IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0189
Polk County No. EQCE089390

MICHAEL CHANDLER, EDDIE JONES, and CHAD MADDISON, on behalf of themselves and all others similarly situated,

Plaintiffs–Appellants,

vs.

IOWA DEPARTMENT OF CORRECTIONS,

Defendant–Appellee.

Appeal from the Iowa District Court
For Polk County
The Honorable Coleman McAllister, District Judge

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES

I. Whether Iowa Code chapter 80F.1 creates a private right of action for an employing agency's alleged failure to adhere to internal investigative procedures.

II. Whether Plaintiffs lack standing to bring this action because they effectively waived their claims when they failed to raise their discovery disputes in their grievance proceedings.

ROUTING STATEMENT

This action should be transferred to the Iowa Court of Appeals. This appeal presents a straightforward application of Iowa law on private rights of action, statutory interpretation, and Iowa's judicial review statute, chapter 17A. Indeed, the Court of Appeals previously addressed a nearly identical issue in *Dautovic v. Bradshaw*, No. 09-1763, 2011 WL 1005432 (Iowa Ct. App. Mar. 21, 2011) (Mansfield, J.). That case's reasoning continues to apply to these facts. Thus, this appeal should be routed to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Plaintiffs, three Iowa Department of Corrections employees, filed a class action petition for money damages as well as declaratory, injunctive, and equitable relief based on alleged violations of procedural protections contained in the Peace Officer, Public Safety, and Emergency Personnel Bill of Rights ("Peace Officer Bill of Rights"). D0002, Petition, ¶¶ 1–8 (09/22/2023); D0011, Amended Petition, ¶¶ 1–8 (11/03/2023). Plaintiffs allege they were denied access to investigatory files from their administrative disciplinary investigations. D0002 ¶ 4; D0011 ¶ 4. The Iowa Department of Corrections moved to dismiss Plaintiffs' claims on multiple grounds, including that Plaintiffs lacked standing and that the Peace Officer Bill of Rights does not provide Plaintiffs a private right of action against their employing agency for alleged procedural violations. D0005, Motion to Dismiss, at 1–2 (10/23/2023); D0018 Motion to Dismiss Amended Petition, at 1–2 (11/13/2023).

The District Court granted the Department's motion. D0021, Order (01/03/2024). The District Court highlighted a Court of Appeals decision holding that a prior version of the Peace Officer Bill of Rights did not contain a private cause of action. D0021 at 3–4 (citing *Dautovic v. Bradshaw*, No. 09-1763, 2011 WL 1005432 (Iowa Ct. App. Mar. 21, 2011)). The court explained that there is no evidence that the Legislature intended to create a private remedy when it amended the law in 2021. D0021 at 5–7. "Instead, the Court agrees with Defendant that the 2021

amendment . . . simply clarified and to some degree expanded the remedies an officer can pursue against individuals or groups who file false complaints against an officer." D0021 at 8. Meanwhile, "the Iowa Legislature has already put in place administrative procedures that govern the relations between the officers entitled to the protections afforded by [the Peace Officer Bill of Rights] and the public entities that employ them." D0021 at 8. In short, the court held the Peace Officer Bill of Rights "clearly operates in an area historically occupied by administrative processes," and "[i]nferring a private cause of action would result in an unwanted intrusion on those administrative processes." D0021 at 8 (quoting *Dautovic*, 2011 WL 1005432, at *3).

Plaintiffs now appeal. D0024, Notice of Appeal (02/06/1024).

STATEMENT OF THE FACTS

Peace Officer Bill of Rights

In 2007, the Iowa Legislature enacted the "Peace Officer, Public Safety, and Emergency Bill of Rights," codified at Iowa Code chapter 80F.1. D0006, Brief in Support of Motion to Dismiss, at 3 (citing 2007 Iowa Acts ch. 160). The law provided "officers" with certain rights and procedural protections, particularly where a "complaint" was filed against the officer. D0006 at 3. For example, as relevant here, Iowa Code section 80F.1(9) stated:

> 9. If a formal administrative investigation results in the removal, discharge, or suspension, or other disciplinary action against an officer, copies of any witness statements and the complete investigative agency's report shall be timely provided to the officer upon the request of the officer or the officer's legal counsel upon request at the completion of the investigation.

D0017, Brief in Support of Motion to Dismiss Amended Petition, at 11 (11/13/2023) (quoting Iowa Code § 80F.1(9)).

When "a formal administrative investigation results in removal, discharge, suspension, or disciplinary action against an officer," the law gave officers certain administrative remedies. More specifically:

> [a]n allegation of a violation of this section may be raised and given due consideration in any properly authorized grievance or appeal exercised by an officer, including but not limited to a grievance or appeal exercised pursuant to the terms of an

> applicable collective bargaining agreement and an appeal exercised through section 341A.12 or 400.20.

D0006 at 5 (quoting Iowa Code § 80F.1(19)).

The law also carved out a special remedy for false complaints that a citizen filed against an officer, providing that "[a]n officer shall have the right to pursue civil remedies under the law against a citizen arising from the filing of a false complaint against the officer." D0006 at 3–4 (quoting Iowa Code § 80F.1(13) (2007)).

In 2021, Iowa, like many States throughout the country, adopted a host of new laws and amended other existing laws applying to law enforcement officers. D0006 at 5. Those changes included amending Iowa Code section 80F.1. D0006 at 5–6. One amendment changed subsection 13, which provides a civil remedy to officers faced with a false citizen complaint. As amended, the section now states:

> An officer shall have the right to bring a cause of action against any person, group of persons, organization, or corporation for damages arising from the filing of a false complaint against the officer or any other violation of this chapter including but not limited to actual damages, court costs, and reasonable attorney fees.

D0006 at 5–6 (quoting Iowa Code § 80F.1(13)).[1] Yet the Legislature left intact subsection 19—the officers' exclusive administrative remedies for

[1] The Legislature subsequently amended Iowa Code chapter 80F.1 twice more in 2022 and 2023. D0021 at 5 n.2 (citing H.F. 2496, 89th Leg., ch. 1142, §§ 1 to 4 (Jul. 1, 2022); H.F. 631 90th Leg., ch. 149, §§ 1 to 3 (June 1, 2023)). Those amendments did not affect the sections at issue.

"[a]n allegation of a violation of this section" in cases where "a formal administrative investigation results in removal, discharge, suspension, or disciplinary action." D0006 at 5, 6 (quoting Iowa Code § 80F.1(19)).

The Legislature also added four subsections to section 80F.1. D0006 at 6. Three subsections impose additional obligations on an officer's employer. D0006 at 6–7. Those subsections all refer to the employer as "the employing agency." D0006 at 6–7. The earlier version of the statute did not use this term. *See* D0006 at 6–7.

Plaintiffs' claims against their employer

Plaintiffs, Michael Chandler, Eddie Jones, and Chad Maddison, are correctional officers employed by the Iowa Department of Corrections. They petitioned on behalf of themselves and putative class members, seeking damages and declaratory, injunctive, and equitable relief for alleged violations of the Peace Officer Bill of Rights. Plaintiffs allege they were subject to internal disciplinary action and were denied access to their investigative files in violation of section 80F.1(9). D0002 ¶¶ 1–8. On November 3, 2023, Plaintiffs filed an Amended Petition in response to a Motion to Dismiss that the Department filed on October 23, 2023. D0011; D0005.

The Department moved to dismiss Plaintiffs' Amended Petition on four grounds: (1) the Peace Officer Bill of Rights does not create a private right of action; (2) the District Court lacked jurisdiction over the case because the Iowa Administrative Procedure Act provides the exclusive

remedy; (3) Plaintiff's failed to plead a plausible violation of Iowa Code section 80F.1; and (4) Plaintiffs lacked standing. D0005; D0006; D0018; D0017.[2] The District Court granted the Department's motion and dismissed Plaintiffs' claims because "the 2021 amendments made by the Iowa Legislature to section 80F.1(13) did not create such a [private right of action] in favor of Plaintiffs" and "Plaintiffs' remedy for such a violation is to access the grievance process or pursue administrative remedies." D0021 at 3.

[2] The Department's original motion to dismiss also argued that Plaintiffs failed to exhaust their administrative remedies under the Iowa Tort Claims Act, while the Department's second motion to dismiss argued that Plaintiff Jones's claims should be dismissed as time barred. D0006 at 14–16; D0017 at 16.

ARGUMENT

I. Iowa Code section 80F.1 does not create a private right of action for an employing agency's alleged failure to adhere to internal investigative procedures.

When the Legislature creates an express private right of action, it speaks clearly. *See Estate of McFarlin v. State*, 881 N.W.2d 51, 58 (Iowa 2016) (quoting *Marcus v. Young*, 538 N.W.2d 285, 290 (Iowa 1995)). Indeed, when it creates a private right of action in an area normally reserved for agency action, it must speak so clearly that it uses specific and explicit language. *See* Iowa Code § 17A.19.

The Legislature did not use this specific, explicit language in 2007 when it first enacted section 80F.1. *See Dautovic v. Bradshaw*, No. 09-1763, 2011 WL 1005432 (Iowa Ct. App. Mar. 21, 2011). Nor did the Legislature use that specific, explicit language when it amended Iowa's Peace Officer Bill of Rights in 2021. The language and structure of section 80F.1 do not create a private right of action for Department employees challenging alleged procedural defects in disciplinary investigations. The text instead provides specific and exclusive administrative remedies for such challenges. Plaintiffs fail to show how the 2021 amendments change the Court of Appeals's conclusion in *Dautovic*. Plaintiffs' reading, by contrast, invites courts to read into the statute terms the Legislature chose not to use. This Court should decline Plaintiffs' invitation.

A. Error preservation and standard of review.

While Plaintiffs' brief does not reference the specific portions of the record where this issue was raised and decided in the District Court, the Department agrees the parties preserved error on this issue. The Department raised this issue in its Motions to Dismiss both Plaintiffs' original and amended petitions. D0005 at 1–2; D0006 at 3–10; D0017 at 3–13; D0018 at 1. Plaintiffs resisted (D0010, Resistance of Defendant's Motion to Dismiss (01/03/2023); Brief in Support of Resistance to Motion to Dismiss, D0012, at 2–8 (11/03/2023); Sur-Reply in Resistance to Defendant's Motion to Dismiss, D0019, at 3–6 (11/15/2023)), and the District Court granted the Department's Motion to Dismiss on this issue. D0021 at 2–9.

Appellate courts review a district court's ruling on a motion to dismiss for the correction of errors at law. Iowa R. App. P. 6.907; *Nahas v. Polk Cty.*, 991 N.W.2d 770, 775 (Iowa 2023). "The purpose of a motion to dismiss is to 'test the legal sufficiency of the petition.'" *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014) (quoting *Geisler v. City Council of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009)). An appellate court "will affirm a district court ruling that granted a motion to dismiss when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Id.* (citing *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012)).

B. Iowa Code section 80F.1(13) does not create an express private right of action.

The "principal purpose" of section 80F.1 was "to establish certain workplace rights for 'officers' via-a-vis their state, county, or municipal employer." *Dautovic*, 2011 WL 1005432, at *3; *see also Olson v. City of N. Liberty*, 451 F. Supp. 3d 1010, 1031 n.10 (S.D. Iowa 2020) (explaining section 80F.1 "provides procedural protections for all police officers facing internal investigations"). The law as originally enacted provided procedural rights including: a guarantee that formal administrative investigations shall be commenced and completed in a reasonable period; a prohibition against compelled polygraph examinations; a right to counsel; a right to a summary of the underlying complaint before an interview; a right to have that interview audio recorded; and a right to investigative files at the completion of an investigation. *See* Iowa Code § 80F.1(3)–(5), (7)–(9). Section 80F.1 also protected officers when citizens file false complaints against them, providing "a right to pursue civil remedies . . . against a citizen." *See* Iowa Code § 80F.1(13).

Section 80F.1, as it existed before 2021, did not give officers a private right of action against their employers. The Court of Appeals held as much when, in 2009, a Des Moines police officer invoked the then-existing version of section 80F.1(13) to sue Des Moines's police chief, alleging various procedural violations during an excessive force investigation. *Dautovic*, 2011 WL 1005432, at *1. The Court of Appeals

affirmed the dismissal because section 80F.1 did not create a private cause of action. *Id.* As then-Judge Mansfield wrote "[t]he law does not contain an express private right of action. That is, nowhere does the statute say that an officer who believes a violation of the 'Bill of Rights' has occurred may bring a lawsuit in district court." *Id.*

Moreover, nothing suggested that chapter 80F contained an implied private right of action. *Id.* at *2–4. "In short, chapter 80F clearly operates in an area historically occupied by administrative processes. Inferring a private right of action would result in an unwarranted intrusion on those administrative processes." *Id.* at *3 (citing *Sanford v. Manternach*, 601 N.W.2d 360, 371 (Iowa 1999)).

While the decision is unpublished, *Dautovic* "has not been overruled or even called into question by any subsequent Iowa appellate decision." D0021, at 4. Perhaps more notably for purposes of this case, the Legislature left section 80F.1 unchanged for approximately a decade following *Dautovic*. *See Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182 (Iowa 2023) (explaining that the courts "assume the legislature is familiar with the existing state of the law" and "a statute will not be presumed to overturn long-established legal principles, unless that intention is clearly expressed or the implication to that effect is inescapable") (citations omitted).

Plaintiffs contend that the 2021 amendments to section 80F.1 created a new private right of action against an officer's employers. *See*

Appellant's Brief at 15–16. Not so. Both subsection 80F.1(13) and section 80F.1 as a whole show that the Court of Appeals rationale in *Dautovic* still governs post-amendment.

Thus, the district court correctly concluded that "the Legislature did not intend by its 2021 amendment to section 80F.1(13) that any violations of section 80F.1(9) would be directly actionable in district court by an aggrieved officer against a public employer." D0021 at 8. The district court rejected Plaintiffs' argument in ruling on the Department's Motion to Dismiss, and the Court of Appeals rejected similar arguments in *Dautovic v. Bradshaw*, 800 N.W.2d 755, 2011 WL 1005432 (Iowa Ct. App. Mar. 21, 2011). This Court should reject Plaintiffs' arguments here.

1. The express language of Iowa Code section 80F.1(13) does not create a private right of action.

A plaintiff cannot sue unless he has a right of action to do so. "A private right of action is the right of an individual to bring suit to remedy or prevent an injury that results from another party's actual or threatened violation of a legal requirement." *Shumate*, 846 N.W.2d at 507 (quoting *Wisniewski v. Rodale, Inc.*, 510 F.3d 294, 296 (3d Cir. 2007)). But "[n]ot all statutory violations give rise to a private cause of action. A private statutory cause of action exists 'only when the statute, explicitly or implicitly, provides for such a cause of action.'" *Mueller*, 818 N.W.2d at 254 (quoting *Sanford*, 601 N.W.2d at 371).

In 2021, Iowa adopted and amended many sections of Iowa Code applying to law enforcement officers. *See* S.F. 342, 89th Leg. (Iowa 2021). Those changes included new and updated provisions regarding public records, the uniform commercial code, health benefits, workers' compensation, qualified immunity, sheriff salaries, civil service examinations, criminal provisions governing assault, harassment, and public disorder, as well as the changes to the Peace Officer Bill of Rights at issue. *See* S.F. 342, 89th Leg. (Iowa 2021).

In particular, the Legislature amended subsection 13 as follows:

> An officer shall have the right to ~~pursue civil remedies under the law~~ bring a cause of action against ~~a citizen~~ any person, group of persons, organization, or corporation for damages arising from the filing of a false complaint against the officer or any other violation of this chapter including but not limited to actual damages, court costs, and reasonable attorney fees.

S.F. 342, 89th Leg., at 12 (Iowa 2021). The Parties do not dispute that section 80F.1(13) creates a private cause of action against "persons, groups of persons, organizations, or corporations" who file false complaints against peace officers.

But Plaintiffs and amicus argue that those changes also created an express private right of action for peace officers to enforce their procedural rights against their employing agencies. Appellant's Brief at 10–16; Brief for Iowa Prof'l Fire Fighters Assoc. as Amicus Curiae at 7–12 ("Fire Fighters Amicus Brief"). Plaintiffs contend the Legislature

created a private right of action when it: (1) changed "right to pursue civil remedies" to "right to bring a cause of action"; (2) expanded the permissible defendants to include any "person, group of persons, organization, or corporation" as opposed to only "citizens"; (3) added language referring to "any other violation of this chapter"; and (4) specifically defined the damages available. *See* Appellant's Brief at 15–16; *see also* Fire Fighters Amicus Brief at 7–10. The State, while acknowledging those changes, contend that Plaintiffs overstate the changes' importance while glossing over some notable omissions.

First, Plaintiffs emphasize the Legislature's decision to change "right to pursue civil remedies" to "right to bring a cause of action" and the inclusion of enumerated civil damages. *See* Appellant's Brief at 11–15. Plaintiffs place more weight on these phrases than they can bear. The "the right to bring a cause of action" merely means the right "to obtain remedy in court." Cause of Action, Black's Law Dictionary (11th ed. 2019). In other words, in the case of a civil cause of action, it means the right to obtain civil remedies. Both phrases simply confer a right to pursue civil remedies from a specified defendant.

Accordingly, as with the 2007 version of the law, this language merely, "reaffirms an officer's preexisting right to pursue 'civil remedies' under the law." *See Dautovic*, 2011 WL 1005432, at *2. At most, the 2021 amendment clarified the available civil remedies—attorney fees and court costs. *See Miller v. Rohling*, 720 N.W.2d 562, 573 (Iowa 2006)

(explaining that generally, attorney fees are recoverable only when specifically provided by statute or under contract).

Second, the 2021 amendment expands the list of permissible defendants under subsection 13, but not to the extent Plaintiffs believe. While the section 80F.1(13)'s original text created a cause of action against "citizens" filing false complaints, the Legislature amended the list to include "any person, group of persons, organizations, or corporations." *Compare* Iowa Code § 80F.1(13) (2021), *with* § 80F.1(13) (2007). That said, the amended and expanded list still does *not* include: employer, employing agency, State of Iowa, agency, department, or government entity.

Instead, the Legislature excluded any term that could be interpreted as creating a cause of action that imposes State or municipal liability. Traditionally, courts "decline[] to read into a statute language which the legislature could have supplied had it so intended." *Neumeister v. City Dev. Bd.*, 291 N.W.2d 11, 15 (Iowa 1980) (citing *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 18–19 (Iowa 1980)). The Legislature speaks clearly when creating a private right of action. *Estate of McFarlin*, 881 N.W.2d at 58. Thus, this omission is telling. When the Legislature wants to create a cause of action against an agency, it says so. *See, e.g.*, Iowa Code § 235A.20 (creating liability under the Iowa Tort Claims Act and Municipal Tort Claims Act for "any person, *agency*, or other recipient" that improperly disseminates or receives child abuse

information) (emphasis added); Iowa Code § 692.6 (imposing liability subject to Iowa's Tort and Municipal Claims Acts for "any person, *agency*, or *governmental body*" that improperly disseminates criminal history information) (emphasis added); *cf.* Iowa Code § 232.75(2) imposing criminal liability on any "person . . . *agency*, or institution" that knowingly fails to report suspected child abuse) (emphasis added).

Indeed, the 2007 statute's legislative history shows that the Legislature considered and rejected just that. The originally introduced Peace Officer Bill of Rights included a cause of action for damages against "against any person, *agency*, organization, business, or *any other legal entity* for damages, including pecuniary damages arising out of the filing of a false complaint." *See* S.F. 457, 82nd Leg. (Apr. 3, 2007) (emphases added). Yet a House amendment removed those references to agencies, organizations, businesses, and other legal entities, resulting in the enacted text. *See* S.F. 457, 82nd Leg. (as amended by House Amendment 1775 Apr. 19, 2007); S.J. 1577, 82nd Leg. (May 15, 2007) (signed by Governor). Nothing in the 2021 statute suggests the Legislature revisited its 2007 decision. The Legislature could have enacted a law applying subsection 13 to an agency or other governmental body but expressly considered and rejected that language. "When the legislature eliminates a provisions during the debate process, 'the statute should not be construed' in a way that gives effect to the eliminated provision." *Estate of Butterfield by Butterfield v. Chautauqua Guest Home, Inc.*, 987 N.W.2d

834, 840 (Iowa 2023) (quoting *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 374 (Iowa 1977)).

Thus, the express text demonstrates that section 80F.1(13) does not apply to Plaintiffs' employer. When, as here, the text of a statute is plain and its meaning clear, the court should not "search for meaning beyond the statute's express terms." *See Iowa Dep't of Transp. v. Soward*, 650 N.W.2d 569, 571 (Iowa 2002). These express terms do not include Plaintiffs' employing agency.

The terms "person, group of persons, organizations, or corporations" also do not encompass an officer's government employer. "We presume statutes or rules do not contain superfluous words." *Iowa Core Ins. Inst. v. Core Grp. of Iowa Ass'n for Justice*, 867 N.W.2d 58, 75 (Iowa 2015) (citing *State v. McKinley*, 860 N.W.2d 874, 885 (Iowa 2015) and Iowa Code § 4.4(2) (setting forth the presumption that "[t]he entire statute is intended to be effective")); *see also United States v. Days Inns of Am., Inc.*, 151 F.3d 822, 825 (8th Cir. 1998) ("Courts should interpret statutory language in a manner that gives effect to all terms so as to avoid rendering terms useless.") (citing *Moskal v. United States*, 498 U.S. 103, 109–10 (1990)). Iowa Code section 4.1 generally defines "person" as an "individual, corporation, limited liability company, government or government subdivision or agency, business trust, estate, trust, partnership, or association or other legal entity," "*[u]nless otherwise provided by law*." Iowa Code § 4.1(20) (emphasis added). But read in

context, section 4.1 includes not only "person" but also "corporations" and "other legal entities"—like "organizations." *Id.* As a result, it would be superfluous for the Legislature to list "corporations" and "organizations" in section 80F.1(13) unless "person" had a more limited definition than that in section 4.1(20).

Similarly, changes the Legislature made to other sections in 2021 directly undercut any argument that "person, group of persons, organizations, or corporations" are synonymous with "employing agency." *See* Iowa Code § 80F.1(20)–(22). Along with amending the Peace Officer Bill of Rights, the Legislature also adopted four new subsections to chapter 80F.1. S.F. 342, 89th Leg., at 13 (Iowa 2021). Three of those subsections impose additional obligations on an officer's employer. Iowa Code § 80F.1(20)–(22) . These sections all refer to the employer as "the employing agency." *Id.* . The earlier version of the statute did not include this term. *See* Iowa Code § 80F.1 (2007). The Legislature would not have added this term if it did not have independent meaning. *See* Iowa Code § 4.4(2); *Iowa Core Ins. Inst*, 867 N.W.2d at 75; *McKinley*, 860 N.W.2d at 885.

In sum, the text establishes that the Legislature intended to expand liability for filing false complaints to groups, organizations, and corporations and not only those filed by individuals. The context in which the Legislature made these amendments underscores this point. The Legislature did not amend section 80F.1(13) in response to the Court of

Appeals decision in *Dautovic*. Rather, it left subsection 13 untouched for approximately a decade. Instead, it amended section 80F.1 in response to nationwide protests about frivolous and harassing reports against police officers and made those changes along with other provisions to expand liability for individuals and groups that interfere with official law enforcement activities. *See, e.g.*, S.F. 342, 89th Leg., at 2–3 (Iowa 2021) (adopting Iowa Code § 9E.2(4) to provide additional public records protections for law enforcement officers); *id.* at 25 (adopting Iowa Code § 708.7(4) regarding harassment); *id.* at 26 (amending Iowa Code § 732.2 regarding unlawful assembly). Nothing in the statute or the circumstances surrounding its enactment suggests that the Legislature was concerned with the employing agencies' treatment of their officers. Instead, subsection 19, governing administrative appeals for certain employment actions, remained untouched.

The final statutory change, providing that an officer has a cause of action for "any other violation of this chapter" also cannot save Plaintiffs' argument. First, the express list of defendants limits the "other violations" to those committed by persons, groups of persons, organizations, or corporations. As explained above, the express terms of this list do not include an officer's employer, so the phrase "any other violation" cannot refer to employer violations.

Yet even if ambiguity remains, the rest of the statute limits the universe of "other violations" to those like "filing of a false complaint."

Iowa Code § 80F.1(13). "Under the doctrine of *ejusdem generis*, general words which follow specific words are tied to the meaning and purpose of the specific words." *In re Estate of Sampson*, 838 N.W.2d 663, 696 (Iowa 2013) (quoting *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 376, 380 (Iowa 2000)); *see also Sallee v. Stewart*, 827 N.W.2d 128, 153 (Iowa 2013). According to this rule, when specific words—here, "the filing of a false complaint"—are used in a statute followed general ones—here, "any other violation of this chapter"—the general terms take their meaning from the specific ones and are restricted to those of the same kind. *See Ellefson v. Centech Corp.*, 606 N.W.2d 324 (Iowa 2000) (citing *Thompson v. Hancock Cty.*, 539 N.W.2d 181, 184 (Iowa 1995) and *State v. Bishop*, 132 N.W.2d 455, 458 (Iowa 1965)). Thus, "other violation" is not broad enough to include every act or omission but is intended to define the preceding term—"the filing of a false complaint"—with some flexibility. *See Harrison v. City of Ankeny Police Dep't*, 909 N.W.2d 228 (Table), 2017 WL 4570474, at *3 (Iowa Ct. App. Oct. 11, 2017). "This flexibility is intended to accommodate for similar . . . actions not within the express contemplation of the legislature when it enacted this . . . provision." *Id.* It is not intended to encompass a different class of violations.

Thus, the term "other violation" in this context includes only those actions of a person, group of persons, organization, or corporation like the filing of a false complaint—not the type of procedural violations alleged

here. Instead, Iowa Code 80F.1(19) establishes a separate administrative remedy for administrative violations of section 80F.1. As explained in more detail below, the existence of these administrative remedies further establishes that administrative "violations" are not included in subsection 13. Rather, subsection 19 addresses these violations.

The focus on outside interference with law enforcement activity in subsection 13 aligns with other 2021 enactments expanding such liability. *See, e.g.*, S.F. 342, 89th Leg., at 25 (Iowa 2021) (adopting Iowa Code § 708.7(4) regarding harassment); *id.* at 25–26 (amending Iowa Code § 732.1 regarding riot); *id.* at 26 (amending Iowa Code § 732.2 regarding unlawful assembly); *id.* at 26 (expanding liability for eluding a law enforcement vehicle under Iowa Code § 321.279).

Accordingly, none of the amended language creates they type of private right of action Plaintiffs seek to pursue, and the District Court's dismissal should be affirmed.

2. Iowa Code section 80F.1(13) omits language that Iowa law requires to create a private right of action.

Along with overstating the importance of the 2021 legislative changes, Plaintiffs overlook key language that the legislature chose not to include when it amended section 80F.1(13). To defend their interpretation of section 80F.1, Plaintiffs point to language used in other statutes to create private rights of action. Appellant's Brief at 11–14 (citing state and federal statutes). Yet those statutes highlight these key

legislative omissions. Plaintiffs' interpretation reads into section 80F.1(13) language that the Legislature has enacted in other statutes but not here.

Here, the Legislature did not include the language required to create a private cause of action when it amended subsection 13. *See Neumeister*, 291 N.W.2d at 15 ("We have declined to read into a statute language which the legislature could have supplied had it so intended." (citing *Hamilton*, 291 N.W.2d at 18–19)). Even if this Court were to accept Plaintiffs' argument that the other changes to section 80F.1(13) suggest the Legislature might have created a private right of action when it amended that subsection, these omissions dispositively prove it did not.

Iowa has an express policy of resolving administrative disputes at the agency level. To serve that goal, the legislature instructed that the judicial review provisions of the Iowa Administrative Procedure Act, codified at Iowa Code chapter 17A "*shall be the exclusive means* by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action." Iowa Code § 17A.19 (emphasis added). The Legislature enacted only one exception to that unambiguous exclusivity provision: when a statute "*expressly* provide[s] otherwise . . . by referring to [chapter 17A] *by name*." *Id.* (emphases added). Chapter 17A is unambiguous. If the Legislature wishes to create a private right of action to challenge agency action, it must use specific explicit language. In other words, it must expressly state that it is

creating an exception to chapter 17A. That language is missing here and the omission dooms Plaintiffs' claims.

A lawsuit that "challenges the [agency]'s performance of [a] statutory duty" constitutes an "agency action" within the meaning of chapter 17A. *See Tindal v. Norman*, 427 N.W.2d 871, 872 (Iowa 1988); *see also* Iowa Code § 17A.2(2) (defining "agency action" to include "performance of any agency duty or failure to do so"). In particular, the Iowa Supreme Court has held that public employee employment actions generally are "agency actions" subject to section 17A.19. *See Papadakis v. Iowa State Univ. of Sci. & Tech.*, 574 N.W.2d 258, 260–61 (Iowa 1997). Here, Plaintiffs allege that the Department violated its duty to provide Plaintiffs' investigative files—an agency action. Accordingly, to overcome the unambiguous exclusivity provision in 17A, chapter 80F.1 must "expressly provide[s] otherwise . . . by referring to [chapter 17A] by name." Iowa Code 17A.19. But section 80F.1 does not refer to section 17A. Instead, section 80F.1(19) provides administrative remedies for "[a]n allegation of a violation of this section" in cases where "a formal administrative investigation results in removal, discharge, suspension, or disciplinary action." Iowa Code § 80F.1(19).

This omission sets it apart from Iowa statutes that create private rights of action. For example, both Iowa Code section 216.16 and section 70A.28—on which Plaintiffs rely, *see* Appellant's Brief at 11–12— contain the critical language chapter 17A requires. *See* Iowa Code § 216.16(1)

("This provision also applies to persons claiming to be aggrieved by an unfair or discriminatory practice committed by the state or an agency or political subdivision of the state, notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A."); Iowa Code § 70A.28(5), (6) (providing that "an action in district court" is an alternative to a hearing "conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A"). Contrast that with section 80F.1, which does not contain a single use of either the term "chapter 17A" or "Iowa administrative procedure Act." *See* Iowa Code § 80F.1. In light of the mandate in section 17A.19, that omission is fatal.

Neither the federal statutes nor the other State statutes on which Plaintiffs rely cure this omission because: (1) these statutes are not subject to Iowa Code section 17A; and (2) these statutes do not concern agency action at all, so would not be subject to any administrative exclusivity provision if one existed. *See* 42 U.S.C. § 9613(f) (providing financial contribution from responsible parties for environmental cleanup costs); 26 U.S.C. § 12(2) (providing investor actions for prospectus fraud); Colo. Rev. Stat. § 10-13-1115 (providing liability for bad faith claim against insurance companies); Minn. Stat. § 58.18 (providing borrower actions against mortgage loan originators and servicers); N.Y. Gen. Bus. Law § 349 (providing consumer claim for deceptive business, trade or commercial practices); Wash. Rev. Code

§ 49.60.030 (establishing a cause of action for discrimination in public accommodations).[3]

Because Plaintiffs challenge agency action—here, an alleged failure of their employing agency to provide investigative files—and because section 80F.1 does not refer to chapter 17A, the statute lacks the language necessary to create private right of action. Put simply, "[i]f the Legislature had wanted to add [a private right of action] to an aggrieved officer's toolkit, it could have expressly done so when it amended subsection 13." D0021 at 7. It did not. There simply "is no evidence of any legislative intent that by amending subsection 13 in 2021 the Iowa Legislature intended to create a private remedy in favor of an aggrieved officer against their employer to be directly actionable in district court." D0021 at 7.

A neighboring State shows what language creating an express private right of action would look like in the context of a peace officer bill of rights had the Legislature created one. Minnesota adopted its version of a police officer bill of rights—the Peace Officer Discipline Procedures Act—in 1991. Minn. Stat. § 626.89 (1991). While the Minnesota

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[3] Georgia Code section 50-18-73, which the Georgia Supreme Court addressed in *Blalock v. Cartwright*, 779 S.E.2d 225, 225 (Ga. 2017), concerns violations of public records laws. *See* Ga. Code Ann. § 50-18-73. However, that statute expressly provides for "actions against persons *or agencies* having custody of records open to the public." *See* Ga. Code Ann. § 50-18-73(a). As explained above, § 80F.1(13) does not expressly list "agencies" as possible defendants.

Legislature amended the law in 2023 to create a civilian review board, the law otherwise has remained largely unchanged. *See* Minn. Stat. § 626.89 (2023); Minn. Stat. § 626.89 (1991). Beyond the same procedural protections contained in Iowa's law, Minnesota's Peace Officer Discipline Procedures Act contains an express "Action for damages," providing:

> Notwithstanding section 3.736, [Minnesota's state tort claims act], or 446.03, [Minnesota's municipal immunity statute], a political subdivision or state agency that violates this section is liable to the officer for actual damages resulting from the violation, plus costs and reasonable attorney fees. The political subdivision or the state is deemed to have waived any immunity to a cause of action brought under this subdivision, except that the monetary limits on liability under section 3.736, subdivision 4 of 466.04 apply.

Minn. Stat. § 626.89(16).

Minnesota's statute thus expressly provides that "a *political subdivision* or *state agency* that violates this section is liable to the officer." *Id.* (emphasis added). The provision also expressly waives both Minnesota's state tort claims law and municipal immunity provisions, referring to both by statute number. *Id.* It also states that "[t]he political subdivision or the state *is deemed to have waived any immunity* to a cause of action brought under this subdivision." *Id.* (emphasis added). "*This* provision expressly creates a cause of action against the executive branch." *Longbehn v. City of Moose Lake*, No. A04-1214, 2005 WL 1153625, at *4–5 (Minn. Ct. App. May 17, 2005) (emphasis added). The

Minnesota statute therefore illustrates the precise language the Iowa Legislature chose to omit when it amended section 80F.1(13) and demonstrates why Iowa's amended language does not in fact create an express private right of action against an officer's employer.

Put simply, Plaintiffs here are attempting an end-run around chapter 17A, relying on a faulty reading of section 80F.1(13). Their Amended Petition challenges agency action, alleging that the Department violated their procedural rights under section 80F.1 during their disciplinary proceedings. Plaintiffs even admit that they are not challenging the merits of their disciplinary actions. *See* D0012 at 8.

Instead, they are solely challenging the Department's alleged failure to comply with its obligations under section 80F.1(9) during their disciplinary proceedings. *See* D0012 at 8. Because "agency action was involved, [Plaintiffs] should have pursued [their] remedy under Iowa Code chapter 17A." *Genetzky v. Iowa State Univ.*, 480 N.W.2d 858, 860 (Iowa 1992); *see also Salsbury Labs. v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 835 (Iowa 1979) (concluding it would be inappropriate "if the provisions of section 17A.19 could be discarded . . . in favor of certiorari, declaratory judgment, or injunction"); *Grains of Iowa, L.C. v. Iowa Dep't of Agric. & Land Stewardship*, 562 N.W.2d 441, 443–44 (Iowa Ct. App. 1997) (dismissing a petition for declaratory judgment that was "in effect, a lawsuit directed at an agency action); *Eddie Jones*, Case No. 102640, 2023 WL 3964041, at *3 (Iowa PERB Apr. 10, 2023) ("The appropriate

place for Jones to request these documents would have been in his grievance appeal proceeding, which he chose not to do.").

At bottom, Plaintiffs' challenge amounts to a discovery dispute in an administrative proceeding. For that, chapter 17A provides the exclusive avenue for Plaintiffs to pursue judicial review of the Department's decision. *See* Iowa Code § 17A.19; *Christensen v. Iowa Civ. Rts. Comm'n*, 292 N.W. 2d 429, 431 (Iowa 1980) ("We believe the legislature intended that discovery problems in administrative proceedings be settled before the agency whenever possible and, in any event, that judicial review ordinarily await final agency action."). One administrative law judge even told one Plaintiff that during an administrative appeal, explaining "[t]he appropriate place for Jones to request these documents would have been in his grievance appeal proceeding, which he chose not to do." *Jones*, 2023 WL 3964041, at *3.[4]

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[4] To be sure, in some cases a Court can construe parties' petitions as petitions for judicial review. *Salsbury Labs.*, 276 N.W.2d at 835. However, that is not possible in this case because Plaintiffs failed to exhaust their administrative remedies before bringing this action. D0011 ¶¶ 21–45.

One Plaintiff, Eddie Jones, pursued an administrative appeal. *See Eddie Jones*, Case No. 102640, 2023 WL 3964041 (Iowa PERB Apr. 10, 2023). But in that appeal he "admitted during the hearing that he was not filing his complaint pursuant to Iowa Code section 80F.1." *Id.* at *4. Jones also chose not to request his investigative files during his grievance appeal proceeding. *Id.* at *3. Furthermore, because the district court sits in an appellate capacity when conducted chapter 17A judicial review, it has no original authority in such cases to decide the rights of parties

Because Plaintiffs did not seek judicial review under section 17A.19, the District Court correctly dismissed Plaintiffs' Amended Petition. The District Court's dismissal should be affirmed.

C. Section 80F.1 does not provide an implied right of action as section 80F.1(19) expressly provides specific administrative remedies for alleged violations of procedural protections in disciplinary investigations.

To determine whether a statute creates an implied private right of action, a court asks whether: (1) the plaintiff is a member of the class for whose benefit the statute was created; (2) there is a sign of legislative intent, explicit or implicit to create or deny such a remedy; (3) allowing such a cause of action would be consistent with the underlying purpose of the legislation; and (4) the private cause of action would intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction. *See Dautovic*, 2011 WL 1005432, at *2 (quoting *Manternach*, 601 N.W.2d at 371).

The Department agrees that Plaintiffs are members of the class for whose benefit the statute was created. *See* Fire Fighters Amicus Br. at 14–15. But Plaintiffs cannot satisfy the second, third, or fourth requirements. Nothing in the text or legislative history suggests that the Legislature intended to create a private right of action when it amended

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through a tort claim or other appended action for damages. *See Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985).

chapter 80F.1 in 2021 and doing so would undermine the administrative remedies in place to address procedural violations of the statute.

"Statutes are to be read as a whole rather than looking at words and phrases in isolation." *Iowa Ins. Inst.*, 867 N.W.2d at 72 (citing *Phillips v. Chicago Cent. & Pacific R. Co.*, 853 N.W.2d 636, 649 (Iowa 2014) (noting that statutory terms are often "clarified by the remainder of the statutory scheme")); *Den Hartog v. City of Waterloo*, 847 N.W.2d 459, 462 (Iowa 2014) ("We have often explained we construe statutory phrases not by assessing solely words and phrases in isolation, but instead by incorporating considerations of the structure and purpose of the statute in its entirety."); *In re Estate of Melby*, 841 N.W.2d 867, 879 (Iowa 2014) ("When construing statutes, we assess not just isolated words and phrases, but statutes in their entirety . . . .")); *see also* Iowa Code § 4.1(38) ("Words and phrases shall be construed according to the context and the approved usage of the language . . . ."); *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996) ("Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of a statute when all its provisions are examined.").

A proper analysis of section 80F.1 thus requires reading subsections 13 and 19 together. D0021 at 5–7. Doing so shows that the Legislature did not intend to create a private right of action and that such a right of action would intrude into an area over which a state administrative agency holds exclusive jurisdiction. Plaintiffs, however,

would like to read "subsection 13 in isolation and not in context of the entirety of § 80F.1." D0021 at 6.

Although Plaintiffs' brief does not address section 80F.1(19), that subsection gives officers an explicit administrative remedy for employer violations of the Peace Officer Bill of Rights. As the Court of Appeals has explained, Section 80F.1(19) provides officers with an exclusive remedy. *Dautovic*, 2011 WL 1005432, at *2–3. It expressly carves out an explicit remedy for cases where "a formal administrative investigation results in removal, discharge, suspension, or disciplinary action against the officer and the officer alleges in writing a violation of the provisions of this section." Iowa Code § 80F.1(19).

Section 80F.1(19)'s carve out applies to Plaintiffs because they allege that they were all subject to formal administrative investigations resulting in suspension or discipline and that they have alleged in writing violations of chapter 80F.1. *See* D0011 at ¶¶ 21–25; 29–33, 36–43. As such, section 80F.1(19) provides that "[a]n allegation of a violation of this section may be raised and given due consideration in any properly authorized grievance or appeal exercised by an officer." Iowa Code § 80F.1(19). In other words, where, as here, a formal administrative investigation results in removal, discharge, suspension, or disciplinary action, the grievance or administrative appeal process provides the exclusive remedy.

About twenty other States have enacted "Bills of Rights" for public safety officers.[5] Like Iowa, many of these States include analogous statutory sections specifying exclusive administrative remedies and limiting judicial causes of action to appellate review of those administrative decisions.[6]

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[5] *See, e.g.*, Ariz. Rev. Stat. §§ 38-1101–1120; Ark. Code §§ 14-52-301–307; Cal. Gov't Code §§ 3300–13; Del. Code Ann. Tit. 11, §§ 9200–9211; Fla. Stat. §§ 112.80–84 (fire fighters), 112.531–.536 (law enforcement and correctional officers); 50 Ill. Comp. Stat. Ann. 725/1–/7.2; Ind. Code §§ 36-8-2.1-1– -11; Ky. Rev. Stat. § 15.520; La. Rev. Stat. §§ 40:2531–:2537; Minn. Stat. § 626.89; Nev. Rev. Stat. §§ 289.020–.120; N.M. Stat. §§ 29-14-1– -11; Or. Rev. Stat. §§ 236.350–.370; 42 R.I. Gen. Laws §§ 42-28.6-1– -17; Tenn. Code §§ 38-8-301–312; Texas Loc. Gov't Code Ann. §§ 143.001–.403; Va. Code Ann. §§ 9.1-500– -507; Wis. Stat. §§ 164.01–.20.

[6] *See, e.g.*, Ariz. Rev. Stat. §§ 38-1106, 1107 (providing for administrative review procedures with court jurisdiction only through judicial review of agency action); Del. Code Ann. Tit. 11, § 9203 (specifying that if an officer is suspended for a disciplinary reason, charged with conduct that violates rules, regulations, or general orders of agency, or faces discipline beyond a reprimand, that officer shall be entitled to an administrative hearing unless a different grievance procedure is contractually provided); Ky. Rev. Stat. § 15.520(8) (providing that circuit court review is "shall be based solely upon the administrative record" and any evidence of alleged arbitrariness of administrative hearing); Nev. Rev. Stat. § 289.120 (providing that judicial relief is available only "after exhausting any applicable internal grievance procedures . . . or administrative remedies"); R.I. Gen. Laws §§ 42-28.6-4, -12 (setting forth administrative remedy with judicial review); Tenn. Code § 38-8-305 (providing administrative hearing for "[a] police officer who is dismissed, demoted, suspended or transferred for punitive reasons"); Va. Code Ann. § 9.1-502 (setting forth right to procedural remedies and providing an officer may not pursue multiple remedies).

In many of these States, courts have held that these sections preclude separate or alternate causes of action for money damages. *See, e.g.*, *State v. MacColl*, No. 2103011110, 2022 WL 2388397, at *8 (Del. Super. Ct. Jul. 1, 2022), *aff'd* No. 129, 2023, 2024 WL 268761 (Del. Jan. 25, 2024) (holding that judicial review is available to review termination decisions but that "[a]ny other claim for a 'failure to follow'" Delaware's Law Enforcement Officer Bill of Rights are "unreviewable in this court" (citations omitted)).[7] These decisions align with a general policy to resolve administrative disputes through the administrative process as the Iowa Legislature has chosen to do through section 80F.1(19).

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[7] *See also Wilbers v. Office of Att'y Gen.*, No. 2018-CA-001174-MR, 2019 WL 3375470, at *3 (Ky. Ct. App. Jul. 26, 2019) (holding that plaintiff "cannot repackage and rebrand his [administrative] appeal as an independent cause of action" to circumvent the administrative appeal provisions of Kentucky's Police Officer Bill of Rights); *Almerico v. Dale*, 927 So.2d 586, 593–94 (La. App. 5th Cir. 2006) (holding that Louisiana's law enforcement officer bill of rights "sets out minimum standards to apply whenever a law enforcement officer is under investigation with a view to possible disciplinary action, demotion, or dismissal. That statute cannot be cited, however, as basis for an abuse of process claim."); *Contreras v. Las Vegas Metro. Police Dep't*, 534 P.3d 135, 2023 WL 5319224, at *1–3 (Nev. Aug. 17, 2023) (holding that plaintiff did not have a judicial cause of action independent of the administrative and grievance processes set forth in Nevada's police officer rights statute); *Sedillo v. N.M. Dept. of Pub. Safety*, 140 N.M. 858 (N.M. Ct. App. 2007) ("We find no support in the statutory language for Plaintiff's argument concerning a private right of action . . . ."); *City of Pawtucket v. Laprade*, 94 A.3d 503 (R.I. 2014) (explaining that judicial review of Law Enforcement Officer Bill of Rights Claims is limited because administrative processes are the "exclusive remedy" under the statute).

Plaintiffs argued to the district court that section 80F.1(19)'s use of the word "may" indicates that "[t]his section does not expressly require administrative review of a violation of Section 80F.1(19)." D0019, at 5. Even so, as Plaintiffs themselves concede: "The word 'may' confers a power." *See id.* (citing Iowa Code § 4.1(3)(c)). Here, the word confers a power to pursue an administrative appeal. That is, "[t]he obvious purpose of the 'may' language is to give an aggrieved party the choice between [the specified remedy] or the abandonment of its claim." *See Bonnot v. Congress of Indep. Unions, Loc. 14*, 331 F.2d 355, 359 (8th Cir. 1964) (holding that language in a collective bargaining agreement that a party "may" request arbitration was not "permissive and optional" but in fact compelled arbitration as the exclusive remedy); *see also United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 565 & n.1 (1960) (explaining that contract language that disputes "may be submitted" to arbitration established arbitration as an aggrieved party's exclusive remedy). In other words, section 80F.1(19) provides the power to choose between pursuing the administrative processes set forth and doing nothing. And Plaintiffs chose the latter option.

Indeed, section 80F.1(13) does not implicitly refute the statutory administrative exclusivity codified in section 80F.1(19). Interpreting other statutes, like Iowa Code section 70A.28, this Court has held that "where the legislature has expressly created independent statutory causes of action in the alternative to chapter 17A-type review, judicial

review of agency action under the administrative procedures act is not the exclusive means of obtaining judicial review." *Walsh v. Wahlert*, 913 N.W.2d 517, 525 (Iowa 2018). Yet as explained above, section 80F.1 is drafted differently than Iowa Code section 70A.28. As the court in *Walsh* explained, that is because section 70A.28 "is an unusual case in which we have a *statute* that expressly creates an independent cause of action in the alternative to administrative remedies under Iowa Code chapter 17A." *Walsh*, 913 N.W.2d at 525. As discussed above, section 70A.28 explicitly states that the administrative procedures of chapter 17A are an alternate remedy. *See* Iowa Code § 70A.28(6) ("Subsection 2 may also be enforced by an employee through an administrative action. . . . The hearing shall otherwise be conducted in accordance with the rules of . . . the Iowa administrative procedure Act, chapter 17A)."). Contrast that with section 80F.1(13), which contains no such language, nor does it contain the express references to chapter 17A that would create a similar "unusual case." *Walsh*, 913 N.W.2d at 525.

Therefore, a private right of action under section 80F.1(13) would directly intrude into an area where the administrative grievance process holds exclusive jurisdiction. Applying Plaintiffs' interpretation of subsection 13 would render the administrative procedures contained in section 80F.1(19) superfluous. That interpretation would undermine existing administrative procedures if an officer could file a parallel claim in district court seeking reinstatement based on the same procedural

violations at issue in the administrative process. Indeed, if an officer could pursue parallel remedies against an employer in district court for money damages based on alleged violations of procedural rights in section 80F.1, it would nullify the section's administrative remedy. *See* Iowa Code § 4.1 ("In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute.").

In fact, this case demonstrates this precise issue. Here, as noted above, only one Plaintiff, Eddie Jones, pursued any administrative appeal of his disciplinary proceeding. And even there, Jones expressly "admitted during the hearing that he was not filing his complaint pursuant to Iowa Code section 80F.1." *Jones*, 2023 WL 3964041, at *4. Instead, he pursued those alleged violations here, in a parallel court action. Plaintiffs' own actions thus "show[] at this point in time that there is an[] . . . administrative agency intrusion." *Contra* Fire Fighters Amicus at 15 (arguing there has been no intrusion).

This Court should join the district court in rejecting such an interpretation and affirm that an officer's exclusive remedies against employing agencies are found through the administrative processes of section 80F.1(19). The Court therefore should affirm the District Court's dismissal of Plaintiffs' claims as section 80F.1 does not provide a private

right of action—either express or implied—against an officer's employing agency.

II. Plaintiffs lack standing to bring this action because they effectively waived their claims when they failed to raise their discovery disputes in their grievance proceedings.

Even if this Court finds that section 80F.1(13) creates a private right of action against an employing agency and is not covered by chapter 17A exclusivity, Plaintiffs claims still must be dismissed because Plaintiffs lack standing to bring their claims.

A. Error preservation and standard of review.

The Department preserved this issue when it raised the issue in its Motion to Dismiss Plaintiffs' Amended Petition. D0017 at 13–15; D0018 at 1. Even though the District Court did not rule on the Department's standing argument, the Court can affirm "on a ground not relied upon by the district court provided the ground was urged in that court and is also urged on appeal." *Veatch v. City of Waverly*¸858 N.W.2d 1, 7 (Iowa 2015).

Questions of standing and whether an action should be dismissed as nonjusticiable are reviewed for corrections of error at law. *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 787 (Iowa 2021).

B. Plaintiffs lack standing because they cannot establish that their injury is fairly traceable to the Department of Corrections.

Plaintiffs lack standing because their alleged injury resulted from their own conduct. "Whether litigants have standing does not depend on

the legal merits of their claims, but rather, whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) (citing *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 567 (Iowa 1976)). To establish standing, a plaintiff must satisfy two elements: a plaintiff must: "(1) have a specific personal or legal interest in the litigation, and (2) be injuriously affected." *Hawkeye Food Serv. Distrib., Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 606 (Iowa 2012) (quoting *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008)).

A plaintiff's "injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.'" *Id.* (quoting *Godfrey*, 752 N.W.2d at 423 (Iowa 2008)); *see also Godfrey*, 752 N.W.2d at 419 ("The second requirement—the plaintiff must be injuriously affected—means the plaintiff must be 'injured in fact.'"). The injury must also be "fairly traceable to the defendant's conduct and . . . likely to be remedied by a favorable decision." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 330 (Iowa 2023) (citing *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 790 (Iowa 2021)).

Plaintiffs fail to establish an injury that is fairly traceable to the Department. Plaintiffs' Amended Petition alleges that the inability to access their investigative files at the grievance level caused them distress. This distress, however, stems from Plaintiffs' own inaction rather than any action or inaction of the Department: Plaintiffs did not

request their investigative files at the grievance and appeal levels—despite instructions to do so—effectively waiving their rights under the Peace Officer Bill of Rights. Had the officers raised this issue at the grievance and appeal levels, either the alleged defect could have been corrected or Plaintiffs could have received an evidentiary inference in their favor based on the unavailable files. But Plaintiffs did not do so.

Indeed, in Plaintiff Jones's administrative appeal, the administrative law judge specifically found that "[t]he appropriate place for Jones to request these documents would have been in his grievance appeal proceeding, which he chose not to do." *Jones*, 2023 WL 3964041, at *3. In other words, Plaintiffs could have avoided the emotional distress alleged in their Amended Petition, but they instead suffered the alleged injury because of their own inaction.

In that way, the present case really is more like a discovery dispute. In any other civil case, when a defendant does not provide access to documents that should be available to a plaintiff, that plaintiff has recourse through a Motion to Compel or Motion for Sanctions. That plaintiff has no right to file a separate lawsuit alleging that the denial of access caused separate emotional harm. Any emotional harm suffered because of lack of access to those documents is simply a consequence of that plaintiff's failure to pursue the appropriate remedies in the original action and thus not fairly traceable to the defendant.

Similarly, section 80F.1 provided Plaintiffs recourse through agency grievance proceedings. Having chosen to forgo that remedy, Plaintiffs cannot collaterally attack the Department for any alleged resulting injury. Such harm is not fairly traceable to the Department, but to Plaintiffs' own inaction. Plaintiffs therefore lack standing. The Court should affirm the District Court's dismissal of the Amended Petition.

CONCLUSION

For any of the reasons above, the District Court's dismissal of Plaintiffs' claims should be affirmed.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(g) and 6.903(1)(i)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 9,400 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

/s/Christopher J. Deist
CHRISTOPHER J. DEIST

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 10th day of May, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/Christopher J. Deist
CHRISTOPHER J. DEIST