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No. 23-1766

IN THE

SUPREME COURT OF IOWA

EUGENE SIKORA,

Appellant,

V.

STATE OF IOWA, AND DR. BETH SKINNER,

Appellee.

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY
THE HONORABLE JOSEPH SEIDLIN, JUDGE
POLK COUNTY CASE NO. CVCV063762

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

I. SHOULD SOVEREIGN IMMUNITY, AND STATUTORY IMMUNITY, LOSE THEIR VITALITY WHEN FACED WITH UNCONSTITUTIONAL ACTS OF THE STATE AND/OR ITS EMPLOYEES?

II. IS TRESPASS ON THE CASE IS A VIABLE COMMON LAW ACTION FOR INVASION OF A CONSTITUTIONAL RIGHT?

III. DOES IOWA CODE § 64.18 GIVES A STATUTORY "RIGHT OF ACTION" ON THE OFFICIAL BOND OF A STATE EMPLOYEE?

IV. SHOULD *BURNETT V. SMITH* BE APPLIED PROSPECTIVELY ONLY, OR RETROACTIVELY TO THIS CASE?

ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it involves several issues of first impression, including the applicability of sovereign immunity, and statutory immunity, to the State and State employees when sued under the common law for invading the constitutional rights of an Iowan, whether Trespass on the Case is a viable common law cause of action to vindicate invasion of an Iowan's article I, §§ 1, 8, and 9 constitutional rights, whether Iowa Code § 64.18 is a viable statutory action to vindicate oppression at the hands of State employees, and whether *Burnett v. Smith* should be applied prospectively or retroactively. *See* Iowa R. App. P. 6.1101(2)(d) and (f).

STATEMENT OF THE CASE

NATURE OF THE CASE.

This is an appeal from the summary dismissal of Eugene Sikora's actions against the State of Iowa for violations of article I, §§ 1, 8, and 9, Negligence, Negligence Per Se, False Arrest, Trespass on the Case, and Action on the Bond, concerning his over-confinement in Iowa prison for nearly five months.

FACTS.

Eugene Sikora entered into plea bargains with the State of Iowa. D0061, Amended Petition at ¶ 10-27 (8/18/23). Three District Courts sentenced Sikora, giving those agreements the force of law. *Id*. The Hancock County District Court, the Winnebago District Court, and the Cerro Gordo District Court each sentenced Sikora to concurrent five-year terms. *Id*.

The State was directed to take Sikora into custody for an indeterminate term not to exceed five years, to be served concurrently on three counties' sentences. *Id*. Importantly, the State was ordered to give Sikora credit for time previously served. *Id*. at ¶¶ 12, 18, 24.

Cerro Gordo County certified that Plaintiff served 118 days in connection with Cerro Gordo County Case No. FECR024737. *Id*. at ¶ 28. Hancock County certified that Plaintiff served 90 days in connection with Hancock County Case No. FECR011058. *Id*. at ¶ 29. Plaintiff served 17 hours and 15 minutes in the Winnebago County Jail. *Id*. at ¶ 30. In connection with all three cases, Plaintiff was placed at the Beje Clark Residential Center for 83 days, and was to receive credit for time served there as well. *Id*. at ¶ 31.

All told, Sikora should have received 292 days credit for time previously served, against each of the concurrent five-year terms. *Id*. at ¶ 32.

Sikora was sentenced to 1826 days. *Id*. at ¶55. Pursuant to Iowa's earned time law, Sikora should have been released after 830 days of his 1826-day sentence. *Id*. at ¶ 56. Sikora should have also been credited 292 days for jail time and residential facility time. *Id*. at ¶ 57. That means Sikora should have been released after 538 days in prison. *Id*. at ¶ 58.

Sikora entered prison on May 4, 2017. Id. at ¶ 59. Sikora should have been release 538 days later, on October 24, 2018. Id. at ¶ 60. Instead, the Iowa Department of Corrections failed to apply Sikora's jail and residential facility time correctly. *Id*. at ¶¶ 39-54, 62. Sikora was not released from prison until March 19, 2019. Id. at ¶ 61. The State of Iowa wrongfully held Sikora in prison for nearly five months longer than authorized by his sentencing orders. *Id*. at ¶ 62.

PROCEEDINGS.

On May 22 Sikora filed a *Godfrey* action against the State of Iowa and its employees for violation of his article I, §§ 1, 8, and 9 rights. The action also included Negligence and Negligence Per Se counts. On July 15, 2022, the State of Iowa made a motion to dismiss Sikora's Petition. D0009, Motion to Dismiss (7/15/22).

On November 28, 2022, the District Court granted the Motion to Dismiss in its entirety D0027, Order Regarding Dismissal (11/28/22). On January 26, 2023, however, the Court Amended and Substituted its dismissal ruling, finding that Sikora had in fact complied with the heightened pleading requirements of Iowa Code § 669.14A(3). D0034, Amended and Substituted Ruling (1/26/23). The District Court dismissed with prejudice Sikora's article I, § 1 claim and his two negligence claims. Sikora's article I, §§ 8 and 9 claims went forward. *Id.*

On May 5, 2023, the State filed a Motion for Judgement on the Pleadings, pursuant to *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023). D0041, Motion for Judgment on the Pleadings (5/5/23).

On June 19, 2023, Sikora filed a Motion for Leave to Amend his Petition, and a proposed Amended Petition. D0046, Motion to Amend and Attachment (6/19/23). Sikora added claims for False Imprisonment, Trespass on the Case, and an Action on the Bond. *Id.*

On June 30, 2023, the District Court granted the Motion on the Pleadings, and summarily dismissed Sikora's article I, §§ 8 and 9 claims. D0050, Order Regarding Dismissal (6/30/23).

On October 2, 2023, the District Court denied Sikora's Motion for Leave to Amend and dismissed the case. D0063, Order Regarding Dismissal (10/2/23).

On October 27, 2023, Sikora filed a timely notice of appeal. D0065, Notice of Appeal (10/27/23).

ARGUMENT

***Burnett* has been subject to some undue criticism.** The State, through its employees, wrongfully held Sikora in prison for nearly five months longer than authorized by the District Courts that sentenced Sikora. The State, and its employees, acted in excess of their authority, and in violation of Sikora's article I, §§ 1, 8, and 9 rights to liberty, due process, and to be free from unreasonable seizure.

In 2022, Sikora filed a civil action against the State and its employees pursuant to *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), to vindicate the invasion of his constitutional rights.

However, in 2023, the Iowa Supreme Court reversed course. The Iowa Supreme Court overruled *Godfrey*, which had allowed direct actions under the Iowa Constitution. *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023).

The *Burnett* Court held that "*Godfrey* should be overruled, and we no longer recognize a standalone cause of action for money damages under the Iowa Constitution **unless authorized by the common law, an Iowa statute, or the express terms of a provision of the Iowa Constitution."** *Burnett* at 307 (emphasis added).

The *Burnett* decision has been met with some notable criticism:

> The traditional structure of an action in constitutional tort was tripartite. Plaintiffs would sue government officers under conventional tort causes of action, those officers would raise public-justification defenses, and then plaintiffs would introduce the alleged constitutional violation as a limitation on that defense. Of course, the entire process short-circuits if the government and its officers are immune from tort liability, as they frequently are today. Recently, in *Burnett v. Smith*, the Iowa Supreme Court declined to recognize an independent cause of action for money damages under its constitution and overruled an earlier case that had done so.
>
> *******
>
> The *Burnett* court was right that nineteenth-century plaintiffs never sued directly under the Iowa Constitution but wrong about which way that fact cuts. In the decades following ratification, the Iowa judiciary facilitated constitutional torts by recognizing a wide array of flexible common law causes of action. Because the common law generally provided a vehicle, plaintiffs rarely needed to sue directly under the constitution. Furthermore, the

shape of the common law reflected original intent; the framers of the Iowa Constitution saw damages as the natural remedy for constitutional violations. If the nineteenth-century practice was crafting judge-made causes of action to enforce the constitution, it is *Burnett*, not *Godfrey*, which deviates from tradition.

The court's repeated claim that there is "no Iowa precedent" for direct suits for money damages under the Iowa Constitution proves more about the historical system of constitutional torts than the appropriateness of implying a damages remedy. Traditionally, plaintiffs vindicated both state and federal constitutional rights by suing under a common law cause of action. The officer would claim that his conduct was a justifiable exercise of state power, and the plaintiff would introduce the constitutional violation as a limit on that defense. Plaintiffs did not sue directly under the constitution because they did not need to; the common law was enough to get the constitutional claim into court.

In Iowa, that historical model is no longer viable. The Iowa Tort Claims Act bars suits arising out of nearly all intentional torts against both the state and individual state officers acting within the scope of employment. And the ITCA, unlike its federal counterpart, does not exempt "law enforcement officers"[68] from its general prohibition on intentional tort claims. In 1857, Burnett could have sued Officer Smith for assault and raised his constitutional claims as a response to Smith's justification defense. But today, similarly situated plaintiffs have no viable cause of action. *Godfrey*, at bottom, was a judge-made vehicle designed to solve that problem.

> Traditionally, when a constitutional claim lacked an obvious vehicle, Iowa courts were more than happy to furnish one. Many of these common law causes of action served no purpose other than the enforcement of the constitution.

Recent Cases, Constitutional Torts-State Bivens Equivalents-Iowa Supreme Court Refuses to Recognize Implied Causes of Action for Damages Under State Constitution, 137 HARV. L. REV. 1026, 1026-1030 (January 2024).

Sikora, however, believes such criticism is premature. The *Burnett* Court did not hold that common law damages actions for the vindication of rights secured under the Iowa Bill of Rights are disallowed or prohibited.

Instead, the *Burnett* Court just clarified that an action for wrongful conduct which rises to the level of an invasion of constitutional rights must be brought pursuant to common law torts, or authorized by statute. It is an important distinction: An action may not be brought directly under the Iowa Constitution, but violations of the Iowa Constitution may still be vindicated in a damages action, whether by a common law or statutory action.

Heeding the directives of the *Burnett* Court, Sikora amended his Petition to add established common law actions: False Imprisonment, and Trespass on the Case. Sikora had also previously plead a Negligence action. Sikora also added a statutory action, an Action on the Bond, pursuant to

Iowa Code § 64.18. Each alleged the State wrongfully held Sikora in prison for nearly five months longer than authorized by the sentencing District Courts, in violation of Sikora's article I, §§ 1, 8, and 9 rights.

As an Iowa citizen, Sikora abided by his plea agreements and sentences, and served his time. As an Iowa citizen, Sikora expected the State to abide by law and by the terms of the sentencing orders. The State and its employees failed to live up to its end of the bargain. The State took five months more of Sikora's life than it was entitled to.

Sikora seeks to invoke the common law and Iowa's own statutes to hold the State and its employees responsible for their wrongful conduct, just as Sikora was held responsible for his wrongful conduct.

Legal authority concerning Motions to Dismiss and Motion for Judgment on the Pleadings. A motion for judgment on the pleadings is only appropriate when the pleadings, taken alone, entitle a party to judgment. *Hurd v. Odgaard*, 297 N.W.2d 355, 356 (Iowa 1980). "In many respects a motion for a judgment on the pleadings is reviewed in a similar manner to a motion to dismiss." *Stanton v. City of Des Moines*, 420 N.W.2d 480 (Iowa 1988).

"Motions to dismiss for failure to state a claim upon which relief may be granted are rarely an appropriate vehicle for disposing of actions without

trial." *American Nat'l Bank v. Sivers*, 387 N.W.2d 138, 140 (Iowa 1986). To sustain a motion to dismiss, "the movant must show no state of facts is conceivable under which the plaintiffs might show a right of recovery." *State ex rel. Miller v. Phillip Morris Inc.*, 577 N.W.2d 401, 403 (Iowa 1998) (quoting *Below v. Skarr*, 569 N.W.2d 510, 511 (Iowa 1997)). The disposition of a motion to dismiss must rest on legal grounds. *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa App.1998). The movant "admits the well-pleaded facts in the pleading assailed for the purpose of testing their legal sufficiency." *Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994).

Courts are to "view the petition in the light most favorable to the plaintiff." *Sanford v. Manternach*, 601 N.W.2d 360, 363 (Iowa 1999). "All doubts and ambiguities are resolved in plaintiff's favor." *Robbins*, 578 N.W.2d at 264 (citing *Below*, 569 N.W.2d at 511). "A motion to dismiss must stand or fall on the exclusive contents of the petition and cannot rely on facts not alleged in the petition or facts presented at an evidentiary hearing." *Id*. (citing *Below*, 569 N.W.2d at 511; *Riediger v. Marrland*, 253 N.W.2d 915, 916 (Iowa 1977)).

Iowa is a notice pleading state. Iowa R. Civ. P. 1.402. Under notice pleading, a petition need not identify a specific legal theory; it is sufficient if

the prima facie elements of a claim are stated, and this is fair notice to the defendant. *Soike v. Evan Matthews & Co.*, 302 N.W.2d 841, 842 (Iowa 1981) (citing *Lamantia v. Sojka*, 298 N.W.2d 245, 247 (Iowa 1980)).

The standard for granting or denying a motion to dismiss is set forth in *Hawkeye Foodservice Distrib. v. Iowa Educators Corp.* as follows:

> Recently, we have described the standard for granting a motion to dismiss as follows:
>
> A court should grant a motion to dismiss if the petition fails to state a claim upon which any relief may be granted. In considering a motion to dismiss, the court considers all well-pleaded facts to be true. A court should grant a motion to dismiss only if the petition 'on its face shows no right of recovery under any state of facts.' **Nearly every case will survive a motion to dismiss under notice pleading.** Our rules of civil procedure do not require technical forms of pleadings. . . .
>
> A 'petition need not allege ultimate facts that support each element of the cause of action[;]' however, a petition 'must contain factual allegations that give the defendant "fair notice" of the claim asserted so the defendant can adequately respond to the petition.' The "fair notice" requirement is met if a petition informs the defendant of the incident giving rise to the claim and of the claim's general nature. (cite omitted) The only issue when considering a motion to dismiss is the 'petitioner's right of access to the district court, not the merits of his allegations.' The court cannot rely on evidence to support a motion to dismiss, nor can it rely on facts not alleged

in the petition.

Hawkeye Foodservice Distrib. v. Iowa Educators Corp., 812 N.W.2d 600, 608-609 (Iowa 2012)(emphasis added).

I. SOVEREIGN IMMUNITY, AND STATUTORY IMMUNITY, SHOULD LOSE THEIR VITALITY WHEN FACED WITH UNCONSTITUTIONAL ACTS OF THE STATE AND ITS EMPLOYEES.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved. The District Court considered each of Sikora's causes of action, and summarily dismissed them, including Sikora's *Godfrey* claims, his Negligence claims, his False Arrest claim, his Trespass on the Case claim, and his Action on the Bond claim. Further, Sikora argued that his *Godfrey* claims should be allowed to go forward, and that *Burnett* should be applied prospectively only. *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023).

The District Court dismissed all claims. Sikora filed a timely notice of appeal. Error is preserved.

B. SCOPE AND STANDARD OF REVIEW.

The scope of review with respect to constitutional claims is de novo. *See State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997); *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007); *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). Sustaining a motion to dismiss does not depend on the trial court's discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994).

C. MERITS

False Imprisonment is the first common law action Sikora added in response to *Burnett*. It is a good jumping off point concerning sovereign immunity, although the following arguments apply equally to each of Sikora's causes of action.

The Iowa Supreme Court has thoroughly explained the tort of false imprisonment:

> A false arrest is one way of committing the tort of false imprisonment—restraining freedom of movement. Prosser, Law of Torts 42 (4th ed. 1971) ("The action for the tort of false imprisonment, sometimes called false arrest, is another lineal descendent of the old action of trespass. It protects the personal interest in freedom from restraint of movement."); *Norton v. Mathers*, 222 Iowa 1170, 1175, 271 N.W. 321, 323 (1937) ("This is a case of false arrest and imprisonment"); *Fox v. McCurnin*, 205 Iowa 752, 757, 218 N.W. 499, 501 (1928) ("although plaintiff has

> alleged false arrest in count 2 and false imprisonment in count 3, they are not distinguishable, and therefore amount only to a charge of false imprisonment").

Children v. Burton, 331 N.W.2d 673, 678 (Iowa 1983).

To prevail on a claim of false arrest/false imprisonment, plaintiff must prove: "(1) detention or restraint against one's will, and (2) unlawfulness of the detention or restraint." *Thomas v. Marion County*, 652 N.W.2d 183, 186 (Iowa 2002) (citing *Kraft v. City of Bettendorf*, 359 N.W.2d 466, 469 (Iowa 1984) and *Children v. Burton*, 331 N.W.2d 673, 678- 79 (Iowa 1983)).

In this case, however, the District Court found the State and its employees were shielded from a false imprisonment suit by Iowa Code § 669.14(4), which specifically excepts false imprisonment suits from the State's waiver of sovereign immunity. Read in conjunction with Iowa Code § 669.23, which purports to make employees not personally liable for claims exempted under § 669.14, Chapter 669 purports to immunize both the State and its employees for false imprisonment claims.

The District Court went further still, however, and found that Sikora's Negligence and Negligence Per Se claims, as well as his Trespass on the Case claims, were the functional equivalent of a False Arrest claim, and thus

excepted by Iowa Code § 669.14(4), and subject to dismissal on sovereign immunity grounds.

Sovereign immunity is an important doctrine, with a long history. However, there must be limits on such immunity. While the State may be able to immunize itself for contract disputes, personal injury suits, and even accidental deaths, the State should never be allowed to immunize its officers from suit for violations of constitutional rights.

Sovereign immunity is not a defense to a claim involving an alleged violation of state constitutional rights. *See* Civil Actions Against State Government, Its Divisions, Agencies, and Officers, Second Edition § 1.20 (J. Craig ed. 2002) *citing Marlin v. City of Detroit*, 441 N.W.2d 45 (1989); *Savage v. Aronson*, 571 A.2d 696 (1988). Since constitutional rights serve to restrict government conduct, such rights would be meaningless if the state could rely on a defense of sovereign immunity to avoid constitutional restrictions. *Id*. Sovereign immunity is not intended to act as a bar to constitutional wrongdoing. *See Corum v. University of North Carolina*, 413 S.E.2d 276, 292 (N.C. 1992) ("[w]hen there is a clash between these constitutional rights and sovereign immunity, the constitutional rights must prevail."); *Dept. of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994) (sovereign immunity does

not exempt State from suit for violations of the constitution). Sovereign immunity "should, as a matter of public policy, lose its vitality when faced with unconstitutional acts of the state." *Smith v. Dept. of Public Health*, 410 N.W.2d 749, 794 (Mich. 1987).

The Iowa Supreme Court has, in the context of direct constitutional torts alleging a violation of constitutional rights, agreed that sovereign immunity should lose its vitality when faced with unconstitutional acts of the State or its employees. *See Wagner* at 856-859. Relatedly, the Iowa Supreme Court has been clear that legislative priorities concerning immunity, such as the **statutory** "due care" immunities in Chapter 669 and 670, are not applicable in cases where the Plaintiff alleges a violation of constitutional rights.

The *Baldwin* Court explained why suits alleging a violation of constitutional rights are incompatible with Iowa Code § 670.4(1)(c)'s due care immunity:

> Iowa's tort claims acts already protect government officials in some instances when they exercise due care. *See, e.g.*, Iowa Code § 669.14(1) (excepting "[a]ny claim based upon an act or omission of an employee of the state, *exercising due care*, in the execution of a statute or regulation, whether or not

> such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused" (emphasis added)); *id.* § 670.4(1)(*c*) (excepting "[a]ny claim based upon an act or omission of an officer or employee of the municipality, *exercising due care*, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused" (emphasis added)). **The problem with these acts, though, is that they contain a grab bag of immunities reflecting certain *legislative* priorities. Some of those are unsuitable for *constitutional* torts.**

Baldwin v. City of Estherville, 915 N.W.2d 259, 279-80 (Iowa 2018) (emphasis added)(hereinafter *Baldwin I*).

Similarly, in *Wagner v. State*, the Iowa Supreme Court explained that provisions involving sovereign immunity, and statutory limits on suits alleging a constitutional violation should be severed when they would prohibit suits alleging a constitutional violation. *Wagner v. State*, 952 N.W.2d 843, 856-859 (Iowa 2020).

> We declined to strictly follow the immunities in the Iowa Municipal Tort Claims Act (IMTCA)—or for that matter the ITCA. *Id.* As we explained, "The problem with these acts ... is that they contain a grab bag of immunities reflecting certain *legislative* priorities. Some of those are unsuitable for *constitutional* torts." *Id.* at 280. Instead, we determined that an official who had exercised "all due care" should not be liable for damages, a standard that bears resemblance to *one* of the immunities set forth in the ITCA and the IMTCA. *Id.* at 279–80 (citing 670.4(1)(*c*)). *Baldwin I* expressly left open whether other provisions of the ITCA and the IMTCA would apply to constitutional tort claims against public officials and public agencies. *Id.* at 281.

Wagner v. State, 952 N.W.2d 843, 851-52 (Iowa 2020)(emphasis original).

The rationale expressed in *Baldwin I* and *Wagner* applies equally to a direct constitutional tort, such as a *Godfrey* action, while it existed, and to a common law tort that alleges wrongful conduct amounting to a violation of the Iowa Bill of Rights, such as the False Imprisonment or Trespass on the Case, as alleged by Sikora. Neither sovereign immunity, nor statutory immunity, are compatible with suits for vindication of constitutional rights.

The relationship between sovereign immunity and violations of constitutional rights does not depend on the vehicle a citizen chooses to seek vindication. Whether under a direct action under the constitution, or under

a common law action alleging wrongful conduct rising to a violation of the constitution, claims of sovereign immunity should face the same result. The State should not be allowed to insulate itself or its employees from suit, if the wrong committed by the State employee rises to the level of a violation of a citizen's constitutional rights, no matter the vehicle.

The doctrine of sovereign immunity remains vital, outside the context of an invasion of constitutional rights. Sovereign immunity should still apply to a suit alleging a slip-and-fall outside a state building, or a suit where a state vehicle strikes and kills a pedestrian, or to a contract dispute. But to apply sovereign immunity to a suit invoking constitutional protections is to put the State and its employees beyond the reach of the people, and put the peoples' constitutional rights in a subservient position to the interests of the Government.

Even if this Court determines the State cannot be sued in its sovereign capacity, even if the wrongful conduct rises to the level of a constitutional violation, the protections of article I, §§ 1, 8, and 9 all "preclude the State from extending its cloak of sovereign immunity to government officials who commit tortious conduct." *Lennette v. State*, 975 N.W.2d 380, 413 (Iowa 2022)

(J. McDonald concurring). As Justice McDonald noted in his *Lennette* concurrence:

> By the time the citizens of Iowa ratified the Iowa Constitution in 1857, it was well established throughout the country that government officials could be, and regularly were, subject to nonconstitutional causes of action for monetary damages. With respect to seizures or searches in particular, government officials were subject to nonconstitutional causes of action for money damages for seizures and searches that were unlawful, tortious, or otherwise prohibited, subject to a defense of justification made pursuant to a valid warrant or other legal process. [Citations omitted].

Lennette at 405-406.

Burnett discussed those very common law claims for damages against local law enforcement officers involving claims that amounted to a violation of the constitution. *See Burnett v. Smith*, 990 N.W.2d 289, 299 (Iowa 2023). The *Burnett* court made it clear that claims for money damages against government officials who act without justification as "authorized by the common law" remain viable. *Id.* at 307. Whether a government official is "local" or an employee of the State should be of no import.

Burnett refers favorably to Justice McDonald's concurring opinion in *Lennette. Id.* at 300. Justice McDonald's *Lennette* concurrence on the point is instructive:

> I would recognize that the Iowa Constitution secures a right to assert nonconstitutional causes of action for money damages against government officials under certain circumstances. In particular, as relevant here, it appears that '[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches' **is a guarantee of the right to assert nonconstitutional causes of action for money damages against government officials for unlawful seizures and searches. Iowa Const. art I, § 8.**

Lennette at 402-403 (emphasis added).

When a plaintiff alleges wrongful conduct in violation of the constitution, sovereign immunity, and statutory immunity, must fall by the wayside. The State should not be allowed to legislatively immunize itself from violations of the people's rights. And the judicial doctrine of sovereign immunity cannot pose an obstacle to government accountability for constitutional violations.

Plaintiff's petition invokes article I, §§ 1, 9 and 8 throughout. Sikora's constitutional rights are incorporated by reference in the False Imprisonment, Trespass on the Case, Negligence, and Action on the Bond

claims. Sikora's common law and statutory actions specifically invoke the guarantees of the Iowa Bill of Rights., that the State will not trample on Iowans' rights to liberty, due process of law, and to be free from unreasonable seizure. And, relatedly, article I, §§ 1, 8, and 9 guarantee Sikora a right of action for the wrongful actions of the State and its employees.

Which brings us back to *Burnett*. In 2023, the *Burnett* Court recognized, and strongly reiterated, what has been clear for 120 years in Iowa. That "a violation of [an Iowa constitutional right] 'without reasonable ground therefor **gives the injured party a right of action**." *Burnett* at 300 quoting *Krehbiel v. Henkle*, 142 Iowa 677, 121 N.W. 378 (1909)(emphasis added); *See also McClurg v. Brenton* , 123 Iowa 368, 98 N.W. 881 (1904); and *Girard v. Anderson* , 219 Iowa 142, 257 N.W. 400 (1934). *Burnett*, overruling *Godfrey*, makes it clear that "the right of action in question [is] a common law claim," or a statutory claim, rather than a direct action under the Iowa Constitution. But the **right of action** remains, and cannot be defeated by legislative fiat, such as Iowa Code § 669.14, or sovereign immunity.

Also, to the extent any wrongful acts by State employees amount to a violation of the oath affixed to their official bond, the State has waived

sovereign immunity, and subjected those employees to an Action on the Bond. *See* Iowa Code §§ 64.2; 64.18.

Just as the *Wagner* and *Baldwin I* Courts rejected the idea that a legislative "grab bag" of immunities could defeat a constitutional tort, this Court should find that that same "grab bag" cannot defeat a nonconstitutional tort alleging conduct that violates the Iowa Bill of Rights. This Court should likewise find that sovereign immunity does not stand as an obstacle to Sikora's False Imprisonment, Trespass on the Case, Negligence, or Action on the Bond claims.

II. TRESPASS ON THE CASE IS A COMMON LAW ACTION FOR INVASION OF A CONSTITUTIONAL RIGHT.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved. The District Court considered each of Sikora's causes of action, and summarily dismissed them, including Sikora's *Godfrey* claims, his Negligence claims, his False Arrest claim, his Trespass on the Case claim, and his Action on the Bond claim. Further, Sikora argued that his *Godfrey* claims should be allowed to go forward, and that *Burnett* should

be applied prospectively only. *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023).

The District Court dismissed all claims. Sikora filed a timely notice of appeal. Error is preserved.

B. SCOPE AND STANDARD OF REVIEW.

The scope of review with respect to constitutional claims is de novo. *See State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997); *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007); *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). Sustaining a motion to dismiss does not depend on the trial court's discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994).

C. MERITS.

Even if this Court decides that Sikora has no right of action for false imprisonment against the State or its employees, false imprisonment is not the only common law claim Sikora makes. Sikora also sought to amend his Petition, adding a claim of Trespass on the Case, citing to *Ashby v. White*, 8 State Trials, 89 (Eng. 1703) and *Lane v. Mitchell*, 133 N.W. 381 (Iowa 1911).

Trespass on the Case, *Ashby*, *Lane*, and *Uzuegbunam*. Both *Lane* and *Ashby* allowed damages suits for the violation of the right to vote.

In *Lane v. Mitchell*, Lane sued a number of election judges for refusing to administer the "statutory oath" required as a prerequisite to voting. The Iowa Supreme Court affirmed that "[t]he Constitution of the state provides that the citizen fulfilling the stated conditions of age, citizenship, and residence shall be entitled to vote at all elections authorized by law." *Lane* at 382. The *Lane* Court further declared that "[t]he constitutional right to vote is of high value to voters." *Id*. at 383.

The *Lane* Court explained that if election judges interfered with Lane's constitutional right to vote, they were subject to a damages action for interference with that constitutional right:

> If a willful and malicious wrong was done the plaintiff under such circumstances as to entitle him to actual damages, it does not necessarily follow that his recovery can be for nominal damages only, even though such actual damage may not be susceptible of exact calculation.
>
> The Plaintiff alleged that the defendants acted willfully and maliciously . . . and if that was found to be true, the jury would have been warranted in awarding the plaintiff substantial recovery.

Lane at 383 (internal citations omitted).

Is *Lane* an example of the Iowa Supreme Court "creating cause of action in tort when defendants violated statutes enforcing constitutional

rights"? *Recent Cases, Constitutional Torts-State Bivens Equivalents-Iowa Supreme Court Refuses to Recognize Implied Causes of Action for Damages Under State Constitution*, 137 HARV. L. REV. 1026, 1031 (January 2024). Is *Lane* an example of the Iowa Supreme Court fashioning a "novel tort to ensure plaintiffs had access to vehicles for constitutional claims"? *Id*. at 1036. Sikora doesn't think so. Sikora believes that the *Ashby* Court did not create a new direct constitutional tort.

And now, after *Burnett*, we can now be sure that *Lane* was not a "constitutional tort" case—i.e. a *Godfrey* claim "before its time." *Burnett* at 300. That is, *Lane* is not a direct action under the Iowa Constitution. But *Lane* was still able to use a common law tort to invoke the protections of the Iowa Bill of Rights, and pursue a damages action against government officials.

So, if *Lane* isn't a *Godfrey* claim before its time, and we know it is not, then . . . what is it? It must be a common law action, according to the *Burnett* Court. But *Lane* clearly isn't an assault, battery, false arrest, private nuisance, public nuisance, defamation, or invasion of privacy action. Could it be a trespass? No, it was not an invasion of Lane's property. Instead, it was an invasion of Lane's constitutional right to vote. So what is the common law action that covers invasion of a constitutional right?

The common law must hold the answer. And, as the *Burnett* Court suggests, "the rich history of the common law" does hold the answer.

The *Lane* Court determined Lane had stated a cause of action, and the common law tort of Trespass on the Case provides a sufficient vehicle to challenge the official's misfeasance. Which is why the *Lane* Court cited to *Ashby* with approval.

The *Lane* Court cited to the celebrated common law case of *Ashby v. White*. And for good reason. The facts of *Lane* are startlingly similar to *Ashby*. Just like in *Lane*, in *Ashby* the court was confronted with a suit alleging the wrongful denial of the right to vote.

The *Ashby* Court held:

> So if a man gives another a cuff on the ear, though it cost him nothing, no not so much as a little diachylon, yet he shall have his action, for it is a personal injury. So a man shall have an action against another for riding over his ground, though it do him no damage; for it is an invasion of his property, and the other has no right to come there. And in these cases the action is brought vi et armis. But for invasion of another's franchise, trespass vi et armis does not lie, **but an action of trespass on the case**; as where a man has retorna brevium, he shall have an action against any one who enters and invades his franchise, though he lose nothing by it. So here in the principal case, the plaintiff is obstructed of his right, and shall therefore have his action. . . . To allow this

> action will make publick officers more careful to observe the constitution of cities and boroughs.

Ashby is a little like reading a different language at first. But the concepts are familiar once we translate a little. What the *Ashby* Court is saying is that either an assault or trespass to land action would be a trespass vi et armis action. Trespass vi et armis is Latin for "by force and arms." Trespass vi et armis actions were for acts that were immediately injurious to another's person or property, and necessarily accompanied by some degree of force. Modern examples of such an action would be assault, trespass, or false imprisonment.

But what about the invasion of a right itself? Invasion of a constitutional right doesn't fall into either category, it is injurious to neither another's person, nor property. The invasion of a right, and damages therefor, instead must be remedied through an action for Trespass on the Case. And in this case, the State has invaded Sikora's constitutional rights.

Justice Clarence Thomas recently summarized *Ashby v. White*, in a manner that helps explain the nature of an action for Trespass on the Case:

> An early case about voting rights effectively illustrates this common-law understanding. Faced with a suit pleading denial of the right to vote, the court rejected the plaintiff 's claim because, among

> other reasons, the plaintiff had not established actual damages. *Ashby* v. *White* , 2 Raym. Ld. 938, 941–943, 948, 92 Eng. Rep. 126, 129, 130, 133 (K. B. 1703). Dissenting, Lord Holt argued that **the common law inferred damages whenever a legal right was violated.** Observing that the law recognized "not merely pecuniary" injury but also "personal injury," Lord Holt stated that "every injury imports a damage" and that a plaintiff could always obtain damages even if he "does not lose a penny by reason of the [violation]."

Uzuegbunam v. Preczewski, 141 S. Ct. 792, 209 L.Ed.2d 94 (2021).

Justice Thomas is explaining here that Trespass on the Case was, and is, a damages action for the invasion of the right, as opposed to physical wrongful imprisonment, or a physical harm. Eliminating any confusion about whether Trespass on the Case is an appropriate common law damages action for violations of constitutional rights, Justice Thomas continued, while again citing to *Ashby*:

> That this rule developed at common law is unsurprising in the light of the noneconomic rights that individuals had at that time. A contrary rule would have meant, in many cases, that there was no remedy at all for those rights, **such as due process** or voting **rights**, that were not readily reducible to monetary valuation. *See* D. Dobbs, Law of Remedies § 3.3(2) (3d ed. 2018) (nominal damages are often awarded for a right "not economic in character and for which no substantial non- pecuniary award is available"); *see also Carey v. Piphus*, 435 U.S. 247, 266–

> 267, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978) (awarding nominal damages for a violation of procedural due process).

The United States Supreme Court, in *Carey*, which was cited by Justice Thomas in *Uzuegbunam*, indeed recognized that:

> Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivations of rights.

Carey v. Piphus, 435 U.S. 247, 266 (1978).

Because Trespass on the Case is concerned with the invasion of the constitutional right, it is not the functional equivalent of False Imprisonment. Again, invasion of a constitutional right is injurious to neither another's person, nor property, and is not a false arrest or assault. That is why Trespass on the Case is not excepted from the State's waiver of sovereign immunity by Iowa Code § 669.14.

Put another way, the gravamen of Sikora's Trespass on the Case action is vindication for invasion of his constitutional rights. In contrast, the gravamen of Sikora's False Imprisonment action is the State's physical restriction of his body and movements. "False imprisonment is a trespass committed by one man against the person of another . . . False imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing by force or threats an unlawful restraint upon a man's freedom of locomotion." *Norton v. Mathers*, 222 Iowa 1170, 271 N.W. 321, 324 (Iowa 1937).

Trespass on the Case, on the other hand, is not about a trespass against the person, it is about the invasion of rights. It is not the functional equivalent of false imprisonment. They are very different actions, which address very different harms.

Iowa Code § 669.14 does not except actions for the Trespass on the Case, or violation of rights, from the State's waiver of sovereign immunity. The State and its employees are not immunized from an action for Trespass on the Case because the State has willingly waived sovereign immunity. *See* Iowa Code §§ 669.4(2); 669.4(3).

Form of Action v. Cause of Action. The District Court found that Trespass on the Case is "no longer viable in Iowa." Order Denying Motion to Amend and Dismissing Case at 12. *Osgood v. Names* is a good example of the Iowa Supreme Court recognizing that, under Iowa's pleading system, while forms of actinon have ceased to exist, the substantive law giving a right of action for invasion of rights remain in full force. *Osgood v. Names* is 184 N.W. 331, 332-333 (Iowa 1921). Specifically referencing Trespass on the Case, the *Osgood* Court found that:

> If the statute creates a right, and fails to prescribe a remedy for the party aggrieved by the violation of such right, it will be presumed that the Legislature intended to give such party a remedy by a common–law action for a violation of his statutory right. In working out modern legal problems, we necessarily and naturally respect our historic continuity with the past, and cite precedent. Without precedent judicial chaos would exist.
>
> **Although forms of action have long ceased to exist under our procedure, the principles underlying and distinguishing the old forms respectively are still of essential importance in determining the nature of the remedy which is applicable to the particular injury. Furthermore, the abolition of the common–law forms of pleading has not changed the rules of substantive law.** The forms of action for injuries arising from the neglect to maintain or repair division fences were trespass and case. Trespass was the proper form to use where the injury was a direct

> one. For example, where the land of A. was invaded by the cattle of B., an action in trespass would lie. However, if the injury was not direct, but consequential, trespass on the case was the proper remedy. For example, if A. brought an action against B. because fences were down which B. was bound to repair, per quod the horses of A. escaped and were killed, the action is on the case.

Osgood at 332-333.

As the Iowa Supreme Court has made clear, **a cause of action is "the act on the part of the defendant which gives the plaintiff his 'cause of complaint.' That is, there must be [a] legal right in [the] plaintiff, a corresponding duty on the part of the defendant and an attendant breach of that duty with resultant harm to plaintiff...."** *Iowa Coal Min. Co., Inc. v. Monroe County*, 555 N.W.2d 418, 429 (Iowa 1996). The substantive law still gives Iowans a right of action for invasion of their rights. Sikora's cause of action is not just a label or sticker affixed to a Petition. Sikora's cause of action is the fact that the State and its employees kept him locked in prison for nearly five months past the date authorized by the sentences issued by the District Courts. Sikora had article I, §§ 1, 8, and 9 rights to his liberty. And the State and its employees breached its duty to set him free from prison.

Another good example that it is the cause of action that matters, not the label put upon it, is *Brown v. Hendrickson.* In *Brown*, the Iowa Supreme Court brushed away a challenge from an appellant who complained that the Petition averred a Trespass, but the facts only supported Trespass on the Case:

> It is claimed by counsel for the appellant that the cause of action stated in the petition is a trespass, and that the evidence establishes, if anything, what was formerly known as trespass on the case, and therefore a new trial should have been granted, because the "verdict is not supported by the evidence." No objection was made to the introduction of evidence which tended to show what counsel styles "trespass on the case," and, as a cause of action is stated in the petition, we are clearly of the opinion that, under our system of pleading, the point made by counsel is not well taken.
>
> *******
>
> It is said that the issues were not correctly stated to the jury. **The objection is that the court confounded trespass with trespass on the case. This, under our system of pleadings, is immaterial.** The third instruction withdrew from the jury the special defenses pleaded, because no evidence had [27 N.W. 916] been introduced to sustain them. This ruling is correct, and it is insisted that the sixth instruction is erroneous, because, in substance, the court did not draw the distinction between trespass and trespass

> on the case. **This is too technical to entitle it to serious consideration. One hundred years ago, or thereabouts, courts and lawyers seem to have had a vague impression that there did exist a practical difference between the two actions; but the line of demarkation** never has been satisfactorily established, **and is now immaterial**, so far as the rights of these parties are concerned.

Brown v. Hendrickson, 27 N.W. 914 (Iowa 1886)(emphasis added).

Under Iowa's pleading system, the cause of action in this case is not the label slapped on the case. The cause of action is the acts of the State and the State's employees that give Sikora his cause of complaint. That is, Sikora had rights to be free from unreasonable seizure, to due process, and to liberty. The State and its employees breached those rights, damaging Sikora. Plaintiff alleged a Trespass on the Case, based on the violation of rights. Sikora has a cause of action for Trespass on the case.

III. IOWA CODE § 64.18 GIVES A STATUTORY "RIGHT OF ACTION" ON THE OFFICIAL BOND.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved. The District Court considered each of Sikora's

causes of action, and summarily dismissed them, including Sikora's *Godfrey* claims, his Negligence claims, his False Arrest claim, his Trespass on the Case claim, and his Action on the Bond claim. Further, Sikora argued that his *Godfrey* claims should be allowed to go forward, and that *Burnett* should be applied prospectively only. *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023).

The District Court dismissed all claims. Sikora filed a timely notice of appeal. Error is preserved.

B. SCOPE AND STANDARD OF REVIEW.

The scope of review with respect to constitutional claims is de novo. *See State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997); *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007); *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). Sustaining a motion to dismiss does not depend on the trial court's discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994).

C. MERITS.

Sikora's Action on the Bond is a statutory action. The Action on the Bond is brought pursuant to Iowa Code § 64.18.

The District Court recognized that an Action on the Bond is specifically provided for by Iowa Code § 64.18, and has been recognized by the Iowa Supreme Court. D0063, Order Regarding Dismissal at 7 (10/2/23). The District Court was correct, in that respect. Iowa Code § 64.18 not only specifically gives a "right of action" on the bond, it gives any person the right to bring that action in the name of the State:

> All bonds of public officers shall run to the State, and be for the use and benefit of any corporation, public or private, **or person injured or sustaining loss, with a right of action in the name of the State for its or the corporation's or person's use.**"

Iowa Code § 64.18 (emphasis added).

The Numerous Authorities Supporting the Action on the Bond. There is voluminous authority on actions on official bonds. There is an entire American Jurisprudence 2d section on it. *See* 63C Am. Jur. 2d Public Officers Employees §§ 130, 481. There are numerous articles on the topic. *See*, e.g., Price, Jeffrey S., McDonnell, Dennis E., and Howald, Rebecca B., *The Public Officials Bond—A Statutory Obligation Requiring "Faithful Performance," "Fidelity," and Flexibility*, FID. LAW ASSN. JRNL., Vol. XII, (October 2006). A "breach of bond" action is specifically referenced as one of "the most

effective restriction[s] placed upon the police officer" to deter them from wrongful arrests. Fortuna Jr., Bert J., *Arrest Without Warrant in Iowa*, DRAKE L. REV. Vol. 19, 441 at 448 (May 1970).

And, most importantly, there are numerous, numerous Iowa Supreme Court cases recognizing an action on the official bond of public officers.

In Iowa's early history, it was common for Plaintiffs to bring "suits on the bond." Public officials were (and are) required to post a bond. The suits on the bond would often allege "oppression." In fact, to this day, Iowa Code § 64.2 prohibits oppression, and makes the lack of oppression a condition on a public official's bond.

In *Lennette*, Justice McDonald referenced some of these early Iowa "oppression" cases in his concurrence:

> Iowa's earliest precedents were in accord with the national consensus. Iowa law allowed "traditional common law tort claims, such as trespass, conversion, malicious prosecution, and abuse of process" to be asserted against government officials. *Godfrey*, 898 N.W.2d at 887. Under Iowa law, plaintiffs could seek nominal, actual, and punitive damages against offending officials and their sureties for their unlawful conduct. See Wright , 961 N.W.2d at 406 ; *McClurg v. Brenton* , 123 Iowa 368, 98 N.W. 881, 883 (Iowa 1904) ("If the jury should find for plaintiff—that the wrongful search was made ...—they could, in addition to actual damages, assess a

> greater or less sum against the defendants by way of punishment or as exemplary damages."); *Yount v. Carney* , 91 Iowa 559, 60 N.W. 114, 115–16 (Iowa 1894) ("The arrests and detentions of the plaintiff were in the presence of a number of persons, and in public places of the town. At the last arrest the plaintiff's person was searched, and his private papers examined. Mental suffering and injury to feelings are proper to be considered in assessing damages in such cases. We think, under the evidence, the question of damages should have been submitted to the jury." (citation omitted)); Holmes v. Blyler , 80 Iowa 365, 45 N.W. 756, 756 (Iowa 1890) (holding good faith was not a defense to liability in false arrest action but could be advanced to mitigate damages); Tieman v. Haw , 49 Iowa 312, 315 (1878) ("The sureties of a sheriff are liable for a trespass committed by their principal in attempting to discharge his duty as an officer."); *Strunk v. Ocheltree*, 11 Iowa 158, 159– 60 (1860) ("The defendant [constable] levied upon the property and took possession of it by virtue of his office, and sold the same when he had no right to do so.... The wrong was committed by color of his office, a wrong which his sureties obligated themselves he would not do, and for which they should be held responsible."); *Plummer v. Harbut*, 5 Iowa 308, 314 (1857) ("If defendants, in executing the process, acted in good faith, and in their entry upon plaintiff's premises, were guilty of no oppression, and made no disturbance, further than was necessary in making the seizure, the trespass, even if without authority, was nominal only, and nominal damages must limit the extent of his recovery.")

Lennette at 406-407 (J. McDonald concurring).

Oppression is, for example, an arrest without authority (without probable cause), even in a case where an officer uses no "harsher means in arresting and detaining the plaintiff than were necessary to accomplish those ends with one offering no resistance." *Yount v. Carney*, 60 N.W. 114, 115 (Iowa 1894).

An important case is *Clancy v. Kenworthy*, 35 N.W. 427 (Iowa 1887). *Clancy* describes an action on the bond, for arrest without probable cause and excessive force, thoroughly from pleading to judgment.

Another is *Norton v. Matthers*. *Norton v. Mathers*, 222 Iowa 1170, 271 N.W. 321 (Iowa 1937). In *Norton*, as was common at the time, the Plaintiff sued both the sheriff who falsely imprisoned him, and the sheriff's bonding company, Massachusetts Bonding & Insurance, as surety on the bond. The Iowa Supreme Court noted that the "bond conditioned that [the Sheriff] would faithfully and impartially discharge the duties of his office as required by law." The Plaintiff, as many other Iowa Plaintiffs had before him, alleged "oppression," in violation of the conditions of the bond. The oppression alleged was false arrest and/or false imprisonment.

Needless to say, the Iowa Supreme Court cases listed above, all of which alleged "oppression," were all actions on the bond, just like Sikora has

alleged. As the above authority makes clear, the Iowa Supreme Court allowed actions on the bond to proceed, based on, among other things, "oppression."

Osbekoff v. Mallory is another example, although not a suit on the bond. *Osbekoff v. Mallory*, 188 N.W.2d 294 (Iowa 1971). Osbekoff sued the Mayor of Luverne for taking his Pontiac Firebird and fining him, but suspending the fine upon satisfaction of a separate civil debt. Osbekoff sued under former Iowa § 740.3, Oppression in Public Office, which prohibited any official from "willfully oppressing any person under pretense of acting in his official capacity." *Osbekoff* at 296.

So what does oppression mean under Iowa law? In several cases, the Iowa Supreme Court has said that arrests made in excess of authority are oppression. *Yount v. Carney*, 60 N.W. 114 (Iowa 1894); *Clancy v. Kenworthy*, 35 N.W. 427, 428 (Iowa 1887); *Scott v. Feilschmidt*, 182 N.W. 382, 384 (Iowa 1921)(holding "an illegal arrest is a breach of a bond conditioned to "faithfully and without oppression discharge all duties required by law.")

Government officials are in a unique position to "oppress." That is why oppression is specifically prohibited as part of their bond, and why Iowa caselaw and statutes have prohibited officials from oppression.

Here is the full definition of "Oppression" in the Black's Law Dictionary 6th Edition: "An act of cruelty, severity, unlawful lawful exaction, **or excessive use of authority**. An act of subjecting to cruel and unjust hardship; an act of domination."

Excessive use of authority is precisely what Iowa's early "suit on the bond" cases alleged— **an official action in excess of authority.** An arrest, seizure of property, fine, or other official action in excess of authority is "oppression." The excessive use of authority.

In this case, the various District Courts sentenced Sikora, and gave him credit for his previous time served. The Defendants acted in excess of their authority when they held Sikora in prison for nearly five months more than they should have, by not giving him credit for his previous time served. That violates the terms of the public official bond and the terms of Iowa Code § 64.2, giving Sikora a right of action on the bond.

Travelers Insurance, the surety on the bond, is a private company, and is not subject to sovereign immunity or protection from the Iowa Tort Claims Act. It is also quite important to point out that Sikora's § 64.18 Action on the Bond names as a separate defendant Travelers Insurance, the surety

on the bond. Travelers Insurance is not the State, or a State employee. That means Travelers Insurance is not subject to the Iowa Tort Claims Act.

Travelers Insurance does not meet the statutory definitions of Iowa Code § 669.2, necessary to bring a claim under the Iowa Tort Claims Act. Travelers Insurance does not fall under the ITCA whatsoever. The suit concerning Travelers Insurance should be analyzed completely separately, at all times, from the ITCA. And Travelers Insurance is a private company. Travelers Insurance enjoys no sovereign immunity. Travelers Insurance enjoys no qualified immunity.

Sikora's action on the bond, against the surety on the bond, and on the conditions of the bond itself, stand on their own.

In this case, the District Court found that (1) in its opinion, the action on the bond was the functional equivalent of false imprisonment, (2) neither the State nor its employees could be sued for false imprisonment under Iowa Code § 669.14 because the State had not waived sovereign immunity for those claims and its employees were immune under Chapter 669, and (3) without a money judgment against the State or its employees, the bond's surety could not be liable. D0063, Order Regarding Dismissal (102/23).

An Action on the Bond is not the functional equivalent of false imprisonment because it is much broader in scope. Concerning the first two points, the Action on the Bond is not the functional equivalent of false imprisonment, for the very same reasons Trespass on the Case is not the functional equivalent: **Because the oath on the bond, including oppression, is broad enough to encompass the invasion of a constitutional right, not just the physical trespass to the person.**

Put another way, the gravamen of Sikora's Action on the Bond action is vindication for invasion of his constitutional rights. In contrast, the gravamen of Sikora's False Imprisonment action is the State's physical restriction of his body and movements. "False imprisonment is a trespass committed by one man against the person of another . . . False imprisonment is a wrong akin to the wrongs of assault and battery, and consists in imposing by force or threats an unlawful restraint upon a man's freedom of locomotion." *Norton v. Mathers*, 222 Iowa 1170, 271 N.W. 321, 324 (Iowa 1937).

And, for that matter, the concept of oppression is broad enough to encompass **any claim a *Godfrey* plaintiff could have conceivably brought while *Godfrey* was still viable.**

The District Court misreads Switzer. As to the last point, the District Court cited to *State ex rel. Switzer v. Overturff*, 239 Iowa 1039, 33 N.W.2d 405 (Iowa 1948). The District Court misread *Switzer*. The *Switzer* Court was engaged in a question of whether an official's bond is forfeitable in full, or indemnifying only. The *Switzer* Court held that official bonds are indemnifying only, and, as such, recovery can only be had once there was a "definite pleaded or proven amount of defalcation or fraudulent overcharge by, or damage for misconduct of the principal." *Switzer* at 407. The *Switzer* Court's holding requires proof of misconduct and damages before indemnification with the bond. The District Court's requirement that there first be a separate judgment against the Official is nowhere stated in *Switzer*. And in fact, "an action on a bond conditioned on the officers faithful discharge of the duties of his office may be maintained without a prior adjudication of the damages claimed." 63C Am. Jur. 2d Public Officers Employees § 483.

All Sikora has to do concerning Travelers is plead and prove the State and its employees failed to act "faithfully and impartially, without fear, favor, fraud, or oppression," in breach of the bond, and establish damages. Iowa Code § 64.2. Sikora need not even name the State or its employees as a

defendant. If Sikora pleads and proves violation of the oath and the conditions of the bond, then, pursuant to Iowa Code § 64.18, the bond is for his "use and benefit" to the extent he has proven his damages.

The State's Employees were required to give official bond. Finally, the District Court found that because Iowa Code § 64.6 does not require employees of the State to personally obtain bonds, and instead allows them to be "covered under a blanket bond," that the State and its employees were not required to obtain bond, and an Action on the Bond only extends to those bonds "required" by statute. *See* D0063, Order Regarding Dismissal (10/2/23); Iowa Code § 64.6.

The District Court is wrong in three respects.

First, the State employees named as defendants in this case are required to obtain bonds. They are not in the list of exempted public officers laid out in Iowa Code § 64.1A. If they were exempted from the bond requirement, they would be listed in § 64.1A with the Governor, Justices of the Supreme Court, Judges, and others. Their absence from the list means they are required to give bond.

Second, all other public officials "shall give bond." Iowa Code § 64.2. While it is true that Iowa Code § 64.6 does not require State employees to

"obtain bonds," that does not mean they do not "give bond" pursuant to Iowa Code 64.2. It is just that they don't have to go out on their own and arrange for the bond. Instead, the bond State Officers "give" is "covered under a blanket bond for state employees." Iowa Code §§ 64.2; 64.6.

Third, Sikora's action is brought under Iowa Code § 64.18, which provides that "[a]ll bonds of public officers shall run to the state, and be for the use and benefit of any . . . person injured or sustaining loss, with a right of action in the name of the state for . . . person's use." The blanket bond covering State employees is still an official bond "covering" public officers. There is no requirement under the statutory action that the bond not be a blanket bond.

The mere fact that bond can be given under a blanket bond does not mean it is not an official bond under Iowa Code § 64.18. The statutes explicitly state that bond is required, but may be covered by a blanket bond. If the blanket bond were not meant to be considered a bond, there would be some language to that effect in § 64.18, e.g., "All bonds, except blanket bonds, of public officers . . . ."

Sikora's Action on the Bond should be allowed to proceed.

IV. *BURNETT* SHOULD BE APPLIED PROSPECTIVELY ONLY, NOT RETROACTIVELY TO THIS CASE.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved. The District Court considered each of Sikora's causes of action, and summarily dismissed them, including Sikora's *Godfrey* claims, his Negligence claims, his False Arrest claim, his Trespass on the Case claim, and his Action on the Bond claim. Further, Sikora argued that his *Godfrey* claims should be allowed to go forward, and that *Burnett* should be applied prospectively only. *Burnett v. Smith and State of Iowa*, 990 N.W.2d 289 (Iowa 2023).

The District Court dismissed all claims. Sikora filed a timely notice of appeal. Error is preserved.

B. SCOPE AND STANDARD OF REVIEW.

The scope of review with respect to constitutional claims is de novo. *See State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997); *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007); *Callender v. Skiles*, 591 N.W.2d 182, 184 (Iowa 1999). Sustaining a motion to dismiss does not depend on the trial court's

discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994).

C. MERITS.

Despite adding two common law claims and a statutory claim in response to *Burnett*, Sikora has not abandoned his *Godfrey* claims. The *Burnett* decision did not address the issue of whether the Court's decision would be applied retroactively, or prospectively only. It appears that is because the parties did not raise the issue.

As a general rule, judicial decisions, including overruling decisions, operate both retroactively and prospectively. *Beeck v. S.R. Smith Co.*, 359 N.W.2d 482, 484 (Iowa 1984).

However, the Iowa Supreme Court has employed a three-part balancing test to decide whether to deviate from the general rule and apply a new decision prospectively only:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed.

> Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and."
>
> Finally whether retrospective operation will further or retard its operation, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."

Id.

Here, all three factors weigh heavily in favor of non-retroactive application of *Burnett*. Each factor will be discussed in turn.

***Burnett* overruled clear past precedent, *Godfrey*, on which Sikora relied.** First, as stated above, *Burnett* overruled *Godfrey*, an Iowa Supreme Court decision that was five years old, that had been affirmed, built upon, and clarified numerous times. *Godfrey* was reinforced in *Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018) ("*Baldwin I*"), *Baldwin v. City of Estherville,* 929 N.W.2d 691 (Iowa 2019) ("*Baldwin II*"), *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019), and *Wagner v. State*, 952 N.W.2d 843 (Iowa 2020).

That made *Godfrey*, and the Iowa Supreme Court's *Godfrey* line of jurisprudence, a clear past precedent that litigants like Sikora have relied upon for years, and expected to rely upon for years to come.

The *Burnett* Court did make statements saying there was a limited reliance interest on *Godfrey*. It is important to note that the *Burnett* Court's "reliance interest" comments were made **in the context of the Iowa Supreme Court deciding to overrule established precedent**. "In *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel State (PPPH IV)*, 975 N.W.2d 710 (Iowa 2002), we considered the potential effects of overruling our decision, *Id*. at 734. We asked whether the prior case was 'long-standing' and whether "people had 'ordered their thinking and living around that case.'" *Burnett* at 13.

The *Burnett* court was talking about whether the people of the State of Iowa, in a broad sense, had come to come to rely on a Supreme Court decision in their daily lives. The *Burnett* Court was not applying a retroactivity test to the specific litigants and their case. The *Burnett* Court was not referring to the reliance interest a litigant may have in their previously-plead cause of action, such as Sikora's reliance interest. And it is

especially telling that the *Burnett* Court did not cite to, and did not apply, the *Beeck* case, or invoke its test.

While the *Burnett* Court concluded that the "reliance interest is relatively slight" in abandoning a line of cases beginning with *Godfrey*, that cannot be said about Sikora. His claims were dismissed after he relied heavily upon this Court's precedents. He should not be penalized for the Court's change of direction.

The "purpose and effect" of *Godfrey*, vindication for violations of constitutional rights, lives on. Second, the "purpose and effect" of a *Godfrey* action was to give an avenue of redress to Iowans who had their constitutional rights violated by public officials. That hasn't ended. This part of the test is akin to asking, "did the Iowa Supreme Court overturn *Godfrey* because damages for violations of a constitutional right are a bad idea?"

Burnett itself provides the answer. *Burnett* does not stand for the proposition that Iowans have no damages remedy for violation of their constitutional rights. Instead, the *Burnett* Court held that "*Godfrey* should be overruled, and we no longer recognize a standalone cause of action for money damages under the Iowa Constitution unless authorized by the

common law, an Iowa statute, or the express terms of a provision of the Iowa Constitution." *Burnett* at *36 (emphasis added).

In short, actions for money damages for violations of rights secured under the Iowa Bill of Rights are not prohibited, they just must be enforced through established common law torts or statutory actions. The *Burnett* Court did not say a common law, or statutory, action for violation of constitutional rights was a bad idea. Rather, the *Burnett* Court affirmed that the "purpose and effect" of *Godfrey* actions remains alive. That "purpose and effect" just must be pursued by a different vehicle than a *Godfrey* action.

That is unsurprising, given the vital importance of Iowan's constitutional rights. Because the purpose and effect of *Godfrey* lives on, through Iowa's constitution, common law, and statutes, the second *Beeck* factor is satisfied, and the *Burnett* decision should be applied prospectively only.

Dismissal of Sikora's *Godfrey* claims would produce a substantial inequitable result. Finally, retroactive application to Sikora would produce substantial inequitable results. It just wouldn't be fair to let Sikora rely upon settled Iowa Supreme Court jurisprudence which gave him a right of action directly under the Iowa Bill of Rights, and then abruptly take that right of

action from him after he had plead and filed his lawsuit seeking to vindicate those very rights. It would be inequitable to take his vested property right from him, violating his right to due process.

In very similar circumstances, the Iowa Supreme Court has held that retroactive application of an amendment to a statute constitutes a violation of a litigant's due process rights under article I, § 9 of the Iowa Constitution and the Fifth Amendment to the U.S. Constitution. *Thorp v. Casey's General Stores, Inc.*, 446 N.W.2d 457, 463 (Iowa 1989) ("[W]e believe that plaintiff had a vested property right in her cause of action against Casey's and that the retroactive application of the 1986 amendment destroyed that right in violation of due process under both the federal and state constitutions.").

Sikora had a vested property right, in his right of action, at the time that he was wrongfully seized in 2021. The law at that time gave him the right to assert a direct claim under the Iowa Bill of Rights for the violation of his constitutional rights, pursuant to *Godfrey*.

When the Iowa Supreme Court overturned *Godfrey*, it was akin to the substantive amendment by the legislature in *Thorp*. Taking Sikora's *Godfrey* action from him now would be taking his vested property right in his *Godfrey*

action, in violation of his Iowa Constitutional due process rights. Sikora is entitled to continue to assert that vested property right to a conclusion.

The Defendants may well argue another cause of action should do just as well, such as an action under 42 U.S.C. § 1983. And Sikora has attempted to amend his Petition to add common law claims such as False Arrest, and Trespass on the Case. However, the elements of a *Godfrey* claim and a common law claim are potentially completely different. So are the defenses.

The same goes for a § 1983 action. In a § 1983, the Court would spend a great amount of time considering whether the exact factual circumstances and attendant constitutional violation have been clearly established for purposes of applying federal qualified immunity. Under Sikora's *Godfrey* action, as originally plead, in contrast, the primary defense would be *Baldwin* "all due care" immunity. *Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa, 2018). These are substantial and vital differences for Sikora's case. Changing the rules in the middle of the game on Sikora would lead to substantial inequitable results.

Sikora's *Godfrey* claims should be allowed to proceed. The Court should apply *Burnett* prospectively only, to avoid changing the rules in the middle of the game.

CONCLUSION

Sikora's claims against the State and its employees, invoking the protections and guarantees of the Iowa Bill of Rights should be allowed to go forward. The District Court's dismissal of each count of the Amended Petition should be reversed, and the matter should be remanded for trial. Sikora was held accountable for his mistakes. The State and its employees should likewise be held accountable for wrongfully taking nearly five months of Sikora's life.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

Respectfully submitted,

/s/ Jack Bjornstad______________

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