ELECTRONICALLY FILED APR 16, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-0300
Polk County No. LACL153187

ASHLEY LYNN KOESTER,
Plaintiff-Appellant,
v.
EYERLY-BALL COMMUNITY MENTAL HEALTH SERVICES,
REBECCA PARKER, and MONICA VAN HORN,
Defendants-Appellees.

DEFENDANTS-APPELLEES' APPLICATION FOR FURTHER REVIEW

FROM THE IOWA COURT OF APPEALS DECISION OF
MARCH 27, 2024
ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE SAMANTHA GRONEWALD

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QUESTION PRESENTED FOR REVIEW

This appeal concerns an employee who was fully paid by her employer and was allegedly terminated after a disagreement about the proper scope of "hours worked" for overtime requirements. The employee admits that she received all wages she contends she was owed, so no wages are due. The employee alleges she was terminated in violation of public policy, pointing to the policy set forth in Iowa Code Chapter 91A and this Court's prior precedent in *Tullis v. Merrill*, 584 N.W.2d 236, 237 (Iowa 1998). The question presented is as follows:

1. The Court of Appeals entered a decision in conflict with the prior Court of Appeals decision, *Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016). Did the Court of Appeals in this case commit error when it expanded the claim of wrongful discharge in violation of public policy based on Iowa Code Chapter 91A to include a plaintiff-employee who was fully paid all the wages she was owed?

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STATEMENT SUPPORTING FURTHER REVIEW

The Supreme Court should grant further review because the Court of Appeals' decision significantly expands the scope of wrongful discharge claims based on the public policy of Chapter 91A to include employees who complain about wage issues *of any kind*, even issues that have nothing to do with Chapter 91A. In *Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016), the Court of Appeals held that an employee cannot succeed on a wrongful discharge claim based on the public policy of Chapter 91A unless the employee has been deprived of wages. Now, the Court of Appeals has issued a decision in direct conflict with *Bjorseth* and held that an employee *may* pursue a Chapter 91A public policy claim even if the employee was paid all the wages she was owed. If the Court of Appeals' decision is permitted to stand, an employee who complains about a wage issue *of any kind* will now be able to assert a claim of wrongful discharge in violation of public policy pursuant to Chapter 91A—even, for example, employees who complain about minimum wage and overtime disputes that are regulated by the Fair Labor Standards Act and not Chapter 91A. Further review should be granted to correct this important legal issue.

Plaintiff Ashley Lynn Koester ("Koester") was employed as an On-Call Mobile Crisis Counselor with Eyerly Ball. App. 36 (Am. Pet. ¶ 8). As her title

suggests, Koester's job required her to be "on call." Eyerly Ball's on-call policy provides that hours spent on-call are not considered "hours worked" for overtime purposes. App. 37 (Am. Pet. ¶ 15). Koester, however, discovered that due to a glitch in the payroll system, she was being paid overtime wages for all of her hours spent on-call. App. 38-39 (Am. Pet. ¶¶ 35, 44, 50).

Koester then spoke with someone at the Department of Labor about the on-call policy. She claims the Department of Labor informed her that Eyerly Ball's on-call policy is restrictive enough that hours spent on-call should constitute "hours worked" for purposes of calculating overtime. App. 40 (Am. Pet. ¶ 60). When Eyerly Ball discovered that Koester was being paid overtime wages for time spent on-call, Monica Van Horn, Rebecca Parker, and Krystina Engle met with her to discuss the issue. Koester told them she had spoken with the Department of Labor and that she believed her on-call hours should constitute "hours worked" under the FLSA. App. 40 (Am. Pet. ¶ 60). Koester claims her employment was then terminated for "receiving overtime payments." App. 41 (Am. Pet. ¶ 65). Koester contends her termination undermines the public policy behind Iowa Code Chapter 91A.

In *Tullis v. Merrell*, 584 N.W.2d 236 (Iowa 1998), an employee sought reimbursement for sums that were *withheld* from his paycheck by his employee—i.e., there were wages he alleged that were "due" to him. *Tullis*,

584 N.W.2d at 237. The Supreme Court found that Tullis had made a "complaint related to unpaid wages for purposes of applying section 91A.10(5)." *Id.* at 240. The Supreme Court then discussed the history of the public policy wrongful termination claim in Iowa and held "that Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due* under an agreement with the employer." *Id.* at 239 (emphasis added).

Almost two decades later, the Iowa Court of Appeals decided *Bjorseth v. Iowa Newspaper Association*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016). In *Bjorseth*, the plaintiff-employee asked to take a day off after exhausting her personal leave, and she was informed that if she did so the employer would deduct the equivalent of eight hours of pay from her paycheck. 2016 WL 6902745, *1. Bjorseth informed her supervisor that the employer could not take that deduction. *Id.* Ultimately, Bjorseth did not take the day off, so her employer never took a deduction from her wages. Bjorseth was later terminated, and she sued her employer for wrongful discharge in violation of public policy. *Id.*

The district court dismissed Bjorseth's 91A public policy claim, which was affirmed by the Court of Appeals. *Id.* at **1-2. The Court of Appeals recognized that there were no unpaid wages at issue—*i.e.*, no wages were

"due" to Bjorseth. *Id.* The court further confirmed that "for an employee to have a cause of action under chapter 91A in the first place, an employer must have improperly failed to pay all wages due to the employee. Here, Bjorseth was paid all wages she was owed." *Id.* at *1. The court further reasoned that "[a] dispute that led to no improper action is not enough to provide chapter 91A protection to Bjorseth" because chapter 91A:

> [D]oes not clearly identify fully-compensated employees as being protected from employer retaliation. The statute itself is designed to facilitate *recollection of wages owed* to employees. The purpose of the law would not be furthered by providing protection in employment disputes that do not result in withheld wages.

Id. at **1-2 (quoting the district court order). Finally, the court recognized that:

> Chapter 91A is not a rule prohibiting an employee's termination in response to a wage dispute. Instead, it is a rule prohibiting an employee's termination in response to a wage dispute *where an employee has not been fully paid*. The parties in this agree that no wages were withheld at any point. Chapter 91A and the associated public policy thus do not afford Bjorseth protection.

Id. at *2 (quoting the district court order) (emphasis added).

In this case, the Court of Appeals recognized that, like Bjorseth, Koester received all wages she alleged she was owed such that there were no wages "due." *See* Court of Appeals Ruling, pp. 3, 5. Yet the Court of Appeals proceeded to enter a ruling in conflict with *Bjorseth*. In doing so, the Court of

Appeals expanded the claim of wrongful discharge in violation of public policy beyond the scope of the Iowa Supreme Court's ruling in *Tullis*, and held that an employee who has *received all wages due* may invoke the public-policy protection set forth in Chapter 91A.

The Court of Appeals' decision in this case is in direct conflict with the Court of Appeals' decision in *Bjorseth* on an important matter—the scope and application of the public policy wrongful-discharge claim under Iowa law where the plaintiff-employee is not owed any wages from her employer. This provides reason enough for this Court to intervene and grant further review. *See* Iowa R. App. P. 6.1103(1)(b)(1) ("[t]he court of appeals has entered a decision in conflict with a decision of . . . the court of appeals on an important matter").

Further, the Court of Appeals' decision presents an issue of first impression before the Iowa Supreme Court—whether the common law claim of wrongful discharge in violation of public policy includes a claim by an employee who is not due any wages where the basis for the public policy is Chapter 91A. This is an important question of law that should be decided by the Iowa Supreme Court, not the Court of Appeals, given the narrow scope of this common law cause of action. *See* Iowa R. App. P. 6.1103(1)(b)(2) ("[t]he

court of appeals has decided . . . an important question of law that has not been, but should be, settled by the supreme court”).

The scope of Iowa’s common law cause of action for wrongful discharge in violation of public policy is also an issue of broad public importance that the Iowa Supreme Court should ultimately determine. *See* Iowa R. App. P. 6.1103(1)(b)(4). If the Court of Appeals’ decision is allowed to stand, then *any dispute* an employee has with his or her employer regarding wages will be deemed to confer standing for a claim of wrongful discharge in violation of public policy under Chapter 91A—even if the underlying wage dispute is regulated by the FLSA. That is not the purpose of the public policy wrongful-termination claim based on Chapter 91A. Further review is warranted to correct legal error in this case.

BRIEF

Facts

Koester is a former employee of Eyerly-Ball Community Mental Health Services (“Eyerly Ball”) where she worked as a PRN (as needed) On-Call Mobile Crisis Counselor. App. 35 (Am. Pet., ¶¶ 8, 11). Koester admits that she “always received her overtime pay for the hours she worked” and was paid all the wages she was owed. App. 39, 41-43 (Am. Pet., ¶ 44, 73, 77, 78, 83, 91). After Koester received her overtime pay from Eyerly Ball, she

discussed the issue of overtime pay with her employer. App. 42 (Am. Pet., ¶ 74). In particular, Koester claims the Department of Labor informed her that Eyerly Ball's on-call policy is restrictive enough that hours spent on-call should constitute "hours worked" for purposes of calculating overtime. App. 40 (Am. Pet. ¶ 60). Koester claims she was then terminated on January 7, 2020 for requesting *and receiving* overtime pay. App. 42 (Am. Pet., ¶¶ 75, 78, 79).

Proceedings in the District Court and Court of Appeals

Koester filed this action on June 2, 2022. App. 6-16 (Petition). In her original Petition, Koester asserted one claim for relief—a common law claim of wrongful discharge in violation of public policy. App. 6-16 (Petition). The purported public policy on which Koester relied is Iowa Code Chapter 91A, the Iowa Wage Payment Collection Act. App. 6-16 (Petition). Defendants filed a motion to dismiss, App. 17-25 (Mot. to Dismiss Petition), and Koester amended her pleading to add a second claim—a statutory claim of retaliatory discharge under Chapter 91A. App. 35-51 (Amended Petition). The statutory claim relied on the same facts at issue in the common law claim.

In both claims for relief, Koester alleged she raised complaints about overtime wages. App. 42 (Am. Pet., ¶ 74). Critically, however, Koester admitted in her pleadings that she was paid all the wages she was owed. *See, e.g.,* App. 43 (Am. Pet., at ¶ 91) ("Plaintiff engaged in a protected activity of

requesting her payment and getting paid her payment under Iowa Code 91A, and this conduct was the reason the Plaintiff was terminated.”). She echoes this admission in her appellate briefing. *See, e.g.*, Pl. Br. at 21 and 22.

This Court’s ruling in *Tullis v. Merrell*, 584 N.W.2d 236, 239 (Iowa 1998) held that “Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due* under an agreement with the employer.” (emphasis added). Courts have since then found that the public policy of Chapter 91A does *not* protect an employee who has received all the wages they are owed. *See Bjorseth v. Iowa Newspaper Ass’n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016); *Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005). As a result, the district court correctly granted Defendants’ motion to dismiss the Amended Petition. App. 156-63 (Order of Dismissal). Koester appealed from that order of dismissal, and the case was transferred to the Court of Appeals.

In its decision entered on March 27, 2024, the Court of Appeals expanded the claim of wrongful discharge in violation of public policy under Chapter 91A beyond the scope of what was addressed in *Tullis*, and in conflict with the *Bjorseth* case, and found that an employee who has *received all wages due* may invoke the public-policy protection set forth in Chapter 91A.

See Court of Appeals Ruling, pp. 9-10 (quoting Iowa Code § 91A.3 ("An employer shall pay all wages due its employees . . . ."")). The Court of Appeals reasoned that a "hyper-focus on statutory minutiae misconstrues the common law exception for wrongful discharge in violation of public policy," and an employee who is "fired after demanding and receiving wages due" should be afforded the same protection as an employee who has not received wages due. *Id.* at pp. 8-10. The Court of Appeals thus reversed the district court decision as to Koester's claim of wrongful discharge in violation of public policy. *Id.* at pp. 11-12.[1]

Argument

I. The Court of Appeals Issued a Decision in Conflict with Prior Iowa Appellate Precedent and Should Be Reversed.

The Court of Appeals' decision in this case directly conflicts with a previous Court of Appeals decision, *Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016). This serves as an independent basis for the Iowa Supreme Court to grant further review.

In *Bjorseth*, the plaintiff-employee exhausted her personal leave and then asked for another day off from work. *Id*. at *1. The employer informed

[1] The Court of Appeals also addressed Koester's second claim asserted in her Amended Petition, affirming the dismissal of that claim on statute of limitations grounds. *See* Court of Appeals Ruling, pp. 12-14. Defendants do not seek further review of that part of the Court of Appeals' decision.

her that if she took the day off, then eight hours of pay would be deducted from her paycheck. *Id*. Bjorseth consulted with someone from the state government and was informed her employer could not deduct anything from her paycheck. *Id*. She shared this information with her supervisor. *Id*. However, Bjorseth ultimately decided to not take the day off, and nothing was ever deducted from her wages. *Id*. Her employment was later terminated. *Id*. She then filed a statutory claim under Chapter 91A and a claim of wrongful discharge in violation of public policy based on Chapter 91A. *Id*.

The district court in *Bjorseth* dismissed both of the plaintiff's claims because she was never deprived of any wages. Reciting the district court's reasoning with approval, the court of appeals stated:

> Chapter 91A is not a rule prohibiting an employee's termination in response to a wage dispute. Instead, it is a rule prohibiting an employee's termination in response to a wage dispute *where an employee has not been fully paid*. The parties in this case agree that no wages were withheld at any point. Chapter 91A and the associated public policy thus do not afford Bjorseth protection.

Id. at *2 (emphasis added).

The Court of Appeals in *Bjorseth* explained that Chapter 91A does not regulate any and all wage disputes between employers and employees—it only requires employers to pay employees the wages they are owed. *Bjorseth*, 2016 WL 6902745, at *2 ("The statute itself is designed to facilitate recollection of wages owed to employees. The purpose of the law would not

be furthered by providing protection in employment disputes that do not result in withheld wages."). The Court of Appeals made clear in *Bjorseth* that Chapter 91A does *not* protect employees who have received all the wages they are owed. *Id.*

In the present case, the Court of Appeals' ruling directly conflicts with the decision in *Bjorseth*, now finding that an employment dispute regarding wages that *were not withheld* apparently can serve as a basis for a claim of wrongful discharge in violation of public policy under Chapter 91A. *Compare Bjorseth*, 2016 WL 6902745, *2 ("[t]he purpose of [Chapter 91A] would not be furthered by providing protection in employment disputes that do not result in withheld wages"), *with* Court of Appeals Ruling, p. 11 ("Chapter 91A is a clearly defined and well-recognized public policy that protected Koester's demands for overtime pay" that were *not withheld by her employer*). The difference could not be more stark.

The Court of Appeals attempts to distinguish *Bjorseth,* apparently agreeing with Koester's "loophole" argument that employers could simply pay employees' wages when an employee disputes those wages and then terminate the employee in an end-run around this common law claim. *See* Court of Appeals Ruling, p. 11. There are at least three issues with that reasoning.

First, those facts are not before the Court. At no time has Koester argued that Eyerly Ball paid her missing wages only after she complained. On the contrary, she has consistently alleged that she was always paid all the wages she was allegedly owed.

Second, Koester has not cited—and Defendants are not aware of—any cases in which a court has actually held that an employer can avoid liability by paying an employee the wages the employee has complained are missing and then firing the employee.

Third, Koester's "loophole" argument is one that is more appropriately directed to the Iowa Legislature rather than the courts. *See Matter of Guardianship of Radda*, 955 N.W.2d 203, 214 (Iowa 2021) ("Policy arguments to amend the statute should be directed to the legislature."); *In re Marriage of Thatcher*, 864 N.W.2d 533, 546 (Iowa 2015) ("'[I]t is not the role of the court to alter a statutory requirement in order to effect policy considerations that are vested in the legislature.'") (quoting *Kakinami v. Kakinami*, 260 P.3d 1126, 1133 (Haw. 2011)).

Because the Court of Appeals' decision is directly contrary to its prior decision in *Bjorseth*, further review is required to address this conflict.

II. The Court of Appeals Has Incorrectly Expanded the Claim of Wrongful Discharge in Violation of Public Policy Based on Iowa Code Chapter 91A To Include An Employee Who Was Fully Paid, Which Is An Important Question of Law That Has Not Been, But Should Be, Settled by the Supreme Court.

Employment relationships in Iowa are presumptively at will, meaning an employer "may discharge an employee at any time, for any reason, or no reason at all." *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 202 (Iowa 1997). One exception to this rule is when an employee's discharge violates a "well-recognized and defined public policy" of the State of Iowa. *Id*. But to prevail on a wrongful discharge claim, an employee must prove—among other things—"the existence of a clearly defined and well-recognized public policy that protects the employee's activity." *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109-10 (Iowa 2011). The simple existence of a statute (such as Chapter 91A) does not necessarily mean there is a public policy that would support a wrongful discharge claim. *Id*. at 110 ("Even if an employee identifies a statute as an alleged source of public policy, it does not necessarily follow that the statute supports a wrongful discharge claim.").

The common law claim of wrongful discharge in violation of public policy has consistently been viewed narrowly with limited exceptions carved out by this Court on an infrequent basis over the last 30+ years. *See, e.g., Springer v. Weeks and Leo Company, Inc.*, 429 N.W.2d 558, 560-61 (Iowa

1988) ("We deem this to be a clear expression that it is the public policy of this state that an employee's right to seek the compensation which is granted by law for work-related injuries should not be interfered with regardless of the terms of the contract of hire."); *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994) ("We hold that retaliatory discharge of an employee who files a claim for partial unemployment benefits serves to frustrate a well-recognized and defined public policy of the state."); *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 300-01 (Iowa 1998) (recognizing that Iowa Code sections 232.67-.77 (1995) set forth "forceful language" articulating a "well-recognized and defined public policy of Iowa" that "mandates protection for an employee who in good faith makes a report of suspected child abuse"); *Tullis*, 584 N.W.2d at 239 ("We now hold that Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due* under an agreement with the employer." (emphasis added)); *Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 602 (Iowa 2023) (recognizing a cause of action for an employee who "can show she was terminated for complying with her statutory duty as lawful custodian [under Chapter 22] to produce records that she had an obligation to produce").

The Iowa Supreme Court, within the last year, has "emphasize[d] again the 'narrow' scope of the wrongful-discharge-in-violation-of-public-policy

claim." *Carver-Kimm*, 992 N.W.2d at 602. This narrow scope is required to "ensure that employers have notice that their dismissal decisions will give rise to liability." *See Fitzgerald v. Salsbury Chem. Inc.*, 613 N.W.2d 275, 279 (Iowa 2000). "An employer's right to terminate an employee at any time only gives way under the wrongful discharge tort when the reason for the discharge offends clear public policy." *Id.* at 283. Further, "[t]he conduct of the employee must be tied to the public policy, so that the dismissal will undermine the public policy." *Id.* at 284. The Court's "insistence on using only clear and well-recognized public policy to serve as the basis for the wrongful discharge tort emphasizes [its] continuing general adherence to the at-will employment doctrine and the need to carefully balance the competing interests of the employee, employer, and society." *Id.* at 283.

In this case, Koester identifies Iowa Code Chapter 91A as the purported source of public policy in support of her wrongful discharge claim. The Iowa Supreme Court in *Tullis* held that Chapter 91A articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due under an agreement with the employer*." 584 N.W.2d at 239 (emphasis added). The plaintiff-employee in that case alleged his employer promised that the plaintiff would be entitled to health insurance at the employer's expense. *Id*. at 237. The employer subsequently began charging the plaintiff

for health insurance premiums, and the plaintiff complained to the employer about it. *Id*. at 237-38. The employer then allegedly terminated the plaintiff for his complaint. *Id*. at 238. The Supreme Court concluded the plaintiff's claim was actionable because the plaintiff alleged he was fired for complaining that he was deprived health benefits promised by his employer—*i.e.*, there were wages due to him. *Id*. at 238-39.

Here, the Court of Appeals found that "[w]hen their claims are stripped down, Koester is in the same boat as Tullis." *See* Court of Appeals Ruling, p. 11. That is simply incorrect. In *Tullis*, the employer *actually withheld* benefits from the employee. Koester, by contrast, admits she was fully paid all the wages she believes she was owed. App. 39, 41-43 (Am. Pet., ¶ 44, 73, 77, 78, 83, 91). This is a clear distinction between the facts of this case and *Tullis*. The Supreme Court in *Tullis* did not answer the question of whether an employee who had been *overpaid* had the right to bring a claim of wrongful discharge in violation of public policy. *Id.* Both the Iowa Court of Appeals in *Bjorseth*, and a federal district court in Iowa have, however, had occasion to address this issue; both courts have determined there is no public policy wrongful termination claim where the plaintiff-employee was overpaid and no wages were due. *See Bjorseth v. Iowa Newspaper Association*, No. 15-2121, 2016 WL 6902745, *1 (Iowa Ct. App. Nov. 23, 2016) (discussed in

section I above); *see also Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887, 893 (N.D. Iowa 2005).

In *Morris*, the employer inadvertently overpaid the plaintiff approximately $13,000 in wages. 435 F. Supp. 2d at 893. The employer requested that the plaintiff repay the overpayment, and the plaintiff subsequently informed the employer he would not be returning to work because of what he alleged was a racially hostile work environment. *Id*. at 894-95. The plaintiff then filed suit for, among other things, alleged wrongful discharge in violation of public policy under Chapter 91A. *Id*. at 895.

In *Morris*, the court recognized that *Tullis* articulated a public policy that prohibits the termination of an employee in response to a demand for wages due. *Id*. at 912. However, that was not the issue in *Morris*. *Id*. "Although at first blush it appears *Tullis* supports Morris's argument, the case lends no credence to Morris's arguments because in *Tullis* and the cases referenced therein, *the employers actually withheld wages from their employee's paychecks*." *Id*. (emphasis added) Drawing from an Illinois case with similar facts,[2] the *Morris* court further stated:

> [T]his court concludes the nexus between Morris's discharge and the Iowa Wage Payment Collection law is too attenuated. Like the complainant in *Kavanagh*, Morris essentially is asking this court to find an at-will employee cannot be terminated because

[2] *Kavanagh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242 (N.D. Ill. 1983).

> of *any* dispute concerning wages, even if the employee has been fully paid, or, as in Morris's case, overpaid. Such a holding would undermine the concept of the employment-at-will doctrine, which [provides] an employee at will is "subject to discharge at any time, for any reason, or for no reason at all."

Id. at 912-13 (internal citation omitted) (emphasis in original). The court therefore found the plaintiff had failed to state a claim of wrongful termination in violation of public policy under Chapter 91A. *Id*. at 913.

The Court of Appeals' decision in this case runs counter to the decisions in both *Bjorseth* and *Morris*, and it departs from the Iowa Supreme Court's reasoning in *Tullis*. If permitted to stand, the Court of Appeals' decision would substantially expand the scope of the wrongful discharge tort based on Chapter 91A to cover *any and all wage disputes* between the employer and the employee, regardless of whether or not the employee was owed any wages. Employees like Koester who have never been deprived of wages will be able to argue they are protected by Chapter 91A's public policy, notwithstanding that they never had standing to pursue a Chapter 91A wage payment collection claim in the first place.

At its core, Koester's wage dispute is not governed by Chapter 91A, but by the Fair Labor Standards Act (FLSA).[3] Eyerly Ball's on-call policy provides that hours spent on-call are not "hours worked," such that those hours

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[3] Koester did not file an FLSA claim in this case.

do not count toward overtime. App. 37 (Am. Pet. ¶ 15). Koester, believing on-call hours should qualify as "hours worked," contacted the Department of Labor to discuss the policy. App. 37 (Am. Pet. ¶ 18). She claims the Department of Labor told her that her on-call hours should qualify as "hours worked." App. 37 (Am. Pet. ¶ 18).

The issue of whether time spent on-call qualifies as "hours worked" is regulated not by Chapter 91A, but by the FLSA. The FLSA "provides that an employer must pay an employee at a rate of one and one-half times the employee's normal rate of pay for all time the employee works beyond forty hours in a workweek." *Dickhaut v. Madison Cnty., Iowa*, 707 F. Supp. 2d 883, 887 (S.D. Iowa 2009) (citing 29 U.S.C. § 207(a)(1)). "The FLSA does not define whether an employee is working for his or her employer. As a result, the burden has fallen largely on the federal courts, as well as the Department of Labor, to develop general criteria for deciding when an employee is working for purposes of the FLSA." *Reimer v. Champion Healthcare Corp.*, 258 F.3d 720, 725 (8th Cir. 2001). Federal courts, based on guidance from the Supreme Court, evaluate whether the time spent is "predominately for the employer's benefit or the employee's." *Armour & Co. v. Wantock*, 323 U.S. 126 (1944). There is an entire body of federal caselaw dedicated to analyzing that question for purposes of determining whether on-call time should be

considered “hours worked” under the FLSA. *See, e.g., Reimer*, 258 F.3d 720; *Dickhaut*, 707 F. Supp. 2d 883.

By contrast, there is nothing in Chapter 91A that regulates whether or under what circumstances time spent on-call will constitute “hours worked.” Chapter 91A only provides that an employer must pay an employee all the wages they are owed. The only way to determine how much an employer owes an employee for time spent on-call is through the FLSA and the cases that have interpreted it.

Here, Koester believed time spent on-call should be considered “hours worked;” Eyerly Ball disagreed. That is not a complaint that wages were owed under Chapter 91A. It is a dispute about whether Koester’s on-call time constituted “hours worked” under the FLSA. As the court recognized in *Morris*, Iowa courts have “never extended the public policy [of Chapter 91A] to encompass every wage dispute an employee has with an employer.” *Morris*, 435 F. Supp. 2d at 913 n.14. Yet, that is exactly what the Court of Appeals has done here. Under the Court of Appeals’ decision, *any* wage dispute between the employer and employee will confer public policy protection on the employee under Chapter 91A, even if the underlying dispute itself is not covered by Chapter 91A.

For example, consider the employee who is paid $15 per hour and complains that she believes she should be paid $20 per hour. If the employer has paid the employee all the wages she is owed, the employee has no claim under Chapter 91A. Under the Court of Appeals' reasoning, that employee is protected by Chapter 91A's public policy because she has engaged in a wage dispute with her employer. It is conceivable that employees who complain about any other wage or hour issue—including recordkeeping violations or claims of sex-based pay inequity—would similarly be covered by the public policy of Chapter 91A, even though those issues are regulated by statutes other than Chapter 91A.

Given the infrequency of the Iowa Supreme Court's expansion of this common law cause of action, the intended "narrow scope" of the claim, and the importance of these issues to employees, employers, and the public as a whole, the Iowa Supreme Court should ultimately determine the issue of whether the wrongful-termination-in-violation-of-public-policy claim based on Chapter 91A will be expanded to include employees who have been fully paid. Because there is no public policy under Chapter 91A (or any other source) that would be undermined by Koester's discharge from employment, the Iowa Supreme Court should provide further review and reverse the Court of Appeals' decision.

CONCLUSION

There is no cause of action under Iowa Code Chapter 91A for an employee's complaint to her employer regarding wages that have already been paid, so there can be no corresponding public policy wrongful-termination claim stemming from such a complaint. Yet that is exactly what Koester is alleging here. The district court correctly determined that Koester failed to state a claim for relief. Defendants-Appellees respectfully request the Supreme Court accept further review of the Court of Appeals' decision and issue a decision reversing the Court of Appeals.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This Application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this Application has been prepared in a proportionally spaced typeface using Times New Roman in 14 point and contains 5,388 words, excluding parts of the application exempted by Iowa R. App. P. 6.1103(4)(a), or

[ ] this Application has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state number of] lines of text, excluding the parts of the [application or resistance] exempted by Iowa R. App. P. 6.1103(4)(a).

April 16, 2024 /s/ *Leslie C. Behaunek*
Date

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on April 16, 2024, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

/s/ Kari Hobbs