

IN THE SUPREME COURT OF IOWA  
No. 23-2114

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CHARLES AARON AMBLE and JOHN JOSEPH MANDRACCHIA,  
Defendants-Appellees,

v.

STATE OF IOWA,  
Plaintiff-Appellant.

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ON APPEAL FROM THE IOWA DISTRICT COURT FOR  
POLK COUNTY

THE HONORABLE MICHAEL D. HUPPERT; CASE NO. FECR372327,  
FECR372333

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BRIEF OF AMICUS CURIAE BY TWENTY-EIGHT  
IOWA STATE SENATORS PURSUANT TO IOWA CODE § 625A.19

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**STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)**

No party or party's counsel authored this brief in whole or in part nor contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

## INTEREST OF AMICI CURIAE

Pursuant to Iowa Code § 625A.19 (2024 Iowa Acts ch. 1049 S.F. 2171), Senate Majority Leader Jack Whitver hereby files this *amicus curiae* brief. Senate Majority Leader Whitver is joined by twenty-seven other Iowa State Senators who were duly elected by the citizens of their several districts.

The Senate is a legislative body of the General Assembly created by Iowa Const. article III. As elected State Senators, Amici have a duty under the Constitution to ensure that the General Assembly's authority in passing legislation is protected. This case involves a substantial impact on the authority of the General Assembly as a coequal branch of government.

Amici include: **Jack Whitver**, Senate Majority Leader; **Brad Zaun**, Senate President Pro Tempore; **Chris Cournoyer**, Assistant Senate Majority Leader; Assistant Majority Leader; **Carrie Koelker**, Assistant Majority Leader, **Mike Klimesh**, Assistant Majority Leader, **Jeff Reichman**, Assistant Majority Leader; and Senators **Kevin Alons**, **Mike Boussetot**, **Dan Dawson**, **Rocky De Witt**, **Adrian Dickey**, **Dawn Driscoll**, **Jeff Edler**, **Lynn Evans**, **Julian Garrett**, **Jesse Green**, **Kerry Gruenhagen**, **Dennis Guth**, **Tim Kraayenbrink**, **Mark Lofgren**, **Charlie McClintock**, **Dave Rowley**, **Ken Rozenboom**, **Jason Schultz**, **Annetee Sweeney**, **Scott Webster**, **Cherielynn Westrich**, and **Dan Zumbach**.

## ARGUMENT

### 1. INTRODUCTION.

In *State v. Wright*, 961 N.W.2d 396 (Iowa 2021) this Court addressed search and seizure when law enforcement conducts warrantless searches of garbage under Iowa's Const. art. 1, § 8.<sup>1</sup> The outcome of *Wright* is that law enforcement is engaging in trespass when conducting a search or seizure of garbage without first obtaining a warrant. The opinion was not unanimous and differing questions of law were discussed at length.

During the subsequent legislative session, the General Assembly enacted Iowa Code § 808.16 (2022) to address issues in *Wright*. As such, whether the doctrine of legislative acquiescence is favored or not by this Court, the doctrine is not at issue here. *See State v. Montgomery*, 966 N.W.2d 641 (Iowa 2021).

Amici first state that they recognize and respect the authority of the judicial branch to review statutory enactments and resolve legal disputes. *See State v. Thompson*, 954 N.W.2d 402 (Iowa 2021) and *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255 (Iowa 2002). However, it is also clear that Iowa Const. article III and article XII, § 1 grant lawmaking authority to the legislative branch. *See In re C.S.*, 515 N.W.2d 851 (Iowa 1994).

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<sup>1</sup> References to *Wright* herein also reflect this Court's decisions in *State v. Hahn*, 961 N.W.2d 370 (Iowa 2021) and *State v. Kuutila*, 965 N.W.2d 484 (Iowa 2021).

Now this Court is being asked to balance the authority of the legislative and judicial branches when considering *Wright* and the subsequent statute. This case demonstrates the need to protect the inevitable intersection between the duties of the courts and the legislature and to promote harmonious cooperation between the two branches. *See State v. Hoegh*, 632 N.W.2d 885 (Iowa 2001) and *Webster County Bd. of Supervisors v. Flattery*, 268 N.W.2d 869 (Iowa 1978).

To ensure this appropriate balance, Amici urge this Court to find that the district court erred in ruling that Iowa Code § 808.16 is void. In addition, Amici urge this Court to reconsider the decision in *Wright* in light of Iowa Code § 808.16 and that if this Court determines a provision of the statute is unconstitutional, that the remaining provisions of the statute be given effect.

**1. GENERAL ASSEMBLY HAS AUTHORITY TO ADOPT STATUTE IN RESPONSE TO *WRIGHT*.**

The district court seemed to say that due to separation of powers the *Wright* decision prohibited the General Assembly from enacting Iowa Code § 808.16 at all. *See* D0024 (Amble FECR 372327) Ruling on Defendants’ Motion to Suppress (11/13/2023) and D0024 (Mandrachia FECR372333) Ruling on Defendants’ Motion to Suppress (11/13/2023). That is simply incorrect. A prior opinion does not automatically prohibit the legislature from engaging in its lawmaking authority under Iowa Const. art. III and art. XII, § 1. Just like the General Assembly could not enact a law prohibiting the judicial branch from reviewing a statute.

This case is similar to the pattern in another criminal matter. In *State v. Heard*, 636 N.W.2d 227 (Iowa 2001) this Court discussed specific intent in an assault case. The General Assembly subsequently amended the statute in response to *Heard* by enacting Iowa Code § 708.1 (2003). This Court then reviewed the statute and its impact in *State v. Bedard*, 668 N.W.2d 598 (Iowa 2003), *State v. Keeton*, 710 N.W.2d 531 (Iowa 2006), and *State v. Fountain*, 786 N.W.2d 260 (Iowa 2010). Nothing in the subsequent decisions stood for the legal proposition that the General Assembly was somehow prohibited from even enacting the statute in the first place due to the *Heard* decision.

One only need look at the issue of abortion over the last decade and see the interplay between passage of legislation and issuances of judicial opinions. The district court's umbrage on the point of the General Assembly enacting Iowa Code § 808.16 in response to the *Wright* opinion is unfounded and the ruling is in error.

Clearly the legislature can engage in its lawmaking authority to enact a statute in response to judicial opinion. Just as this Court has the authority to now review Iowa Code § 808.16. The district court's ruling holding that the General Assembly did not have authority to enact a statute in response to a judicial opinion encroaches on the constitutional authority of the legislative branch. Such an encroachment violates separation of powers. The district court went too far in voiding the statute simply because the *Wright* decision came first.



In enacting Iowa Code § 808.16, the General Assembly was not attempting to usurp the authority of the judicial branch in determining what is ultimately constitutional. *See Green v. City of Cascade*, 231 N.W.2d 882 (Iowa 1975) and *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014).

Iowa Code § 808.16 is more limited in its application and the legislature much more reserved than what the district court held. The law is hardly a constitutional-authority power grab by the legislature to the detriment of the judicial branch in violation of separation of powers. It is necessary to look at what the language of the statute really does and does not do.

The statute informs a person that once garbage leaves the home it is abandoned and no longer should be viewed as being private property. This is true regardless of which city or location the person resides. This is true regardless of whether the items are thrown away in an individual garbage can or a communal dumpster. Importantly, it alerts Iowans that law enforcement officers may look through abandoned garbage and seize it as part of the work of law enforcement.

All of this is certainly within the constitutional authority of the legislature under Iowa Const. art. III to do in response to a judicial opinion without violating separation of powers. The district court erred when it voided Iowa Code § 808.16 due to the fact the legislature enacted the statute.

Turning to what is not stated in the actual language of the statute. Nothing in the law tells the judicial branch what action to take, let alone tells this Court what to do. There is no statutory provision in Iowa Code § 808.16 that limits, and certainly does not prohibit, the judicial branch from reviewing the law to ensure it is constitutional. The law does not impose a standard of review. There are no statements that the legislature is the final arbiter of this matter from a constitutional or any other perspective. As already stated, Amici do not question the ability of this Court to review Iowa Code § 808.16.

However, this does not mean that the legislature cannot enact a law in response to a judicial decision. This Court issued the *Wright* decision. In response, the legislature then engaged in its constitutional lawmaking authority. This Court is now presented with the opportunity to issue a new opinion in response to the legislature's action. That is how balancing the constitutional roles between the judicial branch and the legislative branch works under separation of powers.

As such, Amici urge this Court to find that the General Assembly had the authority to enact Iowa Code § 808.16 in response to the *Wright* decision and that the statute does not violate separation of powers by its very enactment. Such an outcome protects the constitutional authority and roles of both the judicial branch and the legislative branch.

## **2. THIS COURT SHOULD UPHOLD IOWA CODE § 808.16.**

By rejecting a separation of powers holding, this Court still retains the authority to review the statute to ensure it is constitutional. When doing so, Amici urge this Court to find that Iowa Code § 808.16 is constitutional under Iowa Const. art. 1, § 8.

Statutes are “cloaked with a presumption of constitutionality” that must be rebutted with proof of “unconstitutionality beyond a reasonable doubt.” *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 31 (Iowa 2019) (quoting *State v. Seering*, 701 N.W.2d 655, 661 (Iowa 2015)). See also Iowa Code § 4.4 (2023) in “enacting a statute, it is presumed that [c]ompliance with the Constitutions of the state and of the United States is intended.”

In the *Wright* decision, this Court wrestled with several legal issues and that is certainly understandable. Many historical and varying legal principles were ultimately decided in that case. The legislature subsequently enacted Iowa Code § 808.16 to reflect public policy.

The public policy is that garbage placed outside a residence should not be considered as being “private” but instead as “abandoned property” that may be searched and seized by law enforcement. In addition, law enforcement is not trespassing when searching and seizing this abandoned property. Finally, that the law applies the same regardless of where a person lives.

All of these issues were raised in the *Wright* decision and the legislature responded. Iowa Const. article XII, § 1 provides that the “general assembly shall pass all laws necessary to carry this Constitution into effect.” This is what the legislature did in enacting Iowa Code § 808.16. Surely it is within the purview of the legislative branch to state public policy. Statutes are by their very nature such statements of public policy. *See Knorr v. Beardsley*, 38 N.W.2d 236 (Iowa 1949).

The legislature is permitted to preempt local ordinances by enacting this law. *See City of Davenport v. Seymour*, 755 N.W.2d 533 (Iowa 2008). There is certainly nothing that prohibits the legislature from providing authorizations and limitations on law enforcement. Iowa Code § 808.16 itself is one of sixteen statutes in Iowa Code ch. 8 (Search and Seizure).

The legislature enacted the law to provide community standards and views of society. *See Griffin v. Pate*, 884 N.W.2d 182 (Iowa 2016) and *State v. Burns*, 988 N.W.2d 352 (Iowa 2023). As such, “abandoned property” for purposes of “papers or effects” included “garbage placed outside of a person’s residence for waste collection in a publicly accessible area.” The legislature also addressed the current societal view of “trespass” and property rights in the law. *See Wright*, 961 N.W.2d at 412 n.5. The judicial branch now has the authority to determine if the words the legislature chose to reflect those standards and views are constitutional. That is the process that protects both the legislative and judicial branches.

**3. IF A PROVISION OF THE STATUTE IS INVALID THE REMAINING PROVISIONS SHOULD BE GIVEN EFFECT.**

Obviously, Amici believe that the legislature had the authority to enact Iowa Code § 808.16 in response to *Wright* and that the statute itself is constitutional in its entirety. Hopefully this Court agrees with that belief.

However, if the determination is made that a provision of the law is held invalid, Amici urge this Court to utilize Iowa Code § 4.12 (2023) and find that the invalid provision “does not affect other provisions” and the remaining provisions of the statute “can be given effect without the invalid provision....” See *Breeden v. Iowa Dep’t of Corr.*, 887 N.W.2d 602 (Iowa 2016) and *Am. Dog Owners Ass’n v. City of Des Moines*, 469 N.W.2d 416 (Iowa 1991) (per curiam).

This Court has a long and consistent history of severing invalid provisions of statutes and keeping the remaining provisions in effect. This especially true when the remainder of the statute still serves the legislative purpose and apparent legislative intent behind the enactment of the law. *Breeden*, 887 N.W.2d at 608 (quoting *Clark v. Miller*, 503 N.W.2d 422, 425 (Iowa 1993)).

Iowa Code § 808.16 is drafted in such a manner that if this Court determines a provision is invalid, the remaining provisions still can be interpreted to reflect the purpose and intent of the statute. So if this Court does believe that a provision is invalid, Amici urges that the remaining provisions be left intact and in effect.

## **CONCLUSION**

This brief is filed under Iowa Code § 625A.19 (2024 Iowa Acts ch. 1049, S.F. 2171). Amici do not request time to participate in oral argument. For the reasons provided herein, Amici urge this Court to find that Iowa Code § 808.16 is constitutional, reverse the district court's ruling on the motions to suppress, and remand for further proceedings.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2)

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/s/ W. Charles Smithson  
Signature

July 19, 2024  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2024, I electronically filed the forgoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, that will send notification to the parties of record.

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W. Charles Smithson