

**IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 24-1422
Dubuque County Case No. CVCV115206**

BEECHER STORE INC.,

Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF REVENUE,
ALCOHOLIC BEVERAGES DIVISION

Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DUBUQUE COUNTY
HON. THOMAS J. BITTER

REPLY BRIEF OF PLAINTIFF-APPELLANT BEECHER STORE, INC.

KEVIN C. RIGDON (#AT0011385)
Direct Dial: (319) 861-8705
Email: crigdon@bradleyriley.com
THEODORE T. APPEL (#AT0014941)
Direct Dial: (319) 861-8769
Email: tappel@bradleyriley.com
OLIVIA A. McGOVERN (#AT0015751)
Direct Dial: (319) 861-8794
Email: omcgovern@bradleyriley.com

of
BRADLEY & RILEY PC
2007 First Avenue SE
P.O. Box 2804
Cedar Rapids, IA 52406-2804
Phone: (319) 363-0101
Fax: (319) 363-9824

ATTORNEYS FOR BEECHER STORE
INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
ARGUMENT	6
I. A Second Violation under Iowa Code section 123.50(3)(b) Should Not Be Enforced Against Beecher.....	6
A. The ABD’s Interpretation to Give Appropriate Weight to Iowa Code section 123.50(3)(e)(1).....	7
B. The ABD’s Liberal Construction Argument Fails to Overcome the Plain Text, is Rejected by <i>Walsh</i> , and Fails to Account for its Impact on Other Provisions That Help Inhibit Sale of Alcohol to Underage Individuals	8
C. The ABD’s Fears of Non-Compliance by the Imaginary, Unscrupulous Licensee Under Beecher’s Statutory Interpretation is Unfounded.....	12
D. The ABD’s Previous Practice Demonstrates Impermissible Inconsistency with its Current Interpretation of Iowa Code section 123.50(3).....	17
CONCLUSION	22
CERTIFICATE OF FILING AND SERVICE.....	24
CERTIFICATE OF COMPLIANCE	25

TABLE OF AUTHORITIES

Cases:

Dornath v. Employment Appeal Bd., 988 N.W.2d 687 (Iowa 2023) 9

Estate of Butterfield v. Chatnaqua Guest Homes, Inc., 987 N.W.2d 834 (Iowa 2023)
..... 8

Heckler v. Chaney, 470 U.S. 821 (1985) 18

Korean Am. Legal Advoc. Found. v. City of Los Angeles, 28 Cal. Rptr.2d 530, 537
(Cal. Ct. App. 1994)..... 11

Lime Lounge, LLC, v. City of Des Moines, 4 N.W.3d 642 (Iowa 2024) 11

Miller v. Cath. Health Inits., 7 N.W.3d 367 (Iowa 2024)..... 10

Motif, Ltd. v. Iowa Dep’t of Commerce-Alcoholic Beverages Division, No. 11-0793, 2012
WL 170211 (Iowa Ct. App. Jan. 19, 2012) *en passim*

Motif, Ltd. v. Iowa Dep’t of Commerce-Alcoholic Beverages Division, No. 11-0328, 2011
WL 4378166 (Iowa Ct. App. Sept. 21, 2011) 17

Renda v. Iowa Civil Rights Com’n, 784 N.W.2d 8 (Iowa 2010)..... 7

Rushmore State Bank v. Kurylas, Inc., 424 N.W.2d 649 (S.D. 1988) 22

State v. Flynn, 13 N.W.3d 843 (Iowa 2024)..... 10

State v. Hyvee, Inc., 616 N.W.2d 669 (Iowa Ct. App. 2000)..... 14

State v. Iowa Dist. Ct., 843 N.W.2d 76 (Iowa 2014) 21

State v. Middlekauff, 974 N.W.2d 781 (Iowa 2022)..... 19

State v. Null, 836 N.W.2d 41 (Iowa 2013) 15

State v. Thomas, 275 N.W.2d 422 (Iowa 1979) 7

Vroegh v. Iowa Dep’t of Corr’ns, 972 N.W.2d 686 (Iowa 2022)..... 9

<i>Walnut Brewery, Inc. v. Iowa Dept. of Commerce-Alcoholic Beverages Div.</i> , 775 N.W.2d 724 (Iowa Ct. App. 2009)	19
<i>Walsh v. Kirby</i> , 529 P.2d 33 (Cal. 1974) (en banc)	<i>en passim</i>

Statutes:

Cal. Bus. & Prof. Code § 23001	10
Iowa Code § 17A.19	18, 19, 21
Iowa Code § 123.1	11, 12
Iowa Code § 123.3	13
Iowa Code § 123.14	20
Iowa Code § 123.30	16
Iowa Code § 123.31	13
Iowa Code § 123.40	16
Iowa Code § 123.47	15
Iowa Code § 123.49	<i>en passim</i>
Iowa Code § 123.50	<i>en passim</i>
Iowa Code § 123.50A	11, 12
Iowa Code § 805.8C	13, 14, 16

Iowa Court Rules:

Iowa R. App. P. 6.904	11
-----------------------------	----

ARGUMENT

I. A Second Violation under Iowa Code section 123.50(3)(b) Should Not Be Enforced Against Beecher.

In its brief, Beecher argues that a second violation under Iowa Code section 123.50(3)(b), for essentially simultaneous and duplicative action, should not be enforced against due to the plain text and general statutory scheme for preventing the sale of alcohol to underage individuals. (Beecher's Am. Br. pp. 17–24). Specifically, Beecher identifies that the purpose of the escalating penalty provisions in Iowa Code section 123.50(3) is to induce compliance after notice of wrongdoing. (*Id.* at 17–18, 22–24 (citing *e.g. Walsh v. Kirby*, 529 P.2d 33, 36 (Cal. 1974) (en banc)). This purpose is confirmed by reviewing the plain text of Iowa Code section 123.50(3)(e)(1), which contemplates that at least a day must elapse between two violations, and that participation in alcohol complaint training contemplates a bar to civil prosecution for such a violation under Iowa Code section 123.50(5). (Beecher's Am. Br. pp. 24–30).

The ABD¹ attempts to sidestep most of Beecher's statutory analysis. (*See generally* ABD's Br.). The ABD's statutory interpretation fails to consider the entire plain text, statutory scheme, and purpose of Chapter 123. A sidestep is unavailing.

¹ Beecher acknowledges that administration of Iowa Code chapter 123 was transferred to the IDR from the ABD, and that the ABD refers to itself as the IDR in its appellate brief. However, Beecher will continue to refer to the IDR as the ABD to maintain consistency between its brief and district court filings.

This Court should reverse the decision of the district court and remand for an order dismissing the entry of a second violation.

A. The ABD’s Interpretation Fails to Give Appropriate Weight to Iowa Code section 123.50(3)(e)(1) as a Whole.

It is unmistakable that the word “day” or “date” ordinarily means an entire calendar day, rather than a fraction of a day. (Beecher’s Am. Br. pp. 25–26). By applying this general rule, two “violations” cannot occur on the same date, at least as it pertains to an escalating licensure penalty under section 123.50(3) because no “period” of time necessarily has expired. (*Id.*). To combat this textual analysis, the ABD conjures an exception without citation to statute or caselaw.

To start, the ABD does not actually provide a different definition for the terms “within,” “date,” and “period” to counter Beecher’s plain language interpretation or reconcile its own. (*See* Beecher’s Am. Br. pp. 24–26). Nor does the ABD argue that it has deference to define these plain terms. (*See* Beecher’s Am. Br. at 16–17 (citing *Renda v. Iowa Civil Rights Com’n*, 784 N.W.2d 8, 13 (Iowa 2010))). Instead, the ABD limits its analysis to the phrase “date of any violation” within Iowa Code section 123.50(3)(e)(1) while ignoring the accepted definition of the word “date” and the balance of the statute such as the term “period.” (ABD’s Br. p. 23). As such, the ABD’s citation to *State v. Thomas*, 275 N.W.2d 422 (Iowa 1979), which did not interpret a statute such as Iowa Code section 123.50(3)(e)(1) that has an explicit

definition on how and, in particular, what time measurement should be used to certain period between violations, is unavailing. (*See* ABD’s Br. p. 21).

This approach, to focus just on the phrase “date of any violation,” contravenes the basic canon of statutory construction that requires a court to review the entire context of a statute, not just words in isolation, to understand what a statute requires. *Estate of Butterfield v. Chatuagua Guest Homes, Inc.*, 987 N.W.2d 834, 838 (Iowa 2023) (“In many cases, we have identified statutory text that, although clear in isolation, becomes ambiguous in a statute's broader context.”). The rest of Iowa Code section 123.50(3)(e)(1) favors Beechers’ proffered construction because it contemplates that there would be some “period” within the dates of the two violations. A “period” of time cannot plausibly exist when considering that the ordinary meaning of the term “day” is an entire 24 hours. *See* Iowa Code § 123.50(3)(e)(1); (*see* Beecher’s Am. Br. p. 26 (collecting cases defining the term day)). This Court should decline the opportunity to substitute statutory language for the ABD’s unsupported preference.

B. The ABD’s Liberal Construction Argument Fails to Overcome the Plain Text, Is Rejected by *Walsh*, and Fails to Account for its Impact on Other Provisions That Help Inhibit Sale of Alcohol to Underage Individuals.

Without clear textual support for a second violation, the ABD retreats to the notion that “liberal construction” of the text can achieve the ABD’s desired goal. (ABD’s Br. pp. 16, 26). Even assuming that the license revocation provisions of

Chapter 123 warrant liberal construction (which Beecher challenges), it is improper “to ignore the ordinary meaning of words in a statute” under the guise of liberal construction. (Beecher’s Am. Br. p. 19 n.2 (quoting *Vroegh v. Iowa Dep’t of Corr’ns*, 972 N.W.2d 686, 702 (Iowa 2022)); (*see also id.* pp. 19–22 (citing caselaw and treatises that similar civil penalty statutes regarding violations of alcohol legislation are given a strict construction)).

“On the contrary, we best carry out a statute’s purpose ‘by giving fair interpretation to the language the legislature choose; nothing more, nothing less.’ ” *Dornath v. Employment Appeal Bd.*, 988 N.W.2d 687, 692 (Iowa 2023) (quoting *Vroegh*, 972 N.W.2d at 702). A liberal construction of the statute cannot stretch the words “date” or “day” to mean something different than an uninterrupted 24-hour period, nor the concept that a “period” contemplates at least some gap or break in time. Indeed, it is incredibly odd to apply liberal construction in favor of the ABD when it contends that the Legislature created Iowa Code section 123.50(3)(e)(1) to ensure “unjust manipulation or inconsistent application of the specified violation window cannot occur to either the benefit or detriment of a liquor licensee.” (ABD’s Br. pp. 23–24); *see also Vroegh*, 972 N.W.2d at 702 (“Such a provision doesn’t allow courts to ignore the ordinary meaning of words in a statute and to expand or contract their meaning to favor one side in a dispute over another.”).

The California Supreme Court in *Walsh v. Kirby* applied a “liberal construction” when interpreting their Alcoholic Beverage Control Act but rejected an argument similar to the ABD on less textual grounds. 529 P.2d at 36 (citing Cal. Bus. & Prof. Code § 23001 which requires that “all provisions of this division shall be liberally construed”). There, the *Walsh* court considered a progressive civil penalty statute that, much like section 123.50(3), was deliberately designed to combat the “evils” of improper sale of liquor. *Id.* at 38. Yet, even a liberal construction to achieve that claimed purpose could not justify crafty enforcement efforts to technically manufacture escalated civil penalties (much like what the ABD and Dubuque Police Department did here). *Id.* at 39–42.

Rather than engaging *Walsh*’s holding on the merits, the ABD discounts it because it is persuasive out-of-state authority. (ABD’s Br. p. 28). But oftentimes, Iowa courts look to persuasive out-of-state caselaw interpreting similar statutes to help answer questions of Iowa law. *See, e.g., Miller v. Cath. Health Inits.*, 7 N.W.3d 367, 374–77 (Iowa 2024) (citing out-of-state jurisdictions in assessing interpretation issue under Iowa’s certificate of merit statute); *State v. Flynn*, 13 N.W.3d 843, 851–52 (Iowa 2024) (citing out-of-state jurisdictions in assessing interpretation issue under Iowa’s implied consent statute). In fact, the Iowa Supreme Court very recently relied on a California Court of Appeals interpretation of the California Alcoholic Beverage Control Act to

determine whether a city ordinance was expressly preempted by Chapter 123. *See Lime Lounge, LLC, v. City of Des Moines*, 4 N.W.3d 642, 656 (Iowa 2024) (citing *Korean Am. Legal Advoc. Found. v. City of Los Angeles*, 28 Cal. Rptr.2d 530, 537 (Cal. Ct. App. 1994)).

Here, *Walsh* appears to be the most relevant out-of-state case, cited by either party, involving accumulating cumulative penalties prior to notice of wrongdoing under a progressive civil penalty scheme in an Alcoholic Beverage Control Act containing a liberal construction clause. The Court can and should review the statutory interpretation and analysis of *Walsh* and apply *Walsh*'s holding to this appeal.²

Lastly, “liberal construction” applies to all non-penal provisions of Iowa Code Chapter 123; not just what the ABD picks and chooses. *See* Iowa Code § 123.1. That includes the State offered alcohol compliance employee training program. *Id.* § 123.50A. The purpose of this program is to “inform the employees about state laws and regulations regarding the sale of alcoholic beverages to persons under legal age, and compliance with and the importance of laws regarding the sale of alcoholic

² The ABD also argues that *Motif* forecloses a holding similar to what was advocated in *Walsh* regarding the recidivist nature of the statute. (ABD's Br. p. 25.) First, it is neither clear that Motif actually argued that recidivist principles should apply nor that the decision turned on that question. *See generally Motif, Ltd. v. Iowa Department of Commerce-Alcoholic Beverages Division*, No. 11-0793, 2012 WL 170211 (Iowa Ct. App. Jan. 19, 2012). Second, *Motif* is non-binding precedent which did not consider *Walsh*. *See* Iowa R. App. P. 6.904(2)(a)(2).

beverages to persons under legal age.” *Id.* § 123.50A(1). Or stated otherwise, this program is designed by the State to help protect the “the welfare, health, peace, morals, and safety of the people of the state” by encouraging self-policing by licensees and their employees of underage sales and rewarding those who partake with an affirmative defense for violations of Iowa Code section 123.49(2)(b). *See id.* §§ 123.1, .50(5). Essentially, the ABD’s attempted liberal construction to accumulate multiple penalties from a single sting will logically come at a cost of procedurally nullifying in the very training designed to prevent underage alcohol sales in the first place. The ABD makes no attempt to reconcile this likely collateral consequence of its interpretation. (*See generally* ABD’s Br.).

C. The ABD’s Fears of Non-Compliance by the Imaginary, Unscrupulous Licensee Under Beecher’s Statutory Interpretation is Unfounded.

Recognizing an inability to directly challenge Beecher’s plain language definition, the ABD collaterally attacks it, labeling the analysis “tortured” and claiming it may lead to absurd results or bad consequences. (ABD’s Br. pp. 22–23). Specifically, the ABD points to the imaginary, unscrupulous “business operator who purposively and repeatedly sold alcoholic beverages to multiple underage persons” in a 24-hour period. (*Id.*). The ABD’s absurdity argument is unrealistic as it is vastly overstated.

This absurdity argument first discounts the ABD's requirement that all applicants who receive a liquor license must be of "good moral character." Iowa Code § 123.31(2)(b). An applicant of "good moral character" is someone whose "financial standing and good reputation . . . will satisfy the director [of the ABD] that the person *will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter.*" Iowa Code § 123.3(40)(a) (emphasis added). It is hard to imagine an Iowa that exists where this hypothetical, unscrupulous business operator, approved by the ABD's director as a person of good moral character, would subsequently commit blatant "open and notorious violations" of selling alcohol to underage individuals if the Court decided in favor of Beecher. *Id.*; (see also ABD's Br. p. 23).

Second, to the extent such a fictional, unscrupulous business operator does exist, this individual would still be subject to extensive criminal prosecution for each repeat sale of alcohol to underage individuals. See Iowa Code § 123.50(1) ("A person who violates section 123.49, subsection 2, paragraph 'h', commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2."). The scheduled fine is significant: "for a licensee or permittee is one thousand nine hundred twenty-five [\$1,925] dollars, and the scheduled fine for a person who is employed by a licensee or permittee is six hundred forty-five [\$645] dollars." *Id.* §

805.8C(2). Additionally, “the label of a criminal offender for illegal alcohol sales could have an adverse effect on [a licensee’s] reputation as a locally owned and operated business.” *State v. Hyvee, Inc.*, 616 N.W.2d 669, 672 (Iowa Ct. App. 2000). And perhaps most importantly, contrary to the escalating civil license penalty, these criminal violations contain no directive by the Iowa legislature regarding the appropriate calculation for how many scheduled fines are appropriate, such as in Iowa Code section 123.50(3)(e)(1).

The ABD’s allusion that licensees’ and/or their employees’ “desire[] to profit” will go unpunished for multiple infractions of Iowa Code section 123.49(2)(b) on the same day in the state of Iowa under Beecher’s interpretation is simply incorrect. (*See* ABD’s Br. p. 23). And even if a multitude of scheduled fines and impact on reputation were not enough of a deterrent on this “desire to profit,” the ABD and police department could conduct another underage compliance check the *next day* under Beecher’s plain language interpretation, which, if found in violation, would trigger the escalating penalty of a thirty (30) day suspension under Iowa Code section 123.50(3)(b).

In terms of a battle of consequences, Beecher has already identified the worse of two evils involving arbitrary suspension or revocation of a license, depending on how many underage individuals a local police department and ABD may have on

hand. (*See* Beecher’s Br. p. 28). But to expound on this policy discussion, Beecher provides other more realistic hypotheticals. Consider a busy shift at a restaurant, where a young sixteen (16) year old server improperly “sells or serves alcohol” to a group of older looking but underage individuals in violation of Iowa Code section 123.49(2)(b). *See* Iowa Code § 123.49(f)(2) (allowing sixteen (16) and seventeen (17) year olds to sell or serve alcoholic beverages at restaurants under certain conditions); *see generally* *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013) (“[S]ocial scientists recognized that juveniles achieve the ability to use adult reasoning by mid-adolescence, but lack the ability to properly assess risks and engage in adult-style self-control.”). Or perhaps a more difficult scenario: a young sixteen (16) year old server improperly “sells or serves alcohol” to older looking underage individuals at a restaurant with those individuals parents. *See* Iowa Code § 123.47(3) (identifying that the statutory exception for underage drinking individual can occur with a knowledge, presence, and consent of the parent “within a private home” *i.e.* not restaurant).

Under the ABD’s interpretation, the ABD must suspend, or even revoke, that restaurant’s retail alcohol license if at least two underage individuals ordered alcohol from this young sixteen (16) year old server, to satisfy its alleged, mandated liberal construction of preventing improper alcohol sales. *See* Iowa Code § 123.50(3) (applying progressive penalty scheme to “*any* retail alcohol licensee” (emphasis

added)); *see also* Iowa Code § 123.30 (providing various classes of alcohol licensees). But under Beecher’s interpretation, the restaurant’s retail alcohol license is not automatically suspended or revoked for such a misstep by the young sixteen (16) year old server on this given day.

Ultimately, Beecher’s statutory construction should be favored in a battle of consequences. Using Beecher’s analysis, the licensee can take swift corrective action to correct a misstep, is still subject to criminal prosecution for multiple scheduled fines under Iowa Code section 805.8C(2) of repeated violations occurring on the same day, and ensures that the ABD and local police do not use arbitrary and disparate tactics to garner higher civil penalties for the missteps of their employees on a given day. But with the ABD’s interpretation, a liquor licensee, with no prior discipline and who has taken the alcohol compliance training under Iowa Code section 123.50A, can have their license revoked in a matter of “two seconds” as a result of an innocent mistake with no possibility of reinstatement for two years. (*See* ABD’s Br. p. 28); *see also* Iowa Code § 123.40 (“Any retail alcohol licensee, wine permittee, or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a retail alcohol license, wine permit, or beer permit in the state of Iowa *for a period of two years from the date of revocation.*” (emphasis added)).

D. The ABD's Previous Practice Demonstrates Impermissible Inconsistency with its Current Interpretation of Iowa Code section 123.50(3).

Historically, the ABD appears to have followed Beecher's interpretation of section 123.50(3) to avoid the unduly punitive result that Beecher identifies. This occurred in the *Motif* cases, issued over a decade and a half ago, and previously briefed by Beecher.

There, law enforcement conducted a compliance check involving one underage individual on October 24, 2008. *Motif, Ltd. v. Iowa Dep't of Commerce-Alcoholic Beverages Division*, No. 11-0793, 2012 WL 170211 at *1 (Iowa Ct. App. Jan. 19, 2012); *see generally Motif, Ltd. v. Iowa Dep't of Commerce-Alcoholic Beverages Division*, No. 11-0328, 2011 WL 4378166 (Iowa Ct. App. Sept. 21, 2011). The October 24, 2008 check constituted the "first violation" under Iowa Code section 123.50(3)(a). *Motif*, 2012 WL 170211 at *3. Then, a second compliance check occurred on January 30, 2009, which involved two underage individuals. *Id.* at *1. The facts were "found" as follows:

B.R. and K.B. ordered *beers* at the bar. The officers watched the bartender serve *B.R. and K.B.* without taking any action to verify their ages. After paying for their beers, *B.R. and K.B.* gave the *beers* to the officers, left the bar, and waited in the unmarked police car.

Id. at *2 (emphasis added). The administrative law judge in *Motif* concluded that two underage individuals (plural) were served beers (plural) based on these facts. *Id.* at *3.

The record in *Motif* unambiguously demonstrates that a finding that two separate transactions to two separate underage individuals occurred i.e. two violations of Iowa Code section 123.49(2)(b) were committed. As such, the ABD should have pursued a “second” and “third” violation under Iowa Code section 123.50(3) consistent with the ABD’s arguments in this appeal that they lack discretion and zealous liberal construction of enforcing civil penalties for nearly simultaneous violations.³ But the ABD clearly did not do so in *Motif*. 2012 WL 170211 at *5 (“[W]e agree with the agency and the district court—a *second-violation* penalty is appropriate under the circumstances of this case.” (emphasis added)). Seeking a “double penalty” for essentially simultaneous violations in this case, but not for a nearly identical compliance check involving two underage individuals both separately being improperly served alcohol in *Motif*, is the definition of agency action “that is inconsistent with the agency’s prior practice or precedent.” *See* Iowa Code § 17A.19(10)(b).

³ The ABD generally claims that it lacks discretion to prevent the assessment of a second violation based on the term “shall” in Iowa Code section 123.50(3) in this appeal. (*See* ABD Br. at 19, 31). This is an erroneous assumption because it is generally accepted that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion” a point confirmed by the ABD. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); (*see also* ABD’s Br. p. 24 (“The entry of multiple criminal convictions against Beecher’s employee precludes the ABD’s exercise of discretion in this case.”)).

The ABD attempts to differentiate the factual situation by claiming “a key aspect from Beecher’s circumstances i[s] that no criminal convictions were entered against any of Motif’s employees.” (ABD’s Br. at 24); *see also* Iowa Code § 17A.19(10)(b) (explaining that the agency can overcome inconsistent prior practice “by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency”). But Iowa Code section 123.50(3) states a civil penalty is required “[i]f any retail alcohol licensee or employee is convicted *or found* in violation of section 123.49, subsection 2, paragraph ‘h’” *Id.* (emphasis added); *see also State v. Middlekauff*, 974 N.W.2d 781, 794 (Iowa 2022) (explaining that the word “or” between terms indicates “separate meaning”). Consistent with this plain meaning, the Iowa Court of Appeals has confirmed “the absence of a criminal conviction does not preclude the imposition of a civil penalty on the licensee” *i.e.* a finding. *Walnut Brewery, Inc. v. Iowa Dep’t of Commerce-Alcoholic Beverages Div.*, 775 N.W.2d 724, 731 n.5 (Iowa Ct. App. 2009). The ABD’s claim that it is required to pursue a heightened penalty when a licensee or employee is “convicted” under Iowa Code section 123.49(2)(b), rather than when a licensee or employee is only “found” to have committed two violations under Iowa Code section 123.49(2)(b), finds no basis in plain text of Iowa Code section 123.50 and precedent, and demonstrates disparate enforcement of this statute’s penalties by the ABD.

The ABD's limited prosecution in *Motif* as compared to this case is strange when comparing the legal consequences of nearly identical two sales of beer to underage individuals. The licensee and employee in *Motif*, who were repeated offenders, apparently escaped without the criminal prosecution to pay a hefty scheduled fine, did not pay an escalated civil penalty, or suffer any longer suspension that those facts warranted. Yet, Beecher's employee suffered criminal prosecution. Beecher, as a first time offender, is forced to deal with an escalated civil penalty, and deal with a significant suspension under Iowa Code section 123.50(3)(b) that the licensee in *Motif* did not suffer. If anything, the ABD, as the primary alcoholic beverage control law enforcement authority of this State, should have pursued an escalated penalty for a third violation to ensure its claimed goal of deterrence with underage drinking was met considering the lack of criminal prosecution in *Motif*. See Iowa Code § 123.14(1); see also *id.* § 123.14(2) ("The county attorney, the county sheriff and the sheriff's deputies, and the police department of every city, and the department, shall be supplementary aids to the department of public safety for purposes of alcoholic beverage control law enforcement.").

Simply put, the fact that Beecher's situation involves two criminal convictions of its employees, while *Motif's* did not, is truly not a credible, fair, or rational reason to justify such a disparate assessment of penalties as established by the plain language of

Iowa Code section 123.50(3), precedent, and ABD's fierce advocacy of enforcing penalties for any sales of alcohol to underage individuals in this appeal. *See* Iowa Code § 17A.19(10)(b). Reversal is warranted on this ground alone. *See id.*

To be clear, *Motif* demonstrates the real arbitrary, constitutional concerns elucidated by Beecher. (Beecher's Am. Br. pp. 33–35).⁴ The unambiguous factual findings identified in *Motif*, nearly identical to the infidelities of this case, should have justified mandatory enhancement in that case. But the ABD did not pursue such enhancements. The arbitrary enforcement is further demonstrated by the ABD's irrational position on appeal that heightened civil penalties are required only if a conviction has occurred despite the plain language of Iowa Code section 123.50(3). And a similar type of arbitrary, cumulative stacking of liquor license violations to garner heightened civil penalties was held unconstitutional under the due process clause by the California Supreme Court in *Walsh v. Kirby*. 529 P.2d at 42 (identifying

⁴ Much like the ABD's statutory analysis, the ABD's generalized claim that Beecher did not preserve error on the void for vagueness avoids Beecher's legal citation to liberal standards of error preservation and clash with Beecher's specific record identification of how the void for vagueness argument was preserved throughout the agency proceedings. In any event, the ABD admits that Beecher preserved error on whether a second violation should be enforced as a matter of statutory interpretation. (*See* ABD's Br. at 15–16). And a well-established tenet of statutory interpretation "suggests that the proper course in the construction of a statute may be to steer clear of 'constitutional shoals' when possible" which would include interpreting a statute in a way that does not encourage arbitrary enforcement. *See State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 85 (Iowa 2014).

that “the imposition of cumulative penalties resulting in the de facto revocation of the license” without prior notice of wrongdoing was “arbitrary and capricious”).

CONCLUSION

“[A] liquor license is frequently the most valuable asset that this type of business can own.” *Rushmore State Bank v. Kurylas, Inc.*, 424 N.W.2d 649, 665 (S.D. 1988). Here, Beecher’s business is at risk based on a faulty plain language interpretation by the ABD, the ABD’s inability to appreciate the entire statutory scheme of Chapter 123 to prevent underage sale of alcohol, and the ABD’s clearly inconsistent application of its own interpretation of the statute as exemplified in prior caselaw. The Court should reverse and remand for entry of the dismissal for the heightened penalties associated with a second violation.

Dated March 12, 2025.

/s/ Kevin C. Rigdon
KEVIN C. RIGDON (#AT0011385)
Direct Dial: (319) 861-8705
Email: crigdon@bradleyriley.com
THEODORE T. APPEL (#AT0014941)
Direct Dial: (319) 861-8769
Email: tappel@bradleyriley.com
OLIVIA A. McGOVERN (#AT0015751)
Direct Dial: (319) 861-8794
Email: omcgovern@bradleyriley.com
of

BRADLEY & RILEY PC
2007 First Avenue SE
P.O. Box 2804
Cedar Rapids, IA 52406-2804
Phone: (319) 363-0101
Fax: (319) 363-9824

ATTORNEYS FOR BEECHER STORE
INC

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies this brief was electronically filed and served on the 12th day of March, 2025 upon the Clerk of Supreme Court using the Electronic Document Management System, which will send notification of electronic filing (constituting service):

John Lundquist
Iowa Attorney General
1305 E. Walnut Street
Des Moines, Iowa 50319
John.lundquist@ag.iowa.gov

*Attorneys for Department of Revenue
Iowa Alcohol Beverages Division*

/s/ Kevin C. Rigdon
Signature

March 12, 2025
Date

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) because this brief has been prepared in a proportionally spaced typeface using Garamond in 14-point type and contains 4,068 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Kevin C. Rigdon
Signature

March 12, 2025
Date