IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellant, v. JOHN JOSEPH MANDRACCHIA, Defendant–Appellee.	POLK COUNTY COURT NO. FECR372333 SUPREME COURT NO. 23-2114

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE MICHAEL D. HUPPERT, JUDGE

APPELLEE MANDRACCHIA'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

JOSH IRWIN
Assistant Appellate Defender
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Avenue
Des Moines, IA 50321
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT–APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court correctly concluded Iowa Code section 808.16 is facially unconstitutional.

II. State v. Wright was correctly decided and should not be overruled.

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial constitutional question as to the validity of a statute. Iowa Rs. App. P. 6.903(2)(a)(4) and 6.1101(2)(a).

STATEMENT OF THE CASE

Nature of the Case

The State has been granted discretionary review of the district court's determination Iowa Code section 808.16 is facially unconstitutional because it violates separation of powers principles; that police officers' warrantless seizure and search of garbage put out for collection was a violation of Article I, section 8 of the Iowa Constitution; and that because the garbage search was the sole source of probable cause supporting a search warrant, the subsequent search pursuant to that warrant was also conducted in violation of Article I, section 8. D0032 Order Granting Discretionary Review (1/18/2024).

Statement of the Facts

Police officers conducted three garbage pulls at a home in Des Moines, obtained a search warrant for the home based upon items discovered in that garbage, and searched the home pursuant to that warrant. D0018 Motion to Suppress p. 1 (9/13/2023). The State charged Mandracchia with possession of a controlled substance with intent to distribute (marijuana), a class D felony in violation of Iowa Code section 124.401(1)(d), and failure to affix a drug tax stamp, a class D felony in violation of Iowa Code sections 453B.3 and 453B.12. D0009 Trial Information p. 1 (8/25/2023).

ARGUMENT

I. The district court correctly concluded Iowa Code section 808.16 is facially unconstitutional.

Preservation of Error

Mandracchia filed a motion to suppress, arguing Iowa Code section 808.16 is facially unconstitutional, and the State resisted that motion. D0018 Motion to Suppress (9/13/2023); D0022 Resistance to Motion to Suppress (10/10/2023). After a hearing, the district court granted the motion. D0026 Order Granting

Motion to Suppress (11/13/2023). The State filed a motion for reconsideration of that ruling, which the court denied. D0027 Motion to Reconsider (11/28/2023); D0028 Order Denying Motion to Reconsider (11/28/2023). Error was preserved.

Standard of Review

Rulings on the constitutional validity of a statute are reviewed de novo. Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State, 975 N.W.2d 710, 721 (Iowa 2022), reh'g denied (July 5, 2022).

Discussion

The district court determined Iowa Code section 808.16 is facially unconstitutional, because it infringes on the judicial branch's role to determine constitutional compliance. D0026 pp. 5–7. The court found section 808.16, in its entirety, is facially unconstitutional; it did not leave any subsection intact. That was correct.

In State v. Wright, the Iowa Supreme Court made several legal and constitutional determinations which led to the conclusion

garbage placed outside for collection may not be seized or searched without a warrant.[1] In division IV(B), the Court held that garbage bags are effects for constitutional purposes, and their contents are effects, papers, or both. State v. Wright, 961 N.W.2d 396, 414 (Iowa 2021). In division IV(C), the Court held that Iowans do not abandon those effects and papers by placing them out for collection by a garbage service. Id. at 415–16. In division IV(D)(1), the Court held police commit a constitutional trespass when they seize and search garbage placed out for collection. Id. at 417. In division IV(D)(2), the Court held that Iowans have a reasonable expectation of privacy in garbage placed out for collection. Id. at 418–19. In division V, the Court held, based on the preceding conclusions, that an unconstitutional seizure and search occurred when officers seized garbage placed outside for collection without a warrant then searched it. Id. at 420.

[1] Wright is a plurality decision. Justice Appel concurred, joining "divisions I, IV(B), IV(C), IV(D), IV(E), and V" of Justice McDonald's opinion. State v. Wright, 961 N.W.2d 396, 420 (Iowa 2021) (Appel, J., concurring specially). Those divisions constitute the majority opinion.

In response to the Court's holdings, the legislature enacted Iowa Code section 808.16:

> Exception to search warrant requirement--garbage searches:
>
> 1. It is the public policy of this state that a person has no reasonable expectation of privacy in garbage placed outside of the person's residence for waste collection in a publicly accessible area.
> 2. A city or county shall only adopt an ordinance or a regulation concerning waste management and sanitation for the purposes of promoting public health and cleanliness. An ordinance or a regulation adopted by a city or county shall not be construed by a person to create a reasonable expectation of privacy in garbage placed outside of the person's residence for waste collection in a publicly accessible area.
> 3. Garbage placed outside of a person's residence for waste collection in a publicly accessible area shall be deemed abandoned property and shall not be considered to be constitutionally protected papers or effects of the person.
> 4. A peace officer may conduct a search and may seize garbage placed outside of a person's residence for waste collection in a publicly accessible area without making an application for a search warrant.

Iowa Code § 808.16. Each subsection makes an assertion of constitutional dimension: 1) that Iowans do not have a reasonable expectation of privacy in garbage placed out for collection; 2) that municipal ordinances cannot create a reasonable expectation of

privacy; 3) that garbage placed out for collection is abandoned and is not papers or effects; and 4) that police do not need a warrant to seize garbage placed out for collection.

Article III of the Iowa Constitution begins:

> The powers of the government of Iowa shall be divided into three separate departments--the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Iowa Const. art. III § 1. "The judicial power shall be vested in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish. Iowa Const. art. V § 1. "[T]he Iowa Supreme Court is the final arbiter of what the Iowa Constitution means." State v. Burns, 988 N.W.2d 352, 361 (Iowa 2023) (internal quotation and citations omitted). "The separation of powers doctrine prohibits a department of the government from exercising powers that are clearly forbidden to it, from exercising powers granted by the constitution to another branch, and from impair[ing] another in the

performance of its constitutional duties." State v. Basquin, 970 N.W.2d 643, 657 (Iowa 2022), as amended (Mar. 2, 2022) (internal quotations omitted, quoting State v. Thompson, 954 N.W.2d 402, 410 (Iowa 2021)). "As every one knows, it is the province of the Legislature to enact, of the judiciary to expound, and of the executive to enforce, the laws, and any direction by the Legislature that the judicial function shall be performed in a particular way is a plain violation of the Constitution." Richardson v. Fitzgerald, 109 N.W. 866, 867 (1906). "As the Legislature cannot set aside the construction of the law already applied by the courts to actual cases, neither can it compel courts for the future to adopt a particular construction of a law which the Legislature permits to remain in force." Id.

Article I, section 8 of the Iowa Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Iowa Const. art. I § 8. A warrantless search is per se unreasonable and unconstitutional unless an exception to the warrant requirement applies. State v. Watts, 801 N.W.2d 845, 850 (Iowa 2011) (citations omitted). Determination of compliance with constitutional provisions is the province of the Supreme Court, and no other branch may wield that power.

As outlined above, the Court has already spoken on the constitutionality of warrantless seizures and searches of garbage placed out for collection. After a thorough analysis, the Court concluded Iowans have a reasonable expectation of privacy in garbage placed out for collection; garbage bags and their contents are effects and papers for constitutional purposes; those effects and papers are not abandoned at the time garbage is placed at the curb for collection; and police trespass upon those effects and papers when they seize and search them. Wright, 961 N.W.2d at 415–20. Section 808.16 attempts to wield the judicial power to determine compliance with the Constitution, and asserts constitutional conclusions opposite those reached by the Court. While phrased

as a statement of public policy, those assertions are no more than the legislature's attempt to overturn the constitutional holdings of Wright.

Whether a reasonable expectation of privacy exists, whether property is abandoned, whether property is a constitutional paper or effect, and whether a warrant is required for police action are not "policies," they are facts of constitutional dimension. It is for the judiciary to determine whether a given item is a constitutional paper or effect (as the Supreme Court has already done with regard to garbage prior to collection). See Wright, 961 N.W.2d at 414. Evaluating existence of a reasonable expectation of privacy requires analysis of the totality of the circumstances—the actual facts in existence at the time of the search. See State v. Tyler, 867 N.W.2d 136, 169 (Iowa 2015). The legislature may not substitute a legal fiction for that judgment. Likewise, whether property is abandoned is a factual determination "shown by proof that the owner intends to abandon the property and has voluntarily relinquished all right, title, and interest in the property." Benjamin v. Lindner Aviation,

Inc., 534 N.W.2d 400, 406 (Iowa 1995) (citations omitted). These are all factual determinations which cannot be declared by legislative fiat.[2]

The legislative action here is similar to that addressed in State v. Bedard. In that case, like this one, the legislature responded to a ruling by the Iowa Supreme Court by enacting statutory language contradicting that ruling. State v. Bedard, 668 N.W.2d 598, 600–01 (Iowa 2003) (after Court's holding that assault is a specific-intent offense, legislature amended the assault statute to state it is a general-intent offense). As the Court later explained (although it did not comment on the constitutionality of the statutory change), amendments to a statute which use legal terms but are incorrect as a matter of law are, at minimum, ineffective. See State v. Fountain, 786 N.W.2d 260, 264–65 (Iowa 2010). The caselaw the

[2] The State's recitation of statutes dealing with abandonment is unpersuasive. Only one of the statutes the State cites actually purports, without qualification, to deem something—an unrecorded conservation easement—"abandoned." See Appellant's Brief p. 29 (citing Iowa Code § 457A.3). Because that is a question of titling and ownership of real property, rather than personal property, section 457A.3 is easily distinguishable from section 808.16.

legislature attempted to overrule continues to control. Id. at 265; see also State v. Beck, 854 N.W.2d 56, 63 (Iowa Ct. App. 2014), as amended (Aug. 12, 2014) (observing that "despite the legislature's clear intent to abrogate the decision, *Heard*—as affirmed by *Bedard, Keeton, Wyatt*, and *Fountain*—is controlling legal authority"). The same analysis and conclusion are warranted here. Wright and its progeny have held that garbage placed at the curb for collection is constitutionally protected. State v. Kuuttila, 965 N.W.2d 484, 487 (Iowa 2021); State v. Hahn, 961 N.W.2d 370, 372 (Iowa 2021); Wright, 961 N.W.2d at 420. The legislature cannot negate that constitutional protection by enacting a legal fiction.

The legislative overreach in this case is even more blatant than that addressed in Bedard, because Wright involved interpretation of the Iowa Constitution, not just a statute. The legislature's assertion garbage "shall not be considered to be constitutionally protected papers or effects of the person" most clearly demonstrates the overreach. See Iowa Code § 808.16(3). Recognizing invocation of the Constitution and use of express language of Article I section 8

makes the legislative overstep undeniable, the State claims that clause is merely an application of the preceding clause, which says garbage placed out for collection "shall be deemed abandoned property." Appellant's Brief pp. 27–29. There are two problems with this claim. First, it is contrary to the canon of statutory interpretation against surplusage, which says all language of a statute is intended to carry, and must be given, meaning. Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just., 867 N.W.2d 58, 75 (Iowa 2015) (citing State v. McKinley, 860 NW.2d 874, 882 (Iowa 2015); Iowa Code § 4.4(2)). The State's argument the "papers or effects" language is a redundant rephrasing of the "abandoned" language runs headlong into this canon. Second, on its face the State's explanation is that the legislature conducted and enacted a constitutional analysis of its own statute—which it may not do. See Appellant's Brief p. 27 ("Section 808.16(3)'s second clause addressing papers and effects should be read as stating the constitutional result of the first clause deeming garbage on the curb abandoned.").

Ultimately, the State's arguments—like section 808.16 itself—misconstrue the positive-law approach discussed in Wright as the sole method of determining the scope of Article I, section 8. The Wright decision clarified:

> Of course, this is not to say article I, section 8 rises and falls based on a particular municipal law. Municipal laws, like all positive laws, are merely one form of evidence of the limits of a peace officer's authority to act without a warrant. Further, "while positive law may help establish a person's Fourth Amendment interest there may be some circumstances where positive law cannot be used to defeat it." For example, neither the legislature nor a municipality could "pass laws declaring your house or papers to be your property except to the extent the police wish to search them without cause." Article I, section 8 precludes a peace officer from engaging in general criminal investigation that constitutes a trespass against a citizen's house, papers, or effects. No department of the government can circumvent this constitutional minimum.

Wright, 961 N.W.2d at 417 (internal citations omitted, quoting Carpenter v. United States, 585 U.S. 296, 401–03 (2018) (Gorsuch, J., dissenting)). Thus, Wright made clear the impact of positive law is not without limitations, and that positive law cannot defeat constitutional protections. Although Wright discussed municipal ordinances regulating who may access garbage placed out for

collection, that was not the core of its reasoning, and state legislation preempting municipal law does not negate the conclusion garbage placed out for collection is subject to constitutional protection. The Court made that clear the same day it decided Wright, in the companion case State v. Hahn. In Hahn, the Court concluded an unconstitutional search and seizure of garbage occurred, *and there were no municipal ordinances at issue*. State v. Hahn, 961 N.W.2d 370, 372 (Iowa 2021). Although Wright looked to local ordinances as one source of positive law indicating societal expectations, Hahn makes clear they are not necessary to conclude warrantless garbage pulls are unconstitutional. Section 808.16(2)'s preemption of local ordinances does not cure the unconstitutionality of this police practice.

Each portion of section 808.16 purports to make constitutional determinations, with the plain purpose to overturn the Iowa Supreme Court's interpretation of the Iowa Constitution. The legislature may not wield judicial power, and its attempt to do so violates the constitutional separation of powers. The district

court correctly found section 808.16 is facially unconstitutional, that evidence stemming from the warrantless garbage pulls must be excised from the search warrant application, and that without that information the application does not support a finding of probable cause.

Conclusion

The district court correctly determined section 808.16 is unconstitutional, because it is legislative overreach which violates the constitutional separation of powers. The order suppressing evidence stemming from the unconstitutional seizure and search should be affirmed.

II. State v. Wright was correctly decided and should not be overruled.

Preservation of Error

The State did not request that the district court overrule Wright prior to the district court's ruling on Mandracchia's motion, instead only making that request in its motion to reconsider. See D0027 p. 2. However, a party generally does not need to ask a district court to overrule binding appellate precedent, since the

district court has no power to do so. State v. Williams, 895 N.W.2d 856, 859 n. 2 (Iowa 2017).

Standard of Review

Questions whether a prior constitutional precedent of the Iowa Supreme Court should be overruled are reviewed de novo. See Planned Parenthood of the Heartland, Inc., 975 N.W.2d at 721.

Discussion

The State offers no compelling reason why State v. Wright should be overruled, instead merely stating its belief the dissents in that case were correct. See Appellant's Brief p. 42 ("[T]he State does not have much to add to those forceful dissents . . . ."). This is insufficient to justify overruling Iowa Supreme Court precedent. The State's request should be denied.

"Stare decisis alone dictates continued adherence to [Iowa Supreme Court] precedent absent a compelling reason to change the law." Book v. Doublestar Dongfeng Tyre Co., Ltd., 860 N.W.2d 576, 594–95 (Iowa 2015) (citing Ackelson v. Manley Toy Direct, L.L.C., 832 N.W.2d 678, 688 (Iowa 2013); State v. Derby, 800

N.W.2d 52, 59 (Iowa 2011); Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc., 762 N.W.2d 463, 474 (Iowa 2009)). "Overruling a case always requires 'special justification'—over and above the belief 'that the precedent was wrongly decided.'" Kimble v. Marvel Ent., LLC, 576 U.S. 446, 447 (2015) (quoting Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 266 (2014)). "[S]tare decisis 'serves as an intertemporal referee, moderating any knee-jerk conviction of rightness by forcing a current majority to advance a special justification for rejecting the competing methodology of its predecessor.'" See Planned Parenthood of the Heartland, Inc., 975 N.W.2d at 751 (Christensen, C.J., concurring in part and dissenting in part) (quoting Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev 1711, 1723 (2013)). To be sure, the Supreme Court may overrule its precedents, and has indicated less deference is owed to those precedents when they are of a constitutional nature. See State v. White, 9 N.W.3d 1, 13 (Iowa 2024) (citations omitted). But there still must be some compelling reason to do so. Id. (precedents based on a "demonstrably

erroneous" view of the Constitution must be overruled); State v. Brown, 930 N.W.2d 840, 854 (Iowa 2019) (quoting Kiesau v. Bantz, 686 N.W.2d 164, 180 (Cady, J., dissenting) (Courts "must undertake this weighty task [of overruling precedent] only for the most cogent reasons and with the greatest caution."). That reasonable minds might disagree—which is the case whenever a decision produces a dissent—is simply not enough.

Aside from the passage of section 808.16 and the change of one member of the Court, nothing is different today than it was when Wright was decided just three years ago. This weighs heavily against overruling that decision. See Planned Parenthood of the Heartland, Inc., 975 N.W.2d at 751 (Christensen, C.J., concurring in part and dissenting in part) (quoting Henry Paul Monaghan, *Stare Decisis and Constitutional Adjudication*, 88 Colum. L. Rev. 723, 753 (1988)) ("'If courts are viewed as unbound by precedent, and the law as no more than what the last Court said, considerable efforts would be expended to get control of such an institution—

with judicial independence and public confidence greatly weakened.'").

There is no compelling reason to overrule Wright. The standard announced is clear and easy to follow: get a warrant before seizing and searching garbage. That the response in some instances will be "there is no probable cause" is not an evil to overcome; it is our constitutional protection in action, placing a check on the State's immense police power. The usefulness of a given practice to law enforcement is irrelevant to determination whether that practice passes constitutional muster. Wright, 961 N.W.2d at 420 (citing Mincey v. Arizona, 437 U.S. 385, 393 (1978); Hunter v. Colfax Consol. Coal Co., 154 N.W. 1037, 1047 (Iowa 1915)).

That said, there is no reason to believe Wright has even had a significant impact on law enforcement efforts; the State raises none, and the concerns raised by the Wright dissents have not come to pass. Officers still conduct traffic and other Terry-based stops and searches. See State v. Price-Williams, 973 N.W.2d 556, 561–62

(Iowa 2023). The exigent circumstances exception to the warrant requirement remains in full force. See State v. Abu Youm, 988 N.W.2d 713, 721–23 (Iowa 2023); State v. Torres, 989 N.W.2d 121, 130 (Iowa 2023). The community caretaking exception persists unabated. See Abu Youm, 988 N.W.2d at 720. As Justice McDonald explained, none of the fears of the Wright dissents actually follow from that decision; predictably, then, none of them *have* followed. Wright, 961 N.W.2d at 412 n. 5. Police may even still seize and search garbage; they merely must convince a judge beforehand that their desire to do so is based on more than a hunch. Occasional preemptive judicial evaluation of police action is not an evil which must be defeated; it is one of the founding principles of our state, and protects the freedoms and liberties all Iowans enjoy. Id.

Iowa jurisprudence prior to Wright failed to vindicate the constitutional protection against unreasonable search and seizure with regard to garbage searches, instead adhering to United States Supreme Court precedent. See State v. Henderson, 435 N.W.2d

394, 396–97 (Iowa Ct. App. 1988) (citing California v. Greenwood, 486 U.S. 35 (1988)). Wright's departure from that lock-step approach was wise, because Greenwood relied on irrelevant facts to reach an incorrect conclusion. In Greenwood, the Court believed three facts showed society had no reasonable expectation of privacy in garbage placed out for collection: that it is possible individuals or animals could open garbage containers and expose their contents to the public, that garbage collectors might go through garbage once it has been collected or might consent to a search, and that police are not required to avert their eyes from things observable by the general public. Greenwood, 486 U.S. at 40–41. None of those observations are even relevant to the analysis, let alone sufficient to conclude there is no reasonable expectation of privacy in garbage placed out for collection or that its seizure and search is not a trespass.

First, the fact that animals or bad actors might expose garbage in the future is of no consequence; to conclude otherwise is like concluding a person has no reasonable expectation of privacy in

their home because of the possibility burglars might enter. See Greenwood, 486 U.S. at 54 (Brennan, J., dissenting) (quoting Katz v. United States, 389 U.S. 347, 351 (1967)) ("The mere *possibility* that unwelcome meddlers *might* open and rummage through the containers does not negate the expectation of privacy in their contents any more than the possibility of a burglary negates an expectation of privacy in the home; or the possibility of a private intrusion negates an expectation of privacy in an unopened package; or the possibility that an operator will listen in on a telephone conversation negates an expectation of privacy in the words spoken on the telephone. 'What a person . . . seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.'"); State v. Hempele, 576 A.2d 793, 805 (N.J. 1990) ("A privacy expectation in garbage can be reasonable even though the contents are not invulnerable to inspection by outsiders. We expect officers of the State to be more knowledgeable and respectful of people's privacy than are dogs and curious children.").

Similarly, that garbage collectors might open and examine garbage after it has been collected, or consent to its search—even if one assumes that is a likely possibility—has nothing to do with an expectation of privacy *prior* to collection. See Hempele, 576 A.2d at 806 ("There is no principle 'to the effect that the police are free to do what some individual has been authorized to do.'") (quoting 1 W. LaFave, *Search and Seizure* § 2.6(c), at 48 (1990 Supp.)). That an expectation of privacy might become unreasonable based on a possible future event does not render it preemptively unreasonable.

Finally, the Court's statement that police "need not avert their eyes" to information exposed to the public is completely untethered to the factual circumstance at issue when police seize and search garbage. See id. at 807 ("That assertion [that police need not avert their eyes], although obviously true, is hardly relevant. The question here is not whether the police should 'avert their eyes,' but whether they can dig through garbage that is concealed from the public eye."). Garbage which is inside garbage bags, which are in turn inside a garbage can, is not exposed to the public eye.

As Justice Gorsuch, Justice Brennan (joined by Justice Marshall), and several state courts have observed, Greenwood announced an extremely consequential rule based upon an extremely flawed analysis. See Carpenter v. United States, 585 U.S. 296, 395–96 (2018) (Gorsuch, J., dissenting); Greenwood, 486 U.S. at 45–56 (Brennan, J., dissenting); Wright, 961 N.W.2d at 418–20; State v. Goss, 834 A.2d 316, 319 (N.H. 2003); Hempele, 576 A.2d at 807; State v. Crane, 329 P.3d 689, 695–96 (N.M. 2014); State v. Lien, 441 P.3d 185, 193–94 (Or. 2019); State v. Morris, 680 A.2d 90, 98–100 (Vt. 1996); State v. Boland, 800 P.2d 1112, 1116–17 (Wash. 1990) (en banc).[3] Greenwood is manifestly erroneous because its conclusion rests on irrelevant factual considerations. Unfortunately, the United States Supreme Court has yet to correct that error. But Iowa's Constitution allows our judiciary to part

[3] The Hawaii Supreme Court has also concluded, prior to the Greenwood decision, that garbage is constitutionally protected under their state constitution. State v. Tanaka, 701 P.2d 1274, 1276–77 (Haw. 1985). That seven other state supreme courts have reached this conclusion belies the notion that Iowa "stands alone" in affording garbage constitutional protection. See Kuuttila, 965 N.W.2d at 490 (Mansfield, J., dissenting). Iowa is in the minority, but is far from alone.

ways with the United States Supreme Court, as it did in Wright by focusing on the facts in existence rather than those which could occur in the future.

Wright was correctly decided, wisely diverging with United States Supreme Court precedent which, at best, rests on an unstable foundation. The State presents no compelling reason it should be overruled, instead merely reiterating the concerns of the dissents in that case. Those concerns did not carry the majority then, and have not emerged in practice since. Wright should not be overruled.

Conclusion

State v. Wright was correctly decided, and the State has not presented any compelling reason why it should be overruled.

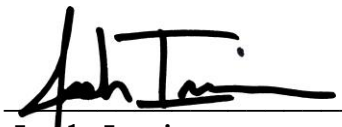
REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g)(1) and 6.903(1)(i)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 4,478 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).



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Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
6200 Park Avenue
Des Moines, IA 50321
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

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