

No. 23-1766

IN THE

SUPREME COURT OF IOWA

EUGENE SIKORA,

Appellant,

v.

STATE OF IOWA, AND DR. BETH SKINNER,

Appellee.

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

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE ISSUES

- A. Do Iowa Code § 669.14(4) and *Greene v. Friend of Court* resolve all claims?
- B. Are State Officers required to give bond pursuant to Chapter 64, making them subject to a § 64.18 action on the bond?
- C. Is Trespass on the Case is a common law action suitable to vindicate the invasion of a constitutional right?
- D. Is Sikora's bond action barred by the statute of limitations?
- E. Did Sikora ever insist upon forfeiture of the entire penal sum of the bond, without proving the amount of his damages to the finder of fact?
- F. Has the Iowa Supreme Court addressed or decided a Plaintiff's request to apply *Burnett* prospectively only?
- G. Is Sikora's suit an "earned time credit" miscalculation suit?

ARGUMENT

A. Iowa Code § 669.14(4) and *Greene v. Friend of Court* are no silver bullet.

The State believes that in Iowa Code § 669.14(4), and the *Greene* case, it has found the silver bullet that defeats all of Sikora's amended claims. *Greene v. Friend of Ct., Polk Cnty.*, 406 N.W.2d 433 (Iowa 1987). The State has found no silver bullet, for a multitude of reasons.

Sikora's Action on the Bond is brought in the name of the State, making sovereign immunity inapplicable.

Sikora's Action on the Bond is brought in the name of the State, making the Iowa Tort Claims Act inapplicable.

Sikora's Action on the Bond is brought in the name of the State, making sovereign immunity inapplicable by waiver.

Sikora's Action on the Bond is against the bond, not just against the State or State employees, making the ITCA inapplicable.

And *Greene* was a statutory action brought pursuant to § 1983, not a common law action invoking the protections of the Iowa Constitution. *Greene* is thus inapplicable to Sikora's requests of this Court to find his common law actions invoking article I, §§ 1, 8, and 9 incompatible with sovereign immunity.

1. Sikora's action on the bond is brought in the name of the State, making sovereign immunity inapplicable.

Sikora's Action on the Bond, alleging oppression, invokes his whole Second Amended Petition. The Second Amended Petition sets forth and includes the actions and omissions of the State's employees, a claim of False Imprisonment, a claim of Trespass on the Case for violations of article 1, §§ 1, 8, 9, and direct constitutional claims. *See* D0061, Second Amended Petition at ¶ 114 (8/18/23). The concept of oppression is broad enough to encompass all of the State's Employees' actions and all of Sikora's legal claims.

Concerning his Action on the Bond, Sikora sued State employees **in the name of the State**. Sovereign immunity is not applicable to a suit Sikora is authorized to bring **in the name of the State**. *See* Iowa Code § 64.18. Under § 64.18, Sikora assumes the power of the State, and the name of the State, to sue on the bond of the State's employees, and sovereign immunity is no obstacle.

2. Sikora's action on the bond is brought in the name of the State, making the Iowa Tort Claims Act inapplicable.

Similarly, because Sikora's action is in the name of the State, the Iowa Tort Claims Act is inapplicable. The ITCA "waives sovereign immunity for tort claims against the State and provides a remedy for a cause of action already existing which would have otherwise been without remedy because of common law immunity. By enacting the ITCA, the State waived this immunity and opened itself to suit, but it did so strictly on its terms." *Wagner* at 856-57 (internal quotations and citations omitted)(emphasis added). The ITCA was never intended to apply to a § 64.18 Action on the Bond where the Plaintiff is . . . the State.

The legislature passed the Iowa Tort Claims Act to coexist with Chapter 64. Not to replace it. If the legislature had wanted to repeal Chapter 64, it would have done so. Instead, the legislature must have intended an

action in the name of the State, against an individual employee, on the bond of state officials, to be outside the scope of the Iowa Tort Claims Act.

Relatedly, the State is not a “claimant” making it subject to the Iowa Tort Claims Act. *See* Iowa Code Chapter 669. For instance, Iowa Code § 669.4 describes a claimant by where their “residence” lays. The State has no residence. And more importantly, § 669.4 provides “the state shall be liable . . .” Again, this shows that the ITCA is inapplicable to a § 64.18 action brought in the name of the State. Where the State is the Plaintiff, it is nonsensical to apply the Iowa Tort Claims Act.

Further, an action brought under § 64.18 is not a “claim against the state.” Iowa Code § 669.14. It is, instead, a claim “in the name of the state . . . for the [oppressed] person’s use.” Iowa Code 64.18. The exemptions contained in § 64.14 simply never come into play in a § 64.18 action brought in the name of the State.

And further still, a § 64.18 action brought in the name of the State provides specific exemptions. *See* Iowa Code § 64.15A. The exemptions listed, which include two Iowa Code Chapters, conspicuously do not include any reference to the ITCA or the exemptions listed in Iowa Code § 669.14.

However, even if the ITCA applies to an action brought in the name of the State, against a state officer, the result in this case is the same. Because the issue of whether a 64.18 action should be brought pursuant to the ITCA has never been ruled upon, Sikora did list the State as a defendant, in an abundance of caution.

In this scenario, let's say Sikora brought his bond action in the name of the State. Because it is a suit against the State, and a State employee, § 669.2(3)(a) and (b) bring his action into the ITCA. But, then let's say § 669.14 kicks in, and makes the bond action exempt from the ITCA, for some reason, such as being the functional equivalent of false imprisonment. *See* Iowa Code § 669.14 ("The provisions of this chapter shall not apply . . .").

In this scenario, where does that leave Sikora's action? Not dismissed. Just *outside the provisions* of the ITCA, with a statutory action in the name of the State. An action in the name of the State, that sovereign immunity cannot defeat, because it has been specifically granted by the State. And that statutory action contains within it the terms of the bond, and each and every claim brought by Sikora, including False Imprisonment, Trespass on the Case, and violations of article I, §§ 1, 8, and 9.

Or, conversely, let's say this Court finds Sikora's action is not the functional equivalent of false imprisonment. At that point § 669.4(3) would waive the State's sovereign immunity, and Sikora's case would proceed.

So, while it makes no sense that the ITCA would apply to Sikora's § 64.18 Action on the Bond, brought in the name of the State, even if the ITCA's provisions do apply, the result is the same in this case.

3. **Sikora's action on the bond is against the bond, not just against the State or State employees, making the ITCA inapplicable.**

The State argues that the ITCA, particularly § 669.5(2)(a), makes the State the true defendant. The State is mistaking the true nature of an action on the bond. It is the bond that is put in suit, not just the public official. As the United States Supreme Court has explained,

the remedy of a person whose property is wrongfully taken by the marshal in officially executing his writ **is not limited to an action against him personally. His official bond is not made to the person in whose behalf the writ is issued, nor to any other individual, but to the government,** for the indemnity of all persons injured by the official misconduct of himself or his deputies; **and his bond may be put in suit** by and for the benefit of any such person.

Lammon v. Feusier, 111 U.S. 17, 19 (1884)(emphasis added); *see also Executive Centers of America*, 402 So.2d 24, 26 (Fla App. 1981)(characterizing the action on the bond as "an independent action against the bond").

Concerning the Action on the Bond, the State's bond is put in suit, not just the public official individually. So far as the suit is on the bond, the ITCA is inapplicable to an action on the bond, at the outset. The ITCA requires a claim against the State or a State employee. *See* Iowa Code § 669.2(3). The Action on the Bond puts the bond in suit, not just the State's employee. The nature of an action on the bond cuts hard against the application of the ITCA to Sikora's Action on the Bond.

4. Because the bond action is brought in the name of the State, sovereign immunity inapplicable by waiver.

Sikora brought his Action on the Bond in the name of the State of Iowa. As such, sovereign immunity and the Iowa Tort Claims Act are not applicable. To the extent any wrongful acts by State employees amount to a violation of the oath affixed to their official bond, the State has waived sovereign immunity, and subjected those employees to an Action on the Bond, in the name of the State. *See* Iowa Code §§ 64.2; 64.18.

This Court has recognized several instances where the State has waived its sovereign immunity. There is the ITCA, of course. *See* Iowa Code

§ 64.4(3). And there are other examples as well. Where the State enters into a contract, or otherwise voluntarily assumes legal consequences, the State constructively waives its immunity from suit. *See Kersten Co. v. Dep't of Soc. Servs.*, 207 N.W.2d 117 (Iowa 1973); *State v. Dvorak*, 261 N.W.2d 486 (Iowa 1978).

Iowa Code § 64.18 is just another example of the State waiving any claim of sovereign immunity concerning state officers. The State, by obtaining the bond, with the oath attached, on behalf of its officers, agreed that it and its officers would be answerable for a breach of the terms of the bond, and waived its sovereign immunity to that extent.

In short, the State has waived sovereign immunity concerning its employees by making them subject to an action for violation of the terms of their bond.

5. ***Greene* was a statutory action brought pursuant to § 1983, not a common law action invoking the protections of the Iowa Constitution. *Greene* is thus inapplicable to Sikora's requests of this Court to find his common law actions invoking article I, §§ 1, 8, and 9 are incompatible with sovereign immunity.**

The State argues that all of Sikora's claims arise out of false imprisonment, primarily citing to Iowa Code § 669.14 and *Greene*. However,

Sikora's claims are much different than the sole claim brought by Greene, a statutory § 1983 Due Process claim. *Greene* at 433.

First, Greene did not bring distinct common law actions for both False Imprisonment and for Trespass on the Case to address distinct injuries, physical and the infringement of rights. Green only brought his due process § 1983 action. When Greene was denied a remedy, a fair answer to Greene would have been "you have not because you ask not." James 4:2. But Sikora brings distinct requests, and asks for relief for both.

Second, unlike Greene, Sikora makes two requests concerning sovereign immunity, which are flip-sides of the same coin. On one side of the coin, Sikora asks this Court to find that sovereign immunity loses its vitality in the face of an action alleging constitutional violations. On the flip side of the coin, Sikora makes a similar request, that this Court find that the protections of article 1, §§ 1, 8, and 9 guarantee Sikora a right of action to vindicate his constitutional rights.

The traditional structure of an action in constitutional tort was tripartite. Plaintiffs would sue government officers under conventional tort causes of action, those officers would raise public-justification defenses, and then plaintiffs would introduce the alleged constitutional violation as a limitation on that defense.

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

Sikora is arguing that something very similar to the traditional tripartite structure should apply. Sikora has sued the State's Officers under conventional tort causes of action, such as false imprisonment, trespass on the case, and negligence. The State's Officers have raised sovereign immunity. But Sikora has introduced alleged constitutional violations as a limitation upon the sovereign immunity of the State's Officers.

Greene did not ask for the Iowa Supreme Court to find that sovereign immunity should not defeat his claim. And if he had tried, because he filed a statutory § 1983, he would have been told that Congress likely did not envision defeating a state agency's sovereign immunity when it drafted 42 U.S.C. § 1983. As we know from the evolution of federal § 1983 qualified immunity over the years, Congressional intent is what makes the federal § 1983 qualified immunity as it stands today possible. Greene did not take that doomed path. Instead, Greene limited his argument to saying his § 1983 14th Amendment claim was not the functional equivalent of False Imprisonment.

Third, Greene obviously didn't bring an Action on the Bond pursuant to § 64.18 in the name of the State. As has been repeatedly stated, § 64.18 is a clear waiver of sovereign immunity, and the ITCA cannot apply to a claim made in the name of the State. Whether the claims included by reference in the action on the bond are styled as false imprisonment, trespass on the case, oppression, or under any other name, a § 64.18 action in the name of the State is not subject to Sovereign Immunity, or a § 669.14 exemption analysis. Greene's § 1983 due process action, against State agencies, by contrast, was subject to the ITCA.

B. State officers must give bond, and they and their bond are subject to an action in the name of the State, pursuant to Chapter 64.

State officers are not required to "obtain" bond, but they are required to "give" bond. Bond is not required of the Governor, Judges, members of the general assembly, and a few other specific officers. *See* Iowa Code § 64.1A. "All other public officers," however, "shall give bond." Iowa Code § 64.2.

Rather than sending state officers shopping for bond companies, Iowa Code § 64.6 excuses state officers from having to "obtain" their bonds. Instead, as has happened in Iowa, state officials "may be covered under a blanket bond for state employees." That does not mean that state officials are

not bonded. It just means that the bond requirement can be satisfied with a blanket bond.

While it may be true that, ordinarily, a blanket bond does not protect third parties from the acts of public officials, Iowa Code § 64.18 changes that general rule in Iowa. It provides that “[a]ll bonds of public officers shall run to the state, and be for the use and benefit of any . . . person injured or sustaining loss, with a right of action in the name of the state for . . . [the] person’s use.” Iowa Code § 64.18. “[S]ome Public Employees Blanket Bonds may be authorized by statute, and therefore put into the class of Official Bonds.” Price, Jeffrey S., McDonnell, Dennis E., and Howald, Rebecca B., *The Public Officials Bond – A Statutory Obligation Requiring “Faithful Performance,” “Fidelity,” and Flexibility*, FID. LAW ASSN. JRNL., Vol. XII, 172 (October 2006).

The State has opted for the blanket bond to serve as the bond of each of its public officers. Sikora has a statutory right of action on the blanket bond of the State.

That no bond action has been brought in “at least the last 50 years” is of no import. Chapter 64 bond actions just fell out of use. The legal trend shifted well over fifty years ago, toward plaintiffs’ lawyers choosing 42

U.S.C § 1983 actions, where those lawyers could seek vindication of federal rights, and their attorney's fees. But Iowa Code Chapter 64 did not expire. It has just been sitting there, at the ready.

The State seems to suggest that Chapter 64 has been made irrelevant by the State's waiver of sovereign immunity in the ITCA. However, "[o]rdinarily, unless statutes are in direct conflict, they should be read together and, if possible, harmonized." *State v. Sullins*, 509 N.W.2d 483 (Iowa 1993); *Coleman v. Iowa District Court*, 446 N.W.2d 806 (Iowa 1989).

In the ITCA, the State waived its sovereign immunity for some claims so that claimants could be made whole. That is in no way disharmonious with the State also allowing those who have been harmed by state officials an action on the bond for the benefit of any person who has been injured. In fact, both chapters have similar aims: making sure those injured by the State's employees receive adequate redress, and are not unjustly denied by sovereign immunity.

The exemptions in Iowa Code § 669.14 actually make more sense when one considers that Chapter 64.18 was on the books too. Some of the most serious injuries and infringements the State's employees can impart on an Iowan are assault, battery, false imprisonment, and constitutional violations.

It makes little sense to exclude those harms from the State's ITCA waiver of sovereign immunity, while allowing lesser harms to proceed.

But when read in conjunction with the availability of a Chapter 64 action on the bond for any wrongful State action rising to the level of oppression, or acting with fear or favor, the exemptions of § 669.14 make more sense.

And, as stated above, it is the waiver of sovereign immunity that really matters. By allowing an injured Iowan to bring an action against the bond of a state official in the name of the State, the State has clearly waived any state officer's immunity. How much clearer can the State make it that sovereign immunity is no obstacle than by creating a right of action **in the name of the State?**

As the Iowa Supreme Court has made very clear, "[b]y enacting the ITCA, the State waived this [sovereign] immunity and opened itself to suit, but it did so strictly on its terms." *Segura v. State*, 889 N.W.2d 215, 221 (Iowa 2017). The action on the bond granted in the name of the State by § 64.18 is just a similar example of the State opening its officers to suit.

C. Trespass on the Case is a common law action that vindicates invasion of a constitutional right.

First, and foremost, it should be pointed out that the question posed by Sikora concerning *Lane* has gone unanswered by the State:

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

Appellant's Brief at 34.

So, again, if *Lane* is not a Trespass on the Case action . . . what is it? The Iowa Supreme Court held *Lane* had stated a cause of action for interference with his right to vote. The fact patterns in *Ashby* and *Lane* are essentially identical. *Ashby v. White*, 8 State Trials, 89 (Eng. 1703); *Lane v. Mitchell*, 133 N.W. 381 (Iowa 1911). The *Lane* Court cited to *Ashby* favorably, in a case with essentially the same fact pattern. And the *Lane* Court cited multiple times to the Iowa Constitution's guarantee of the right to vote. In the end, *Lane's* suit was, just as Justice Thomas said of *Ashby*, "about voting rights" and the "denial of the right to vote." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 209 L.Ed.2d 94 (2021).

Further, whether *Lane* is or is not a Trespass on the Case action, it is undisputed that *Ashby* is a Trespass on the Case action. But the State only argues that *Lane* is not a Trespass on the Case action, not that *Ashby* is not a Trespass on the Case action. So long as Sikora cites to *Ashby*, what has the State accomplished with this argument? Either Trespass on the Case is a common law action that covers invasion of a constitutional right, or it is not.

We know from *Ashby* itself that Trespass on the Case was an action that covered the violation of a right. But does Trespass on the Case come from the common law?

Commentators have *painstakingly* demonstrated that Trespass on the Case “was a gradual and evolutionary **common law development**, in the late fourteenth and the fifteenth centuries, out of the older action of trespass *vi et armis*.” Dix, Elizabeth Jean, *Origins of the Action of Trespass on the Case*, 46 YALE LAW JRNAL 1142, 1145 (1938). The action of Trespass on the Case originated from the common law: “These earlier lawyers never spoke of the action of trespass on the case as a new kind of action, or as a statutory action, but only as an extraordinary form of the common law action of general trespass, adapted to a particular case to which, on account of its facts, the usual form of the writ of trespass could not be made to apply.” *Id.* at 1176

Is the State really arguing that the willful and malicious interference with Ashby's right to vote evolved into negligence? That is not persuasive. In reality, "[t]respass on the case, or Case, was a form of action which **included a large variety of torts**" including, but not limited to, "negligence." *New York Life Ins. Co. v. Clay Cnty.*, 267 N.W. 79, 80 (Iowa 1936).

As Trespass on the Case developed through the common law, it had many branches, such as negligence, disturbance of the right of way, misfeasance, contract, and, according to *Ashby*, interference with constitutional rights:

Within the boundaries set for it as a remedy for indirect injuries, case expanded in many directions. A number of wrongs for which it early served as a remedy have been noted incidentally: negligent treatment of a horse by a farrier or by a horse doctor; negligent treatment of an injured man by a surgeon; an inn-keeper's failure to protect his guest's goods; disturbance of a right of way. From cases for misfeasance and later for nonfeasance in the performance of an agreement, came a large part of the law of simple contract. At a later time, case lay also for waste. And in the role of an action for trover and conversion, a substitute for detinue and for the old criminal actions for theft, trespass on the case produced the law of personal property.

Dix, Elizabeth Jean, *Origins of the Action of Trespass on the Case*, 46 YALE LAW JRNL 1142, 1163 (1938).

The State also tries to argue that Sikora can't seek recovery for both the State's wrongful physical confinement in addition to the distinct harm resulting from the violation of his article I, §§ 1, 8, and 9 rights. The Plaintiff is the master of his Petition, and Sikora should be able to seek relief for both wrongs.

Plus, the State is playing a game of "heads I win, tails you lose." The State very much wants to characterize Sikora's Trespass on the Case action as a false imprisonment action, and then argue sovereign immunity bars such an action. Iowa Code § 669.14 excludes false imprisonment from the State's waiver of sovereign immunity. If false imprisonment "d[id] not lie," because sovereign immunity prevents it, then what prevents Sikora from pursuing his distinct other claim, Trespass on the Case for infringement of his rights as guaranteed under the Iowa Bill of Rights?

The State puts much emphasis on Blackstone's summary that "THE satisfactory remedy for this injury of false imprisonment, is by an action of trespass, vi et armis, usually called an action of false imprisonment." But the State fails to ask the related questions. What if the nature of the harm done to Sikora is more than just physical, a false imprisonment? What if Sikora

suffered a separate, non-physical harm, the infringement of his article I, §§ 1, 8, and 9 rights?

As the *Lane* Court declared, a “constitutional right . . . is of high value to [Iowans].” *Lane* at 383. “If a willful and malicious wrong was done the plaintiff under such circumstances as to entitle him to actual damages, it does not necessarily follow that his recovery can be for nominal damages only, even though such actual damage may not be susceptible of exact calculation.” *Id.*

Sikora has been accused of “artful pleading.” But in reality, Sikora just has more than one harm that he seeks a remedy for, and brings two distinct actions: False Imprisonment, for the State’s wrongful physical confinement, and Trespass on the Case, for the harm caused by the State’s wrongful interference with his article I, §§ 1, 8, and 9 rights. Trespass on the Case is not excepted from the State’s waiver of sovereign immunity by Iowa Code § 669.14.

D. Sikora’s bond action is not barred by the statute of limitations.

Iowa Rule of Civil Procedure 1.402(5) provides that “[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original

pleading, the amendment relates back to the date of the original pleading.”

The claims Sikora asserted in his Amended Petition arose out of the same conduct, transaction, and occurrence set forth in the original Petition.

The only thing that changed was that the *Burnett* Court reversed course on *Godfrey* actions. The direct action under the Iowa Constitution that Sikora first plead was no longer available to him, so he sought to amend his Petition pursuant to Rule 1.402. Each of the new claims, including false arrest, trespass on the case, and the Action on the Bond related back to the date of the original Petition. The action on the bond is not barred by the statute of limitations.

Further, concerning Defendant Travelers, a “judgment against the principal on an official bond is conclusive against the sureties, in the absence of fraud or collusion, although they had no notice of suit” 63C Am. Jur. 2d Public Officers Employees § 480.

And, because the action on the bond sounds in contract, the statute of limitations is ten years, for actions brought to enforce written contracts. *See* Iowa Code § 614.1(5); *City of Waukon v. S. Sur. Co. of N.Y.*, 214 Iowa 522, 242 N.W. 632, 636 (Iowa 1932)(holding actions on bonds executed by surety companies are written contracts subject to a ten-year statute of limitations).

E. Sikora does not seek, and never did seek, forfeiture of the entire penal sum of the bond, without proving the amount of his damages to the finder of fact.

Sikora actually only asked for a “judgment against the Defendants in a fair and reasonable monetary amount to be determined by the trier of fact.” That is, an amount directly tied to his actual damages, as proven at trial.

Sikora only seeks a fair and reasonable determination of his damages by the trier of fact, and the forfeiture of only so much of the official bond as is determined appropriate by that finder of fact. In contrast, the Plaintiff in *Switzer* strenuously and stubbornly argued for “a forfeiture **of the entire sum.**” *Switzer v. Overturff*, 33 N.W.2d 405, 406 (Iowa 1948). Plaintiffs, in the words of their Petition, do not seek “forfeiture of the entire amount of the bond.” Instead, Sikora is simply asking for what the Iowa Supreme Court explicitly approved in *Switzer*. The amount of Plaintiffs’ damages should be determined by the trier of fact, and that amount only should be awarded to Plaintiffs for their use and benefit.

In any event, the portion of the Amended Petition complained of by the Defendants goes to the measure and amount of damages only, not the viability of the statutory action on the bond pursuant to Iowa Code § 64.18. And regardless, Sikora asked the Court for “such other relief as may be

deemed just and equitable in the premises.” Similarly, in his jury demand, Sikora asked for judgment against the Defendants in a fair and reasonable monetary amount to be determined by the trier of fact act, . . . as well as such other relief as may be deemed equitable in the premises.” *See* Second Amended Petition at Count VIII. Sikora’s Petition leaves it up to the District Court and the finder of fact to determine the amount of damages, if any.

Nevertheless, in an abundance of caution, and to placate the Defendants, Sikora filed a Substituted Amended Petition on August 18, 2023, which clarified even further exactly what Sikora is seeking. Recognition of the Substituted Amended Petition would be a more just remedy than the harsher, and unnecessary option, of dismissal.

The Substituted Second Amended Petition contained only two changes, to ¶¶ 112 and 124, as follows:

112. There is a substantial controversy between the parties having adverse legal interests, of sufficient immediacy and realty to warrant a declaratory judgment as to whether judgment should be entered against Directors Dr. Skinner’s and Jerry Bartruff’s official bonds for the use and benefit of Plaintiff Eugene Sikora pursuant to Iowa Code § 64.18.

124. Judgment should be entered against Directors Dr. Skinner’s and Jerry Bartruff’s official

bonds for the use and benefit of Plaintiff Eugene Sikora pursuant to Iowa Code § 64.18.

Sikora does not seek, and never did seek, forfeiture of the entire penal sum of the bond. Sikora seeks the opportunity to prove the amount of his damages to the finder of fact.

F. The Iowa Supreme Court has not addressed and decided a Plaintiff's request to apply *Burnett* prospectively only.

The undersigned has reviewed the Appellants' pre-opinion briefing in *Burnett, Venckus, Carter, White, and Richardson. Burnett v. Smith*, 990 N.W.2d 289, 290 (Iowa 2023); *Venckus v. City of Iowa City*, 990 N.W.2d 800, 806–07, 812 (Iowa 2023); *Carter v. State*, No. 21-0909, 2023 WL 3397451 (Iowa May 12, 2023); *White v. Harkrider*, 990 N.W.2d 647 (Iowa 2023); *Richardson v. Johnson*, No. 22-1727, 2023 WL 4036138 (Iowa June 16, 2023).

None of the Appellants in those cases argued, pre-opinion, that *Burnett* should be applied prospectively only. The issue is still undecided by the Iowa Supreme Court.

G. Sikora's case is not an "earned time credit" miscalculation suit.

The State characterizes Sikora's suit as an "earned-time credit" suit. *See* Appellee's Brief at 12, 13, 15, 48. That is a mischaracterization. The State failed to calculate and apply Sikora's previous time served. The result was

the State taking Sikora's liberty for nearly five months longer than authorized by the sentencing courts.

The State and its officers acted outside of their authority. The State's officer's over-detention of Sikora is the basis for an action for false imprisonment, trespass on the case, violation of constitutional rights, and an action on the bond.

In *Hall v. State ex rel. Freeman*, 52 N.E.2d 370 (Ind. App. 1944), the Plaintiff brought an Action on the Bond. The *Hall* Court found the complaint made out a good cause of action for false imprisonment by over-detention. The plaintiff's-verdict on the action on the bond was upheld. Ultimately, the vehicle is unimportant. But this Court should afford Sikora some remedy for the wrongful taking of nearly five months of his freedom.

CONCLUSION

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

should likewise be held accountable for wrongfully taking nearly five months of Sikora's life.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

Respectfully submitted,

/s/ Jack Bjornstad_____

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