IN THE SUPREME COURT OF IOWA
No. 24-0885
Polk County No. CVCV057085

LEONARD GREGORY, DEE J. RADEKE, SEAN O'GEARY, JERRY NEWELL, JOHN HRBEK, CHAD WELSH, CLARENCE FENTON, JACK HAYS, and JOSEPH LAWRENCE.
Plaintiffs-Appellants, and

ZACHARY ZIMPEL, PHILIP STACY, RICHARD CORTEZ, GENE COOK, DONTE GILMORE, and MELVIN DENNIS,
Plaintiffs,

vs.

STATE OF IOWA, IOWA STATE LEGISLATURE, and IOWA DEPARTMENT OF CORRECTIONS,
Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JEFFREY FARRELL AND
HONORABLE LAWRENCE P. McLELLAN

APPELLANT JACK HAYS'S PRO SE FINAL BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that I served and filed this document by sending the original to the Clerk of Supreme Court at 1111 East Court Avenue, Des Moines, IA. 50319, and a Copy to the Appellants by U.S. Mail at 1305 East Walnut Street, Des Moines, IA. 50319, on May 12th, 2025.

Jack Hays

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STATEMENT OF ISSUES

I. CODE OF IOWA §904.310A (2018) IS UNCONSTITUTIONAL UNDER BOTH IOWA AND U.S. CONSTITUTIONS

II. CODE OF IOWA §904.310A (2018) VIOLATES FUNDAMENTAL RIGHTS AND IS SUBJECT TO STRICT SCRUTINY

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court. This is a case where there are "substantial constitutional questions as to the validity of a statute". Iowa R. App. P., Rule 6.1101(2)(a).

STATEMENT OF THE CASE

Nature of the Case: This is a direct appeal brought by a group of citizens whom are incarcerated individuals[1] challenging, under the Iowa Constitution[2], the constitutionality of Code of Iowa §904.310A. See the Original Petition filed 9/26/2018.

Course of Proceedings: September 26th, 2018, 12 incarcerated individuals filed a "Petition for Declaratory Judgment, And Both Temporary and Permanent Injunctive Relief...". Original Petition filed 9/26/2018 (D0003).

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[1] The Iowa Department of Correction has stopped using the term "offenders"—because the term itself is offensive—and have since started using the term "incarcerated individuals". I would also note to the court that the Iowa Legislature uses the term "inmate" in the statute in question.

[2] The Appellant Jack Hays submits that citizens, even those whom happen to be incarcerated individuals, have greater protection under the Iowa Constitution than the U.S. Constitution according to Iowa Jurisprudence.

The defendants responded by filing a Motion to Dismiss which was denied by the Honorable Scott Rosenberg. See Denial of Motion to Dismiss.[3]

On April 3rd, 2019, the Honorable Judge Scott Rosenberg granted a temporary injunction stating that, "[I]t is the order of the Court that the Defendants shall not prevent the distribution of materials to the Plaintiffs and other inmates similarly situated that features mere, non-sexually explicit, nudity." See Court's April 3rd, 2019, Order (D0039).

Plaintiffs filed numerous requests reflected throughout the court docket for contempt, as well as affidavits and other sworn statements (including certified statements under Iowa Code §622.1) establishing the defendants were perpetually violating the injunction and retaliating against the Plaintiffs.

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[3] This Appellant, Jack Hays, does not have access to the court record with all the docket entries, dates, etc. Moreover, the defendants' agents of the IDOC have transferred the Appellant to different institutions around the state, and subjected Jack Hays to numerous cell searches wherein the court documents filed in this case were sometimes seized or otherwise "lost" and never returned. Indeed, Jack Hays does not have access to this material and must find references to the record wherever possible—Jack Hays is an indigent prisoner who is regularly denied employment in the prison so that he remains indigent. Jack Hays, and the other indigent prisoners, could not afford the transcripts for this case and, therefore, this case was nearly thrown out in this court until they could pay for the trial transcripts.

The defendants sought an Interlocutory Appeal to this court for denial of Motion to Dismiss and grant of Temporary Injunctive relief. This court denied Interlocutory Appeal.

Both parties later sought a Summary Judgment. Judge Lawrence McLellan entered an Order March 19th, 2021, denying the Plaintiffs' motion for Summary Judgment (D0454). However, Judge McLellan entered an Order Summarily granting relief for the defendants' claims regarding due process, cruel and unusual punishment, ex post facto, and enumerated rights; these grounds are vital to this brief as well. Judge McLellan also (erroneously) ruled in this Order that the Plaintiffs had limited their challenge to only printed materials.

This Plaintiff, Jack Hays, filed a Motion to Reconsider the Summary Judgment ruling—especially regarding the conclusion that the Plaintiffs had failed to address television, movies, etc.[4] and had waived the objections—however, Judge McLellan did not hear the Motion before the case was appealed to this court (D0458). See also post-trial "Findings of Fact, Conclusions of Law, and Order", Judge

[4] Page 3 of the Original Petition in a footnote defines the material and information that the Plaintiffs were seeking to protect. Also, the intervener Petition filed by John Hrbek includes the television, movies, etc.

Jeffrey Farrell 4/25/2024, pg. 2-3, wherein Judge Farrell summarily denied the Motion after trial.

On March 30th, 2021, the defendants filed a request for Interlocutory Appeal (D0455). This court granted the request and scheduled briefing wherein the Plaintiffs and the American Civil Liberties Union (*Amicus Curiae)* filed briefs (D0470). The district court entered a stay (D0478). However, prior to the Iowa Supreme Court's disposition could be rendered, the defendants *dismissed their own appeal*—presumably because Judge McLellan ruled they failed to produce evidence of legitimate government interest—and this court issued Procedendo August 24th, 2022, for the case to return to the district court for further trial (D0492).

A "settlement" hearing with the parties was scheduled April of 2023. However, as shown by the filings submitted by this Appellant, Jack Hays, Deputy Attorney General Stan Thompson merely tried to control the narrative at the "hearing" and refused to acknowledge the IDOC's belligerent snub to the 2019 injunction. Stan Thompson actually stated that he intended to the court that IDOC was following the court order. In May of 2023

Before trial, a number of Motions were filed concerning discovery, a proposed "expert witness" named Anthony Tatman (IDOC employee), and continuance of trial due to the defendants refusing and failing to participate in mandatory discovery conferences or otherwise work with the Plaintiffs professionally. However, those Motions were summarily denied and the Plaintiffs were forced to go to trial unprepared.[5]

Trial was held from February 19th to February 22nd, 2024. Though both Judge McLellan and Judge Farrell stated that the contempt issue would be handled at trial, Judge Farrell then stated it would be dealt with *after* trial. However, **it was not**. This Appellant, Jack Hays, filed a brief and statement after trial.

After four days of trial, Judge Farrell denied all relief to the Plaintiffs, including the dissolving of the injunction previously granted by Judge Rosenberg. In addition, there was no hearing on the contempt issues and the Judge arbitrarily chose a few instances out of the many requests (with affidavits) to show cause for contempt. See "Findings of Fact, Conclusions of Law, and Order", Judge Jeffrey Farrell 4/25/2024.

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[5] See Motion to Reconsider and Motion to Reconsider Supplemental filed by Jack Hays regarding these rulings in February, 2024.

A timely Notice of Appeal was filed.

STATEMENT OF THE FACTS

In 1993, the U.S. District Court, for the Southern District of Iowa, adjudicated issues pursuant to the federal constitution in *Dawson v. Scurr*[6] regarding nudity and sexually explicit material or information—including "security" or "rehabilitation" issues. Under *Dawson,* **the Iowa Department of Corrections (IDOC) allowed nudity in prisoners' cells** but required a "reading room" for sexually explicit material. The defendants have not cited any law, facts, court order, nor precedent which would negate or supersede the *Dawson* ruling. This ruling also resulted in the Iowa General Assembly passing *former* Iowa Code §904.310A (1991), stating:

> **904.310A Institution reading rooms.**
> The director shall, as necessary, provide suitable space for reading material for inmates. For purposes of this section, *"reading material"* does not include material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for inmates, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value. The space shall be located so that any visitors, other than those authorized pursuant to section 904.512, shall not be able to view the space or the materials located within that space.

[6] *Dawson v. Scurr*, 986 F.2d 257 (8th Cir. 1993).

In 2018, the Iowa General Assembly **changed** Iowa Code §904.310A[7] to **deny nudity or sexually explicit material information** in the IDOC; this law makes **no exceptions for art, nor any other legitimate material or information**. This law was sought by IDOC in response to a jury award of $2+ million for a sexual harassment and retaliation case against IDOC tried in Polk County District Court **due to misconduct of IDOC employees** not the prisoners whom were merely scapegoats.[8] This law follows the federal "Ensign Amendment" *verbatim*— which was a "**product of congressional hostility to prisoners' rights**"—not supported by any empirical evidence, science, or studies.[9] The purpose of the law was **to punish prisoners** by denying any information or material that may contain "nudity" or simply whatever may be claimed as "sexually

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[7] Stating, "**904.310A Information or materials — distribution.** 1. Funds appropriated to the department [of corrections] or other funds made available to the department shall not be used to distribute or make available any **commercially published information or material to an inmate when such information or material is sexually explicit or features nudity**..." (emphasis added).

[8] *Sink v. State*, 888 N.W.2d 682, Case No. 15-0264 (Iowa Ct. App., Oct. 12th, 2016) (Table Format) (This case was remanded wherein **IDOC employees called *Sink* a "whore" and a supervisor stated he would "get with her".** On remand, *Kristine Sink*, a former IDOC employee, was awarded over $2 Million over retaliation.).

[9] *Looking the Other Way: Porn, "Playhouse" Prisons, and the Culture of Judicial Deference*, Spease, Adam k., 91 Iowa L. Rev. 1117, 1123-24 (2006) (emphasis added).

explicit". The congressional record for this law demonstrates its purpose.[10]

This law was meant **to further punish prisoners. Only *Months* after the district court denied defendants' Motions to Dismiss the case**[11], the defendants, by and through their attorney William Hill, claimed the bill was for rehabilitation and security.

The Plaintiffs are claiming that §904.310A unconstitutionally prohibits an overbroad range of material and information conveyed by legitimate art, literature, performing arts, theater, film, video, etc.[12]

The defendants have **perpetually denied and/or destroyed constitutionally protected books, magazines, photos, art, literature, movies, T.V. shows**, etc. The Plaintiffs sought prohibition of censoring "information and material **that is visual, written,**

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[10] See generally *Looking the Other Way*, Spease.

[11] January 2nd, 2019, the defendants filed a "Motion to Dismiss" claiming "failure to state a claim and jurisdictional defect". **The motion required the defendants accept the facts alleged in the Petition as true—i.e., facts establishing the statute violates the constitution**. The motion was denied. Months and years later, the defendants alleged (via the Attorney General's office) that the law was passed for "security" and "rehabilitation" reasons.

[12] See the Original Petition, pg. 3, filed 9.26.2018.

auditory, video or photographic".[13] And Judge Rosenberg acknowledged in his order granting injunctive relief, "...**Plaintiffs stated that they are opposed to pornography, and they are not seeking access to pornography.**"[14]

In 2019, when Plaintiffs and "similarly situated" prisoners received the temporary injunction for §904.310A as it applies to the distribution of "mere, non-sexually explicit, nudity",[15] Judge Scott Rosenberg found that defendants had "adopt[ed] rules" to ban the Plaintiff's "access to **legitimate art, literature, and other publications**".[16] Affidavits were filed, as well as numerous applications for finding the defendants in contempt, establishing their **failure and refusal to follow the court ordered temporary injunction over the course of 5 years.**[17]

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[13] *Id.,* The Plaintiffs predicted that the defendants would use this law as a Carte Blanche to arbitrarily and capriciously ban large swathes of media...and they have.

[14] Judge Rosenberg's, "Ruling and Order [Granting] Motion for Temporary Injunction", filed 4.03.2019, page 3.

[15] *Id.*, page 10.

[16] *Id.*, page 9 (emphasis added).

[17] Though the court did not have a hearing in five years over contempt, the evidence merely needs to be in writing to establish contempt of court **according to the statute.** See Iowa Code **§665.8**, "[Contempt] founded upon evidence given by others...**must be in writing**, and be **filed and preserved**," (emphasis added). The Iowa Rules of Civil Procedure, Rule **1.1511, "Violation as contempt",** states, "Violation of any provision of any **temporary or permanent injunction shall constitute contempt and be punished accordingly**." (emphasis added). Contempt statute also states, **"665.6 Affidavit necessary. Unless the contempt is committed in the immediate view**

Testimony at trial, from both Plaintiffs and defendants, **established denial and destruction of information or material containing pictures and art portraying *clothed* women in bathing suits or lingerie, nudity, in addition to anything the defendants deem is sexually explicit**—even written text and prisoners' personal artwork.[18]

The IDOC persistently violated the court's injunctive relief granted in 2019. The Plaintiffs persistently sought relief for these violations. The IDOC retaliated against Jack Hays—the principle author of meaningful legal documents in the district court—persistently; including numerous transfers to prevent advocacy.[19]

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and presence of the court...an affidavit showing the nature of the transaction..." (emphasis added). Affidavits are on file over the course of five years establishing contempt. The Plaintiffs have been denied the equal protection and due process of these laws.

[18] Testimony during the trial established this included prisoners' **personal drawings** and written books. At one point during trial, the defendants' employee, Rebecca Bowker (head of Publications Review Committee and "executive officer"), respondent to Plaintiff Leonard Gregory holding up a photo of a female in Lingerie at trial by retorting, "I see it...I don't know how you got it...", Bowker testified to denying this type of material, despite the injunction, as well as other photos of clothed women "with their legs spread"—Bowker defined this as "lewd exhibition of genitals", though no genitals, breasts, or buttocks were shown. See Trial Transcripts Feb. 21, 2024, pg. 33, line 19, to pg. 38, ln. 23; Tr. Trans. Feb. 21, 2024, pg. 68, lns. 5-18; Tr. Trans. Feb. 21, 2024, pg. 69, ln. 4, to pg. 70, ln. 16.

[19] (See "Jack Hays's Affidavit Supporting the March 2023 Contempt of Court Proceedings Pursuant to Iowa Code §665.6 And 665.8 (2023) With Memoranda").

The IDOC's violations implicate more than the rights of prisoners.[20] Both parties to correspondence of commercial publications and other material or information have an interest. Censorship of communication between these parties implicates the rights of both parties. This is not just about prisoners.

ARGUMENT

I. CODE OF IOWA §904.310A (2018) IS UNCONSTITUTIONAL UNDER *BOTH* IOWA AND U.S. CONSTITUTIONS FACIALLY AND AS APPLIED

Standard of Review

The Plaintiffs in this case are alleging constitutional violations and, therefore, the review is *de novo*. [21]

Preservation of error

The Plaintiffs preserved error in the trial record, as well as numerous filings in the district court; e.g., motion and reply for

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[20] See *Procunier v. Martinez*, 416 U.S. 396, 408 (1974) ("[M]ail censorship implicates more than the rights of prisoners...Both parties to the correspondence have an interest...and censorship of communication between them necessarily impinges on that right.").

[21] *Planned Parenthood of the Heartland v. Reynolds, ex rel. State*, 915 N.W.2d 206, 232 (Iowa 2018).

summary judgment, as well as the trial brief filed by this Appellant (Jack Hays).[22]

Discussion

Iowa prisoners have greater rights[23] to both substantive and procedural due process and equal protection, to rights regarding free speech, search and seizure, and the right to be free from cruel and unusual punishments. In *The Vanguard of Equality*, late Chief Justice Mark Cady demonstrates Iowa at the forefront of protecting freedoms, such as:

a. Same sex marriages 6 years before the U.S. Supreme Court in *Obergfell v. Hodges*, 576 U.S. 644 (2015).[24]

b. Desegregation of schools 80 years before the U.S. Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), stating, "[E]ducation is perhaps the most important function of state and

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[22] *Meier v. Senecaut*, 641 N.W.2d 532, 537-41 (Iowa 2002).

[23] Pursuant to Iowa's Natural Rights Clause alone, Iowa Constitution Article I §1, stating we have a right to "certain **inalienable rights** — *among which* are those of **enjoying and defending life and liberty**, acquiring, possessing and protecting property, and **pursuing and obtaining safety and happiness**" (emphasis added). These are specific rights "among which" are "inalienable". The framers of the Iowa Constitution clearly intended Iowans to be further protected from the government of encroachment of numerous "inalienable rights".

[24] *Varnum v. Brien*, 763 N.W.2d 862, 906-07 (Iowa 2009).

local governments."[25] **§904.310A would suspend all incarcerated young men and women in arrested development by providing nothing but PG-13 material.**

c. 61 years before U.S. Congress ratified the 19th Amendment in 1920 allowing women to vote, the Iowa Supreme Court supported the first female lawyer (1869).[26]

d. Recognizing equal protection to all, **regardless of color**, *30 years before* U.S. Congress ratified the 14th Amendment in 1869,[27] after **the U.S. Supreme Court had even declared black folks were property** in *Dred Scott v. Sandford*.[28]

1. Due Process and Equal Protection

A. §904.310A Violates the Rights of Both Incarcerated and Free Citizens

§904.310A is a statute in the Iowa Code directed at "information or material" to incarcerated citizens. However, for rule of law and equality purposes, a "citizen" includes **both the incarcerated and**

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[25] *Clark v. Board of Directors*, 24 Iowa 266, 274 (1868).

[26] *Shine On, You Bright Radical Star: Clark v. Board of School Directors (of Muscatine—the Iowa Supreme Court's Civil Rights Exceptionalism*, Lovell, Russell E., 67 Drake L. Rev. 175, 192 (2019).

[27] *In re Ralph*, Morris 1, 1 Morris 1 (1839).

[28] 60 U.S. (19 Howard) 393, 15 L.Ed. 691 (1857).

those in free society—i.e., all whom a state coerces by code of law.[29] Under both the Iowa and U.S. Constitutions, citizens have the right to equal protection and due process of the law. **§904.310A violates the rights of both free citizens in society and incarcerated citizens.**[30] Among other violations of rights, §904.310A violates of the rights of free citizens and those whom are incarcerated in Iowa's prisoners to share and receive "information or material [that the agents of the IDOC determine] is sexually explicit or features nudity".

B. Iowa's Greater Protections of Due Process and Equal Protection Clause Within the Context of Marginalized Iowans—Prisoners

As demonstrated by late Chief Justice Mark Cady cited *infra*, **Iowa has consistently been at the vanguard of greater protections** for citizens whom are marginalized. Prisoners are marginalized citizens. However, under the Iowa Constitution, Article I §1, 6, and 9, ***all* Iowans have greater protection of due process and equal protection of the law.**[31] "[T]he judiciary is the guardian of

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[29] *The Rule of Law and Equality*, Gowder, Paul, 32 Law & Phil. 565, 573-74 n. #3 (2013).

[30] *Procunier*, 416 U.S. at 408.

[31] See generally, *Varnum v. Brien*, 763 N.W.2d 862, 906-07 (Iowa 2009) (Stating same-sex couples have right to equal protection of Iowa's Marriage laws due to greater protection of Iowa's

the lives and property of **every person in the state[—including Iowa's prisoners]**."[32] In 2009, this court **unanimously** determined that Iowans in same-sex relationships (marginalized, disparately treated Iowans) have the same right to due process and equal protection of Iowa's marriage statutes as do heterosexual relationships.[33]

Prisoners have been historically marginalized and disparately treated Iowans and should have the same substantive and procedural rights of other marginalized Iowa citizens. Iowa Code **§904.310A was copied verbatim after federal legislation (the *Ensign Amendment*) meant to punish prisoners and make them suffer**—Representative Jon Christensen of Nebraska lamented, "For too long, liberal judges...have turned prisons into play houses."[34] It was the stated purpose this law to punish prisoners and make them suffer—it

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Constitution. I case decided in *Varnum's* favor in this court and affirmed by a unanimous Iowa Supreme Court decision written by the late Chief Justice Mark S. Cady.).

[32] 1 *Debates of the Constitutional Convention of the State of Iowa*, 229 (W. Blair Lord rep., 1857) (emphasis mine).

[33] See generally *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

[34] See *Looking the Other Way: Porn, "Playhouse" Prisons, and the Culture of Judicial Deference*, Spease, Adam k., 91 Iowa L. Rev. 1117, 1123-24 (2006) (Spease provides a record of the legislative history of this statute, as well as a stirring argument against the federal practice of judicial deference.).

was motivated by hostility, **not for the purposes of either security nor rehabilitation.**

C. Equal Protection and Substantive Due Process

Because the rights to freedom of speech and search and seizure are fundamental rights, the statute "give[s] rise to strict scrutiny under equal protection and substantive due process".[35]

Iowa's Constitution starts with the Bill of Rights. The Iowa Constitution is a "living vital instrument".[36] The guarantee of due process under the Iowa Constitution "exists to prevent unwarranted governmental interferences".[37] There was no reason to take the reading rooms under *Dawson* or to place mature audience blocks for children on the televisions. There has been no evidence-based material that this has done anything besides do exactly what the defendants wanted it to do: aggravate prisoners. The Ensign Amendment was designed to *punish* prisoners.[38] U.S. Representative Jon Christensen of Nebraska was

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[35] *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 549 (Iowa 2019).

[36] *In Re Johnson*, 257 N.W.2d 47, 50 (Iowa 1977).

[37] *McQuistion v. City of Clinton*, 872 N.W.2d 817, 832 (Iowa 2018).

[38] See *Supra*, note #34 herein.

recorded as lamenting, "For too long, liberal judges...have turned prisons into playhouses."[39]

The reach of this statute extends to every form of nudity, including "the arts". Indeed, "[A]ny information and material <u>that is visual, written auditory, video or photographic</u>" which has nudity is rejected by the defendants agents in the IDOC.[40] The defendants continued to ban this material even though an injunction was in place.

D. The Defendants' Witness Testimony Did Not Corroborate Their Defense Claims Regarding Security and Rehabilitation

i. <u>Rebecca Bowker, Defendants' Witness, Was Dishonest</u>

To support the defendants' claim regarding security and rehabilitation, they called multi-tasking IDOC employ Rebecca Bowker. As indicated in Judge Joseph Farrell's decision, Rebecca Bowker was **repeatedly dishonest** with the court and showed hostility towards prisoners. She held numerous positions within the IDOC that involve conflicts of interest.[41]

ii. <u>Dr. Anthony Tatman's Expert Designation and Testimony Denied Due Process and Equal Protection</u>

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[39] *Id.*, note #34.

[40] See the original petition, pg. #3, fn. *.

[41] Tr. Trans. Feb. 21, 2024, pg. 44, lns. 3-6.

Dr. Anthony Tatman was designated an expert at the 11th hour by the defendants in this case. The parties were supposedly held to an October 22, 2020 expert designation. (See D0296). The defendants did not designate their expert until shortly before trial and the Plaintiffs—largely through this Appellant, Jack Hays—objected before, during,[42] and after trial. The Plaintiffs were never given an opportunity to depose the bogusly designated expert, nor were they given a report. The defendants' bogus self-serving "expert" defined pornography as simple nudity of sculptures and other art is pornography—nudity one would see on broadcast television suited for children.[43]

An Iowa R. Evid., rule **5.104(*a.*)** hearing was requested (but never granted) by Jack Hays, among the reasons were but not limited to, that: (1) Anthony Tatman's testimony was **irrelevant** (rule **5.403**) when the defendants did not author or pass the Iowa Code **§904.310A** for either rehabilitation nor security reasons, (2) Tatman is not basing his opinion

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[42] E.g., Tr. Trans. Feb. 21, 2024, pg. 96, lns. 7-24.

[43] However, later, the defendants' witness **Nicholas Lamb would testify that he has never witnessed nor heard of simple nudity causing any kind of violence**—prisoners across multiple state maximum facilities he supervised and was employed at.

"on facts or data in the case that the expert has been made aware of or personally observed" (rule **5.703**)—Tatman works in the free world and not in prisons and is basing his testimony on conjecture and internet studies. In fact, Tatman's clients **have daily access to pornography on the internet, through magazines, etc. in the free world.**

Tatman **was not** a "witness who is qualified as an expert by knowledge, skill, experience, training, or education [who] may testify in the form of an opinion or otherwise [because his] scientific, technical, or other specialized knowledge **will help the trier of fact to understand the evidence or to determine a fact in issue**", Iowa R. Evid., rule **5.706** (emphasis added). **Tatman did not work in the prisons, he worked in the free world. His testimony was not based on any empirical knowledge it was based on the defendants' bogus studies culled for the purpose of giving the impression that there was some scientific correlation between their newly proffered claims of security and rehabilitation.**[44]

[44] Tr. Trans. Feb. 21, 2024, pg. 100, lns. 15-25, Jack Hays was still under oath and established that previous "testimony from people who have been in prison for decades established there is no rehabilitation in prison...[including] Rebecca Bowker [who] even testified herself that in the environment that we live in today, she said because of the murders in Anamosa were [sic] essentially restricted more than we ever were..."; and Tr. Trans. Feb. 21, 2024, pg. 110, lns. 3-7, for the "standing objection" against Tatman.

Though Tatman's testimony was largely based upon **conjecture and studies from the internet, the studies cited by Tatman and the defendants do not support their claims. The defendants never provided the Plaintiffs with a report regarding Tatman's evaluation and testimony.** There is still much debate regarding the studies cited, the studies do not cover "mere, non-sexually explicit nudity", and citizens do not need to take treatment to do the right thing—as demonstrated by the following testimony of Tatman:

[Tatman] **A.** Future studies should be comprehensive and explicit when defining and measuring pornography labeled as nonviolent and should evaluate whether nonaggressive, nondegrading, nonobjectifying pornography is so infrequently consumed that its existence is largely irrelevant to discussions of pornography's social impact.

[Jack Hays] **Q.** Why don't you dumb that down for me too, please.

[Tatman] **A.** It is saying that additional research is recommended on these different definitions of pornography and types of pornography and the impact that it has.
(Tr. Trans. Feb. 21, 2024, pg. 135, lns. 13-22.)

[Jack Hays] **Q.** Okay. You said your definition of pornography includes nudity; right?

[Tatman] **A.** Correct

[Jack Hays] **Q**. And you – so nonaggressive, nondegrading, and nonobjectifying pornography under your definition would just be nudity; correct?

[Tatman] **A**. Can you say that again? I'm sorry.

[Jack Hays] **Q**. Nonaggressive, nondegrading, and nonobjectifying pornography, according to you, not this study, would include just plain nudity; correct?

[Tatman] **A**. Correct.
(**Tr. Trans. Feb. 21, 2024, pg. 44, lns. 3-6**.)

[Jack Hays] **Q**. Okay. Read the first sentence in the abstract of that study.

[Tatman] **A**. Whether pornography consumption is a reliable correlate of sexually aggressive behavior continues to be debated.

[Jack Hays] **Q**. Okay. Now, would you agree that there are conflicting opinions across the board regarding whether or not the consumption of pornography causes sexual aggression?

[Tatman] **A**. Sure. There would be debate.
(**Tr. Trans. Feb. 21, 2024, pg. 131, lns. 9-17**.)

[Jack Hays] **Q**. And essentially what this study is saying that there's a possibility that this type of pornography, which was not the same as your definition, there needs to be more studies done to determine whether or not that type of pornography is largely irrelevant to the discussion of pornography's social impact; correct?

[Tatman] **A**. Correct.
(**Tr. Trans. Feb. 21, 2024, pg. 136, lns. 15-21**.)

[Jack Hays] **Q**. I guess the easiest way to put this question, Doctor, is people can figure out how to do the right thing without your help; correct?

[Tatman] **A.** Sure.
(Tr. Trans. Feb. 21, 2024, pg. 127, lns. 9-12.)

iii. Nicholas Lamb, defendants' witness, testified to no Aggression Concerning Mere Nudity

The defendants' witness, Nicholas Lamb—who testified to working in multiple prisons, in multiple states—confirmed that I all the years, states, and prisons that he had worked in, he had never witnessed nor heard of mere nudity causing violence, aggression, nor rape. Therefore, the defendants' witness did not corroborate their claims.

(See **Tr. Trans. Feb. 2, 2024, pg. 26, lns. 11-16; pg. 55, ln. 8 to pg. 56, ln. 8; pg. 40, lns. 13-17; pg. 43, lns. 12-17; and pg. 59, ln. 14. to pg. 60, ln. 1**)

iv. Studies show a decline in rape due to increased consumption of pornography worldwide

By reducing exposure of nudity and sexually explicit material in prisons, research, statistics, and academic treatises show that **the defendants will cause the behavior that they claim they are trying to prevent**; i.e., rape, violence, and aggression. In 2006, Professor Anthony D'Amato, wrote a publication titled, "PORN UP,

RAPE DOWN"[45] with statistics from various—e.g., the Nation Crime Victimization Survey demonstrating both attempted and actual rapes—**the *more pornography* that is available to any population, *less sexual victimization.*** D'Amato published his research **establishing that after the explosion of pornography from the internet and other sources, from 1973 to 2003 there was a reduction in sexual victimization by 85%.**

D'Amato also establishes that the real agenda of conservative politics, he reviewed the results of the Reagan Commission on pornography, is **political truth not actual truth**. In fact, D'Amato stated that conservatives seek out, fund, and studies to seek out "political truth". In any event, "if they had been right that exposure to pornography leads to an increase in social violence, then the vast exposure to pornography furnished by the internet would by now have resulted in scores of rapes per day on university campuses, hundreds of rapes daily in every town, and thousands of rapes per day in every city. Instead, **the Commissioners were so incredibly wrong that the**

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[45] D'Amato, Anthony. "PORN UP, RAPE DOWN," *Public Law and Legal Theory Research Paper Series*. Northwestern University School of Law, 2006.

incidence of rape has actually declined by the astounding rate of 85%."[46]

E. Protections for Due Process and Equal Protection Under the U.S. Constitution *Must* Be *Greater* Under the Iowa Constitution—Not Less

The majority of the jurisprudence cited by both the district court and the defendants was largely pertaining to the federal constitution, as well as the "rational relationship" standard as it relates to the **U.S. constitution**. The original petition **was based on the Iowa Constitution.**

The Plaintiffs have **based their rights on the greater protections of the Iowa Constitution. Moreover, "[t]he Iowa Constitution affords individuals greater rights than does the United States Constitution".**[47] **Therefore, the court cannot provide lesser rights** under the U.S. Constitution. The **U.S. Constitutional precedence provides "a constitutional floor**

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[46] *Id.*, at 6 (emphasis added); see also, Professor Milton Diamond, "*Pornography, Public Acceptance and Sex Related Crime: A Review*", 32 *International J. Law & Psychiatry* 304, 304-314 (2009) (Stating that "is a myth" that pornography causes sexual or other violence); and *Psychology Today*, "Does Porn Cause Social Harm?" www.psychology.com (posted April 27, 2009) (Stating it "causes no social harm").

[47] *Schmidt v. State*, 909 N.W.2d 778, 793 (Iowa 2018).

below which state constitutional interpretations may not sink".[48]

The federal court already adjudicated prisoners' U.S. constitutional rights regarding issues of information and material containing nudity or that is sexually explicit. The court allowed the prisoners to have this information and material the defendants seek to deny and destroy. *Dawson* "does not ban such materials" and, in fact, **"inmates are allowed to keep many sexually explicit materials in their cells".**[49] There were no exigent or extenuating circumstances that required this legislation taking this away. This legislation was passed to make prisoners' sentence more onerous, to punish prisoners, and to retaliate for the *Sink* case.

In 1992, United States District Court, Northern District of Iowa, former Chief Judge John Jarvey, admonished the IDOC agents, stating, **"[P]ersons are sent to prison *as* punishment, *not for* punishment."** [50] The agents of the IDOC have a long history of placing

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[48] *The Vanguard of Equality: The Iowa Supreme Court's Journey to Stay Ahead of the Curve on an Arc Bending Toward Justice*, Cady, Mark S., Former Chief Justice of the Iowa Supreme Court, 76 Albany L. Rev. 1991, 1992 (2013).

[49] *Dawson v. Scurr*, 986 F.2d 257, 261 (8th Cir. 1993) (emphasis added).

[50] See *Gordon v. Faber*, 800 F.Supp. 797, 800 (N.D. Iowa 1992) (emphasis mine) (**Anamosa State Prison** forced prisoners in solitary confinement to **exercise in freezing weather outside in**

subjecting prisoners to punishment—though it is not their jobs to punish prisoners—and even **cruel and unusual punishments**. In 1997, Chief Judge Donald O'Brien admonished, "Iowa should be ashamed that such conditions [of cruel and unusual punishments] have not been improved upon or terminated". Stating the prisoners endured ***years of solitary confinement*** resulting in "bedlam and pandemonium". However, Iowans were not "ashamed" because they did not know. Honorable Chief O'Brien ordered that the Clinical Care Unit be built for the mentally ill, which the defendants have since closed in violation of the court order. [51]

2. Freedom of Speech, Freedom of Thoughts, Ideas, and Freedom of Association

§904.310A violates the right to free speech of both prisoners and free citizens who communicate with them.[52]

The defendants have "adopt[ed] rules" pursuant to §904.310A that unconstitutionally ban the Plaintiff's "access to legitimate art,

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5' X 12' dog pens without gloves or hats.); citing *Tyler v. Black,* 811 F.2d 424, 435 (8th Cir. 1986); quoting *Battle v. Anderson*, 564 F.2d 388, 395 (10th Cir. 1977).

[51] See *Goff, et al., v. Harper, et al.,* 59 F. Supp. 910, 922, 928 (S.D. Iowa 1999); and *Goff, et al., v. Harper, et al.*, No. 4:90-cv-50365, June 5th, 1997, 1997 U.S. Dist. LEXIS 24186, at *157 (S.D. Iowa 1997).

[52] *Procunier,* 416 U.S. at 408.

literature, and other publications".[53] Moreover, testimony and evidence at trial established that the statute encourages arbitrary and discriminatory enforcement against prisoners. "[F]reedom of speech, lies at the foundation of a free society."[54]

"No law shall be passed to restrain or abridge the liberty of speech"...[55] However, **§904.310A** was specifically passed to "restrain [and] abridge the liberty of speech". Defendants' witness Rebecca Bowker testified to specifically targeting "content" of this kind.

3. Search and Seizure

Defendants are illegally seizing the Plaintiffs property which was purchased by them. Under the Iowa Constitution, **Iowans have greater protection from search and seizure**. Iowa's search and seizure provision[56] is interpreted in a "broad and liberal spirit".[57]

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[53] Court's 4.03.2019, "Ruling and Order", by Judge Scott Rosenberg, pg. 9.

[54] *Buckly v. Valeo*, 424 U.S. 1, 25 (1976).

[55] Iowa Const. Art. I §7.

[56] Iowa Const. Art. I §8.

[57] *State v. Coleman*, 890 N.W.2d 284, 286 (Iowa 2017).

Under Iowa's Constitution, the Plaintiffs are entitled to damages for unlawful seizure of their property and have greater protection for unlawful seizure.[58]

II. THE PROPER TEST FOR VIOLATION OF THE PLAINTIFFS' RIGHTS IS STRICT SCRUTINY

Under Iowa's Free Speech protections, the targeting "information and material" that may be sexually explicit or contains nudity "is a content-based regulation, it is subject to strict scrutiny".[59] §904.310A violates the "strict scrutiny" test. In any event, to determine what test to use, there is a two-stage inquiry: (1) "determine the nature of the right involved", [60] and (2) "the appropriate level of scrutiny". [61] "If the government implicates a fundamental right, [the court] appl[ies] strict scrutiny". [62]

Nature of the Rights involved

In this case, the court ruled that the defendants had violated *freedom of speech, substantive due process, equal protection*, and *search*

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[58] *Carpenter v. Scott,* 86 Iowa 563, 53 N.W. 328, 329 (1892); and *State v. Cline*, 617 N.W.2d 277, 282 (Iowa 2000).

[59] *State v. Musser*, 721 N.W.2d 734, 744 (Iowa 2006).

[60] *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010).

[61] *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (2002).

[62] *Id., Hensler*, 790 N.W.2d at 580.

and seizure; all fundamental rights. App. Under the Iowa Constitutional right to "equal protection" alone, the Plaintiffs have greater protection under the Iowa Constitution.[63] No clear test exists for determining whether a right is fundamental. [64] However, "The state fails to appreciate the extent of the liberty interest[s] at stake."[65]

The Plaintiffs submit that the correct level of scrutiny should have been strict scrutiny because of the fundamental rights involved. Fundamental rights are those which are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty". *Freedom of speech, substantive due process, equal protection, the right to be free from cruel and unusual punishments,* and *search and seizure* are "deeply rooted in this Nation's history and tradition".[66]

The defendants' statute is banning large swathes of protected speech. Moreover, the statute is "content based". Therefore, when a

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[63] *See generally Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

[64] *Id., Planned Parenthood*, 915 N.W.2d at 233.

[65] *In Re Johnson*, 257 N.W.2d at 50.

[66] *Chavez v. Martinez*, 538 U.S. 760, 775 (2003).

statute is content based, it is subject to strict scrutiny.[67] Indeed, the statute encourages arbitrary and discriminatory enforcement against prisoners. "[F]reedom of speech, lies at the foundation of a free society."[68] "No law shall be passed to restrain or abridge the liberty of speech"...[69] When the defendants block television shows, they block documentaries for C.N.N., they block all the commercials, they block everything just to see that a breast isn't shown.

CONCLUSION

"[C]ourts must, under all circumstances, protect the Supremacy of the constitution as a means of protecting our form of government and our freedoms."[70] The Appellees in this case want for the court to strip the Plaintiffs (as well as free citizens who communicate ideas to them) of their constitutional rights. **Not because art causes them to commit crimes, but because they are prisoners.** "There is no iron

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[67] *Supra* note #59, *Musser,* 721 N.W.2d at 744.

[68] *Buckly v. Valeo*, 424 U.S. 1, 25 (1976).

[69] Iowa Const. Art. I §7.

[70] *Varnum*, 763 N.W.2d at 875.

curtain between the constitution and the prisons of this country."[71] The district court previously determined that denial of material or information with simple nudity violates the rights of the Plaintiffs. The district court made the right decision.

The facts and controlling authority establish that the defendants are violating the Plaintiffs rights to due process and equal protection, the right to freedoms of speech and association (of access and expression of thought and ideas), the right to be free from unreasonable search and seizures, the right to be free from cruel and unusual punishments (they are censuring all art with "nudity"), and the enumerated rights which protect certain rights that are fundamental and inalienable. These rights are protected by both the Iowa and U.S. Constitutions, however, Iowans have greater protection. Therefore, this court must reverse the rulings and orders of the district court against the Plaintiffs and remand this case with directions.

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[71] *Wolff v. McDonnell*, 418 U.S. 539, 555-556 (1974).

REQUEST FOR ORAL ARGUMENT

This Appellant, Jack Hays, requests oral argument before this court. The issues in this case are "significant". The Appellant, Jack Hays, can address this court via "Zoom" or some other video application.

Dated May 12th, 2025.

Respectfully Submitted,

Jack Hays

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation because it contains only 6828 words.

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