

IN THE SUPREME COURT OF IOWA

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JOHN LEE HRBEK,	)	
Applicant—Appellant,	)	S.Ct.No.19-1571
	)	
vs.	)	
STATE OF IOWA,	)	
Respondent—Appellee.	)	
	)	

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INTERLOCUTORY APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR POTTAWATTAMIE COUNTY  
THE HONORABLE KATHLEEN A. KILNOSKI, JUDGE

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APPELLANT'S SUPPLEMENTAL PRO SE REPLY BRIEF  
PURSUANT TO IOWA RULE APPELLATE PROCEDURE 6.901 (2)

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## CERTIFICATE OF SERVICE

On August 24, 2020, the undersigned certifies that a true copy of the foregoing Instrument was served upon the Applicant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

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## STATEMENT OF THE REPLY ISSUES PRESENTED FOR REVIEW

### I. AS IOWANS WE HAVE A LONG AND PROUD HISTORY OF REJECTING INCURSIONS UPON OUR LIBERTIES AND COURTS THAT IGNORE THEM CAN ONLY ACCOMPLISH INJUSTICE

#### Authorities:

State v. Short. 851 NW2d 474, 507 (Iowa 2014)

State v. Baldon, 829 NW2d 785, 790-91 (Iowa 2013)

Varnum v. Brien, 763 NW2d 862. 876 (Iowa 2009)

Robert F. Williams, the Equality Guarantees in State Constitutional Law, 63 Tex. L. Rev. 1195, 1197 (1985)

State v Lyle. 845 NW2d 378, 403 (Iowa 2014)

### II. OUR COURTS INHERENT AUTHORITY TO MANAGE IT'S COURTROOMS AND PROCEEDINGS ARE ALIVE AND WELL.

#### Authorities:

Davis v. Iowa District Court for Scott County, 943 NW2d 58  
(Iowa 2020) (S.Ct. No. 19-1008).

Ostergen v. Iowa District Court for Muscatine County, 863 NW2d 294,  
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## ARGUMENTS

### **I. AS IOWANS WE HAVE A LONG AND PROUD HISTORY OF REJECTING INCURSIONS UPON OUR LIBERTIES AND COURTS THAT IGNORE THEM CAN ONLY ACCOMPLISH INJUSTICE.**

In State v. Short, 851 NW2d 474, @ 507 (Iowa 2014) our late Chief Justice Cady, issued a separate, but concurring opinion with this Court's majority. Indeed, in doing so, Justice Cady, held:

The Majority's opinion capably resolves the issue before this Court, and I join it in full. I write separately, to emphasize the importance of independence interpreting our Iowa Constitution.

As Iowans, we are deservingly proud of a long history of rejecting incursions upon the liberty of Iowans, particularly because we have so often arrived at just results well ahead of the national curve. Yet, we cannot ignore that our history of robust protection of human rights owes in no small part to our authority within the America's federalist system to independently interpret our constitution. Similarly, we must not forget that the virtue of federalism lies not in the means of permitting State experimentation, but in the ends of expanded liberty, equality, and human dignity.

Citing, State v. Baldon, 829 NW2d 785, @ 790-791 (Iowa 2013). Our late Chief Justice Cady went on to hold that: A court that categorically ignores these distinctly human ends can only accomplish injustice. Thus, we have recognized that [w]hen individuals (like Hrbek) have invoked the Iowa Constitution's guarantees of freedom and equality, Courts are bound to interpret those guarantees. Quoting, Varnum v. Brian, 763 NW2d 862, @ 876 (Iowa 2009); cf, Robert F. Williams, the Equality Guarantees in State Constitutional Law, 63 Tex. L. Rev. 1195 @ 1197 (1985) ("When faced with State constitutional equality claims, State courts should recognize their obligation to take these provisions seriously.") It goes without saying, our decisions have not always been without their detractors, as we pointed out in State v. Lyle , also decided today. "[O]ur court's history has been one that stands-up to preserve and to protect individual rights regardless of the

consequences." **Id.** 845 NW2d 378, @ 403 (Iowa 2014). Yet, history has repeatedly vindicated, and the people of Iowa have repeatedly embraced, the bold expansions of civil, constitutional and human rights we have undertaken throughout the 175 years of our existence as a Court."

## **II. OUR COURTS INHERENT AUTHORITY TO MANAGE IT'S COURTROOMS AND PROCEEDINGS ARE ALIVE AND WELL.**

On May 8, 2020, this Supreme Court used many of the case law relied upon by Hrbek in his supplemental pro se brief, for his inherent authority arguments.

See: **Davis v. Iowa District Court for Scott County**, 943 NW2d 58 (Iowa 2020) (S.Ct. 1908). Indeed, in Davis, it is held:

"We have repeatedly acknowledge that district courts have inherent authority to manage proceedings on their dockets and in their courtrooms. See, e.g., **Ostergen**, 863 NW2d @ 300 ("[D]istrict courts have authority 'to adopt rules for the management of cases on their dockets.'") (quoting, **Johnson v. Miller**, 270 NW2d 624, 626 (Iowa 1978)); **Hearity v. Iowa District Court**, 400 NW2d 860, 863 (Iowa 1989) ("The district court has inherent power to exercise its jurisdiction, to maintain and regulate case proceedings to final disposition within its jurisdiction, and



when necessary, to punish contempt."). ([O]ur cases have consistently recognized the inherent common-law power of the courts to adopt rules for the management of cases on their dockets....."). The authority includes ordering and enforcing certain pretrial conduct, such as attendance at pretrial conferences.

See: Fry v. Blauvelt, 818 NW2d 123, 130 (Iowa 2012).

## CONCLUSION

Based on the forgoing arguments in the original brief and now in this reply brief, the newly created Iowa Codes, §§ 814.6A & 822.3A (2019) will deny and violate Hrbek's State constitutional right to free speech. See: Article I, § 7, of the Iowa Constitution:

**"No Law shall be passed to restrain or abridge the liberty of speech, or of the Press."**

These newly enacted codification(s) strip the right of defendants and applicants from filing pro se with the courts, when represented by counsel, especially [W]hen counsel will not plead and or argue their grounds, their issues and claims, or present their evidence to carry those burdens of proof, as recognized by this Court in Leonard v. State, 461 NW2d 465 (Iowa 1990); Gamble v. State, 723 NW2d 443

(Iowa 2006), and Jones v. State, 731 NW2d 388, 2007 Iowa Sup. Lexis 61 (Iowa 2007).

In 2000, this Court began to emphasize its independence from adopting federal constitutional principles as Iowa's constitutional principles. State v. Cline, 617 NW2d 277, 284-85 (Iowa 2000). *Abrogated on other grounds by* State v. Turner, 630 NW2d 606 (n<sup>2</sup>) (Iowa 2001). Indeed, this Court stated in Cline, that we no longer abdicate our constitutional role in interpreting the Iowa constitution, by blindly following federal constitutional doctrine. Id. 285. This Court held, that for the federal constitutional doctrine 'to have any value,' the doctrine "must be based on a convincing rationale." (quoting, State v. James, 393 NW2d 465, 472 (Iowa 1986) (Lavorato, J. dissenting)). Evidently those few that lobbied for S.F 589 (88th G.A. 2019) inclusive of appellee's arguments, have forgotten, that this Court has repeatedly held: "\*\*\* we will accept United States Supreme Court precedent only as persuasive authority. "See: e.g., State v. Hoskins, 711 NW2d 270, 725 (Iowa 2006); State v. Allen 690 NW2d 684, 689-90 (Iowa 2005); State v. Reinders, 690 NW2d 78, 81-82 (Iowa 2004); Cline, supra., 617 NW2d 284-285 (Iowa 2000). State v Daly 623 NW2d 799, 801 (Iowa 2001) (We are "dedicated to...expanding the personal liberties of Iowans.").

Hrbek has presented this Court with sound reasoning why it should not hesitate to distinguish the protection afforded by our Iowa constitution from those of the federal constitution, and other jurisdictions cited by appellee in its arguments. **Pfister v. Iowa District Court for Polk County**, 688 NW2d 790, 795 (Iowa 2004). The United States Supreme Court's decisions are not binding upon this Court, even when faced with a corresponding claim under the Iowa constitution. And as such, neither are any of the "other jurisdiction cases" cited by the appellee. **State v. Olsen**, 293 NW2d 216, 219 (Iowa 1980) (citing, **Bierkamp v. Rogers**, 293 NW2d 577, 579 (Iowa 1980)).

If the lobbyist and appellee counsel cannot accept and or appreciate our Court's rich historical values, our independence, our legal heritage, and respect our expanded and protected State constitutional rights, those individuals can always take up their professions in the jurisdictions that they ask this Court to emulate today.

It is respectfully submitted that this Court should find Iowa Code, Sections 814.6A & 822.3A (2019) to be unconstitutional on their face, and as applied. And in the Remand Order, it should include an instruction, that Hrbek is to be served personally, as well in-as-much, that Hrbek was recently assigned new counsel

(Christine Bradstad) after Hrbek's previously long-term PCR counsel (Clemens A. Erdahl) died. [W]hen new counsel filed for a private investigator to complete the discovery that Mr. Erdahl started, the district court record does not show Hrbek was served with those filings by Branstad nor the County Attorney. During the June 4, 2020 hearing, Hrbek states he brought these oversights to the Court's attention and requested a Order, directing the attorney(s) serve him with their filing/s so Hrbek can be adequately informed in a timely manner, to provide Hrbek with a meaningful due process opportunity to be heard on his Pro-Se claims, if or when necessary, by supplementing counsel's filing. In *Hrbek v. State*, 872 NW2d 198, 2015 Iowa App. Lexis 908, 2015 WL 6087572 (S.Ct. #13-1619, October 14, 2015), we held: ("At the very least, procedural due process requires notice and an opportunity to be heard in a proceeding that is adequate to safeguard the right...invoked.")

The record shows that the Court denied Hrbek's request in a verbal order, and when the denial was not included in the written order Hrbek filed a 1.904(2)(3) motion for reconsideration of that denial, or, that the denial be made a part of the written order. The record shows the Court summarily denied Hrbek's motion. This Appellate Court has reviewed those records on-line as requested by Hrbek, and has considered them as a part of his appeal.

Respectfully submitted,

/s/ John L. Hrbek

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**ATTORNEY'S CERTIFICATE OF COSTS**

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost  
Of preparing the foregoing Appellant's Pro Se Reply Brief was \$1.40

RESPECTFULLY SUBMITTED

/s/ Philip B. Mears

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATIONS

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

this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 1,797 words, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903 (1)(f)(1)

/s/ Philip B. Mears  
Signature

August 24, 2020  
\_\_\_\_\_  
Date