IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1463
Polk County No. PCCE090014

CHEYANNE HARRIS,
Applicant-Appellee,

vs.

STATE OF IOWA,
Respondent-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE JUDGE DAVID NELMARK

RESISTANCE TO APPLICATION FOR INTERLOCUTORY APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules and Regulations

Constitutional Provisions

Other Authorities

INTRODUCTION

Cheyanne Harris was disciplined for something she did not do based on evidence the State now finally admits was unreliable. By the State's own characterization of events, it took a year and a half of district court litigation, and then only after being forced to work on written discovery (which it still challenges), for it to realize its "mistake" in pursuing charges. But then, rather than acknowledging that the outmoded and insufficient "some evidence" threshold that Administrative Law Judges in Iowa prisons are permitted to use to impose discipline allowed this injustice to occur otherwise unchecked, and must be changed, the State instead tried to quietly make the case go away. In this case, and three others handled by undersigned counsel challenging the "some evidence" standard as a violation of Due Process, the State sought to avoid adjudication of the merits by expunging the discipline

The district court, applying this Court's precedent on the public interest exception to the mootness doctrine—including cases arising from prison discipline as this one—ruled that the matter should proceed to trial to develop a fulsome record for a long overdue and sorely needed review of "some evidence" by this Court.

The district court was correct. What happened to Cheyanne could only happen in Iowa, and only because of a decades-old decision of this Court adopting a unique take on the "some evidence" standard, in which it interpreted a U.S. Supreme Court

case to mean this standard satisfies procedural due process at both the judicial review (the "some evidence standard of review") and initial factfinding (the "some evidence burden of proof") stages. The U.S. Supreme Court has all but disavowed this interpretation, the American Bar Association decries it as a violation of constitutional rights, and numerous state and federal courts have subsequently found it to be in error. Yet, it remains in Iowa, because even the limited and almost exclusively pro se district court proceedings can, according to the State, be taken away with an expungement that costs the disciplinary institution nothing. The some evidence burden of proof is "workable," the State claims—but only for the State. For incarcerated individuals like Cheyanne, it will continue to authorize arbitrary disciplinary decisions that do not require any person at any stage to look at the evidence critically. In Iowa, once any charge or allegation is made, prisoners are presumed guilty of breaking disciplinary rules by ALJs: the reliability of the evidence need not be weighed, nor contrary evidence even considered. Some evidence, no matter how sparse or unreliable, is sufficient to find guilt and deprive a prisoner of earned time, academic, and employment opportunities, and freedom and privileges within the prison.

FACTUAL AND PROCEDURAL BACKGROUND

The State's recitation of this case's background misrepresents or omits key facts, procedural events, and even certain findings of the district court. By selectively

drawing on statements from the litigation in which the State's position can best be described as shifting, the State's summary leaves the impression that what happened to Cheyanne was simple human error, easily and quickly corrected by the Warden, which should and would be forgotten but for an overzealous district court. The impression is false.

For one, Cheyanne's case is not unique. By design, the some evidence burden of proof allows the Iowa Department of Corrections to find and discipline rule violations on the slimmest of evidence. (Statement of Additional Material Facts, ¶¶ 92–105 (describing ALJ's finding of guilt of three separate disciplinary rules based solely on urine drug test without regard to validity of test results) (D0041-0) [hereinafter, "SAMF"])). This presents here in the form of urine drug testing using immunoassay-based test kits because IDOC frequently uses these kits, despite knowing them to be unreliable and prone to false positives, to conduct suspicionless, facility-wide "screening" of inmates. (SAMF ¶¶ 19–37 (describing drug testing program at the Iowa Correctional Institution for Women and deficiencies in testing as established by Expert Report of Joshua Radke, MD)). This is what happened to Cheyanne Harris, Amanda Wright, and Mo Fagan, all of whom were accused following mass testing at ICIW. (SAMF ¶¶ 38–80). But it also presents itself in the similarly unreliable testing of legal mail for K2, *see* Exhibit A to Dismissal Without Prejudice, *Atwell v. State*, No. PCCV007332 (Jones Cty. Dist. Ct., April 28, 2023)

(D0015)), or in any number of non-drug-related disciplinary rules, *see* Gerald L. Neuman, *The Constitutional Requirement of 'Some Evidence,'* 25 San. Diego L. Rev. 631, 663 (1988) (noting that evidence the prisoner "was alive at the time in question" is conceivably "some evidence" supporting the charge, though arguing due process must "demand[] more than that"). The some evidence burden of proof even allows drug tests to evidence other rule violations, such as the cases of Amanda and Mo, who were not charged with possession like Cheyanne, but with "medication violations," which penalize medication refusals and missed appointments. (SAMF ¶¶ 81, 84–86). The some evidence burden of proof allows such inconsistencies because, in effect, any evidence can establish any rule violation.

In all of these cases, the inmate challenged the some evidence burden of proof, and the State expunged the discipline before a decision on the merits could be reached. (SAMF ¶¶ 131–34); *see* Exhibit A to Dismissal Without Prejudice, *Atwell*, No. PCCV007332, *supra*.[1] In innumerable others, in which the inmate lacks the funds or ability to obtain counsel, fears retribution, or is denied the ability to conduct any discovery by the district court, (Exhibit A to Reply to Resistance to Motion to Reconsider, at 2 (D0067-1)), the discipline is simply affirmed.

[1] Pursuant to Iowa Rule of Appellate Procedure 6.1002(2), the records of expungement in these four cases are included in Attachments B and C.

Of course, the State's ability to impose and obtain affirmation on *de minimus* evidence discourages any sort of self-review, which is why it took so long for Cheyanne to be exonerated here. The State continues to downplay the error in its Application, acknowledging simply a "failure to follow [drug testing] protocol," (Application for Interlocutory Appeal, at 12 [hereinafter, "App."]), and not what it was: a false positive. But even this acknowledgment was hard given. (Transcript[2] of Hearing on Motion for Summary Judgment, 26:13-19 ("In looking further at this case, the warden determined that she made a judgment call, as she's properly allowed to do under the disciplinary record, Exhibit B-1, and she felt it was the right thing to do given something that happened in this particular case in the process of the UA. The UA itself was fine, the taking of it was fine.") [hereinafter, "Tr."]); *id.* 26:24-25 ("No. I'm not conceding it was a false positive. I'm – no."). That the error was not discovered at all until sometime "[i]n discovery," (App. at 12), means that at every stage prior–the investigation of violations by the investigating officer on January 1, (Exhibit A to Answer to Application for Postconviction Relief, at 6 (D0008)), the ALJ's hearing on January 2, (*id.*, at 10–11), the Warden's review of Cheyanne's appeal on January 11, (*id.* at 12–15), and the State's Answer to Cheyanne's Application for Postconviction Relief on May 17, (D0008), all the way through

[2] Pursuant to Iowa Rule of Appellate Procedure 6.1002(2), certain relevant portions of the transcript are included in Attachment A.

March or April 2025, when the State was forced to prepare discovery responses–*nobody* accusing Cheyanne of a relapse considered the possibility the test was a false positive, as she had said since the beginning, and as ICIW itself concluded in a subsequent test only a month after the first. (SAMF ¶¶ 47–49, 55–56). Until confronted with the possibility of turning over proof that it was wrong, the State never had to consider it and would have obtained another decision affirming the discipline but for her persistence.

This all makes the State's resistance to Cheyanne's efforts at discovery throughout this case all the more problematic. To be clear, until it resisted the initial motion to compel, the State had emphatically denied any possibility of discovery. (Reply to Resistance to Motion to Compel, ¶¶ 3–4 (compiling statements denying ability to take discovery) (D0030)). This is why its equally emphatic denial of this position (a "bald assertion" that "is simply not true," as it characterized then (Respondent's Resistance to Motion to Compel Discovery Responses, at 4 (D0027)), was a surprise. Less surprising, though, was its subsequent return to that position, (Respondent's Resistance to [Renewed] Motion to Compel Response to Written Discovery, at 3 (D0056) ("The discovery Applicant seeks is not part of the record below, not relevant to these proceedings, and Applicant is not allowed to introduce

any further evidence into the record in this case."); a position it has taken with great success in the more common venues for disciplinary PCRs.[3]

Regardless, what the State misunderstands of the district court's Order granting the Renewed Motion to Compel is that, while the flip-flopping *would* be grounds for sanction, it is not the reason the Court granted the Renewed Motion. (Order Granting Motion to Compel, at 2 (D0060) [hereinafter, "MTC Order"]). The Court granted the Renewed Motion because discovery responses were due, had not been served, and no motion for stay or protective order had been filed to limit them. (*Id.* at 1–2 ("The Motion notes that the State has provided no discovery responses . . . and that the responses are past due. . . . [T]he State does not refute the assertion that it has not provided discovery responses. . . . The Court finds that the discovery requests were proper and the State has not timely responded."). It is as simple of a discovery "dispute" as that, and the outcome—grant of the motion and waiver of objections—as clearly stated.[4] *See* Iowa R. Civ. P. 1.509(1)(*c*) ("Any ground not

[3] Indeed, it has pursued this strategy with *such* success the courts there issue an order at the initiation of the case, before any discovery requests are even contemplated, flatly denying the right to engage in discovery at all. (Exhibit A to Reply to Resistance to Motion to Reconsider at 2 (D0067-1)). These significant and persistent problems in disciplinary cases in Iowa call out for corrective guidance by this Court at the appropriate time.

[4] Irrelevant as it is to the State's Application for Interlocutory Appeal, the record should be clarified regarding attorney's fees. As it must in an order on any unexcused violation of a party's discovery obligations, the district court authorized Applicant's counsel to submit a fee statement, providing the State with an opportunity for hearing. (MTC Order at 3). *See* Iowa R. Civ. P. 1.517(1)(*d*)(1) ("If

stated in a timely objection is waived unless the court, for good cause, excuses the failure."); *id.* r. 1.512(2)(*b*)(3) ("Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."); *id.* r. 1.517(1)(*b*)(2) (authorizing motion to compel for failure to timely respond to discovery request). In short, the State has filed for interlocutory appeal because it missed its deadline.

Moreover, though it appeals from the Order compelling it to do so, the State has now turned over answers and responses to the only pending requests. (Notice of Discovery Response at 1 (D0065)). While the State makes much of the burden of responding to the request for drug testing policies and procedures, there was only one such policy, and the district court, at the State's request, entered a protective

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the motion is granted . . . , the court shall, after opportunity for hearing," award fees absent separate finding). Applicant's counsel, hoping to avoid further litigation on the issue of discovery—which had already taken enormous time throughout the litigation and was subject to a pending motion to reconsider—sought to reduce over 13 hours to solely the time spent preparing the Renewed Motion to Compel: 2.5 hours. (Notice of Attorney Fee Statement at 10 (D0069)). When the State moved for a hearing, it did not do so to challenge the time spent, but to raise the very same arguments it had already made twice before. (Motion for Hearing Re: Attorney's Fees at 11 (D0073)). "[I]n recognition of the additional expense imposed by a hearing, and in further recognition of the mounting time and expense of continued litigation on an already drawn-out dispute following an order compelling *discovery responses that the State had agreed to provide*, Applicant withdrew the reduction. (Response to Motion for Hearing at 1 (D0076)). The district court set the hearing accordingly, (Order Setting Hearing on Motion (D0081)), but later continued it indefinitely following this Application for Interlocutory Appeal. (Motion to Continue Hearing(s) at 5 (D0083)); (Resistance to Respondent's Motion to Continue Hearing(s) at 8 (D0084)); (Order Cancelling Hearing and Issuing Protective Order at 1 (D0086)).

order maintaining its confidentiality. (Order Cancelling Hearing and Issuing Protective Order (D0086)). Now, that document too has been exchanged. (Notice of Additional Discovery Response (D0087)). Given there are no pending further requests and no "lengthy discovery" actually being asked of it, (App. at 5), it is unclear exactly what the State hopes to obtain by appealing this discovery order, except, perhaps, an advisory opinion.

Regarding the Order Denying the Motion for Summary Judgment, the State's summary of the district court's reasoning as "any case relating to prison discipline is a matter of public importance" is willfully inadequate. (App. at 15). In a thoroughly reasoned ruling that drew heavily on this Court's precedent—and did not, despite the State's criticism of its admission, rely at all on evidence relating to the other two pending cases—the district court explained that the State's attempt to deprive Cheyanne from a decision on the merits of this issue does not serve the interest of justice. (Ruling on Respondent's Motion for Summary Judgment at 5–7 (D0068) [hereinafter, "MSJ Ruling"]). The court found, due to the inherently limited term of most prison sentences and the potential for early release, prison disciplinary PCRs do tend to evade appellate review, even if the State had not engaged in strategic mooting, which, the court noted, it likely did.[5] (*Id.* at 4, n. 2). At the same

[5] The district court did not, as the State declares in a footnote, "correctly conclude[] that Iowa courts do not recognize a voluntary cessation exception to the mootness doctrine," for that would be wrong. Instead, the district court correctly

time, the court continued, prison discipline, including discipline related to the use of drug tests, occurs regularly, and the fundamental issue here—the burden of proof that applies at the factfinding stage—is of substantial importance to both the prison population and the officials overseeing these proceedings. (*Id.* at 3). Most crucially, Cheyanne gave many "compelling reasons" why the only guiding determination of this issue is in dire need of appellate review, as that determination arises from a split decision that is decades old and has since been rejected by virtually every other court. (*Id.* (citing Memorandum of Authorities in Support of Resistance to Respondent's Motion for Summary Judgment at 20 n. 5)).

In summary, the district court did not set out to issue an "advisory order," but to allow the development and presentation of a fulsome record for this Court's eventual review of an important constitutional issue impacting thousands of Iowans. (MSJ Ruling at 6). This is something the parties, not wanting to burden the court with lengthy proceedings (having previously scheduled their non-jury trial for a mere half day), quickly set out to do. (Unopposed Motion to Continue Trial at ¶ 4 (D0072)). That is, until this Application.

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concluded that Iowa Courts "have not *yet*" recognized the doctrine, *see Riley Drive Entertainment I, Inc. v. Reynolds*, 970 N.W.2d 289, 296 (Iowa 2022), while noting that it appears to apply to this case. (MSJ Ruling at 4).

ARGUMENT

The State's Application for Interlocutory Appeal should be denied. The district court correctly applied established and unchallenged precedent on the public interest exception to the mootness doctrine. The district court's discovery order was similarly unremarkable, simply directing the State to respond to the discovery requests that it had agreed to answer. When the Iowa Supreme Court takes this case—as all agree it eventually must—it should take it for the right reason: to review (and finally reject) the some evidence burden of proof.

I. THE DISTRICT COURT CORRECTLY DENIED THE STATE'S MOTION FOR SUMMARY JUDGMENT.

Iowa courts, unlike federal courts, are not limited by Article III to hear "cases" and "controversies." *See Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008). In other words, Iowa courts can hear a "moot" case; the question is only whether they will. *Rush v. Ray*, 332 N.W.2d 325, 326 (Iowa 1983) ("Mootness is not a question of power but rather one of restraint.").

A. The Public Interest Exception to Mootness Applies.

Cases meeting the test of "great public importance" that "are likely to recur," should be heard, even if moot. *See id.* Over time, these two prongs have been further broken down into four factors:

> (1) the private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future

> conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review.

Homan v. Branstad, 864 N.W.2d 3201, 330 (Iowa 2015) (quoting *Maghee v. State*, 773 N.W.2d 228, 234 (Iowa 2009)). The district court correctly determined that Cheyanne's case, if moot, meets this test.

i. Cheyanne's case raises an issue of great public importance.

As an initial matter, the State finds no fault in the district court's threshold conclusion that Cheyanne's case raises an issue of public importance. The concession is wise, given this Court has frequently applied the exception in matters—like Cheyanne's—of prison discipline and due process. *See Maghee v. State*, 773 N.W.2d 228, 235 (Iowa 2009) (postconviction relief challenge to revocation of work release heard despite inmate's death); *Rhiner v. State*, 703 N.W.2d 174, 177 (Iowa 2005) (postconviction relief challenge to revocation of parole heard despite subsequent parole); *In re M.T.*, 625 N.W.2d 702, 705 (Iowa 2001) (due process challenge to involuntary civil commitment procedures heard despite patient no longer being subject to treatment); *Roth v. Reagen*, 722 N.W.2d 464, 466 (Iowa 1988) (due process and equal protection challenge to placement on sex offender registry heard despite expungement from registry); *Wilson v. Farrier*, 372 N.W.2d 499, 501 (Iowa 1985) (postconviction relief challenge to imposition of prison discipline heard despite parole). The administration of criminal justice is uniquely, even categorically, an issue that "transcends the concerns" of the parties

before the court. *In re Sodersten*, 53 Cal. Rptr. 3d 572, 610 (Cal. Ct. App. 2007) (quoting *In re Stevens*, 15 Cal. Rptr. 3d 168, 170 (Cal. Ct. App. 2004)). Indeed, the State itself relies on the public importance of prison discipline, though it does so to urge this Court to grant interlocutory review. (App. at 35). Accordingly, this piece of the district court's analysis is beyond dispute.

The State objects, however, to the second factor: "the desirability of an authoritative adjudication to guide public officials in their future conduct." *Homan v. Branstad*, 864 N.W.2d 321, 330 (Iowa 2015). To start, this is inconsistent with the State's earlier concession. The second factor is merely a piece of the first prong; if an issue is of great public importance, then it also carries a need for authoritative adjudication. *See Rush*, 332 N.W.2d at 326 (viewing the public concern and authoritative adjudication "criteria as being ingredients of the first of the two prongs (great public importance)"). What the State seems to be arguing by implication, though it failed to do so in its Motion for Summary Judgment, is the underlying merits of Cheyanne's challenge: whether the some evidence burden of proof remains good law. To this, while Cheyanne must, of course, concede this Court's precedent on the issue remains binding, it is far from "good" law.

The story of "some evidence" begins with the U.S. Supreme Court's decision in *Wolff v. McDonnell*, which recognized that the Due Process Clause applies to the revocation of inmates' earned-time credits, in which they have a liberty interest. 418

U.S. 539, 557–58 (1974). As with all procedural due process matters, the issue then became what procedure was owed. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (outlining the factors governing "the specific dictates of due process"). In *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, a case challenging the right of *judicial* review of disciplinary proceedings and the standard of that review, the U.S. Supreme Court held "the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits." 472 U.S. 445, 455 (1985). While *Hill* was a standard of judicial review case—and not a disciplinary *burden of proof* case, as the Court itself has since made clear, *see Hamdi v. Rumsfeld*, 542 U.S. 507, 537 (2004) (stating "some evidence" is used "as a standard of review" for "courts in examining an administrative record developed after an adversarial proceeding," and "not as a standard of proof" in that proceeding), the nuance at the time was not so clear.

In the 1993 case *Goff v. Dailey*, the 8th Circuit interpreted *Hill* to mean some evidence satisfies due process both as a standard of review *and* the burden of proof in the disciplinary proceeding. 991 F.2d 1437, 1442 (8th Cir. 1993). The Iowa Supreme Court, shortly thereafter in *Backstrom v. Iowa Dist. Ct. for Jones Cty.*, relied on *Goff* and followed suit. 508 N.W.2d 705, 711 (Iowa 1993). Both decisions were issued over dissents. *Goff*, 991 F.2d at 1445 (Heaney, Senior Circuit Judge, dissenting) ("Under the approach adopted by the majority today, an inmate is now

faced with proving his or her innocence. This proof of innocence must meet not simply a preponderance of the evidence, but some higher standard, perhaps clear-and-convincing evidence or even higher, for as long as some evidence exists of an accused inmate's guilt, the disciplinary board can judge the inmate guilty, notwithstanding the weight of the evidence to the contrary. . . ."); *Backstrom*, 508 N.W.2d at 711 (Carter, J., dissenting) ("[T]he rule that the court approves includes a probability standard of less likely than not. Manifestly, that standard is the equivalent of no standard at all and provides a license for arbitrary decision making."). Both decisions have been sharply criticized by legal commentators. *See* ABA, *Standards for Criminal Justice: Treatment of Prisoners* 23-4.2 cmt. (3d ed. 2011), https://tinyurl.com/yhkbbpwy ("The Standard rejects the rule stated in *Goff* . . . , that (mistakenly in our view) makes the standard of proof the same as the standard of judicial review. The result of the *Goff* holding is to allow hearing officers to impose discipline even if they believe it more likely than not that the prisoner is not guilty, so long as some evidence supports the accusation."); 4A *Iowa Practice: Criminal Procedure* § 42:3 (2024 ed.) (describing the *Backstrom* opinion as an "unfortunate aspect of prison litigation and Iowa" and concluding, "Hopefully, the Court will have an opportunity to revisit [it] at some point in the future."). This—

Goff and *Backstrom*—is the "authoritative adjudication" that the State argues should continue to guide public officials.[6]

The passage of time has not provided support for these cases. The "prevailing view" now firmly holds "that *Hill* addressed only the appropriateness of 'some evidence' as a standard of appellate review, not a standard of proof." *Carillo v. Fabian*, 701 N.W.2d 763, 775–76 (Minn. 2005); *see also Brown v. Fauver*, 819 F.2d 395, 399 n. 4 (3d Cir. 1987) ("In *Hill*, a Court did not address whether the Constitution requires a particular burden of proof in prison disciplinary proceedings. *Hill* only spoke to issues involving standards of appellate review."). As noted above, this reading has also been confirmed by the U.S. Supreme Court. *Hamdi*, 542 U.S. at 537. For good reason, as such a minimal burden of proof fails to satisfy due process; one state supreme court decision explaining this, *LaFaso v. Patrissi*, 633 A.2d 695, 697–70 (Vt. 1993), was so persuasive that members of the *Backstrom* majority decided to switch sides. *See Marshall v. State*, 524 N.W.2d 150, 152–53 (Iowa 1994) (Neuman, J., dissenting) ("Further reflection," including review of

[6] *State v. Iowa Dist. Ct. for Jones Cty.,* 888 N.W.2d 655 (Iowa 2016), is distinguishable. *Jones Cty.* arose out of the Sex Offender Treatment Program. 888 N.W.2d at 667, 671-72. The holding concerned whether a victim's statement from the underlying criminal matter constituted "some evidence" on which to *affirm* the requirement to participate. *Id.* at 668-69; *see also Hamdi*, 542 U.S. at 537 (clarifying "some evidence" is used by reviewing courts, not by factfinders determining guilt). Cheyanne's case, by contrast, arises from prison discipline and challenges the some evidence *burden of proof* in the first instance, not the later *standard of review*.

LaFaso, "leads me reluctantly to conclude that [*Backstrom*] rested on a faulty interpretation of [*Hill*].").

As a matter of federal practice, the Bureau of Prisons itself took the issue off the table and adopted a "greater weight of the evidence" standard for its disciplinary proceedings. *See* 28 C.F.R. 541.8(f). As a matter of Iowa practice, Cheyanne's case is a prime example of the injustice that the some evidence burden of proof facilitates. (SAMF ¶¶ 94–105). The issue is not simply that unreliable urine drug tests are being administered in Iowa prisons, (SAMF ¶¶ 19–37), it is that *despite them being unreliable*, they, as the *sole piece of evidence*, satisfy this constitutionally deficient standard of proof. (SAMF ¶¶ 99–104). Were this Court to hear this challenge and apply to it the well-established *Mathews v. Eldridge* test for the adequacy of due process procedures, it would find, as the dissent in *Goff* recognized then, that: "the inmate's interest in not being erroneously disciplined is an important one; the risk of error with use of a 'some evidence' standard of proof is high; and the state's interest in swift and certain punishment is not impeded by use of the preponderance standard of proof." 991 F.2d at 1444 (adding that "the state has an interest in accurate determinations, for 'neither the state nor the inmate has any valid interest in treating the innocent as though he were guilty.'" (quoting *United States ex rel. Miller v. Twomey*, 479 F.2d 701, 718 (7th Cir. 1973)). *Stare decisis*, as this Court has said, is

of limited importance to matters of constitutional law.[7] *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 83 (Iowa 2002). It should not stop its review here.

ii. Cheyanne's case, and others like it, are likely to recur.

Turning to recurrence, the State's strawman argument mischaracterizes the issue as whether further breaches of a particular drug testing protocol are likely to recur. (App. at 23). But the relevant question is whether the State is likely to continue to apply merely the some evidence burden in imposing prison discipline. As the district court correctly found, "Drug tests, *the disciplinary process arising therefrom*, and *prison discipline generally* are all common occurrences." (MSJ Ruling at 6). Per Iowa Department of Corrections Policy, every single one, whether the charge is supported by a faulty drug test or an unreliable witness statement, will be resolved under a some evidence burden of proof. (SAMF at 101). *See* State of Iowa Dept. of Corrections, *Major Discipline Report Procedures*, Policy No. IO-RD-03, at (IV)(D)(15)(j) ("The findings of fact [in a hearing decision] shall be made using the 'some evidence' standard of proof.") The issue at the core of this case—

[7] Separately, *Backstrom*'s decision was based solely on the U.S. Constitution's Due Process Clause. 508 N.W.2d at 710 (identifying the applicant's challenge "under the due process clause *of the fourteenth amendment of the federal constitution*") (emphasis added). Cheyanne brings her challenge under the Fourteenth Amendment *and* the Iowa Constitution's Article I, section 9. (Amended Application for Postconviction Relief at 85 (D0013)). For purposes of Article I, section 9, there is no existing authoritative adjudication. Whatever this Court's reading of the federal Due Process Clause, Cheyanne asserts due process under the Iowa Constitution demands a different result.

the infringement of a recognized liberty interest without adequate procedural protections—is not just likely to recur, it is certain to recur. *See Maghee*, 773 N.W.2d at 235 (noting prisoners are frequently disciplined for alleged rule violations, "and challenges to such [discipline] inevitably arise").[8]

The State offers no response to the district court's determination that the issue will continue to evade appellate review. (MSJ Ruling at 6). "[D]ue to the effect of earned-time credits, work release, and parole, it is likely many actions similar" to this one "could be rendered moot by the inmate's release prior to the resolution of appeal." *Maghee*, 773 N.W.2d at 235. Additionally, wardens regularly affirm discipline with a caveat that, after six months of good behavior, the inmate may reapply for some earned time to be restored. (Appendix in Support of Resistance to Motion for Summary Judgment at 48 (Disciplinary Appeal Response - Warden, Wright). And all this is assuming the warden does not, as occurred here, simply expunge the discipline prior to trial, without explanation. (SAMF ¶¶ 131–34).

B. The Voluntary Cessation Doctrine Is an Alternative Basis to Affirm.

In light of the State's expungement of Cheyanne's individual discipline, without any change to the some evidence burden that allowed it to be improperly

[8] While not necessary to the public importance analysis as set forth above, Cheyanne would not in any case concede that the State has actually shown that problems with drug testing are unlikely to recur. (SAMF ¶¶ 137-160) Other than testimony offered *by counsel* and made without any evidentiary support, the State has done nothing to support its assertions.

imposed, the district court's ruling is also supported by the voluntary cessation doctrine. Under this doctrine, a defendant's unilateral change in behavior to secure a dismissal will not moot the case unless the defendant can show it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968). The doctrine is not so much an "exception" to mootness as it is a recognition that an attempt to disguise the controversy does not eliminate it. *See Federal Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024) ("A live case or controversy cannot be so easily disguised, and a federal court's constitutional authority cannot be so readily manipulated."). The dispute between the parties remains, even if the relief the plaintiff seeks to obtain has been freely given.

In the prison disciplinary context, the voluntary cessation doctrine is readily applied. *See, e.g.*, *Burns v. PA Dept. of Correction*, 544 F.3d 279, 284 (3d Cir. 20087); *Whitmore v. Hill*, 456 Fed. Appx. 726, 729 (10th Cir. 2012); *Stano v. Pryor*, 372 P.3d 427, 429 (Kan. Ct. App. 2016). The rationale is obvious: rather than incentivize prisons to impose discipline "safe in the knowledge that any court action . . . could be mooted," the Court should ensure a prison is convinced that imposing the discipline is justified by the evidence "before doing so, and . . . should not be allowed to retreat simply because the inmate files a lawsuit." *Stano*, 372 P.3d at 429. In every single case challenging the some evidence burden brought by the

undersigned counsel, including this one, the prison has expunged the discipline before allowing the case to reach the merits.[9] (SAMF ¶¶ 131–34); *see* Exhibit A to Dismissal Without Prejudice, *Atwell*, No. PCCV007332, *supra*. Never, however, has the State attempted to show any change in policy or practice to prevent recurrence. Were there no public interest exception, this case would be an ideal one for this Court's first application of the voluntary cessation doctrine. *See Riley Drive*, 970 N.W.2d at 296 (declining to apply, but not rejecting, voluntary cessation doctrine).

II. CHEYANNE SEEKS APPROPRIATE RELIEF AND PRESENTS EVIDENCE IN SUPPORT.

Neither the State's challenge to Cheyanne's ability to seek the relief she claims nor its challenge to her offer of evidence from related cases for limited

[9] The State criticizes Cheyanne for presenting only "a handful of cases where discipline was imposed and then expunged on similar grounds." (App. at 23). One hundred percent of the four relevant cases brought by her counsel have followed this pattern, and other than through the experience of her counsel, it is unclear how the State expects Cheyanne to obtain information about any other cases. Certainly none have been reported. The State responded to a discovery request on the matter by stating, "This is not tracked in any way, so it is unknown." Thus it seems the State's characterization of the four cases cited by Cheyanne as merely "a handful" of some larger number of cases is, at best, based on assumptions and not real information. Regardless, the burden, as a movant for summary judgment and under the voluntary cessation doctrine, is on the State, which has not presented any evidence *contradicting* the fact that this appears to be a regular occurrence. In any case, the State does not rebut that all prison discipline is imposed in the first instance by the ALJ under the some evidence burden, that the overwhelming majority of disciplinary PCRs are pro se, and that, in the decades in which this has been the law in Iowa, few reported cases challenging some evidence as a violation of due process have reached this Court.

purposes fit clearly into its overall Application for Interlocutory Appeal. The public interest exception was the basis for the challenged Order Denying Summary Judgment; the Iowa Rules of Civil Procedure was the basis for the challenged Order Granting Motion to Compel. Neither turns on the formulation of relief nor the evidence offered in support of that relief. The State's objection to the record admitted and the relief requested provides no basis for this Court to take interlocutory appeal, but must nevertheless be addressed here.

The portion of the State's Application asserting Cheyanne "no longer has a basis to seek postconviction relief in *her* case" appears to be a recasting of the rejected "jurisdictional" argument on which it initially based its Motion for Summary Judgment. The premise is that Cheyanne's right to judicial review under section 822.2 of the unlawful reduction of her earned time was revoked—her "ticket to court" withdrawn—when the earned time was restored. Because this is nonsense, as Cheyanne had a right to file for postconviction relief then and the only question now is whether there remains a live case or controversy, the State promptly abandoned this argument at the start of the hearing:

> THE COURT: Ms. Wallace, you've argued this as a jurisdictional issue. Mr. Story has said it's mootness, but it's also a standing question. I think it's a standing question because I clearly have the jurisdiction to hear this type of case. You're simply arguing that the Plaintiff doesn't have a claim that can be remedied or doesn't have – doesn't meet the requirements for review under [chapter 822]. So I think that's a standing issue. If I'm wrong, tell me why I'm wrong.

MS. WALLACE: I think you're right.

THE COURT: Okay. So then –

MS. WALLACE: And, Your Honor, honestly, I hadn't thought about that. But I think you're right.

(Tr. 3:21–25, 4:1–8).

To the extent the State is attempting to argue that Cheyanne is seeking a declaratory judgment, she is not. Cheyanne is challenging the validity of the imposition of discipline upon her under an unconstitutional burden of proof; to grant that relief, the district court must determine whether the burden of proof complied with the Constitutions of the United States and Iowa. Cheyanne seeks nothing more than the findings a court would make in support of its ruling in any case. Indeed, this is no different than the postconviction relief case that gave rise to the some evidence burden of proof in the first place. *See Backstrom*, 508 N.W.2d at 707 ("Plaintiff Michael Backstrom, an inmate at the Iowa Men's Reformatory, was found guilty by a prison disciplinary committee of violating certain prison rules. After Backstrom exhausted his administrative remedies, he filed an application in the defendant district court seeking postconviction relief."). Surely, if the burden can be established in such a case, it may also be challenged in one.

To the extent the State is implying that Cheyanne's claim is better suited for a section 1983 action, brought by her and a class of plaintiffs like her,[10] it is irrelevant. It is also, likely, a trap. Cheyanne can expect that were she to file a section 1983 claim for declaratory relief and damages in the Southern District of Iowa, the State would quickly respond that she is challenging the validity of the discipline and must first demonstrate that has been invalidated in a postconviction relief proceeding. *See Minter v. Bartfruff*, 939 F.3d 925, 929 (8th Cir. 2019) ("[I]f a judgment in plaintiff's favor in a § 1983 damage action 'would necessarily imply the invalidity of his conviction or sentence,' the action 'must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.'") (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)). Additionally, if she were to seek prospective injunctive relief, she might reasonably expect the very same arguments concerning likelihood of recurrence the State makes here. *See Goff v. Harper*, 60 F.3d 518, 521 (8th Cir. 1995) ("[F]or an injunction to issue [under § 1983] 'a right must be violated' and . . . 'the court must determine' whether 'a cognizable danger of future violation exists and that danger must be more than a

[10] The State's argument that chapter 822 does not authorize "class actions or other multiple plaintiff challenges" is irrelevant. Cheyanne brings neither. She sought consolidation early in the case for purposes of judicial efficiency because her claim carries common questions of law and fact with two others. (Motion to Consolidate, ¶¶ 1-8 (D0016)). This was denied. (Order Denying Motion to Consolidate (D0022)). These three individuals nevertheless each have facts relevant to and corroborating the others' cases.

mere possibility.") (quoting *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982)). All in an endeavor that fails to give the Iowa Supreme Court, "the final arbiter of what the Iowa Constitution means," *State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023), the right to review its own precedent.

The State's challenge to the consideration of evidence outside of the administrative record below is similarly unavailing. For one, it is inconsistent with the State's own Motion for Summary Judgment—the only thing presently at issue—which was based on evidence outside of the administrative record, i.e., the expungement:

> MS. WALLACE: So she lost 14 days of earned time and seven days of investigat[ive] segregation that she was given time for – credit for time for. Subsequently, down the road, the warden of the institution dismissed the discipline entirely and credited all earned time back and expunged from the record this entire discipline. It's gone, as far as the DOC is concerned. The reason that last piece of paper [the record of expungement] is viably and rightly part of this record is because it is in the exact—it was filed in the case, the discipline that is before this court.
>
> THE COURT: Was it part of the certified record when the certified record was put into this matter?
>
> MS. WALLACE: No. Because it hadn't happened yet. But that doesn't mean it's not now properly before the Court in this case now.

(Tr. 16:6–22). As the district court correctly recognized, "in a civil case, which this is," the party responding to a motion for summary judgment "gets to put in whatever evidence they want," because "[t]hat's how you respond to a Motion for Summary Judgment." (Tr. 7:21-25, 8:1). When the State asserted the case was moot, Cheyanne

was entitled to introduce evidence establishing that it was not, or that an exception to mootness should apply.

The entire dispute over the evidence submitted with Cheyanne's Statement of Additional Material Facts also ignores that the district court, though allowing this evidence into the record (while also welcoming the State "to file a Motion to Strike if you have authority," (Tr. 9:1–2), which the State never did), did not "find, really, anything about the other applicants that are not before me particularly persuasive." (Tr. 9:20–21). And, in fact, the district court made no reference to the facts presented by Amanda or Mo in its Order. As with its challenge to the relief Cheyanne seeks, the State's challenge to the evidence she submitted in response to a motion for summary judgment has little, if any, relevance to this Court's consideration of the Application for Interlocutory Appeal.

III. THE DISTRICT COURT CORRECTLY COMPELLED THE STATE TO RESPOND TO DISCOVERY THAT WAS PAST DUE.

Separately, the State seeks interlocutory appeal on the district court's order granting Cheyanne's Renewed Motion to Compel. As noted above, two things stand out here: (1) the State has already turned over the requested discovery and, therefore, would obtain nothing by reversal of this order now, as "[w]hether the items ordered to be produced in discovery are ultimately admissible at trial is a debate for another day," (MTC Order at 2); and (2) [t]he Court simply held that the discovery responses

were not timely," (Order Denying Motion to Reconsider at 1 (D0079)), and there is nothing appealable about that.

There are additional points to be made. Overall, the State's position, whatever it sometimes claims, is that discovery should never be allowed in postconviction relief actions arising from prison discipline, based on the limited scope of the standard of judicial review, that is, merely to determine if some evidence supported the ALJ's decision. *See Wilson*, 372 N.W.2d at 501. It has asserted this position so frequently, in fact, that the Iowa District Court for Jasper County, where the Newton Correctional Facility is located, provides all postconviction relief applicants with a notice on filing that "requests for discovery are not permitted." (Exhibit A to Reply to Resistance to Motion to Reconsider). This defies the Iowa Uniform Postconviction Procedure Act, which provides the ordinary rules of civil procedure, "including pretrial and discovery procedures," apply to these actions. Iowa Code § 822.2(1)(*f*). It also defies the Iowa Rules of Civil Procedure themselves, which do not allow an objection to the relevancy of discovery requests as a process, but require each to be examined on its own terms. *See* Iowa R. Civ. P. Rs 1.509(1)(*c*) (interrogatories must "be answered separately and fully in writing under oath"); *id.* r. 1.510(2) (answers to requests for admission must, unless admitted, "specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter); *id.* r. 1.512(2)(*b*)(2) (responses to requests for production must,

for each request, state whether copies will be provided or, if an objection is made, "state the grounds for objecting to the request with specificity"). And it means that, coupled with a some evidence burden of proof, the procedure the State advances has an inmate accused, segregated, and brought before an ALJ shortly thereafter to be almost certainly convicted on the basis of any evidence, as the burden is such that the inmate cannot ever muster sufficient evidence in contradiction; the inmate then applies to the district court for relief, where they are not permitted to discover evidence relating to that used to convict them, where they cannot introduce any new evidence they manage to obtain, and where their conviction will be affirmed because, again, some evidence existed at the time. "[S]uch procedures in no way comport with the requirements of due process." *Goff*, 991 F.2d at 1445 (Heaney, Senior Circuit J., dissenting).

The State's position is also incredible, given that it claims it was engaging with Cheyanne's discovery requests that led it to expunge the discipline of her and two other inmates. (Motion to Reconsider Order Granting Motion to Compel, at ¶ 8 (D0062-0)). By its own admission, if it had successfully avoided any obligation to respond to discovery at the outset, it *never* would have found its own mistake, and an innocent person would remain guilty. It now asks this Court to license that outcome for all future incarcerated individuals seeking relief. This Court should refuse to do so.

As for the "security concerns that were not addressed by the Court's decision granting broad discovery," (App. at 32), they were in fact addressed. The district court, acknowledging the State's claim that "[u]nder Iowa law Respondent is forbidden from giving the [security policy] to Applicant," instructed the State to file any such responsive documents with the Court first, under seal for *in camera* review. (MTC Order, at 2). The State did so, (Motion for In Camera Review (D0064)), the parties submitted competing authority on the issue, (Response to Motion for *In Camera* Review (D0071)); (Reply to Response to Motion for In Camera Review (D0077)), and the Court issued a protective order granting "attorneys' eyes only" status to the policy and prohibiting redisclosure except on certain authorized bases. (Order Cancelling Hearing and Issuing Protective Order (D0086)). There is no error here for this Court to address.

IV. INTERLOCUTORY APPEAL DOES NOT SERVE THE INTERESTS OF JUSTICE.

Summary disposition[11] under Iowa Code section 822.6(3) exists "to provide a method of disposition once the case has been fully developed," not before. *Linn v. State*, 929 N.W.2d 717, 730 (Iowa 2019). This Court disfavors intervention too soon

[11] The State denominated its motion as "for Summary Judgment," in reference to Iowa Rule of Civil Procedure 1.981. The analogous method under the Iowa Uniform Postconviction Procedure is summary disposition under section 822.6(3). *See Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). The underlying principles are the same. *Id.* at 560.

in a case, preferring to decide important issues with the benefit of "a fully developed factual record made by parties with a strong motivation to illuminate the issues." *Berent v. City of Iowa City*, 738 N.W.2d 193, 201 (Iowa 2007). Particularly because she asks this Court to overrule its precedent, Cheyanne seeks a trial at which she can make "the highest possible showing" against its continued validity. *Venckus v. City of Iowa City*, 930 N.W.2d 792, 802 (Iowa 2019) (quoting *Kiesau v. Bantz*, 686 N.W.2d 164, 180 n. 1 (Iowa 2004) (Cady, J., dissenting)); *see also State v. Smith*, 957 N.W.2d 669, 686 (Iowa 2021) (Appel, J., dissenting) (noting the due process clause is "open textured and subject to plausible alternative interpretations," and the court should "thus be very careful not to announce sweeping statements on the law in the absence of full-blown advocacy and well developed records"). An appeal *after* a trial is how the interests of justice will be served in this case.

It must be an "exceptional case[]" for this Court to allow the appeal of interlocutory orders. *Banco Mortg. Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984); *see also State v. O'Dell*, 456 N.W.2d 910, 912 (Iowa 1990) (noting the "advantage of both furthering a speedy conclusion of district court litigation and of reducing the number of appeals"). Prior to the Application for Interlocutory Appeal, the parties had exchanged discovery and were working to streamline the presentation of evidence in preparation for a half-day, non-jury trial, after which an order on the merits would issue. There is little reason not to allow this process to conclude, and

thereby set the underlying challenge up for an appeal on those merits and, if the State desires, on the preliminary issue of mootness as well.

However, "piecemeal appeals" must be discouraged. *Mason City Production Credit Ass'n v. Van Duzer*, 376 N.W.2d 882, 886 (Iowa 1985). If this Court were to grant the State's Application for Interlocutory Appeal, then it should also instruct the parties to brief the challenge to *Backstrom*. At this stage, the Court has the benefit of the evidentiary submission in resistance to the motion for summary judgment, which includes declarations and an expert report. Though this record lacks those materials subsequently obtained in discovery, it is unchallenged and its facts may, therefore, be presumed established. While Cheyanne would like to try her case, the case on the existing record against the some evidence burden of proof is very strong. The interests of justice are best served by denying the State's Application for Interlocutory Appeal; they are secondly best served by hearing the merits along with it.

Thus, should the Court grant the State's Application for Interlocutory Review, Cheyanne respectfully seeks to submit the merits of the question of whether the "some evidence" burden of proof comports with Due Process at the same time.

CONCLUSION

This case presents an issue of substantial public importance and challenges the State of Iowa's continued use of a constitutionally deficient burden of proof. The

district court was right to conclude that the State's voluntary expungement of the discipline imposed does not remove this important issue from consideration. The district court further made no error in granting the Applicant's Renewed Motion to Compel, given the State simply failed to respond or assert its objections properly and in a timely manner. Interlocutory appeal from these orders is not necessary or appropriate. Notwithstanding, if it is granted, the Court should also consider the merits of the challenge.

Accordingly, the Applicant respectfully requests this Court deny the State's Application for Interlocutory Appeal, granting all such other, and further relief as it deems just.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface and type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because this resistance has been prepared in a proportionally spaced typeface using Times New Roman in size 14.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on September 19, 2025, this resistance was electronically filed with the Clerk of the Supreme Court and served upon counsel of record for all parties to this appeal using EDMS.

/s/ Thomas D. Story

Thomas D. Story