ELECTRONICALLY FILED APR 24, 2015 CLERK OF SUPREME COURT

SUPREME COURT NO. 15-0212
POLK COUNTY CASE NO. LACL131321

IN THE SUPREME COURT OF IOWA

KIRSTEN ANDERSON
Plaintiff-Appellant,

v.

STATE OF IOWA, IOWA SENATE REPUBLICAN CAUCUS, STATE SENATOR BILL DIX, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, ERIC JOHANSEN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND ED FAILOR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE D.J. STOVALL, DISTRICT COURT JUDGE

PROOF BRIEF* OF *AMICI CURIAE:*

AMERICAN CIVIL LIBERTIES UNION OF IOWA
AND NATIONAL EMPLOYMENT LAWYERS ASSOCIATION - IOWA AFFILIATE
IN SUPPORT OF PLAINTIFF-APPELLANT
***** *CONDITIONALLY FILED*

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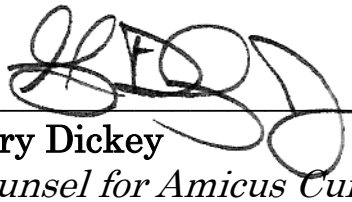

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INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization made up of more than 500,000 members dedicated to the principles of liberty and equality embodied in state and federal law. The ACLU of Iowa, founded in 1935, is its statewide affiliate. Together, the two organizations work in the courts and legislature to safeguard the rights of all citizens. The ACLU has long sought to ensure that the law provides individuals with meaningful protection from employment discrimination on the basis of gender, including sexual harassment in the workplace. The ACLU has also urged robust legal protection for victims of sexual harassment who bring that harassment to light. The proper resolution of this case, which concerns barriers to access of legal remedies for a harassment and retaliation victim, both in this case and in all cases to come, therefore is a matter of substantial interest to the ACLU and its members.

The Iowa Affiliate of the National Employment Lawyers Association ("Iowa NELA") is an organization of approximately

forty Iowa attorneys who advocate for fair and just treatment of Iowa employees and work tirelessly to eliminate workplace discrimination. Iowa NELA's members share the goals of upholding and defending the Constitutions of the United States and of the State of Iowa; advancing the science of jurisprudence; training in all fields and phases of advocacy; promoting the administration of justice for the public good; upholding the honor and dignity of the profession of law; and advancing the cause of those whose right to equal treatment under the law has been violated. Iowa NELA's interest in this case is based on its commitment to ensuring that every Iowa citizen has the right to fair and just treatment under the Iowa Civil Rights Act and other laws governing employment relationships, and that Iowa law remains consistent in upholding that right.

STATEMENT OF THE CASE

After receiving a right-to-sue letter from the Iowa Civil Rights Commission, Kirsten Anderson filed a petition against Defendants alleging sexual discrimination, sexual harassment,

and retaliation in violation of the Iowa Civil Rights Act ("ICRA"). (Am. Pet. at 17). The Defendants filed a motion to dismiss on the basis that Anderson failed "to allege exhaustion of administrative remedies" in her petition. (Mot. to Dismiss at 1). Notably, Defendants do not dispute that Anderson had, in fact, exhausted her administrative remedies through the Iowa Civil Rights Commission ("Commission"). (Def's Br. in Supp. of Pre-Answer Mot. to Dismiss at 5) ("Defendants do not claim that Plaintiff has not exhausted her administrative remedies, only that she has not pleaded as such"). Nonetheless, they contend that dismissal is required under *Lindaman v. Bode*, 478 N.W.2d 312 (Iowa Ct. App. 1991). (Def's Br. in Supp. of Pre-Answer Mot. to Dismiss at 5). The district court applied Defendants' misreading of *Lindaman* to this action and dismissed Anderson's petition.

The question presented in this appeal is whether dismissal is warranted when a plaintiff who asserts a claim under the ICRA fails to plead exhaustion of administrative remedies, when the defendant does not contest that the Commission as a matter of fact actually issued the plaintiff a right-to-sue letter. *Id.* at §

216.3(a). This issue calls for a straightforward resolution based on the text and purpose of the Iowa Rules of Civil Procedure and the ICRA and the cases that interpret them, none of which require exhaustion as an element of a plaintiff's prima facie case. Instead, exhaustion is considered an affirmative defense. In other words, under Iowa law, the burden is on the defendant to argue that a civil rights plaintiff has failed to exhaust administrative remedies, rather than on the plaintiff to preemptively plead facts sufficient to defeat a motion to dismiss that asserts failure to exhaust administrative remedies.

ARGUMENT

I. BECAUSE THE DISTRICT COURT'S HEIGHTENED PLEADING STANDARD IS NOT SUPPORTED BY THE TEXT OR PURPOSE OF THE IOWA CIVIL RIGHTS ACT, THE DISMISSAL ORDER MUST BE REVERSED

A. Iowa Is a Notice Pleading State in Which Motions to Dismiss are Disfavored

Consideration of a motion to dismiss must begin with the recognition that Iowa has rejected technical pleading requirements in favor of "liberal notice-pleading standards."

Shumate v. Drake Univ., 846 N.W.2d 503, 510 n.2 (Iowa 2014); Iowa R. Civ. P. 1.402(2)(a) ("No technical forms of pleading are required"). All that is required is "a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the type of relief sought." Iowa R. Civ. P. 1.403(1). Iowa's pleading standards are intended "to secure a just, speedy and inexpensive determination of all controversies *on their merits*." *Id.* at 1.402(1) (emphasis added). "Under notice pleading, nearly every cause will survive a motion to dismiss." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). Accordingly, motions to dismiss are disfavored in both civil and criminal cases. *State v. Gonzalez*, 718 N.W.2d 304, 309 (Iowa 2006). In granting Defendants' motion to dismiss, the district court lost sight of these core principles of Iowa's "traditional generous pleading approach." *King v. State*, 818 N.W.2d 1, 88 (Iowa 2012) (Appel, J. dissenting).

B. The District Court's Judicially Created Rule that a Plaintiff Must Plead Exhaustion Has No Textual Basis in the Iowa Civil Rights Act

The district court erred in dismissing the petition for failure to plead exhaustion of administrative remedies by reading such a

requirement into the text of the statute where it does not exist. The text of the ICRA does not require a plaintiff to allege exhaustion in her district court petition. The plain language of the ICRA includes two conditions of filing a petition in district court for discriminatory practices. First, a plaintiff must file a timely complaint with the Commission. *Ritz v. Wapello Cnty Bd. of Sup'rs*, 595 N.W.2d 786, 790 (Iowa 1999); Iowa Code § 216.16(1)(a). Second, the Commission must issue a release or right-to-sue letter no earlier than sixty days after the complaint has been on file. *Id.*; Iowa Code § 216.16(1)(b). There is no dispute that Anderson did exactly what Chapter 216 required and obtained a right-to-sue letter from the Commission. The ICRA, by its terms, requires nothing more.

Significantly, once the Commission issues the right-to-sue letter and the action is in district court, "it proceeds as *an ordinary action at law*." *Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 680 n.1 (Iowa 2013) (emphasis added). "[T]here is nothing extraordinary about the nature of a district court proceeding brought once [administrative] remedies are so

exhausted. The ICRA is no different than any other statute providing a cause of action." *McElroy v. State*, 703 N.W.2d 385, 394 (Iowa 2005). There is no textual support in Chapter 216 to suggest that the pleading requirements for civil rights cases should be treated differently than any other cause of action.

The district court's ruling rests, by analogy, on *Lindaman v. Bode*, 478 N.W.2d 312 (Iowa Ct. App. 1991), which is of no precedential value to the case at hand. In *Lindaman*, the petition was dismissed because the plaintiff failed to exhaust his administrative remedies on the mistaken belief that the Iowa Tort Claims Act did not apply to his causes of action. *Id.* at 315-17. The Court of Appeals' observation that *Lindaman* failed to *plead* exhaustion of remedies is plainly dicta. *United States v. Warren*, 338 F.3d 258, 265 (3rd Cir. 2003) ("Gratuitous statements in an opinion that do not implicate the adjudicative facts of the case's specific holding do not have the bite of precedent"). Since he failed to exhaust his administrative remedies, it was necessarily the case and of no consequence to the outcome of the case that he did not plead exhaustion. His petition was dismissed because he

failed to exhaust his administrative remedies, not because he neglected to plead exhaustion in his petition.

The district court's reliance on *Lindaman* was also in error in construing exhaustion of administrative remedies as a matter of jurisdiction. (Ruling Re: Motion to Dismiss at 2) ("As such, the Court cannot consider the exhaustion in fact of administrative remedies as meeting the requirements of the ICRA, which requires that the Plaintiff allege in her Petition that she has the *jurisdictional right* to be there"). While the *Lindaman* decision declares the "failure to exhaust his administrative remedies deprives the court of *jurisdiction* over any claim as defined in the [Iowa Tort Claims] Act," *Lindaman*, 478 N.W.2d at 315 (emphasis added), subsequent case law makes clear that failure to exhaust administrative remedies does not implicate subject matter jurisdiction:

> Generally, the exhaustion-of-remedies requirement does not implicate subject matter jurisdiction. This is because the exhaustion-of-remedy doctrine does not preclude judicial review, but merely defers it until the administrative agency has made a final decision. Our legislature has given the district court subject matter jurisdiction to act in response to challenges to decisions

> made by administrative agencies, but requires this authority to be withheld until any available administrative remedies have been exhausted. Thus when a litigant requests judicial review before exhausting administrative remedies, the district court merely lacks authority to entertain a particular case. This is the type of challenge that can be waived.

Alliant Energy-Interstate Power & Light Co. v. Duckett, 732 N.W.2d 869, 875 (Iowa 2007).

In the present case, the district court had subject matter jurisdiction because Iowa Code section 216.16(2) gave it such jurisdiction. An unexhausted claim simply means that the district court must withhold its authority to decide the case until any available administrative remedies have been exhausted. *Keokuk County v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). Once this distinction is recognized, *Lindaman* offers no guidance on the question presented.

C. The District Court's Novel Pleading Standard Is Contrary to the Legislative Intent that the Iowa Civil Rights Act be Construed Broadly

The prima facie elements of Anderson's discrimination, harassment, and retaliation claims are well established. As to the first claim, "an employer engages in unlawful sex discrimination

when the employer takes adverse employment action against an employee and sex is a motivating factor in the employer's decision." *Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64, 67 (Iowa 2013). With regard to a claim of harassment, a plaintiff must show: (1) she belongs to a protected group; (2) she was subject to unwelcome harassment; (3) the harassment was based on a protected characteristic; and (4) the harassment affected a term, condition, or privilege of employment. *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 746 (Iowa 2006). Similarly, to prove a retaliation claim, a plaintiff must show: (1) she was engaged in statutorily protected activity; (2) the employer took adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action. *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 678 (Iowa 2004). No reported Iowa case, as far as diligent research can reveal, has ever held that exhaustion of administrative remedies is an element of a plaintiff's prima facie case.[1]

[1] Even if exhaustion of remedies is an element of a

To the contrary, exhaustion is generally understood to be an affirmative defense. *Shors v. Johnson*, 581 N.W.2d 648, 653 (Iowa 1998); *Tracy v. Coover*, 2011 WL 227629 at *6 (Iowa Ct. App. Jan. 20, 2011); *Traveler's Indem. Co. v. D.J. Franzen, Inc.*, 2009 WL 4842497 (Iowa Ct. App. Dec. 17, 2009) ("The doctrine of exhaustion of administrative remedies is an affirmative defense") vacated on other grounds by *Traveler's Indem. Co. v. D.J. Franzen, Inc.*, 778 N.W.2d 218 (Iowa 2010). The burden to show failure to exhaust administrative remedies, therefore, is the defendant's; the plaintiff bears no burden to preemptively plead and prove exhaustion. *See, e.g., Bowden v. United States*, 106 F.3d 433, 437 (D.C. Cir. 1997); *see also Donnelly v. Yellow Freight Sys., Inc.*, 874 F.2d 402, 411 (7th Cir. 1989).

Of great concern to *amici* is that the heightened pleading standard established in this case at the district court level is squarely at odds with the way exhaustion is treated in federal employment discrimination cases, as well as the broader

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discrimination claim, "an employment discrimination complaint need not include [specific facts establishing a prima facie case of discrimination]." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 (2002).

protections provided under the ICRA. In Title VII actions, failure to exhaust administrative remedies is an affirmative defense in the nature of a statute of limitations. *See Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997); *Hornsby v. United States Postal Serv.*, 787 F.2d 87, 89 (3d Cir. 1986). The defendant bears the burden of pleading and proving that the plaintiff has failed to exhaust administrative remedies. *Bowden v. United States*, 106 F.3d 433, 437 (D.C. Cir. 1997); *see also Donnelly v. Yellow Freight Sys., Inc.*, 874 F.2d 402, 411 (7th Cir. 1989) (defendant has burden of proof regarding its affirmative defenses in Title VII actions). For this reason, a Title VII plaintiff's failure to plead exhaustion is not sufficient grounds to warrant a dismissal. *Miles v. Bellfontaine Habilitation Ctr.*, 481 F.3d 1106, 1107 (8th Cir. 2007); *Rodriguez v. Cent. Sch. Dist. 13J*, 2012 WL 6756945 at *2 (D. Or. Nov. 14, 2012) (Title VII "does not require the plaintiff to *plead* exhaustion in order to satisfy the jurisdictional prerequisites to a Title VII action") (emphasis in original).

If allowed to stand, the district court's rule would impose a more burdensome pleading standard for claims brought under the

ICRA than those asserted under Title VII. That heightened burden would run counter to the contemporary understanding of the interplay between the two civil rights acts. The ICRA was passed in 1965 in an effort "to establish parity in the workplace and market opportunity for all." *Pippen v. State*, 854 N.W.2d 1, 9 (Iowa 2014). It was modeled after Title VII of the United States Civil Rights Act, and therefore, Iowa courts "traditionally turn to federal law for guidance in evaluating the [ICRA]." *Vivian v. Madison*, 601 N.W.2d 872, 873 (Iowa 1999).

In several important respects, however, the ICRA provides Iowans with broader protection against discriminatory employment practices. *Id.* at 873-74. Most importantly, the Iowa General Assembly has expressly declared that it "shall be construed broadly to effectuate its purposes." Iowa Code § 216.18(1). This directive is not mere surplusage. It "has had a substantive impact on the outcome of a case." *Goodpaster v. Schwan's Home Servs., Inc.*, 849 N.W.2d 1, 10 (Iowa 2014). In effect, it means that "the remedies afforded by the state civil

rights statutes require the 'widest constitutional application.'" *Pippen*, 854 N.W.2d at 28.

D. A Heightened Pleading Standard Undermines the Purpose of the Iowa Civil Rights Act Protections by Discouraging Reporting of Sexual Harassment

Allowing for the novel imposition of a heightened, technical pleading standard in this case will have the predictable effect of further deterring claims of sexual harassment and retaliation. This Court has recognized that "[a] primary purpose of the legislature in passing the Iowa Civil Rights Act was to place women on equal footing with men in the workplace." *Lynch v. City of Des Moines*, 454 N.W.2d 827, 834 (Iowa 1990) (citation omitted) (distinguished on other grounds by *McElroy v. State,* 703 N.W.2d 385 (Iowa 2005). "Where sexual harassment in the workplace is so pervasive and severe that it creates a hostile or abusive work environment . . . female employees are faced with a working environment different from that faced by men, a situation that the [ICRA] sought to remedy." *Id.* at 834-35.

For the ICRA's protections against sex discrimination to be effective, claims regarding sexual harassment and retaliation

which are colorable on their merits must be encouraged and a remedy must be accessible. Sexual harassment remains a pervasive problem that undermines the equality of women in the workforce and in society. It is estimated that ten percent of women leave jobs because they experience sexual harassment at work, and research suggests that more than half of women in the United States experience sexual harassment in the workplace. Barbara A. Gutek & Mary P. Koss, *Changed Women and Changed Organizations: Consequences of and Coping with Sexual Harassment*, 42 J. Vocational Behavior 28, 31-32 (1993); Chelsea R. Willness et al., *A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment*, 60 Personnel Psychology 127, 128 (2007) (hereinafter "*Consequences of Workplace Sexual Harassment*").

Sexual harassment can result in long-term harm to the mental and physical health of women, as well as their financial well-being. The harmful health effects of workplace sexual harassment include "sleeplessness, anxiety, depression, and lowered satisfaction with one's job and one's life." Beth A. Quinn,

The Paradox of Complaining: Law, Humor, and Harassment in Everyday Work World, 25 Law & Soc. Inquiry 1151, 1154 (2000). Sexual harassment "exerts a significant negative impact on women's psychological well-being and, particularly, job attitudes and work behaviors." Kimberly Schneider et al., *Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations*, 82 J. Applied Psychol. 401, 412 (1997). Some employees who experience sexual harassment even suffer symptoms of Post-Traumatic Stress Disorder. *Consequences of Workplace Sexual Harassment*, at 149 (discussing multiple studies).

Social science studies demonstrate that sexual harassment is already grossly underreported, because victims of sexual harassment fear retaliation in the workplace. Sexual harassment comes at a high price for workers who experience it, a price that is amplified by underreporting. All people face numerous structural barriers to reporting harassment and discrimination, including a "desire to maintain social relationships, the lack of power in the

workplace, and the fear of retaliation." Andrew Tae-Hyun Kim, *Culture Matters: Cultural Differences in the Reporting of Employment Discrimination Claim*s, 20 Wm. & Mary Bill Rts. J. 405, 425-26 (2011) (hereinafter "*Cultural Differences*"). Research shows that women in particular face additional structural barriers, which are further magnified among certain cultural groups. *Id.*

Unfortunately, fear of retaliation is well founded. Retaliation comes at a high price. It takes the forms of "lowered job evaluations, denial of promotion, and being transferred," with "the most assertive harassment responses . . . incurr[ing] the greatest [retaliation] costs." *Id.* In one study of a state's employees, 62% of the employees assessed reported some form of "retaliation for their responses to harassment." *Cultural Differences,* at 427-28, citing Louise F. Fitzgerald et al., *Why Didn't She Just Report Him?: The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 J. Soc. Issues 117, 118 (1995). In addition, those who report discrimination are perceived by those around them as "troublemakers," as "hypersensitive, emotional,

argumentative, irritating . . . and complaining." Cheryl R. Kaiser & Brenda Major, *A Social Psychological Perspective on Perceiving and Reporting Discrimination*, 31 Law & Soc. Inquiry 801, 818-819 (2006); Cheryl R. Kaiser & Carol T. Miller, *Stop Complaining! The Social Costs of Making Attributions to Discrimination*, 27 Personality and Social Psychol. Bull. 254, 255 (2001).

Evidence shows that women are well aware of these social and economic costs, and are constrained by them in reporting sexist remarks. J. Nicole Shelton & Rebecca E. Stewart, *Confronting the Perpetrators of Prejudice: The Inhibitory Effects of Social Costs,* 28 Psychol. Women Q. 215 (2004); Julie A. Woodzicka & Marianne LaFrance, *Real Versus Imagined Gender Harassment,* 57 J. Soc. Issues 15, 20-21. When victims of employment sexual harassment make a determination about whether to formally report the illegal behavior rather than use individual coping mechanisms like avoidance, they tend to make a careful calculation of the costs and benefits of reporting. Deborah A. Brake, *Retaliation*, 90 Minn. L. Rev. 18, 36 (2005).

The ICRA's purpose to eliminate discrimination on the basis of protected classes in the areas of employment, housing, credit, public accommodations, and education is frustrated by work and legal environments which foster underreporting. Against this backdrop of the myriad structural disincentives to reporting sex discrimination, including sexual harassment, stands the intent and purpose of the ICRA. Sexual harassment is an insidious form of sex discrimination that will not significantly decrease unless it is reported and, when appropriate, litigated. When employers fail to adequately address complaints or retaliate against employees who report it, litigants must turn to the Commission and subsequently to the courts to obtain a remedy. Meritorious cases simply should not be dismissed for a failure to meet technical pleading standards.

The Court has recognized these principles and the role of access to the courts in allowing the ICRA to achieve its purpose. In order to effectuate the purpose of the ICRA, the Iowa Supreme Court has allowed plaintiffs to bring cases even where the plain language of the statute would bar the claim. For instance, "[T]he

Lynch court found it appropriate to consider acts of harassment that occurred outside of the 180 day time limit for bringing discrimination claims under the Iowa Civil Rights Act." Frank D. Harty, *Sex Discrimination in Iowa: An Analysis and Critique*, 44 Drake L. Rev. 261 (1996), *citing Lynch v. City of Des Moines*, 454 N.W.2d 827, 831 (Iowa 1990) (distinguished on other grounds by *McElroy v. State,* 703 N.W.2d 385 (Iowa 2005) ("were we to hold that the court cannot consider incidents of sexual harassment which occurred outside the limitations period in sexually hostile work environment cases, a plaintiff would be forced to endure the hostile environment until sufficient incidents had occurred to show that the environment existed, but then might be precluded from proving a case because some incidents occurred outside of the limitations period.")

Of course, this case concerns sex discrimination, sexual harassment, and retaliation. *Amici* emphasize, however, that the heightened pleading standard applied below, if upheld on appeal, would apply to all other claims brought under the ICRA as well. This brief focuses on the harms caused by sexual harassment and

retaliation that primarily, but not solely, impact women. However, the arguments apply across the spectrum of classes protected by the ICRA. Fear of retaliation, as well as external pressures not to report discrimination, perpetuates underreporting of all forms of discrimination.

E. A Heightened Pleading Standard Will Have a Disproportionate Harm on the Ability of Pro Se Litigants to Obtain a Remedy in the Iowa Courts for Unlawful Discrimination

If the Court affirms a technical requirement that plaintiffs plead exhaustion of administrative remedies, pro se plaintiffs will be particularly impacted. Iowa courts have seen increasing numbers of citizens choosing to represent themselves in court proceedings. *See Report of the Joint Iowa Judges Assoc. and Iowa State Bar Assoc. Task Force on Pro Se Litigation* (May 18, 2005), http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/iowaprosetaskforcereport2005.authcheckdam.pdf. Pro se plaintiffs with civil rights claims are no exception. To be sure, "[t]he right to prosecute one's own case without assistance of counsel in fact depends significantly upon liberal pleading standards. The ability to file a 'short and plain statement

of the claim' mitigates the impact that the choice to proceed pro se has on litigants' access to discovery by reducing the number of technicalities and requirements the satisfaction of which demands legal expertise." Rory K. Schneider, *Illiberal Construction of Pro Se Pleadings,* 159 U. Pa. L. Rev. 586-87 (2011) (citing Charles E. Clark, *The New Federal Rules of Civil Procedure: The Last Phase—Underlying Philosophy Embodied in Some of the Basic Provisions of New Procedure,* 23 A.B.A. J. 976, 976-77 (1937) (commenting that liberal pleading rules were necessary to mitigate information asymmetries between plaintiffs and defendants that often led to premature dismissal of suits). A new pleading "rule" for ICRA claimants frustrates this fundamental principle to its core.

Iowa courts have recognized that pro se litigants are entitled to a liberal construction of their pleadings. *Knight v. Knight,* 525 N.W.2d 841, 843 (Iowa 1994). But if the Court holds that pleading of exhaustion of remedies is *required* under the ICRA (despite the absence of this requirement from the statutory text), pro se civil rights plaintiffs will no doubt face dismissal of their cases in

almost every circumstance. The heightened standard applied by the district court and urged by Appellees would be fatal to their claim, just at it would be for represented plaintiffs. This cannot be the desired outcome; Iowa courts should be striving to open the doors to justice, not close them based on technical pleading rules that go beyond the well-established notice pleading requirements of Iowa R. Civ. P. 1.402(2)(a).

The district court's judicially created heightened pleading standard for civil rights cases cannot be squared with the legislative directive that the ICRA be broadly construed. The ICRA was enacted in part to encourage the prosecution of discrimination claims, with the goal of reducing workplace discrimination in Iowa. For these reasons, the *amici* urge the Court to reject it.

II. THE STATE OF IOWA SHOULD BE ESTOPPED FROM SEEKING TO DISMISS ON EXHAUSTION GROUNDS

Finally, the State should be estopped from seeking dismissal on the basis that Anderson failed to plead exhaustion. Under Iowa law, the doctrine of judicial estoppel prohibits a party who has asserted a position in one proceeding from asserting an

inconsistent position in a subsequent proceeding. *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 166 (Iowa 2003). Although the doctrine is called "judicial" estoppel, it is equally applicable to administrative cases. *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 573-74 (Iowa 2006); Charles Alan Wright et al., *Fed. Practice and Procedure* § 4477 at 575 (2002) (judicial estoppel applicable to cases of inconsistent statements made to administrative agency). "The rationale for this principle is that ascertaining the truth is as important in an administrative inquiry as in judicial proceedings." *Winnebago Indus. Inc.*, 727 N.W.2d at 574 (internal quotations omitted).

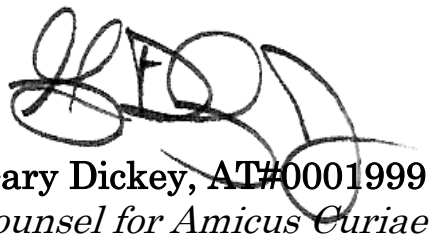
All the preconditions for the application of judicial estoppel are present in this case. The State does not dispute that Anderson actually exhausted her administrative remedies. (Br. in Supp. of Mot. to Dismiss at 5). The final step to exhaust administrative remedies is to obtain a right-to-sue letter from the Commission. In issuing the letter, the Commission is acting in its agency capacity on behalf of the State of Iowa. Not only would the State essentially have issued the very writing that completes the

exhaustion process, it presumably received a copy of the right-to-sue letter by virtue of being a named party to the complaint. Thus, even if a heightened pleading standard existed for civil rights claims, which it does not, such standard should not be applicable where the State is named as a defendant.

CONCLUSION

The *amici curiae,* the ACLU of Iowa and Iowa NELA, respectfully request that this Court reverse the district court's ruling because it instituted a heightened pleading standard for civil rights plaintiffs in contravention to the text and purpose of the ICRA and the Iowa Rules of Civil Procedure.

Respectfully submitted,



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