IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHEYANNE HARRIS, Applicant, v. STATE OF IOWA, Respondent.	Case No. PCCE090014 **MEMORANDUM OF AUTHORITIES IN SUPPORT OF RESISTANCE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Applicant Cheyanne Harris, by and through undersigned counsel and pursuant to Iowa Rule of Civil Procedure 1.981(3), respectfully submits this Memorandum of Authorities in Support of Resistance to Respondent State of Iowa's Motion for Summary Judgment.

INTRODUCTION

While the State's Motion is phrased in terms of earned time and deprivations of liberty, what it really argues is mootness. (State's Memorandum of Authorities in Support of Motion for Summary Judgment at 3, May 14, 2025 (D0035)). The State contends that by restoring the earned time it previously withdrew, it has mooted the case and left this Court without a remedy to offer Ms. Wright. Proceeding this way, the State fails to contend with the ramifications of its actions. Not only does it fail to explicitly acknowledge its wrongdoing or the harms it inflicted, it fails also

to recognize or respond to the well-known and plainly applicable exceptions to mootness: voluntary cessation and public interest. Either doctrine warrants the continuation of this case to a merits decision to resolve the important constitutional question and prevent the State from continuing in its unconstitutional practices. The harms suffered by Applicant will be suffered again, and it is time for the Court to intervene.

I. FACTUAL BACKGROUND

Cheyanne Harris has, at all relevant times, been incarcerated at the Iowa Correctional Institution for Women ("ICIW"). (Applicant's Statement of Additional Material Facts, ¶ 1 [hereinafter, "SAMF"]). While incarcerated, through good behavior, hard work, and active engagement with available rehabilitative programming, she had earned for herself a reduction of her sentence, called "earned time." (SAMF, ¶ 2); *See* Iowa Code § 903A.2(1)(*a*)(1)(*a*)–(e) (describing programs in which an inmate displaying good conduct may participate to earn a reduction of sentence, including employment programs, treatment programs, and educational programs). Participating in these programs is important to Amanda not only because of the potential for a sentence reduction, but more presently for the personal growth she experiences through them. (SAMF, ¶ 3). With respect to employment, prior to the discipline Cheyanne had obtained the position of Assistant Clerk at Iowa Prison Industries ("IPI"), where she excelled and learned skills necessary for administrative work. (SAMF, ¶ 3). She took college courses and enjoys drawing in her free time. (SAMF, ¶ 6). Cheyanne also put in the personal work necessary for her mental health and her sobriety; indeed, as she would explain to the Administrative Law Judge and to the Warden of ICIW, her sobriety means everything to her. (SAMF, ¶¶ 5, 48, 110).

Other currently incarcerated individuals at ICIW have similar stories. For example, Amanda Wright had been working a physically demanding housekeeping position but was looking forward to a new position as a mentor in the segregation unit. (SAMF, ¶¶ 9–11). She is qualified

and recommended for the position by her job supervisor, and she was excited to be a positive influence. (SAMF, ¶¶ 10–11). Additionally, Amanda is a diligent student, was attending both Des Moines Area Community College ("DMACC") with the support of a Pell Grant, and Grinnell, and had achieved a 4.00 GPA at both institutions. (SAMF, ¶¶ 13–14). Mo Fagan found a sense of accomplishment and growth through his barber apprenticeship. (SAMF, ¶ 18). Through these efforts and ongoing good behavior, both had also gained earned time. (SAMF, ¶¶ 8, 17).

All these rehabilitative efforts were lost when ICIW began a program of mass, suspicionless urinalysis ("UA") testing of inmates. (SAMF, ¶ 19). In short, without properly training its correctional officers or assessing them for competency in the role they were assigned, ICIW began UA testing incarcerated individuals *en masse*. (SAMF, ¶¶ 19, 36). Over three days in January 2024 alone, ICIW used immunoassay-based drug testing kits to test over 100 individuals. (SAMF, ¶ 50). This type of UA test, as Applicant's expert witness would testify, is prone to error and misinterpretation, particularly in the manner it was deployed here. (SAMF, ¶ 20–25). In a rushed setting where large numbers of inmates were being tested, ICIW staff failed to maintain appropriate sanitary measures and ignored chain of custody procedure, compromising the integrity of the samples. (SAMF, ¶¶ 32–37, 43, 62–64, 73–76). Gloves were not changed, collection receptacles were not sterilized, and documentation and accountability measures were absent. (SAMF, ¶¶ 43, 62–64, 73–76). This was an environment ripe for cross-contamination and even tampering. (SAMF, ¶ 36).

Moreover, even under ideal circumstances (which these were not), the results provided by the immunoassay-based tests used by ICIW are qualitative, meaning they purport to show whether or not certain antibodies are present in the sample, but they do not provide any information on the type or level of chemical components found. (SAMF, ¶ 22). This type of testing, accordingly, is

frequently associated with false positives based on the use of legitimately prescribed medications. (SAMF, ¶¶ 23–24). The inherent lack of context in results means that chemical components in legitimately prescribed medications may result in a "dirty drop" just as would prohibited substances, with no way of telling the difference. (SAMF, ¶¶ 22–23). This is why, in the treatment or laboratory settings, while an immunoassay test may be used in initial diagnosis of a trauma patient, further confirmation testing using more advanced testing methods are recommended to obtain the more accurate quantitative results. (SAMF, ¶¶ 25–27).

Other than the fact that they were serving time, Amanda Wright, Mo Fagan, or Cheyanne Harris did nothing that would warrant drug testing. (SAMF, ¶¶ 41, 66, 78). None exhibited any sign of intoxication, nor were they or their belongings found with any controlled substance or paraphernalia, nor had there been any reports, confidential or otherwise, of suspected drug use. (SAMF, ¶¶ 41–42, 65–66, 77–78). In fact, it was the opposite, as they would plead with the Warden of ICIW to only speak with the staff and supervisors who work with them on a daily basis, knowing these references would reject any claim of illicit drug use. (SAMF, ¶¶ 107, 110). Nevertheless, all were tested, and under the circumstances described above, all tests purportedly showed a "positive" result for controlled substances. (SAMF, ¶¶ 40, 61, 72). There was no confirmation testing allowed, nor even was a second immunoassay-based test performed. (SAMF, ¶¶ 47, 67, 79–80).

In any other civil case in Iowa, such as an employment matter, or indeed, in most other disciplinary institutions, including the Federal Bureau of Prisons, this "evidence" would not be sufficient for a factual finding of drug use let alone a legal finding of guilt. *See generally* Iowa Code § 730.5(7)(*a*)–(*m*) (mandating extensive requirements for workplace drug testing, including the preclusion of the possibility of sample contamination, adulteration, or misidentification, as well

as the right to request a confirmatory test); 28 C.F.R. 541.8(f) (proscribing a "greater weight of the evidence" standard of hearing decisions on discipline in the presence of conflicting evidence). The potential for false positive results in the UA test alone would likely require some amount of confirmatory evidence, if not a confirmation test then at least the presence of drugs or paraphernalia on their person or belongings, or even testimony of unusual behavior. However, as a matter of written policy, the Iowa Department of Corrections employs only a "some evidence" burden of proof[1] in its disciplinary proceedings. 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."). By this standard, "some"—textually, "any"—evidence is sufficient for finding a rule violation. Indeed, the *only* evidence submitted against Amanda, Mo, and Cheyanne, was a single UA test. (SAMF, ¶ 95). But under a "some evidence" standard, this was found sufficient in each case, notwithstanding their protestations that the results were inaccurate, attributable to their legitimately prescribed medications, or simply faulty. (SAMF, ¶¶ 95, 101–105).

These cases reveal the incredible scope of the some evidence burden of proof. Amanda, Mo, and Cheyanne, were all found to have violated rules that, on their face, have little to do with the evidence presented. The Department of Corrections has a specific rule—rule 20, possession of drugs or intoxicants—that includes a presumption of guilt on the basis of a positive urinalysis.

[1] Applicant uses the term "burden of proof" here to distinguish from a some evidence standard of review. The burden of proof referred to applies at the initial factfinding hearing, and allows the factfinder to assess guilt if *some* evidence supports the charge. This is different from the use of a "some evidence standard" of judicial review, in which the court will affirm the initial finding of guilt if some evidence supported the factfinder's determination. Sources may variously refer to a "some evidence standard of proof," or simply, a "some evidence standard." *See, e.g.*, *Hamdi v. Rumsfeld*, 542 U.S. 507, 537 (2004) (noting the "some evidence" standard of *Walpole v. Hill*, 472 U.S. 445, 454–55 (1985), is utilized "as a standard of review, *not* as a standard of proof" (emphasis added)). *See generally,* fn. 5, *infra.*

(SAMF, ¶ 89). Of course, it also states that "[a]ll testing done for drugs or intoxicants must conform to the requirements of IDOC Policy IO-SC-21, *Incarcerated Individual Substance Abuse Testing*." (SAMF, ¶ 89). Only Cheyanne was charged with violating this rule, but the ALJ never received any evidence regarding the requirements of the drug testing policy. (SAMF, ¶¶ 81–82, 97). Amanda and Mo, meanwhile, were both charged with violating rule 21—a "medication violation." (SAMF, ¶¶ 81, 84). This rule prohibits inmates from failing to follow self-administered medication directions, storing or sharing medication, or being absent from a scheduled medication line or medical appointment (an "attendance" violation). (SAMF, ¶ 84). More bizarrely, they were not charged and found guilty of the same type of medication violation; Amanda was alleged to have committed a class C "non-attendance" medication violation, and Mo a class D "attendance" violation. (SAMF, ¶¶ 84–86, 103, 105). All, including Cheyanne, were also charged and found guilty of violating rule 29, which is not possession, but being found to be intoxicated. (SAMF, ¶¶ 87, 103–105). Rule 29, unlike rule 20, does not contain a presumption of guilt on the basis of a urinalysis test. (SAMF, ¶ 88). Nevertheless, the some evidence burden of proof allowed the State to prevail: an ALJ found each guilty of violating these major disciplinary rules despite there being no meaningful relationship between the alleged violations and the evidence offered. (SAMF, ¶¶ 103–105).

The consequences were swift and severe. All three obviously lost earned time. (SAMF, ¶¶ 103–105). All three spent time in administrative segregation. (SAMF, ¶¶ 40, 61, 72). But the other consequences were almost worse. Cheyanne, after working hard to make Assistant Clerk, had to move to laundry. (SAMF, ¶¶ 122–23). Cheyanne also keenly felt the personal cost of a major disciplinary report; to Cheyanne, being accused of a relapse when she had fought so long to maintain her sobriety was an immense loss, and she describes the difference in the way the COs

looked at her after as "unbearable." (SAMF, ¶ 139). For Amanda, discipline meant she was prohibited from attending her ongoing college courses. (SAMF, ¶ 115). Her hard-earned GPA slid from 4.00 to 2.40 due to her forced non-attendance. (SAMF, ¶ 116). Piling on, this resulted in her losing eligibility for her Pell Grant, and, once withdrawn, she was charged $970 for the now unpaid tuition and was no longer eligible for future Pell Grants. (SAMF, ¶¶ 117–118, 126). Like Mo and Cheyanne, her job classification was also changed. (SAMF, ¶¶ 119, 120, 122). Instead of the $0.59/hour mentor job she sought, Amanda remained in the physically demanding housekeeping job at $0.38/hour. (SAMF, ¶¶ 119–120). Mo was removed from his barber apprenticeship, stalling him from this long-sought goal. (SAMF, ¶ 121).

As the State will emphasize, it has since restored the lost earned time and expunged the disciplinary reports from the record. (SAMF, ¶ 131). It did so without acknowledging its mistake or taking accountability for the policies that made it possible. (SAMF, ¶¶ 133–34). Without explanation, the Warden writes, for each, simply that "[u]pon further review . . . , dismissal and expungement is proper." (SAMF, ¶¶ 132–33). The State does not claim to have notified ICIW staff of the error, implemented any changes to the manner in which drug testing is conducted or staff trained, or otherwise put in place procedures to guard against relying on erroneous UA results in the future.

This leaves the door wide open for future discipline on similarly inadequate evidence. Indeed, after the expungement, Mo only narrowly, and then only thanks to the advocacy of certain ICIW staff and no small amount of luck, avoided a repeat. (SAMF, ¶¶ 147–59). Throughout the case, ICIW has continued its policy of mass UA testing with immunoassay-based tests. (SAMF, ¶ 137). First thing in the morning on June 1, Mo was called with approximately 30 other individuals from various units for a random UA. (SAMF, ¶¶ 147, 149). Mo has continued taking his

legitimately prescribed medication and does so at night before bed. (SAMF, ¶¶ 148, 150). Taking the sample from his first urine of the day, a potential positive for benzodiazepines was indicated, just as it had in January 2024. (SAMF, ¶¶ 72, 152). Thankfully, the CO performing the test knew of Mo's prior experience and suspected this was also a false positive. (SAMF, ¶ 153). The CO consulted with the captain, who agreed, and despite the test, Mo was released to his unit. (SAMF, ¶ 154). But merely an hour or two later, the unit manager on duty overrode the decision. (SAMF, ¶ 155). Mo was called back. (SAMF, ¶ 155). At this point, there was nothing to stop ICIW from placing Mo in administrative segregation and initiating disciplinary proceedings, which, past experience shows, would culminate in major discipline. But the CO, apparently acting independently and contrary to the unit manager's wishes, had Mo take a second UA. (SAMF, ¶¶ 156–58). This second test was negative. (SAMF, ¶ 157). Mo was released to his unit, but is now considering changing medications to lessen the risk of future incidents. (SAMF, ¶ 160). Unfortunately, changing medications is not an easy process. Cheyanne, fearing future false positives and repeat accusations of relapse, worked with her treating physician to find a medication that would meet mental health needs while being less likely to cause a false positive. (SAMF, ¶¶ 140–42). This led to months of struggling through poor mental health while her body had to adjust. As she explains, she "would not wish that on anyone." (SAMF, ¶¶ 144–45). Amanda, for her part, has simply stopped taking most of her medications. (SAMF, ¶ 146).

Separate from the drug testing process, the "some evidence" burden of proof remains Department policy for disciplinary decisions, allowing—mandating—future discipline against Applicant and others on little basis for any major offense.

II. PROCEDURAL BACKGROUND

On December 20, 2023, a Disciplinary Notice was entered against Cheyanne Harris, charging possession/manufacture of drugs, intoxicants, and being intoxicated or under the

influence. (SAMF, ¶ 82); (Disciplinary Notice - Wright, App. 51). The investigation into the charges consisted solely of the Test Result Record and photographs appearing to show the UA test kit. (SAMF, ¶¶ 95, 99); (Investigation of Violations – Harris, App. 52–55). Cheyanne pled not guilty at the hearing before the ALJ, testifying that her "sobriety is all [she] has" and she "is still trying to understand how [the test result] can be positive." (SAMF, ¶ 102); (Hearing Decision – Harris, App. 56). By decision dated January 8, 2024, the ALJ, making "findings of fact applying the 'some evidence' standard of proof," concluded "Harris did… submit a urine sample resulted in a positive indication" and was, therefore, guilty of a class B possession and a class B violation of being intoxicated or under the influence. (SAMF, ¶¶ 101, 104); (Hearing Decision - Harris, pp. 1–2, App. 56–57). Cheyanne appealed to the Warden of ICIW, offering to submit to any further testing necessary to prove her innocence and asking the Warden to consult with "COs who have watched me grow and change during my stay here" to verify her sobriety. (SAMF, ¶¶ 108–10); (Appeal to Warden - Harris, pp. 1–3, App. 58–60). The Warden affirmed the decision. (SAMF, ¶ 112); (Disciplinary Appeal Response - Warden, No. 20231009345, App. 61).

On March 28, 2024, Cheyanne filed an Application for Postconviction Relief, pro se. The State filed an Answer on May 17, 2024, to which the State appended as Exhibit A all "the nonconfidential record or portions thereof that are material to the questions raised." This consisted of sentence and time computations, the Disciplinary Notice and Investigation of Violations detailing the UA test, the Hearing Decision itself, and Cheyanne's written appeal to the Warden, along with the Warden's response and two departmental policies, IO-RD-01 and IO-RD-03. It did not include the Iowa Department of Corrections policy governing drug testing, which the ALJ did not appear to have reviewed. (SAMF, ¶ 97). Following the appearance of counsel for Applicant, an Amended Application for Postconviction Relief was entered after proper motion for leave.

The Application asserts three grounds for relief: (1) a violation of due process under the state and federal constitutions, in that the use of a "some evidence" burden of proof by the ALJ does not meet minimum guarantees of procedural due process; (2) a violation of Iowa Code, in that section 903A.3(1), in authorizing the revocation of earned time "[u]pon finding that an inmate has violated an institutional rule," inherently requires such finding be upon a preponderance-of-evidence or more-likely-than-not standard; and (3) insufficient and unreliable evidence, in that the State failed to meet even the some evidence burden of proof due to the unreliability of the evidence presented and the insufficiency of that evidence to support the rules charged. Pursuant to Iowa Code chapter 822, the relief requested includes (1) a finding that the ALJ's application of a some evidence burden of proof deprived Applicant of due process; (2) a finding that the ALJ's application of a some evidence burden of proof violated Iowa Code; and (3) reversal of the ALJ's decision, restoration of all earned time, expungement of the disciplinary record, and such other and further relief necessary to restore Applicant's privileges at ICIW. Alternatively, the Application requests remand for rehearing by the ALJ using a lawful standard of proof.

Amanda and Mo similarly filed applications for postconviction relief on these grounds. These cases are designated PCCE090035 and PCCE090131, respectively, and are proceeding before this same Iowa District Court for Polk County, though presently assigned to different judges. The Applicants sought to have their cases consolidated for trial, which was denied by the Court in this case. A reconsideration motion, which included an expert report obtained by the Applicants as an exhibit, was similarly denied.

Thereafter, the Applicants sought discovery through interrogatories, requests for production, and requests for admission. Applicants filed motions to compel, which the State resisted, claiming an intent to produce the requested discovery materials. Noting the State's

commitment to providing discovery requests, the motion was deemed withdrawn in this case, with authorization to file a new motion to compel following review of the discovery responses. The State then provided answers to Applicants' requests for admission, but did not provide responses to interrogatories or requests for production.

While the parties were engaged in this process and the State ostensibly was working on its responses to discovery, the Warden issued its decision to restore the Applicants' lost earned time. (SAMF, ¶ 131). The State thereafter filed motions for summary judgment in each matter on identical grounds.

III. GOVERNING LEGAL STANDARD

Iowa Code sets out the standard for summary disposition of PCR proceedings as follows:

> The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Iowa Code § 822.6(3). "The goal of that provision 'is to provide a method of disposition *once the case has been fully developed by both sides*, but before an actual trial.'" *Linn v. State*, 929 N.W.2d 717, 730 (Iowa 2019) (quoting *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002) (emphasis in original)). In light of this goal and the provision of Iowa Code making the ordinary rules of civil procedure applicable to PCR actions, *see* Iowa Code § 822.7, the requirements of summary judgment under Iowa Rule of Civil Procedure 1.981 apply to summary disposition by motion of either party in a PCR action. *Hines v. State*, 288 N.W.2d 344, 346 (Iowa 1980); *see also Moon v. State*, 911 N.W.2d 137, 142 (Iowa 2018) ("We apply our summary judgment standards to summary disposition of postconviction-relief applications.").

In short, for "a summary disposition to be proper, the State must be able to prevail as if it were filing a motion for summary judgment in a civil proceeding." *Schmidt v. State*, 909 N.W.2d

778, 784 (Iowa 2018). As in a civil proceeding, the entire record must be viewed "in the light most favorable to the nonmoving party," the Applicant. *Linn*, 929 N.W.2d at 730 (quoting *Bass v. J.C. Penny Co.*, 880 N.W.2d 751, 755 (Iowa 2016)). The Applicant is also given "every legitimate inference reasonably deduced from the record." *Id.* As the moving party, "[t]he burden of showing undisputed facts entitling [it] to summary judgment rests with" the State. *Id.*

IV. ARGUMENT

While summary disposition by motion of the parties is intended to apply *after* "the case has been fully developed," *Linn*, 929 N.W.2d at 730 (quoting *Manning*, 654 N.W.2d at 559 (emphasis omitted)), the State is using it to try to cut development short. But for the Warden's restoration of Applicant's lost earned time, there is no doubt this case and its companions would be progressing to an eventual trial after the conclusion of a disputed discovery process. This discovery process would fully explore ICIW's use of immunoassay-based UAs in suspicionless, mass drug testing. (SAMF, ¶¶ 19–37). Applicants believe it would reveal extensive potential for injustice and abuse, and even admissions by ICIW that the methods employed are faulty and yield erroneous results. (*See, e.g.*, SAMF ¶¶ 55–56). Moreover, a trial based on these developed facts would finally resolve *the* legal issue that confronts every incarcerated individual in Iowa who defends themselves against an unfounded accusation of violating a disciplinary rule. The "some evidence" burden of proof, a relic of misinterpreted legal precedent,[2] intentionally encourages arbitrary decisionmaking in disciplinary proceedings. (*See, e.g.*, SAMF ¶¶ 97–105). Because of this rule, and the highly deferential "some evidence" *standard of review* on judicial review, disciplinary proceedings have become a *pro forma* exercise in futility for the accused, who, no

[2] *See* fn. 5, *infra*.

matter how much evidence they might muster in a limited time while confined in administrative segregation, cannot possibly rebut even the slimmest of cases against them.

The State's Motion confronts none of this. The State's Motion, without saying the word, is about mootness. Relying on limitations in prisoners' right to appeal disciplinary action, the State argues Applicant's redressable injuries have been cured. After citing a litany of unrelated cases rejecting inmates' claims of due process violations on various grounds, *see, e.g.*, *Drennan v. Ault*, 567 N.W.2d 411, 414 (Iowa 1997) (assessing whether a deprivation triggers a due process right to review requires finding the deprivation an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995))), this "no harm, no foul" Motion is captured by its single, concluding sentence:

> Simply put, the Court is without jurisdiction over this case since all earned time Applicant lost as a result of the discipline at issue herein was restored . . . and the entire discipline has been expunged from Applicant's prison records i.e. Applicant lost no earned time as a result of the discipline at issue herein nor was she substantially deprived of a liberty nor property interest.

(State's Memorandum of Authorities, p. 3 (D0035)). But this offers no meaningful assurance to Amanda, Mo, Cheyanne, or any other Iowan incarcerated now or in the future, whose earned time and other hard-earned privileges may be taken just as easily as the State claims to have given them back. (SAMF, ¶ 137). This leaves individuals like Cheyanne, Amanda, and Mo to put their own health at risk by making changes to their medications in an attempt to ward off potential false positives. (SAMF, ¶¶ 139–46, 160).

The State doesn't just refuse to provide any guarantee against future major disciplinary action on "some evidence," it continues doing it. Worse, as granting the State's Motion would prove, if a challenge to this unconstitutional action ever does approach judicial review of the merits, the State may simply continue to "undo" the discipline, moot out the case, and impose new discipline on similarly dubious grounds.

This is precisely the situation for which exceptions to mootness have arisen. In Iowa, the courts are not limited to the cases and controversies clause of the U.S. Constitution, but are of general jurisdiction and authority, giving them greater leeway than federal courts of limited jurisdiction. *See Federal Bureau of Investigation v. Fikre*, 601 U.S. 234, 240–41 (2024); *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (noting "standing under federal law is fundamentally derived from constitutional strictures not directly found in the Iowa Constitution"); *cf. Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 162 (4th Cir. 2021) ("The mootness doctrine is rooted in the case-or-controversy limitation on federal judicial power . . . ."). "Mootness" in Iowa courts, therefore, "is not a question of power but rather one of restraint." *Rush v. Ray*, 332 N.W.2d 325, 326 (Iowa 1983). The question is not, as the State has phrased it, whether this Court has "jurisdiction" to hear the dispute; rather, it is whether this Court will hear the case notwithstanding the changed circumstances. *See Riley Drive Entertainment I, Inc. v. Reynolds*, 970 N.W.2d 289, 296 (Iowa 2022) ("We have the ability to hear moot cases in appropriate circumstances."). Under the doctrines of voluntary cessation and public interest, it should.

A. <u>The State Is Engaging in "Strategic Mooting."</u>

"The voluntary-cessation doctrine exists to stop a scheming defendant from trying to 'immunize itself from suit indefinitely' by unilaterally changing 'its behavior long enough to secure a dismissal' and then backsliding when the judge is out of the picture . . . ." *Boston Bit Labs, Inc. v. Baker*, 11 F.4th 3, 10 (1st Cir. 2021) (quoting *Town of Portsmouth, R.I. v. Lewis*, 813 F.3d 54, 59 (1st Cir. 2016) (cleaned up)). At no point in its three-page Memorandum of Authorities does the State offer any explanation for *why* the discipline was expunged. This silence is telling and leads only to the legitimate inference that the discipline was expunged because the case was nearing the merits.

The voluntary cessation doctrine, though not yet recognized (nor rejected) by Iowa courts, "is frequently applied by federal courts," notwithstanding their limited jurisdiction. *Riley Drive*, 970 N.W.2d at 296 (declining to apply voluntary cessation doctrine on grounds exception does not apply to natural cessations of unlawful conduct unrelated to the litigation or a desire to thwart judicial review); *see also Fikre*, 601 U.S. at 241 ("A live case or controversy cannot be so easily disguised [by strategic mooting], and a federal court's constitutional authority cannot be so readily manipulated."). It is a "stringent" test—not against the plaintiff, but against the defendant. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000); *see also Lighthouse Fellowship Church*, 20 F.4th at 163 ("[I]t is not easy to make a sufficient showing that the voluntary cessation exception does not apply . . . ."). The well-settled assumption is that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Before the case will be moot, "subsequent events" must make "it 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 defendant bears this "heavy burden of persuasion"; it is not the plaintiff's responsibility to show the behavior will recur. *Friends of the Earth*, 528 U.S. at 189 ("The 'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." (quoting *Concentrated Phosphate*, 393 U.S. at 203)); *see also Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006) (rejecting state's claim of mootness under voluntary cessation doctrine and finding state failed to "meet the 'heavy burden'").

While it may have expunged *this* discipline,[3] the State has not submitted any other efforts into evidence that might meet its burden. Indeed, the State is defiant. ICIW *will* continue to engage in suspicionless drug testing using immunoassay-based tests. (SAMF, ¶¶ 137–38). Indeed, in the short time since it expunged the Applicants' discipline in these cases, it has *already* conducted another such test at Mitchellville. (SAMF, ¶¶ 147–60). The Department of Corrections *will* continue to impose discipline based on the some evidence standard of proof. The State is not just "free to return to its old ways," *Aladdin's Castle*, 455 U.S. at 289 n. 10, they never actually ceased. It is only that record of this specific discipline, a year and a half after the fact, was expunged.

The voluntary cessation doctrine has been applied by state and federal courts to counteract other attempts by correctional facilities to moot out challenges to discipline. For example, there is *Stano v. Pryor*, in which an inmate challenged the imposition of a fine and discipline as a violation of his due process rights. 372 P.3d 427, 429 (Kan. Ct. App. 2016). After the court ordered an evidentiary hearing on the matter, the state promptly rescinded the fine and moved to dismiss on

[3] To be clear, Applicant does not concede this case is, at the outset, "moot." The violation of her rights has occurred and was completed at the time the discipline was imposed without due process, giving rise to the claim notwithstanding the reversal of the penalty unconstitutionally imposed and entitling her, at a minimum, to nominal damages. (SAMF, ¶¶ 101, 104). *See Burns v. PA Dept. of Correction*, 544 F.3d 279, 284 (3d Cir. 2008) ("[A] procedural due process violation is complete at the moment an individual is deprived of a liberty or property interest without being afforded the requisite process."); *see also Carey v. Piphus*, 435 U.S. 247, 266–67 (1978) (denial of procedural due process actionable even without proof of actual injury); *Hughes v. City of Cedar Rapids*, 840 F.3d 987, 993 (8th Cir. 2016) ("allegations that the procedure is inadequate . . . sufficiently establish[] standing"). But acknowledging limitations on the relief available to her in this prerequisite postconviction relief proceeding, *see* Iowa Code § 822.2(2); *see also 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))), Applicant focuses on the clearly applicable exceptions to mootness. That said, the experience of segregation, like the lost work opportunities and the reputational damage of being accused of a relapse, can never be "expunged," and remain unrecompensed. (SAMF, ¶¶ 122–24, 129–30, 139).

the grounds the case was moot. *Id.* While the district court granted this motion, the appellate court, relying on the voluntary cessation doctrine, reversed. *See id.* at 431. The state's rescission of the fine "only after litigation was commenced" failed to give "a reasonable expectation that such an occurrence would not recur." *Id.* "In fact," the court said,

> if we were to allow the rescission of a fine in such situations to moot a case after it has been filed, it would seem to have the opposite effect and give every correctional facility in the state an incentive to impose a fine in a disciplinary case, safe in the knowledge that any court action brought by an inmate to challenge such fine could be mooted.

Id. "This," the court said, "strikes us as intolerable." *Id.* ("[E]very correctional facility must be convinced of the appropriateness of imposing a fine on an inmate *before* doing so, and such facility *should not be allowed to retreat simply because the inmate files a lawsuit*." (emphasis added)). The Court of Appeals of Kansas was not alone in reaching this decision in this context; in support it noted at least two federal circuits that had similarly applied the voluntary cessation doctrine to hear inmate due process claims purportedly mooted by the state's rescission of the discipline. *See Burns v. PA Dept. of Correction*, 544 F.3d 279, 284 (3d Cir. 2008) (noting the timing of the state's letter committing not to deduct funds from an inmate account as a result of a disciplinary incident, after oral argument, gave pause in whether "there is no reasonable expectation that the violation will recur" (quoting *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979) (cleaned up)); *Whitmore v. Hill*, 456 Fed. Appx. 726, 729 (10th Cir. 2012) (rejecting prison's argument that no property interest is implicated because deduction of inmate's funds has not yet occurred, finding, "[t]here is no indication that prison officials would not have deducted the fines, had they not been rescinded during the administrative and judicial review process."). In short, it is not unusual for a

correctional facility to withdraw discipline once confronted by litigation,[4] and it is not unusual either for a court to reject the attempt.

Under the voluntary cessation doctrine, the Applicants remain entitled to a determination of the legality of the practice; a finding, as requested for relief, that the State violated their constitutional and statutory rights, thus prompting a *real* cessation of the practice.

B. <u>The Issues Presented Are of Public Importance and Likely to Recur.</u>

Another exception to mootness, "well-established in Iowa," is the "public-importance exception." *Riley Drive*, 970 N.W.2d at 298; *see also In re Guardianship of Kennedy*, 845 N.W.2d 707, 711 (Iowa 2014) ("An exception to the general rule against deciding moot cases exists where matters of public importance are presented and the problem is likely to recur." (quoting *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001) (cleaned up))). There are four factors for the Court to consider in determining whether to exercise this discretion:

> (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.

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[4] It is not even unusual for *this* state to withdraw discipline mid-litigation, as can be seen by the three separate cases arising from ICIW, as well as a past case involving the same counsel as these matters. In *Atwell v. State*, PCCV007332, another postconviction relief action arising out of prison discipline and asserting violations of procedural due process rights, after the service of discovery requests but before providing any discovery response, the warden unexpectedly, and as here, without explanation, dismissed the disciplinary report and credited back the earned time lost. (Exhibit A to Dismissal Without Prejudice (D0015) (Jones Cty. Dist. Ct., April 28, 2023)).

As a general matter, the facts presented here and others of which the Court can take judicial notice, *see* Iowa R. Evid. 5.201(b)(1)-(2), adequately establish application of the voluntary cessation or public importance exceptions, particularly in light of the State's failure to present evidence on the issue of the possibility of recurrence. Notwithstanding, to the extent additional facts may be necessary, Applicant notes its discovery requests remain pending. This Motion for Summary Judgment is at the State's initiative, and it bears the burden of establishing the absence of a genuine issue of material fact, including on the issue of mootness. *Linn*, 929 N.W.2d at 730; *see also Federal Bureau of Investigation v. Fikre*, 601 U.S. 234, 244 (2024) (affirming denial of motion to dismiss for mootness while noting potential for additional factual development).

Homan v. Branstad, 864 N.W.2d 321, 330 (Iowa 2015) (quoting *Maghee v. State*, 773 N.W.2d 228, 234 (Iowa 2009)).

Like the voluntary cessation doctrine, the public-importance exception to mootness is familiar to the prison disciplinary and due process contexts and is regularly applied in Iowa and elsewhere. *See Maghee*, 773 N.W.2d at 235 (postconviction relief challenge to revocation of prisoner's work release allowed to continue notwithstanding prisoner's death); *Rhiner v. State*, 703 N.W.2d 174, 177 (Iowa 2005) (postconviction relief challenge to revocation of parole allowed to continue notwithstanding subsequent parole); *In re M.T.*, 625 N.W.2d at 705 (due process challenge to involuntary civil commitment hearing procedures allowed to continue notwithstanding patient no longer being subject to treatment order challenged); *Roth v. Reagen*, 422 N.W.2d 464, 466 (Iowa 1988) (due process and equal protection challenge to placement on sex offender registry allowed to continue notwithstanding expungement from registry); *Wilson v. Farrier*, 372 N.W.2d 499, 501 (Iowa 1985) (postconviction relief challenge to imposition of prison discipline allowed to continue notwithstanding parole); *see also In re Sodersten*, 53 Cal. Rptr. 3d 572, 610 (Cal. Ct. App. 2007) ("Where questions of general public concern are involved, *particularly in the area of the supervision of the administration of criminal justice*, we may reject mootness as a bar to a decision on the merits." (quoting *In re Walters*, 543 P.2d 607, 744 (Cal. Supr. Ct. 1975) (en banc))). Indeed, it was the related question of due process and the some evidence standard of judicial review—though not the some evidence burden of proof at the administrative level as here—that was at issue in the postconviction relief action in *Wilson*, and, though the applicant had been paroled while the case progressed, the court "view[ed] the basic underlying question . . . as one of public importance" meeting the exception to mootness. 372 N.W.2d at 501.

So too, here. This case "presents an issue of general applicability that is likely to reoccur." *Maghee*, 773 N.W.2d at 235. Prisoners are frequently disciplined for alleged rule violations, "and challenges to such [discipline] inevitably arise." *Id.* The regularity with which the State conducts inmate drug testing and relies on it to impose discipline makes it very apparent that this issue will reoccur, as Mo himself nearly experienced after just receiving the expungement of his past discipline. (SAMF, ¶¶ 38, 51 (Cheyanne tested twice in two months)); (SAMF, ¶¶ 57, 60 (Amanda tested twice in six months)); (SAMF ¶¶ 147–49 (Mo tested twice in three months, most recently after expungement and nearly leading to discipline)). "Certainly," therefore, "it is desirable to have an authoritative adjudication as to" the burden of proof that should apply to such disciplinary proceedings. *See id.*; *see also In re M.T.*, 625 N.W.2d at 705 ("Because such hearings," in that case, civil commitment, "are a daily occurrence, questions about the proper procedures to be followed . . . are likely to reoccur.").

The only available adjudication of this constitutional due process issue is that adopted in *Backstrom v. Iowa Dist. Ct. for Jones County*, 508 N.W.2d 705, 710–11 (1993), which was wrongly decided and has been undermined by the passage of time,[5] *see Planned Parenthood of the*

[5] Briefly and without attempting to present an exhaustive list of reasons for this, *Backstrom* was made over a dissent, *see Backstrom*, 508 N.W.2d at 711–12 (Carter, J., dissenting), a position that would gain support from other members of the court formerly in the majority in later cases. *See Marshall v. State*, 524 N.W.2d 150, 152–53 (Iowa 1994) (Neuman, J., dissenting in part) (on "[f]urther reflection," including review of a subsequent Vermont Supreme Court ruling persuasively adopting opposite reasoning in *LaFaso v. Patrissi*, 633 A2d 695, 697–70 (Vt. 1993), two more justices joined in dissent). It was based on an interpretation of a U.S. Supreme Court case the Court itself has since called into doubt. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 537 (2004) (noting the "some evidence" standard of *Walpole v. Hill*, 472 U.S. 445, 454–55 (1985), is utilized "as a standard of review, *not* as a standard of proof" (emphasis added)). This interpretation has since been rejected by multiple federal circuit courts and state supreme courts. *See Brown v. Fauver*, 819 N.W.2d 395, 399 n. 4 (3d Cir. 1987) ("In *Hill*, the 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."); *Carillo v. Fabian*, 701 N.W.2d 763, 775–76 (Minn. 2005) ("We agree with the prevailing view and conclude that *Hill* addressed only the appropriateness of 'some evidence' as a standard of appellate review, not a standard of proof.").

Heartland, Inc. v. Reynolds, 975 N.W.2d 710, 773 (Iowa 2022) (noting the limited applicability of stare decisis in constitutional matters and ability to overrule precedents under certain circumstances). The guidance from a new decision would benefit not just those who are now or in the future may serve time in an Iowa correctional facility, for whom the consequences of disciplinary action are far reaching, (SAMF, ¶¶ 114–30), but also the prison officials charged with implementing this policy themselves. *See Maghee*, 773 N.W.2d at 235 ("Public officials as well as prisoners would benefit from . . . guidance [as to the method of challenging work release transfers]."). Moreover, with "earned-time credits, work release, and parole," many challenges to prison discipline "could be rendered moot by the inmate's release prior to the resolution of an appeal." *Id.*

Accordingly, the public-interest exception to mootness is uniquely applicable to this case. Far from being "without jurisdiction," as the State contends, this Court has the discretion, authority, and duty to hear this case and allow it to proceed so that the parties may develop a record on the underlying issue of public importance.

And it is strongly criticized by both national and state legal commentators, *see* ABA, *Standard for Criminal Justice: Treatment of Prisoners* 23-4.2 cmt. (3d ed. 2011), https://tinyurl.com/yhkbbpwy ("The Standard rejects the [some evidence burden of proof]. The result of the [some evidence burden of proof] 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] as some point in the future.").

Given the some evidence burden of proof allowed the imposition of discipline on rule violations that should not have applied and despite the complete lack of evidence apart from a single UA test taken in unsanitary conditions and likely giving a false positive, (SAMF, ¶¶ 36–37, 98–105), this case—and the related cases from the testing at ICIW—present a prime opportunity for the Iowa Supreme Court to reconsider this well-eroded precedent.

CONCLUSION

Declaring this case "moot" based on the unexplained expungement of discipline would sanction a strategy of arbitrarily imposing discipline in violation of incarcerated individuals' due process rights, "safe in the knowledge that any court action" challenging these infringements "can be mooted." *Stano*, 372 P.3d at 429. Instead, Iowa prison officials should be sure that discipline is appropriate *before* they enter it, and not be permitted to evade responsibility simply by expungement "[u]pon further review." (SAMF, ¶ 131). Granting the State's Motion would also ensure this issue of public importance, the burden of proof applicable in prison disciplinary proceedings at the administrative level, would remain in stasis, leaving Iowa the outlier it is in this regard. Both the voluntary cessation doctrine and the public-importance exception to mootness are available to ensure this Court, and any appellate courts to follow, do not permit this result.

For these reasons, Applicant Cheyanne Harris respectfully requests this Court deny Respondent State of Iowa's Motion for Summary Judgment and grant all such other and further relief as this Court deems just.

Respectfully submitted,

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ATTORNEYS FOR APPLICANT

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties of record via EDMS on June 13, 2025.

/s/ Thomas Story
Thomas Story