LEGISLATIVE SERVICES AGENCY

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In This Edition

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Tuesday, November 13, 2018

Administrative Rules Review Committee

9:00 a.m., Room 103, Sup. Ct. Chamber

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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee
Chairperson: Senator Mark Chelgren
Vice Chairperson: Representative Dawn E. Pettengill
Location: Room 103, Supreme Court Chamber
Date & Time: Tuesday, November 13, 2018, 9:00 a.m.
LSA Contacts: Jack R. Ewing, Legal Services, 515.281.6048; Amber Shanahan-Fricke, Legal Services, 515.725.7354
Agenda: To be announced.
Internet Site: https://www.legis.iowa.gov/committees/committee?endYear=2018&groupID=705

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 9, 2018

Co-chairperson: Senator Mark Chelgren
Co-chairperson: Representative Dawn Pettengill

DEPARTMENT OF HUMAN SERVICES, Subsidized Adoptions, 9/26/18 IAB, ARC 4033C, NOTICE.

Background. These amendments formalize the ability of the department to assess and suspend a family's use of adoption subsidy funds if concerns are brought forward that the adoptive child is not being supported. Payments would be suspended during the department's review and would be reinstated if the family is found to be supporting the family's adoptive child or if the family agrees to provide documentation that the family is providing appropriate support and provides that documentation. These amendments would allow the department to terminate the subsidy agreement if the family is not supporting the adoptive child and will not agree to provide and document support for the adoptive child.

Commentary. Department representatives Ms. Nancy Freudenberg and Ms. Janee Harvey reviewed the rulemaking and responded to inquiries from the committee. In response to a concern by committee members that aid may be suspended upon a complaint prior to an investigation, Ms. Freudenberg stated that payments would not be suspended or terminated until an allegation is determined to be founded. Ms. Harvey confirmed that these rules are possible under a new federal policy to provide for suspension of the adoption subsidy payment rather than a limited choice between continuation or termination of benefits. Ms. Harvey explained that an adoption subsidy is provided to the adoptive parent with the intention that it be used for the needs of the child.

Upon inquiry from committee members, Ms. Harvey clarified that an adoption subsidy is provided to parents in approximately 95 percent of adoptions of children out of foster care.

Committee members inquired who would be the decision maker on withdrawing the subsidy. Ms. Harvey indicated that a department social worker would make the decision based upon policies and procedures, which are set forth in a manual. Ms. Harvey indicated that the parents would need to demonstrate documentation of financial support.

Committee members inquired what documentation is required to defend an allegation that an adoption subsidy is not being used to financially support a child. Committee members mentioned that they were aware of examples of baseless complaints being made against adoptive parents. Committee members were concerned that adoptive parents were going to be micromanaged to such a degree that it would take away any incentive to adopt. Ms. Harvey provided examples of documentation. In response to an inquiry from committee members, Ms. Harvey indicated that the department would hope to work closely, but not heavy-handedly, with adoptive parents who have been accused of not financially supporting their adoptive children to gather the facts and understand circumstances. Ms. Harvey stated the department is concerned when it hears of homeless youth who do not have money to eat but their adoptive parents continue to receive a subsidy.

Committee members recounted observing a history of overreach by the department. Committee members inquired how long the parents are subject to oversight by the department for proper use of the subsidy. Ms. Harvey stated that the rule would make oversight permissible while the subsidy was in place. Ms. Harvey stated that the idea is not to be ruthless or to disrupt adoptions. She stated that every adoption includes a contract and that the department would introduce the suspension language

into the contract. She explained that termination decisions are appealable. She also stated that if a suspension was found to not be warranted, the department would provide retroactive payments.

In response to an inquiry from committee members, Ms. Harvey indicated that there are many circumstances where adoptive parents are receiving subsidies when the child is no longer living with the parent, rather the child is back in foster care, living in group care, or is homeless. Committee members followed up by stating that it sounds like the department is making the right decision in utilizing the suspension option; it allows flexibility to protect taxpayer money and also protect the needs of children.

Action Taken. No action taken.

DEPARTMENT OF MANAGEMENT, Suspension and Reinstatement of State Funds, 9/26/18 IAB, ARC 4008C, NOTICE.

Background. This proposed rulemaking will establish procedures and guidelines to deny state funds to a local entity intentionally violating the provisions of 2018 Iowa Acts, Senate File 481, and to reinstate eligibility to receive state funds when a local entity comes into compliance with Senate File 481. These rules establish the process by which the department receives a final judicial determination that the local entity is out of compliance with Senate File 481 and is ineligible to receive state funds and results in state funds being denied. The rules also establish the process by which the department receives the declaratory judgment that the local entity is in full compliance with Senate File 481 and is eligible to receive state funds and results in state funds being reinstated.

Commentary. Mr. David Roederer represented the department and reviewed the rulemaking. Mr. Roederer and committee members engaged in a discussion regarding whether the rulemaking applied to schools. Mr. Roederer indicated that the rulemaking does not apply to schools. Committee members inquired why the rulemaking did not explicitly state that schools are excluded. Mr. Roederer indicated that Senate File 481 includes a definition of “local entity” and a school is not in the definition; therefore, the enabling legislation and the corresponding rulemaking does not apply to schools. Committee members stated that usually the law is restated in the rulemaking. Other committee members suggested the rulemaking be revised to explicitly provide for schools to be excluded. Mr. Roederer said the department would take that suggestion under advisement and stated he did not anticipate making such a change would be a problem.

Action Taken. No action taken.

INSURANCE DIVISION, Multiple Employer Welfare Arrangements, 9/24/18 IAB, ARC 4039C, FILED EMERGENCY AFTER NOTICE.

Background. This rulemaking establishes membership stability requirements for entities wanting to establish a self-insured multiple employer welfare arrangement (MEWA) in Iowa pursuant to 2018 Iowa Acts, Senate File 2349. The rulemaking also includes various other updates to the division’s rules on MEWAs relating to the division’s five-year review of its rules pursuant to Iowa Code section 17A.7(2).

Commentary. Mr. Doug Ommen represented the division and reviewed the rulemaking. Committee members questioned why the rules require that an association must be in existence for five years in order to form a MEWA. Mr. Ommen explained that Senate File 2349 replaced previous restrictive requirements on the formation of MEWAs with a requirement that the division establish membership stability standards for MEWAs by rule. The five-year requirement is part of the division’s new membership stability standards. In additional discussion on this subject, he explained that the five-year requirement, including its penalty provisions for early departure from the health insurance market, is intended to

ensure membership stability through continuous participation in the market, that the five-year limit is unlikely to decrease participation by MEWAs in the health insurance market, and that the division may seek legislative action in regard to formation of MEWAs by newer associations, although he would be concerned about opening the door too wide in that regard. Mr. Chance McElhaney, also representing the division, noted that the division received no negative feedback about the five-year requirement.

In response to additional questions from committee members, Mr. Ommen and Ms. Andrea Seip, also representing the division, explained that there are no legal restrictions on establishing MEWAs based on geographic areas, that the recent interest in establishing MEWAs in Iowa is due to statutory changes and customers fleeing the individual health insurance market, that the division has communicated with existing MEWAs to determine best practices relating to MEWAs, that this rulemaking will not affect existing MEWAs, that MEWAs are intended to provide lower cost alternatives to the individual health insurance market, and that MEWAs are not subject to mandates under the federal Affordable Care Act, but are subject to mandates under state law.

Mr. Scott Sundstrom made a public comment on behalf of Wellmark Blue Cross Blue Shield. He explained that Wellmark supports this rulemaking and that the rulemaking includes consumer protection while ensuring stability in the health insurance market. He stated that the rulemaking is in full compliance with federal law. He noted that Wellmark runs an existing MEWA for bankers and provided additional background on the effects of the rulemaking on the health insurance market. In response to questions from committee members, he explained that he foresees a modest increase in health insurance premiums in Iowa next year due to a decline in the individual health insurance market and that "employee" under the rulemaking would include realtors.

Ms. Paula Dierenfeld made a public comment on behalf of the Iowa Association of Insurers. She explained that the association circulated this rulemaking among its members, and the division made some changes to the noticed language based on the association's feedback. The association supports the rulemaking.

Committee members expressed concern about the increased cost of health insurance in Iowa.

Action Taken. No action taken.

Next Meeting. The next committee meeting will be held in Room 103, Statehouse, on Tuesday, November 13, 2018, beginning at 9:00 a.m.

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Internet Site: www.legis.iowa.gov/committees/committee?endYear=2018&groupID=705

MENTAL HEALTH AND DISABILITY SERVICES FUNDING STUDY COMMITTEE
October 5, 2018

Co-chairperson: Senator Jeff Edler
Co-chairperson: Representative Joel Fry

Overview and Committee Charge. Analyze the viability of mental health and disability services funding, including the methodology used to calculate and determine the base expenditure amount, the county budgeted amount, the regional per capita expenditure amount, the statewide per capita expenditure target amount, and the cash flow reduction amount. The committee is required to submit its recommendations to the General Assembly by January 15, 2019.

History of Adult Mental Health and Disability Services Funding in Iowa. Mr. Jess Benson, Senior Legislative Analyst, Legislative Services Agency, provided the committee with an overview of the major legislative enactments relating to Mental Health and Disability Services (MHDS) funding over the previous 25 years. Legislation enacted in 1995 capped the MHDS property tax levy at $214.2 million statewide, with counties choosing to lock in FY 1994 actual expenditures or FY 1996 net expenditures as their new county levy dollar cap. The state then provided $88.4 million in property tax relief to reduce the levy to $125.8 million statewide. Mr. Benson presented data on the varying county property tax levy rates and various sources of MHDS funding following implementation of the statewide cap, and noted the complexities that existed in the years following implementation of the statewide cap.

Mr. Benson also provided historical context for the responsibility of paying certain portions of Medicaid for MHDS. Mr. Benson outlined the adult MHDS redesign that was enacted in 2012 where the state assumed responsibility for the nonfederal share of Medicaid previously funded by the counties, directed counties to join regions, created core and core plus service domains, set MHDS eligibility standards, and created a new per capita levy system with a cap of $47.28 per capita. In addition, equalization payments were made by the state to counties in FY 2014 and FY 2015. Additional modifications to the MHDS funding system were adopted through the Medicaid expansion by the state under the Affordable Care Act. Certain individuals became eligible to receive more intensive services under Medicaid. Consequently, counties were for one year required to return 80 percent of the savings related to Medicaid expansion to the state to help offset the state cost for Medicaid either through returning all or a portion of the county's equalization payment or reduction of the following year's property tax levy.

Senate File 504, enacted in 2017, equalized the tax levied in each county on a regional basis and set a maximum per capita amount that can be levied across the entire region. Accordingly, there are now only 14 different maximum levy rates among the 99 counties, ranging from $25.84 to $47.28. Senate File 504 also instituted limits on funds counties reserve for cash flow, gave counties three years to spend down excess fund balances, and included specific funding transfer and service provisions for Polk County and Broadlawns Medical Center.

Mr. Benson concluded his remarks by identifying several ongoing issues related to the MHDS funding system and briefly describing several of the funding options and legislative reform proposals that have been presented in recent years.

Telehealth Services. Mr. Doug Wilson, President, Integrated Telehealth Partners (ITP), presented an overview of ITP's telepsychiatry and mental health patient placement services. ITP's customers in Iowa include 10 MHDS regions, 51 hospitals, 20 mental health clinics, 57 county jails, 4 crisis centers, and 3 Assertive Community Treatment teams.

Mr. Wilson identified the benefits of using telepsychiatry services in order to create collaborative situations with emergency room physicians that more quickly identify the appropriate level of care and to reduce the likelihood of unnecessary hospitalizations. Mr. Wilson outlined ITP's telepsychiatry assessment process and, if necessary, the location of available inpatient beds within the state.

According to Mr. Wilson, ITP has handled approximately 4,500 cases in Iowa. Mr. Wilson described 80 percent of those cases as falling within the category of predictable cases, with the remainder being complex cases requiring more rigorous assessments and more difficult placement. Mr. Wilson provided data regarding the disposition outcomes of ITP's cases, placement times, transportation distances for placements, and frequency of cases based on day of the week and time of day.

Mr. Wilson identified several of the difficulties ITP faces when seeking patient placement options and outlined several proposals and considerations relating to efficiencies that could be achieved through modifications of the state's placement process, the modernization of medical file sharing, and potential integration of ITP's software applications. Mr. Wilson also emphasized the need for increased and continued data and analytics collection in order to further optimize the system and establish accountability measures.

Committee Small Group Tours. Following the conclusion of committee business at the State Capitol, committee members and legislative staff toured the Crisis Observation Center and other mental health services departments at Broadlawns Medical Center in Des Moines. Tours were also provided for a separate Crisis Observation Center operated by Broadlawns Medical Center, a nine-bed, short-term facility in Des Moines.

LSA Staff: Michael Duster, Legal Services, 515.281.4800; Hannah Beach, Legal Services, 515.725.4117.

Internet Site: www.legis.iowa.gov/committees/committee?ga=87&session=2&groupID=31963

LEGAL UPDATES

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

FIRST AMENDMENT RIGHTS AND DISCRIMINATION BASED ON SEXUAL ORIENTATION IN PUBLIC ACCOMMODATIONS

Filed by the United States Supreme Court
June 4, 2018

Masterpiece Cakeshop, Ltd., et al. v. Colorado Civil Rights Commission
No. 16-111
www.supremecourt.gov/opinions/17pdf/16-111_j4el.pdf

Factual and Procedural Background. In 2012, a same-sex couple requested to order a custom wedding cake from Jack Phillips, who owned and operated Masterpiece Cakeshop, Ltd. Phillips refused to create and sell a wedding cake to the couple because he was opposed to same-sex marriage, but offered to sell them other types of baked goods, such as a birthday cake. The mother of one of the grooms called Phillips and asked why he would not serve her son. Phillips explained that he was religiously opposed to same-sex marriage and noted that Colorado did not recognize same-sex marriage.

The couple filed a complaint of discrimination based on sexual orientation in violation of the Colorado Anti-Discrimination Act (CADA) with the Colorado Civil Rights Commission (Commission). The Colorado Civil Rights Division (Division) found probable cause and referred the case to the Commission, which subsequently referred the case for a formal hearing before a state administrative law judge (ALJ). The ALJ ruled in favor of the couple and rejected Phillips' arguments that compelling him to create a cake for a same-sex couple's wedding would violate his First Amendment rights to free speech and the free exercise of religion by compelling him to utilize his artistic talents to express a message that he disagreed with and which was contrary to his religious beliefs. The ALJ held that the act of preparing the cake is not a protected form of speech and would not force Phillips to adopt that ideological viewpoint. The ALJ did not view CADA as interfering with Phillips' constitutional right to free speech. Furthermore, citing *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), the ALJ held that requiring Phillips to create the cake would not violate his right to the free exercise of religion because "CADA is a 'valid and neutral law of general applicability.'"

On appeal, the seven-member Commission held two formal, public hearings. At the first hearing, one of the commissioners stated that a business person must keep the person's religious beliefs out of the person's business practice. At the second hearing, another commissioner made statements comparing religious beliefs opposing same-sex marriage to religious beliefs justifying the Holocaust and slavery. The record does not show that the other commissioners objected to these comments made during the hearing. The Commission ruled in favor of the couple and against Phillips. Phillips appealed to the Colorado Court of Appeals (Court of Appeals).

The Court of Appeals affirmed the Commission's decision and made no mention of the commissioners' comments about religion. The Court of Appeals held that Phillips' conduct was not sufficiently

expressive to be protected by the First Amendment. The Court of Appeals held that Phillips was not unconstitutionally compelled to "speak" by compelling him to exercise his talents to express a message with which he disagreed. The Court of Appeals also held that the First Amendment did not prohibit the Commission's order under the Free Exercise Clause, which does not relieve an individual of an obligation to comply with a valid and neutral law of general applicability on the ground that following the law would interfere with religious practices or belief. The Colorado Supreme Court declined to hear the case, and the United States Supreme Court (Court) granted certiorari.

Issue. Whether the Commission's decision that Masterpiece Cakeshop and Jack Phillips discriminated against a same-sex couple in public accommodations in refusing to create a wedding cake violated the Free Exercise Clause or Free Speech Clause of the United States Constitution.

Analysis. The Court placed an emphasis on the importance of government neutrality required by the Free Exercise Clause. The Court's evidence that the Commission act with religious hostility toward Phillips was based on the comments of two of the commissioners who adjudicated the case before the Commission. The Court deemed these comments and sentiments inappropriate for an agency that is charged with enforcing antidiscrimination laws not only based on sexual orientation but also on religion.

The Court held that the Commission also showed hostility to religion by treating this case differently than three other bakers' creation cases in Colorado involving William Jack (Jack cases). Two months before the Commission heard Masterpiece Cakeshop's appeal of the ALJ decision, Jack visited three bakeries requesting two cakes with messages opposing homosexuality and same-sex marriage with biblical verses written on the cakes. All three bakeries refused to create the cakes as requested and Jack filed complaints against the bakeries based on religious discrimination in public accommodation in violation of CADA. The Division found no probable cause of discrimination in all three cases. The Commission subsequently affirmed the Division's findings.

Before the Court of Appeals, Phillips objected to the different treatment of his case from the bakers in the Jack cases, arguing that the Commission had treated his religious beliefs as illegitimate but the conscience-based objections by the bakers in the Jack cases as legitimate. The Court of Appeals stated that the cases are distinguishable because the bakers in the Jack cases did not discriminate on an impermissible basis but rather "'because of the offensive nature of the requested message.'"

The Court expressed displeasure with the way the Court of Appeals dealt with the disparate treatment of the bakers. By concluding that Phillips' viewpoint was more offensive than Jack's viewpoint, the Court stated that the Court of Appeals had indicated disapproval of Phillips' religious beliefs.

The Court held the Commission treated this case differently than the Jack cases by stating that in this case the message would be attributed to the customer, not the baker, but the Commission did not address that point in the Jack cases. In the Jack cases, the Commission found that because the bakeries were willing to sell other baked goods, including those depicting Christian themes to prospective customer cases, there was no violation of CADA, but in this case, the Commission found the fact that Phillips was willing to sell other baked goods to be irrelevant.

The Court did not address the Free Speech argument on appeal.

Holding. Justice Kennedy delivered the majority opinion and Chief Justice Roberts and Justices Breyer, Alito, Kagan, and Gorsuch joined. The Court held that the Commission violated the Free Exercise Clause in issuing its decision against Masterpiece Cakeshop, Ltd., and Jack Phillips by

exhibiting hostility to a religion or religious viewpoint. The Court reversed the Court of Appeals and set aside the Commission's order.

Concurrence by Justice Kagan (Joined by Justice Breyer). Justice Kagan opined that a comparison of the Jack cases and the Phillips cases does not suggest religious bias. Justice Kagan stated the different outcomes are a result of the three bakers in the Jack cases not violating the prohibition against discrimination in public accommodations under CADA (the bakers would not have made the cakes requested for any customers) and, by contrast, Phillips violating CADA (Phillips would have made a wedding cake for a heterosexual couple).

Concurrence by Justice Gorsuch (Joined by Justice Alito). Justice Gorsuch argued that the Commission failed to act neutrally toward Phillips' religious faith. He compared the Commission's treatment of Phillips to the treatment of the bakers in the Jack cases. Justice Gorsuch viewed the Commission as not penalizing the bakers in the Jack cases for refusing service on the basis of secular beliefs but penalizing Phillips for refusing service on the basis of religious beliefs. In Justice Gorsuch's opinion, this does not survive strict scrutiny.

Justice Gorsuch argued that the Commission should have applied a consistent legal rule. Justice Gorsuch argued that in both cases, the bakers refused to create the cake based on the type of cake, not on the protected characteristic of the customer; however, just as a cake requested for a same-sex wedding is usually requested by a person of a certain sexual orientation, a cake opposing same-sex marriage on religious grounds is usually requested by a person of a certain religious background. Justice Gorsuch stated that the legal rule would either need to be that actual proof of intent to discriminate on the basis of a protected class is required or that intent to discriminate is presumed from the knowing failure to serve someone in a protected class. Justice Gorsuch emphasized that the Commission cannot apply a more generous legal test or rule to secular objections than legal objections.

Concurrence by Justice Thomas (Joined by Justice Gorsuch). Justice Thomas opined that the prohibition on abridgment of freedom of speech includes regulation of conduct. Some applications of public accommodation laws can burden protected speech. For example, requiring a St. Patrick's Day Parade to include a parade unit of LGBT Irish-Americans violated the sponsor's right to free speech because the parade is expressive conduct. "To determine whether conduct is sufficiently expressive, the Court asks whether it was 'intended to be communicative' and, 'in context, would reasonably be understood by the viewer to be communicative.'" If the conduct is expressive, Justice Thomas opined, the state's authority to limit or compel it is restricted. Justice Thomas concluded that the conduct of creating and designing a custom wedding cake is expressive, and thus requiring Phillips to create the cake violated the First Amendment.

Justice Thomas stated that the Court of Appeals was incorrect in concluding that Phillips' conduct was not expressive. Justice Thomas also rejected several arguments of the Court of Appeals justifying the interpretation on the basis that it could be used to justify any law compelling protected speech.

Justice Thomas argued that there is a flaw with an asserted justification for CADA: that Phillips must serve same-sex couples because to do otherwise is offensive and harms the dignity of same-sex couples. He recounted: "If the only reason a public-accommodations law regulates speech is 'to produce a society free of . . . biases' against the protected groups, that purpose is 'decidedly fatal' to the law's constitutionality, 'for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression.'" He argued that it is important to maintain free speech jurisprudence in light of *Obergefell v. Hodges*, 576 U.S. ___ (2015).

Dissent by Justice Ginsburg (Joined by Justice Sotomayor). Justice Ginsburg's dissent compared this case with the Jack cases. Phillips refused to sell a wedding cake to people because of their sexual orientation. In contrast, Jack was not sold cakes for reasons other than his religion or any other protected characteristic. Justice Ginsburg stated that it mattered that Phillips would not sell wedding cakes to other gay or lesbian people but would sell wedding cakes to heterosexual people. Similarly, it mattered that the bakers in the Jack cases would sell other baked goods to other Christians. This showed that the Phillips case and the Jack cases were dissimilar. One encountered protected basis discrimination and the other did not.

Justice Ginsburg rejected the majority's contention, stating: "Nor was the Colorado Court of Appeals' 'difference in treatment of these two instances . . . based on the government's own assessment of offensiveness.'" Phillips' declination to make a cake was based solely on the identity of the customer. The declinations by the bakeries in the Jack cases to make cakes were based on literal messages.

Finally, Justice Ginsburg stated that the comments of one or two commissioners should not be taken to overcome the sexual orientation discrimination committed by Masterpiece Cakeshop in public accommodations by refusing to create the wedding cake because of the multiple layers of independent decision making that occurred by the Division, the ALJ, the Commission, and the Court of Appeals.

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WARRANTLESS INVENTORY SEARCHES AND SEIZURES OF A MOTOR VEHICLE AND THE FOURTH AMENDMENT
Filed by the Iowa Supreme Court
June 29, 2018
State v. Ingram
No. 16-0736
https://www.iowacourts.gov/courtcases/155/embed/SupremeCourtOpinion

Factual Background and Prior Proceedings. On October 30, 2015, a Newton police officer pulled over Bion Ingram (defendant) who was operating a motor vehicle. The officer noticed the defendant's vehicle did not have the license plate of the vehicle illuminated as required by Iowa law. The officer also noticed the vehicle's registration sticker did not match the vehicle's license plate. The vehicle registration had also expired in 2013. The officer decided to impound the vehicle based upon the registration violation but did not arrest the defendant. The defendant asked the officer to retrieve work items from the vehicle which the officer declined to do until the officer finished writing the citations. Next, the officer informed the defendant the items in the vehicle would be inventoried and asked the defendant if anything of value was in the vehicle. The defendant informed the officer that nothing of value was in the vehicle. During the inventory of the vehicle, the officer discovered a black cloth bag and when the officer opened the bag, the officer discovered a glass pipe and approximately one gram of methamphetamine. The officer did not obtain a search warrant prior to opening the black cloth bag. The defendant was charged with possession of methamphetamine, second offense, and with possession of drug paraphernalia. The defendant moved to suppress the evidence based on the Fourth Amendment to the United States Constitution (Fourth Amendment) and Article I, Section 8 of the Iowa Constitution (prohibitions against unreasonable searches and seizures), contending that the impoundment of the vehicle was a pretext to search the vehicle. The district court denied the defendant's motion to suppress on the ground that an inventory search of an impounded vehicle is an exception to the search warrant requirement. Subsequently, the defendant was found guilty of possession of methamphetamine and possession of drug paraphernalia. On appeal, the Iowa Court of Appeals ruled the district court correctly denied the defendant's motion to suppress.

Issue on Appeal. Whether a warrantless inventory search and seizure of an impounded motor vehicle violates the search and seizure provisions of the Iowa and United States Constitutions.

Holding. The Iowa Supreme Court (Court) held that the warrantless inventory search and seizure of the defendant's motor vehicle in this case violated Article I, Section 8 of the Iowa Constitution.

Analysis.

Iowa Constitution and United States Constitution. The Court emphasized that the Court is the ultimate arbiter of the meaning of the search and seizure clause of Article I, Section 8 of the Iowa Constitution, and that the Court reserves the right under this clause to reach results different from current United States Supreme Court precedent under parallel provisions contained in the Fourth Amendment. The Court further emphasized that in construing provisions of the Iowa Constitution that are open to interpretation, the Court has a duty to select from possible plausible alternative approaches that best reflect the important constitutional values underlying those provisions. The Court's most recent approach is to allow warrantless inventory searches and seizures of vehicles by police, provided the searches are conducted pursuant to generally applicable local policy requirements that are reasonable. Under the federal approach, the police and not independent impartial judges may set the contours of the substan-

tive protections of liberty under the Fourth Amendment in the field of warrantless inventory searches through the crafting of local policy. In response to technological innovations introduced in recent years, the Court has downgraded and demoted the warrant requirement and declared that the touchstone of a Fourth Amendment analysis is a general, free-floating and open-ended reasonableness standard which has no relationship to the warrant requirement of the Fourth Amendment and may, in fact, override the warrant requirement. However, the Court noted that recent Iowa Supreme Court cases have "repeatedly embrace[d] what can only be characterized as a strong warrant preference" in interpreting Article I, Section 8 of the Iowa Constitution. The Court stated that owners and drivers of vehicles have a substantial privacy interest in "papers and effects" that may be found within the passenger compartment, glove compartment, or trunk of a motor vehicle.

Evaluation of law enforcement interests justifying warrantless searches and seizures. The first justification used to justify a warrantless inventory search and seizure of a vehicle is the State's interest in protecting itself from false claims. The Court stated that the State's interest in protecting itself from false claims is insubstantial due to the minimal risk, the limited effectiveness of inventories, the availability of less intrusive options, and the limited exposure of gratuitous bailees. The second justification used for a warrantless inventory search and seizure of a vehicle is police safety. The Court stated that where a driver or owner is separated from the driver's or owner's vehicle, and the vehicle is securely impounded, there is little risk to the police. Finally, the third justification used for such a warrantless search and seizure is the benign purpose of assisting the owner in the protection of valuables. The Court stated that the risk of theft from the inventoried vehicle is minimal and the benefit to the owner is minimal.

Status of warrantless inventory searches under Article I, Section 8 of the Iowa Constitution. For the impoundment of a vehicle by the police going forward, the Court stated the first determination is whether impoundment of the vehicle is necessary, and if impoundment is unnecessary, the owner or operator should be advised of other options to impoundment, including park-and-lock options on nearby streets or calling a friend or third party to drive the vehicle away. Impoundment of a vehicle should be permitted only if these options have been adequately explored. If impoundment is necessary, law enforcement should ask the operator whether there is any personal property in the vehicle the operator wishes to retain and, if so, the operator should be allowed to retrieve such property. Next, if property is left behind, law enforcement should ask the driver if there is anything of value requiring safekeeping and make a record of the response in order to protect law enforcement from a later claim of theft. If knowing and voluntary consent to search the vehicle is not given by the operator, law enforcement must inventory closed containers left in the vehicle as a unit, and closed containers found within the vehicle should not be opened but stored for safekeeping as a unit. The Court noted that none of the aforementioned requirements for a warrantless search and seizure of the vehicle occurred in this case. The Court further noted that even if it could be argued that, in light of the registration problems, the police were entitled to impound the vehicle, the scope of the search, which included the search of the black cloth bag, was impermissible under the principles outlined in this case absent a knowing and voluntary consent to search. Therefore, the Court held that the motion to suppress in this case should have been granted because the warrantless inventory search violated the Iowa Constitution. However, the Court emphasized that the ruling in this case does not mean impoundment is always inappropriate. The State may develop a policy on impoundment and inventory searches consistent with this ruling including impounding a vehicle when the motorist agrees to such impoundment and has had an opportunity to retrieve the belongings from the vehicle or if the vehicle has been abandoned.

Concurrence by Chief Justice Cady. Chief Justice Cady noted that this case illustrates that the problem with the inventory search doctrine is that it has given the police free reign to conduct warrantless investigatory searches and to seize incriminating property, despite the doctrine's genesis as a means of protecting private property, guarding against false claims, and protecting the police from potential harm. The approach outlined in this case strikes a better balance between the interests of citizens and the needs of the government.

Concurrence by Justices Mansfield, Waterman, and Zager. Justices Mansfield, Waterman, and Zager concurred only in the result of this case. The police conducted a roadside inventory search of an impounded vehicle and found methamphetamine in a black cloth bag without offering any evidence of an inventory search policy regarding closed containers and thus the warrantless search fell short of established federal case law. However, the police need clear rules and not elaborate, partially developed decision trees. Inventory searches are subject to abuse, but the relevant question is how to limit discretion to eliminate the abuse. The police should be allowed to develop the policy involving inventory searches of vehicles, rather than having judges develop the policy. The majority opinion understates the need for inventory searches, the willingness of defendants to make false claims of missing property, and the potential risk of transforming vehicle impoundments into lengthy interactive question and answer sessions.

Impact on Iowa. The State of Iowa and local law enforcement agencies will be required to develop clear vehicle impoundment policies consistent with this ruling.

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