

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>JESSE VROEGH,</p> <p>Plaintiff,</p> <p>v.</p> <p>IOWA DEPARMTNET OF CORRECTIONS, IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES, WELLMARK INC., d/b/a WELLMARK BLUE CROSS AND BLUE SHIELD OF IOWA, and PATTI WACHTENDORF, Individually and in her official capacities,</p> <p>Defendants.</p>	<p>Case No. LACL138797</p> <p>STATE DEFENDANTS' REPLY TO PLANTIFF'S RESISTANCE TO MOTION TO DISMISS DEPARTMENT OF ADMINISTRATIVE SERVICES AS A PARTYAND TO DISMISS COUNTS II, III AND IV</p>
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COME NOW the Iowa Department of Corrections, Iowa Department of Administrative Services, and Patti Wachtendorf (hereinafter "State Defendants") for their reply to Plaintiff's resistance state:

Iowa Civil Rights Act Provides an Adequate Remedy for Counts III and IV

Plaintiff contends that the Iowa Civil Rights Act ("ICRA") does not provide an adequate remedy in this case because punitive damages are not available under the ICRA. Here, Plaintiff does not even seek punitive damages in his Petition. However, even if Plaintiff asserted punitive damages in this case, it would not change the outcome.¹ The Iowa Supreme Court in *Godfrey* addressed this very issue and held that ICRA did provide an adequate remedy, regardless of punitive damages not being available. Chief Justice Cady explained:

Here, however, the remedies provided in the ICRA are robust, even without punitive damages. I find these remedies suffice as an adequate deterrent of any alleged unconstitutional conduct. First, as to the reduction in salary, Godfrey

¹ Plaintiff filed a motion to amend petition to now seek punitive damages, but as set forth in State Defendants' resistance to Plaintiff's motion to amend, the amendment would be futile.

makes no claim that an action under the ICRA will not adequately provide him with compensatory damages. Further, the ICRA includes a provision for attorney fees. Obviously, attorney fees cannot replace punitive damages in cases of physical invasion, assault, or violations of other liberty interests, but their availability for a claim of monetary loss is an important factor in assessing the adequacy of a statutory remedy. Regarding Godfrey's claim of harassment, it is true this is not solely for monetary loss. Instead, Godfrey additionally claims emotional distress damages. But the ICRA provides for this, too. Again, Godfrey makes no claim that an action under the ICRA will not adequately compensate him for damages relating to the alleged unconstitutional conduct. Thus, I would find the ICRA an adequate remedy for these claims and would not recognize an independent constitutional claim under these circumstances.

In the appropriate case, a remedy of punitive damages may be necessary to vindicate a plaintiff's constitutional rights. But when the *claimed harm is largely monetary in nature and does not involve any infringement of physical security, privacy, bodily integrity, or the right to participate in government, and instead is against the State in its capacity as an employer, the ICRA exists to vindicate the constitutional right to be free from discrimination*. While not providing punitive damages, it provides full compensation and attorney fees. On these facts, I do not believe an independent *Bivens*-type action is necessary for the sole purpose of providing a punitive-damages remedy.

Godfrey v. State, 898 N.W.2d 844, 881 (Iowa 2017) (Cady, C.J., concurring in part and dissenting in part) (internal citations omitted) (emphasis added).

Here, Plaintiff's claims (like the claims of plaintiff in *Godfrey*) arise out of his employment with the State and are not premised on any infringement of physical security, privacy, bodily integrity, or the right to participate in government. *See id.* Indeed, Plaintiff seeks the exact same remedies for Counts I-IV. *See* Pet. Relief Sought for Counts I-IV. Thus, Plaintiff's arguments for punitive damages are the same arguments that the Iowa Supreme Court considered and ultimately rejected. This Court, therefore, should dismiss Counts III and IV in their entirety for failure to state a claim for which relief can be granted.

CONCLUSION

For the reasons stated above and in their motion to dismiss, State Defendants respectfully request that the Court grant their motion to dismiss and dismiss DAS as a party to the lawsuit, and dismiss Counts II, III and IV of the petition.

Respectfully submitted,

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