

CONSTITUTIONAL TORTS — STATE *BIVENS* EQUIVALENTS —
IOWA SUPREME COURT REFUSES TO RECOGNIZE IMPLIED CAUSES
OF ACTION FOR DAMAGES UNDER STATE CONSTITUTION. —
Burnett v. Smith, 990 N.W.2d 289 (Iowa 2023).

The traditional structure of an action in constitutional tort was tripartite.¹ Plaintiffs would sue government officers under conventional tort causes of action,² those officers would raise public-justification defenses,³ and then plaintiffs would introduce the alleged constitutional violation as a limitation on that defense.⁴ Of course, the entire process short-circuits if the government and its officers are immune from tort liability, as they frequently are today.⁵ Recently, in *Burnett v. Smith*,⁶ the Iowa Supreme Court declined to recognize an independent cause of action for money damages under its constitution and overruled an earlier case that had done so.⁷ The court observed that the Iowa judiciary of the mid-nineteenth century did not recognize direct constitutional claims for damages and argued that modern Iowa courts should follow suit.⁸ This reasoning overlooks the flexibility of Iowa’s early common law. Early cases immediately following the adoption of the Iowa Constitution recognized common law torts with no purpose other than the enforcement of a constitutional right⁹ and fashioned novel torts to ensure plaintiffs had access to vehicles for constitutional claims.¹⁰ And the framers and early interpreters of the Iowa Constitution presupposed tort remedies for violations of constitutional rights. Thus, the system of constitutional tort in 1857 Iowa should have made the *Burnett* court more willing to craft remedies, not less.

On November 1, 2019, Officer Philip Smith of the Iowa Department of Transportation spotted a garbage truck with a cracked windshield and stopped it.¹¹ Approaching the truck’s driver, Cory Burnett, Officer

¹ See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 390–92 (1971).

² See, e.g., *Poindexter v. Greenhow*, 114 U.S. 270, 273 (1885) (plaintiff brought action in detinue against Richmond treasurer).

³ See, e.g., *id.* at 274 (defendant’s justification defense).

⁴ See, e.g., *id.* at 306 (holding statute unconstitutional and ordering judgment in favor of plaintiff).

⁵ See Gregory Sisk, *Recovering the Tort Remedy for Federal Official Wrongdoing*, 96 NOTRE DAME L. REV. 1789, 1790 (2021) (faulting “all-encompassing official immunity from tort liability” for “nearly suffocat[ing] accountability in court for federal official wrongdoing”).

⁶ 990 N.W.2d 289 (Iowa 2023).

⁷ *Id.* at 290–91.

⁸ See *id.* at 299 (“Common law claims against local law enforcement were widely recognized before and after the adoption of the 1857 Constitution, but these were not direct constitutional claims for damages.” (italics omitted)).

⁹ See, e.g., *Long v. Long*, 10 N.W. 875, 876 (Iowa 1881) (awarding damages for denial of constitutional right to vote).

¹⁰ See, e.g., *Burdick v. Babcock*, 31 Iowa 562, 562, 565 (1871) (allowing damages action for denial of constitutional entitlement to education).

¹¹ *Burnett*, 990 N.W.2d at 291.

Smith indicated that he would be inspecting the vehicle.¹² Burnett consented and offered Officer Smith access to his garbage truck.¹³ But when Officer Smith asked Burnett to turn the truck's lights on, Burnett refused.¹⁴ His position, reiterated frequently as the stop grew contentious, was simple: the officer could examine the garbage truck however he liked, but without Burnett's help.¹⁵ After Burnett refused a series of requests for assistance, Officer Smith arrested him for "interference."¹⁶

The State charged Burnett under section 719.1 of the Iowa Code, "interference with official acts."¹⁷ The problem for the State was that Burnett never actually "interfere[d]" with, "resist[ed]," or "obstruct[ed]" Officer Smith's inspection.¹⁸ The statute does not criminalize mere intransigence and, likely observing as much, a magistrate judge promptly dismissed the charges.¹⁹

His roadside indignation at least partially vindicated, Burnett pressed on with claims of his own. On November 19, 2020, he filed suit against Officer Smith and the State of Iowa in the District Court of Iowa for Johnson County.²⁰ Burnett's petition alleged violations of the inalienable rights, search and seizure, and due process clauses of the Iowa Constitution.²¹ In support of these claims, Burnett cited the Iowa Supreme Court's 2017 decision in *Godfrey v. State*,²² which recognized an implied cause of action for violations of the state constitution.²³

The district court granted summary judgment to Officer Smith and the State, dismissing Burnett's claims.²⁴ Beginning with Burnett's inalienable rights claim, the court held that the inalienable rights clause grants only a negative power against state infringement on common law rights, not a "positive right to civil damages."²⁵ Relying on *Baldwin v. City of Estherville*²⁶ (*Baldwin I*), the district court then held that Officer Smith had acted with "all due care" and therefore could not be held liable under the search and seizure clause of the Iowa Constitution.²⁷

¹² *Id.*

¹³ *Id.*; Petition at Law and Jury Demand at 1, Burnett v. Smith, No. LACV082143 (Iowa Dist. Ct. Apr. 20, 2022).

¹⁴ *Burnett*, 990 N.W.2d at 291.

¹⁵ *See id.*

¹⁶ *Id.*; Petition at Law and Jury Demand, *supra* note 13, at 2.

¹⁷ Interference with Official Acts, IOWA CODE § 719.1 (2023); *Burnett*, 990 N.W.2d at 291.

¹⁸ § 719.1(1)(a); *see Burnett*, 990 N.W.2d at 291.

¹⁹ *See Burnett*, 990 N.W.2d at 292; *see also id.* at 290 ("[R]esistance and obstruction are not the same as a passive refusal to render assistance.").

²⁰ Petition at Law and Jury Demand, *supra* note 13, at 1.

²¹ *Id.* at 3.

²² 898 N.W.2d 844 (Iowa 2017).

²³ Petition at Law and Jury Demand, *supra* note 13, at 3; *Godfrey*, 898 N.W.2d at 879.

²⁴ Burnett v. Smith, No. LACV082143, 2022 WL 20317723, at *9 (Iowa Dist. Ct. Apr. 20, 2022).

²⁵ *Id.* at *4 (quoting Meyer v. Herndon, 419 F. Supp. 3d 1109, 1132 (S.D. Iowa 2019)).

²⁶ 915 N.W.2d 259 (Iowa 2018).

²⁷ *Burnett*, 2022 WL 20317723, at *5, *7.

Last, quoting the Iowa Supreme Court's decision in *King v. State*,²⁸ the district court held that the due process clause of the state constitution bars only actions that "shock[] the conscience."²⁹ Finding Officer Smith's conduct insufficiently shocking, the district court dismissed Burnett's final constitutional claim.³⁰ Burnett timely appealed.³¹

The Iowa Supreme Court affirmed.³² Writing for a unanimous court, Justice Mansfield held that the Iowa Constitution does not create implied causes of action for money damages, and hence that *Godfrey* should be overruled.³³ After summarizing the three opinions in *Godfrey*,³⁴ the court provided three core reasons for reconsidering the case. First, the court questioned the consistency of the answers it had provided to the novel and nettlesome questions that had emerged in the six years since *Godfrey*.³⁵ For example, the court observed that its decision in *Baldwin v. City of Estherville*³⁶ (*Baldwin II*) denied plaintiffs punitive damages on *Godfrey* claims against municipal officers because such damages are unavailable under the Iowa Municipal Tort Claims Act³⁷ (IMTCA).³⁸ But eighteen months later, in *Wagner v. State*,³⁹ the court refused to conclusively bar punitive damages on *Godfrey* claims against state employees even though punitive damages are also forbidden under the Iowa Tort Claims Act⁴⁰ (ITCA).⁴¹ Second, the court noted the United States Supreme Court's decision in *Egbert v. Boule*⁴² and the withering dissatisfaction with *Bivens*⁴³ expressed therein.⁴⁴ Finally, the court interpreted the Iowa legislature's explicit refusal to waive sovereign immunity in its 2021 amendments⁴⁵ to the IMTCA and ITCA as symbolic disapproval of *Godfrey*.⁴⁶

Having discussed its reasons for reappraising *Godfrey*, the court then explained why it viewed the case as wrongly decided. Its argument centered on *Godfrey*'s inconsistency with the text and history of the Iowa

²⁸ 818 N.W.2d 1 (Iowa 2012).

²⁹ *Burnett*, 2022 WL 20317723, at *5 (quoting *King*, 818 N.W.2d at 31).

³⁰ *Id.* at *6.

³¹ *Burnett*, 990 N.W.2d at 293. On appeal, Burnett raised only his article I, section 8 (search and seizure) constitutional tort. *Id.* at 290.

³² *Id.* at 290–91.

³³ *Id.* at 293. Justice Mansfield was joined by Chief Justice Christensen and Justices Waterman, McDonald, Oxley, McDermott, and May.

³⁴ *Id.* at 293–97.

³⁵ *Id.* at 297.

³⁶ 929 N.W.2d 691 (Iowa 2019).

³⁷ IOWA CODE §§ 670.1–.14 (2023).

³⁸ *Burnett*, 990 N.W.2d at 297 (citing *Baldwin II*, 929 N.W.2d at 698–99).

³⁹ 952 N.W.2d 843 (Iowa 2020).

⁴⁰ IOWA CODE §§ 669.1–.26 (2023).

⁴¹ *Burnett*, 990 N.W.2d at 297 (citing *Wagner*, 952 N.W.2d at 861–62).

⁴² 142 S. Ct. 1793 (2022).

⁴³ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

⁴⁴ *Burnett*, 990 N.W.2d at 298 (citing *Egbert*, 142 S. Ct. at 1802–04).

⁴⁵ IOWA CODE §§ 669.26, 670.14 (2021).

⁴⁶ *Burnett*, 990 N.W.2d at 298.

Constitution and the traditional structure of constitutional torts in Iowa.⁴⁷ The second sentence of article XII, section 1 of the Iowa Constitution reads: “The general assembly shall pass all laws necessary to carry this Constitution into effect.”⁴⁸ The court’s first argument was that by implying causes of action under the Iowa Constitution, *Godfrey* had deprived this sentence of meaning.⁴⁹ Second, the court argued that *Godfrey*’s analysis of historical Iowa case law erroneously characterized traditional common law claims against law enforcement as constitutional torts.⁵⁰ For example, in the court’s view, *Godfrey*’s references to *McClurg v. Brenton*⁵¹ overemphasized the case’s lofty constitutional language while ignoring that *McClurg* was just a common law action for “wrongful and unauthorized trespass.”⁵² Finally, citing early case law and the debates at Iowa’s constitutional convention, the court argued that the state’s sovereign immunity from suit was “an established rule” at the time of the current Iowa Constitution’s enactment.⁵³

The court concluded by addressing the practical reasons for overruling *Godfrey*. It argued that plaintiffs suing under *Godfrey* frequently failed to allege an actual constitutional violation.⁵⁴ In federal court, when plaintiffs did raise a real state constitutional violation, their state claim was generally duplicative of a separate claim under the Federal Constitution.⁵⁵ Finally, finding reliance interests minimal given *Godfrey*’s youth, the court overruled the case.⁵⁶

Chief Justice Christensen wrote a brief concurrence.⁵⁷ After affirming her belief in stare decisis, the Chief Justice indicated she had nonetheless voted to overrule *Godfrey* because of the inconsistency and disorder that the decision had imposed on Iowa law.⁵⁸

The *Burnett* court was right that nineteenth-century plaintiffs never sued directly under the Iowa Constitution but wrong about which way that fact cuts. In the decades following ratification,⁵⁹ the Iowa judiciary facilitated constitutional torts by recognizing a wide array of flexible common law causes of action.⁶⁰ Because the common law generally

⁴⁷ *Id.*

⁴⁸ IOWA CONST. art. XII, § 1.

⁴⁹ See *Burnett*, 990 N.W.2d at 298–99.

⁵⁰ *Id.* at 299–300; see also *id.* at 294.

⁵¹ 98 N.W. 881 (Iowa 1904).

⁵² *Burnett*, 990 N.W.2d at 297, 300 (quoting *McClurg*, 98 N.W. at 882).

⁵³ *Id.* at 300.

⁵⁴ *Id.* at 301.

⁵⁵ *Id.* at 302–03.

⁵⁶ *Id.* at 303–04, 307.

⁵⁷ *Id.* at 307 (Christensen, C.J., concurring). The Chief Justice was writing only for herself.

⁵⁸ *Id.* at 308.

⁵⁹ See IOWA CONST. (ratified 1857).

⁶⁰ See, e.g., *Lane v. Mitchell*, 133 N.W. 381, 383 (Iowa 1911) (finding implied cause of action for denial of statutory voting procedures).

provided a vehicle,⁶¹ plaintiffs rarely needed to sue directly under the constitution. Furthermore, the shape of the common law reflected original intent; the framers of the Iowa Constitution saw damages as the natural remedy for constitutional violations. If the nineteenth-century practice was crafting judge-made causes of action to enforce the constitution, it is *Burnett*, not *Godfrey*, which deviates from tradition.

The court's repeated claim that there is "no Iowa precedent"⁶² for direct suits for money damages under the Iowa Constitution proves more about the historical system of constitutional torts than the appropriateness of implying a damages remedy. Traditionally, plaintiffs vindicated both state and federal constitutional rights by suing under a common law cause of action.⁶³ The officer would claim that his conduct was a justifiable exercise of state power, and the plaintiff would introduce the constitutional violation as a limit on that defense.⁶⁴ Plaintiffs did not sue directly under the constitution because they did not need to; the common law was enough to get the constitutional claim into court.⁶⁵

In Iowa, that historical model is no longer viable. The Iowa Tort Claims Act bars suits arising out of nearly all intentional torts against both the state and individual state officers acting within the scope of employment.⁶⁶ And the ITCA, unlike its federal counterpart,⁶⁷ does not exempt "law enforcement officers"⁶⁸ from its general prohibition on intentional tort claims. In 1857, Burnett could have sued Officer Smith for assault and raised his constitutional claims as a response to Smith's justification defense. But today, similarly situated plaintiffs have no viable cause of action. *Godfrey*, at bottom, was a judge-made vehicle designed to solve that problem.

Traditionally, when a constitutional claim lacked an obvious vehicle, Iowa courts were more than happy to furnish one. Many of these common law causes of action served no purpose other than the enforcement of the constitution. For example, in *Edmonds v. Banbury*,⁶⁹ only twelve years after ratification, the Iowa Supreme Court permitted a suit against

⁶¹ See *Lough v. City of Estherville*, 98 N.W. 308, 309 (Iowa 1904) (allowing preemptive damages action for violation of constitutional prohibition on excessive indebtedness).

⁶² *Burnett*, 990 N.W.2d at 297–98.

⁶³ See Carlos M. Vázquez & Stephen I. Vladeck, *State Law, The Westfall Act, and the Nature of the Bivens Question*, 161 U. PA. L. REV. 509, 531 (2013); JAMES E. PFANDER, PRINCIPLES OF FEDERAL JURISDICTION § 7.2, at 231 (4th ed. 2021) (noting that the Federal Constitution "assumes that common law actions would secure the enforcement of the new constitutional limits on government power").

⁶⁴ See *Developments in the Law — Remedies Against the United States and Its Officials*, 70 HARV. L. REV. 827, 831–32 (1957).

⁶⁵ See Vázquez & Vladeck, *supra* note 63, at 537; see also *id.* at 539, 541 (noting common law claims premised on violations of the Constitution resemble *Bivens* remedies).

⁶⁶ See IOWA CODE § 669.14 (2020); *id.* § 669.23 (2023); *Wagner v. State*, 952 N.W.2d 843, 858 (Iowa 2020).

⁶⁷ 28 U.S.C. §§ 1346(b), 2671–2680.

⁶⁸ *Id.* § 2680(h).

⁶⁹ 28 Iowa 267 (1869).

state officials seeking money damages for denial of the right to vote.⁷⁰ The plaintiff in the action had failed to register for the 1869 Iowa elections and, seeing his ballot refused, sued the election judges “for the sum of ten dollars.”⁷¹ And *Edmonds* was not alone. Early Iowa courts permitted successful⁷² and unsuccessful⁷³ common law actions for deprivation of the right to vote.

Elsewhere, Iowa courts achieved the same effect by creating causes of action in tort when defendants violated statutes enforcing constitutional rights.⁷⁴ In *Lane v. Mitchell*,⁷⁵ the plaintiff sued a set of election judges for refusing to perform the “statutory oath” required as a prerequisite to voting.⁷⁶ Arguing that “[t]he constitutional right to vote is of high value to voters generally, and they should not be deprived of it,” the court recognized that the plaintiff had stated a cause of action.⁷⁷

The court created additional vehicles for other constitutional provisions. In *Burdick v. Babcock*,⁷⁸ parents sued a school superintendent for damages after their children were suspended.⁷⁹ In effect, the parents were alleging that the school rules deprived their children of the state constitutional right to an education.⁸⁰ Despite the absence of a conventional common law tort, the court simply described the suits as “actions at law,” considered a few prior cases, and then proceeded to the merits.⁸¹ Elsewhere, the constitutional prohibition on impairment of contracts was similarly enforced through judge-made doctrines refusing to recognize certain statutes of limitations.⁸² The common law of nineteenth-century Iowa was a generous vehicle for constitutional litigation, not a rigid limitation on it.

Iowa plaintiffs alleging constitutional torts invariably found a vehicle in the common law. The *Burnett* court’s sole purported example of an early Iowa court rejecting a constitutional tort for want of a cause of action is *Lough v. City of Estherville*.⁸³ In *Lough*, the Iowa Supreme Court ruled against taxpayers suing a mayor and city council who had drawn the City of Estherville into an unconstitutional degree of

⁷⁰ See *id.* at 267–69.

⁷¹ *Id.* at 269.

⁷² Long v. Long, 10 N.W. 875, 876 (Iowa 1881).

⁷³ See Vanderpoel v. O’Hanlon, 5 N.W. 119, 120–21 (Iowa 1880) (citing IOWA CONST. art. II, § 1).

⁷⁴ Cf. Vázquez & Vladeck, *supra* note 63, at 538–39 (observing a similar tendency in English and later American state common law generally); Alfred Hill, *Constitutional Remedies*, 69 COLUM. L. REV. 1109, 1134 (1969) (noting same trend occurred through common law actions on statutes).

⁷⁵ 133 N.W. 381 (Iowa 1911).

⁷⁶ *Id.* at 382.

⁷⁷ *Id.* at 383.

⁷⁸ 31 Iowa 562 (1871).

⁷⁹ See *id.* at 563–64.

⁸⁰ *Id.*; *id.* at 571 (Cole, J., concurring); *id.* at 571–76 (Miller, J., dissenting).

⁸¹ *Id.* at 562, 564 (majority opinion).

⁸² See *Casady v. Grimmelman*, 77 N.W. 1067, 1068 (Iowa 1899).

⁸³ 98 N.W. 308 (Iowa 1904).

indebtedness.⁸⁴ The plaintiffs stated an unorthodox theory: they wanted the defendants to compensate taxpayers in advance by immediately paying into the city treasury enough money to cover the unconstitutional debt.⁸⁵ The court called this abstract tort “unique, to say the least.”⁸⁶ But in the very next sentence, it called the action “fairly presented by the record,” and “entitled to our deliberate consideration.”⁸⁷ The court then simply accepted that the plaintiffs had stated a “law action” and analyzed the immunity of the defendants⁸⁸: “It has always been the law that a public officer *who acts either in a judicial or legislative capacity* cannot be held to respond in damages on account of any act done by him *in his official capacity*.”⁸⁹ By contrast, an executive officer enforcing an unconstitutional tax was individually liable for damages.⁹⁰ In short, the problem for the *Lough* plaintiffs was the defendants’ immunity, not the court’s unwillingness to fashion a cause of action.

The framers of the 1857 Iowa Constitution expected it to be enforceable through tort. At the constitutional convention, a delegate proposed an amendment authorizing suits against the state for money damages if it revoked previously granted privileges or immunities.⁹¹ The proposal was designed to fill a narrow gap in the preexisting remedial scheme: under the historical system of constitutional tort, Iowa officers acting in an official capacity could not be held individually liable for the state’s breach of contract.⁹² The state, not its agents, was the principal in any contractual agreement.⁹³ Because the state was immune to suit,⁹⁴ plaintiffs were simply out of luck. Thus, the first notable thing about the delegate’s proposal is that it addressed the major⁹⁵ hole in the traditional system. The inference is that the delegates presumed conventional tort law would provide remedies for most other constitutional violations.⁹⁶

⁸⁴ *Id.* at 308, 310.

⁸⁵ *Id.* at 309.

⁸⁶ *Id.* at 310.

⁸⁷ *Id.*

⁸⁸ *Id.*; see also *id.* at 309 (describing the suit as “predicated solely upon tort allegations”).

⁸⁹ *Id.* at 310 (emphases added); see also *Muscatine W. R.R. Co. v. Horton*, 38 Iowa 33, 46–48 (1873) (underscoring judicial immunity).

⁹⁰ See *Macklot v. City of Davenport*, 17 Iowa 379, 385 (1864) (citing *Langworthy v. City of Dubuque*, 13 Iowa 86 (1862)).

⁹¹ 1 THE DEBATES OF THE CONSTITUTIONAL CONVENTION; OF THE STATE OF IOWA 104 (W. Blair Lord reporter, Davenport, Luse, Lane & Co. 1857) (remarks of Mr. Palmer).

⁹² *Baker v. Chambles*, 4 Greene 428, 430 (Iowa 1854); *Lyon v. Adamson*, 7 Iowa 509, 510 (1859); see also PFANDER, *supra* note 63, § 7.2.2, at 235 (describing the traditional system of constitutional tort as protecting most rights but noting that it protected contractual rights “far less well”).

⁹³ *Chambles*, 4 Greene at 429–30.

⁹⁴ See, e.g., *Wilson v. La. Purchase Exposition Comm’n*, 110 N.W. 1045, 1046 (Iowa 1907).

⁹⁵ Other rights could generally be enforced through intentional tort and common law actions under statutes. See PFANDER, *supra* note 63, § 7.2.2, at 235; Richard H. Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 CALIF. L. REV. 933, 942–43 (2019); Vázquez & Vladeck, *supra* note 63, at 537.

⁹⁶ Cf. PFANDER, *supra* note 63, § 7.2, at 231 (“One can see this presumptive reliance on common law remedies . . . in the sparseness of remedial references in the Constitution.”).

Furthermore, the convention rejected the proposal because it abrogated sovereign immunity, not because it created a constitutional remedy. The proposal proved unpopular. Delegates called it “injurious,”⁹⁷ “unnecessary,”⁹⁸ and (somewhat dramatically) “monstrous.”⁹⁹ Though they opposed the amendment, the delegates did not oppose enforcement of the constitution through tort actions for damages.¹⁰⁰ Instead, their primary criticisms were that the proposal was “liable to get the State into an innumerable number of law suits”¹⁰¹ and impliedly authorized the legislature to make and break contracts at will.¹⁰² But the fundamental idea, that the appropriate remedy for the violation of a vested¹⁰³ constitutional right was a suit for damages, was uncontroversial.¹⁰⁴ The *Burnett* court was, therefore, entirely right to rely on this debate as evidence of the framers’ bedrock belief in sovereign immunity.¹⁰⁵ But the court did not observe the delegates’ other fundamental presumption: that their constitution would be enforceable through tort.

Historically, Iowa courts built a common law supple enough to enforce the vast majority of constitutional rights.¹⁰⁶ The system performed particularly well in Iowa’s state constitutional context, where Iowa courts could simply adjust the common law to adequately protect constitutional guarantees. Indeed, enforcing the Federal Constitution through state tort law¹⁰⁷ was altogether less reasonable than enforcing the Iowa Constitution through Iowa tort law. The strange thing about *Burnett*, then, is that the decision reads the traditional willingness of Iowa courts to facilitate constitutional suits through judge-made common law torts as a reason those courts should reject the same kinds of suits today.

⁹⁷ 1 THE DEBATES OF THE CONSTITUTIONAL CONVENTION, *supra* note 91, at 110 (remarks of Mr. Parvin).

⁹⁸ *Id.* at 105 (remarks of Mr. Hall).

⁹⁹ *Id.* at 111 (remarks of Mr. Hall).

¹⁰⁰ Compare, e.g., *id.* at 106 (remarks of Mr. Clark) (opposing the amendment because it “will be the means of getting the State into law suits”), with *id.* at 106 (remarks of Mr. Clark) (describing an alternate “means of causing damages to be paid” as “less objectionable”).

¹⁰¹ See *id.* at 106 (remarks of Mr. Wilson).

¹⁰² *Id.* at 105 (remarks of Mr. Hall).

¹⁰³ Delegates understood a privilege granted to a corporation as a constitutional entitlement. See *id.* at 111 (remarks of Mr. Clark) (opposing the amendment because “[i]t recognizes the principle that a corporation may obtain a vested right under the constitution”); *id.* at 108 (remarks of Mr. Clarke).

¹⁰⁴ See *id.* at 109 (remarks of Mr. Clarke) (opposing the amendment as likely to encourage excess litigation, but admitting that if the right exists, “the party injured should have the same mode of redress against the State, as he would have against an individual”); *id.* at 105 (remarks of Mr. Palmer).

¹⁰⁵ *Burnett*, 990 N.W.2d at 300–01; see also *Godfrey v. State*, 898 N.W.2d 844, 885 (Iowa 2017) (Mansfield, J., dissenting) (same argument).

¹⁰⁶ Cf. *Vázquez & Vladeck*, *supra* note 63, at 537.

¹⁰⁷ See PFANDER, *supra* note 63, § 6.8, at 217–18 (noting “the loss of federal control over common law causes of action,” *id.* at 218, post-*Erie* created a mismatch in the enforcement of constitutional rights).