IN THE IOWA SUPREME COURT
No. 24-0894

GREGG MANDSAGER,
Plaintiff-Appellee,

vs.

CITY OF MUSCATINE, DIANA BRODERSON, KELCEY BRACKETT, OSMOND MALCOLM, SANTOS SAUCEDO, and NADINE BROCKERT,

Defendants-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT IN MUSCATINE COUNTY CASE NO. LACV025982 RULING DATED APRIL 29, 2024

THE HONORABLE TAMRA ROBERTS,
DISTRICT COURT JUDGE

PLAINTIFF-APPELLEE'S BRIEF

(TRIAL DATE – September 22, 2025)

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT TWICE CORRECTLY DENIED SUMMARY JUDGMENT AS MANDSAGER PRESENTED DIRECT EVIDENCE OF DISABILITY DISCRIMINATION AND RETALIATION, MAKING *FEEBACK* INAPPLICABLE TO THIS CASE.

II. EVEN IF MANDSAGER'S EVIDENCE IS CONSIDERED INDIRECT, THE DISTRICT COURT CORRECTLY RULED TWICE THAT THERE IS AMPLE EVIDENCE THAT DEFENDANTS' NOW-OFFERED REASONS FOR TERMIATNION ARE ILLEGIMATE OR PRETEXTUAL.

III. ON THE ISSUE OF PREEMPTION, *GRAHEK V. VOLUNTARY HOSP.* IS THE GOVERNING LAW AND HOLDS NO PREEMPTION OF MANDSAGER'S COUNT V AND VI CLAIMS AGAINST BRODERSON.

ROUTING STATEMENT

This appeal involves the application of existing legal principles, and thus under Iowa R. App. P. 6.1101(3)(a) transfer to the Court of Appeals would seem appropriate.

Appellant's briefing reveals that the issues raised are not of a conflict between the Supreme Court and Court of Appeals as alleged in Appellant's Routing Statement reference to Iowa R. App. P. 6.1101(2)(b). Appellant's briefing further reveals that the issues raised are not on a substantial issue of first impression as alleged in Appellant's Routing Statement reference to Iowa R. App. P. 6.1101(2)(c).

Instead, Appellant argues for the reversal of two District Court Orders denying summary judgment based on an alleged misinterpretation or misapplication of *Feeback* to the particular facts of this case. *Feeback* expresses the Court's legal principles on the honest belief affirmative defense. This appeal is strictly about Defendants' alleged application of the affirmative defense to the facts of this case. Similarly, Appellant's second brief point deals with the application of *McCoy* to the facts of this case. Accordingly, Appellant's appeal is proper for transfer to the Court of Appeals. See, Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Appellee-Plaintiff Gregg Mandsager ("Mandsager") filed his Petition against Appellant-Defendants on February 17, 2021, alleging various misconduct relating to his termination as City Administrator for the City of Muscatine.[1] D0001, Petition (2/17/2021). Defendants have twice been denied summary judgment by the District Court concerning Counts I – Disability Discrimination, II – Disability Retaliation, V – Interference with Employment Contract, and VI – Interference with Prospective Business Advantage. D0080, Order Granting in Part and Denying Part MSJ; D0133, Order on Defendants' Renewed MSJ.[2]

[1] For reference in this briefing, the parties will be referred to as Appellant-Defendants City of Muscatine ("the City"), Diana Broderson ("Broderson"), individually, Kelcey Brackett ("Brackett") individually and in his Official Capacity as a Councilmember of the City, Osmund Malcolm ("Malcolm") individually and in his Official Capacity as a Councilmember of the City, Santos Saucedo ("Saucedo") individually and in his Official Capacity as a Councilmember of the City, and Nadine Brockert ("Brockert") individually and in her Official Capacity as Councilmember of the City. When referenced collectively, the term "Defendants" will be used unless clarified as to specific defendants.

[2] The Court dismissed Counts V and VI against Broderson in her capacity as Mayor, but not in her individual capacity. That ruling, along with the other Counts dismissed are not part of this Interlocutory Appeal, but it is relevant to how the Court views Counts V and VI in light of the current law of the case, as will be discussed in greater detail below.

Regarding Counts I and II, the District Court rejected Defendants' "legitimate business reason" defense[3] in ruling on the First Summary Judgment and held:

> "Next, **Defendants contend that they had a legitimate business reason for firing Plaintiff, namely, that he "pushed back on Council objectives.**" Plaintiff points to several counterexamples of statements that might be construed as expressing animus against Plaintiff's disability. While the Court recognizes that Broderson's comments on the subject are of less import than the actual decision makers' comments, **there is active participation amongst the Defendants expressing animosity for Plaintiff having to take time off of work**. In response to a comment by Broderson that Plaintiff took "another day off," Defendant Saucedo replies Wow, imagine that." Defendant Saucedo in one text also refers to Plaintiff as "baby Gregg," and explicitly states that "Baby is my code word for [Plaintiff]." Defendant Brockert testified that she believed that Plaintiff's absences were causing things to not "quite [get] covered the way they should have." One council member testified that Defendants retaliated against Plaintiff's disability in closed sessions while discussing merit pay. There are also text messages between Defendants talking about their "plan" to get rid of Plaintiff."

D0080, p. 12. (emphasis added)

The District Court continued:

> "The Court finds that Defendants have failed to demonstrate that a reasonable jury taking all reasonable inferences in favor of Plaintiff must find a lack of pretext.

[3] While posited at the time as a "legitimate business reason" defense and not an "honest belief" defense, the alleged facts relied upon by Defendants for the "legitimate business reason" defense are the same as the "honest belief" defense asserted in the renewed MSJ, and thus, the Court's analysis in the First Summary Judgment wherein it denied Defendants the first time is relevant to this Appeal of the Renewed Summary Judgment.

> **A reasonable jury could infer that Defendants, with knowledge of Plaintiff's disabilities and dissatisfied with his failure to adhere to a more traditional in-person work schedule, sought to terminate him based on his disabilities and used an alleged refusal to go along with council objectives as a pretextual justification for the termination.** Summary Judgment is not appropriate under the McDonnell Douglas standard. Likewise, there is a dispute of fact as to whether Defendants have established their affirmative defense under the Price Waterhouse standard."

D0080, p. 13. (emphasis added)

Regarding Counts V and VI, the District Court held:

> "The Court finds the fact pattern in this current case substantially analogous to *Iowa Coal Min. Co., Inc.* Here, there is evidence that Broderson was hostile towards Plaintiff based on his absences from work and their prior lawsuits against one another. There is also evidence that Broderson was significantly involved in plans to have Plaintiff terminated from his position, despite not being a voting member of the council authorized to effectuate his removal. A reasonable jury viewing the evidence in the light most favorable to Plaintiff could infer that Broderson interfered with Plaintiff's business advantage in continuing as city administrator and that her primary purpose in doing so was to injure or financially destroy Plaintiff.

D0080, pp. 24-25.

Unhappy with the District Court's first denial of summary judgment on Counts I, II, V, and VI, Defendants filed for interlocutory appeal, which was previously denied by this Court. Subsequently, Defendants took their third bite at the apple with a renewed summary judgment, which, as the Court is aware, was also denied by the District Court. D0102.

With respect to the Renewed Summary Judgment, the District Court, through a different Judge, reviewed the evidence, law, and again denied summary judgment on Counts I and II, emphasizing that "Defendants did not show any additional facts or evidence that would require this Court to disturb its earlier ruling." D0133, pp. 3-4. The Court further noted that the District Court had already ruled on the issue of pretext, finding a fact question on pretext for the jury to determine under both pre-*Feeback* and after the law following the *Feeback* decision. D0133, p. 3. Accordingly, the District Court held that this is not an "honest belief rule" case. D0133, p. 4.

In addressing the Renewed Motion, the District Court also went on to hold that *McCoy* was inapplicable to this case and did not represent new authority to disrupt the prior decision, denying summary judgment as to Counts V and VI against Broderson. D0133, p. 6. Defendants filed for Interlocutory Appeal, which was granted. D0136, Order Granting Application (7/18/2024). This is now Defendants' fourth bite of the apple, seeking to avoid a jury trial on the hotly disputed facts and asserted reason(s) why and how Mandsager was terminated as the City Administrator for the City of Muscatine and Broderson's associated liability with respect to his termination. Defendants' Interlocutory Appeal should be summarily denied, and the case sent back for trial.

STATEMENT OF DISPUTED FACTS

Mandsager's 10-year history of positive job reviews

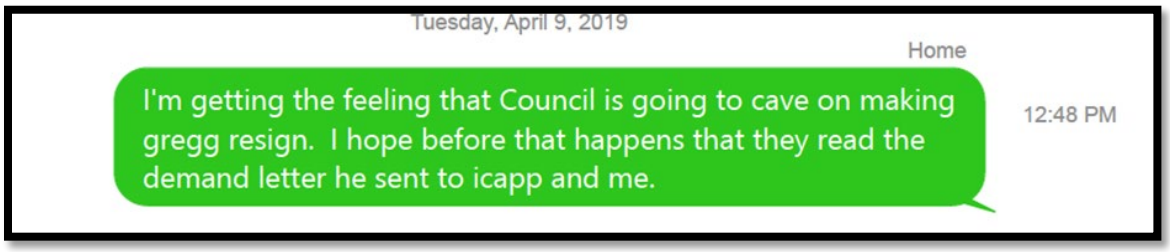
Mandsager was hired by the City of Muscatine as the City Administrator in November 2009. D0058 ¶ 1. Throughout his 10-year career at Muscatine, he received glowing, positive yearly job reviews *and* yearly merit-based pay increases with no complaints made about his job performance by direct reports. D0058 ¶¶ 3-17. In fact, shortly before his wrongful termination, on December 20, 2018, Plaintiff received a 1% merit-based pay increase from the City Council and a second 1% merit-based pay increase on April 18, 2019, indicating satisfaction with his job performance, not insubordination, as now claimed by Defendants' Counsel in defense of this lawsuit. D0058 ¶¶ 13-15.

Broderson's personal vendetta towards Mandsager's job

Despite exceptional job performance and yearly merit-based pay increases by the Council, there is no doubt that Broderson had a personal vendetta towards terminating Mandsager's job. D0058 ¶¶ 32-33. Broderson's issues with Mandsager date back to at least 2017 shortly after she was elected Mayor when Broderson was removed from her job as Mayor after being impeached by the City Council's 7-0 vote. D0058 ¶¶ 32-33. Broderson openly admits that she took issue with Mandsager's role in having to execute the Council's vote to remove her from her Mayoral position. D0058 ¶¶ 32-33. The record reveals that she took the Council's

removal of her personally towards Mandsager and, in return, she wanted his job to satisfy her thirst for revenge. D0058 ¶¶ 32-33.

Following her ouster by the Council as Mayor (and later reinstatement), Broderson was sued by Mandsager on November 10, 2017, based on defamatory statements made by Broderson towards Mandsager. D0058 ¶¶ 24-26.[4] The case was litigated for a year and a half, and as the case moved towards settlement in April 2019, Broderson made it known to the Council that she wanted Mandsager fired. D0058 ¶ 27. In a text message to Brackett, on April 9, 2019, Broderson confirmed her intentions in writing when she stated the following:



D0058 ¶ 27.

The Council, of course, did not force Mandsager's resignation as a term of settlement in April 2019, as there were no grounds for termination or alleged insubordination. D0058 ¶ 30. Instead, the Council gave Mandsager a merit-based pay increase. D0058 ¶¶ 13-15. After the settlement, Defendants understood and

[4] As part of Broderson's attempt at a "Blue Wave" of elected officials overtaking the "good ol' boys" of Muscatine, Brackett, Brockert, and Malcolm were sworn in as new Council Members for the City of Muscatine on December 21, 2017, joining Fitzgerald, Saucedo, Harvey, and Spread. D0058 ¶ 21.

were aware that they could not retaliate against Plaintiff and seek his termination for asserting his rights in the previous Defamation lawsuit. D0058 ¶ 30.

However, during that time and following, Broderson continued to express in multiple secret text message to Brackett and others that she was still thinking about her own 2017 termination when plotting and planning Mandsager's termination in secret meetings with certain Council members who were part of her attempted Blue Wave (Brackett, Brockert, Malcolm) of Democrats running Muscatine politics along with Saucedo. D0058 ¶¶ 216, 220.[5]

Text messages confirm secret meetings amongst Defendants where they discussed a plan to terminate Mandsager.

Discovery in this case revealed the reality of what was going on behind the scenes through secret text messages and secret meetings amongst the Defendants designed with the goal of fulfilling Broderson's wish that Mandsager lose his job. D0058 ¶¶ 191-283.[6] Numerous text messages reveal secret, non-public discussions

[5] The Blue Wave of Muscatine was short lived, as Malcolm, Brackett, and Saucedo served one term on the Council. D0058, ¶ 22. Brackett later lost an election to the Iowa House in 2019, and Broderson lost an election for the Board of Supervisors in 2022 after being nominated by Brackett who was the County's Democratic Chair at the time.

[6] Ironically, Broderson claimed on multiple occasions and unsolicited by examination that she believed in "full transparency" and that she "did not keep secrets." D0058 ¶ 191. She could not explain why (1) she had secret meetings, (2) she engaged in hundreds of secret text messages, and (3) her failure to disclose this to the Council and public was supportive of her claim of transparency. D0058 ¶ 253.

amongst the Defendants, aimed at terminating Mandsager's employment. D0058 ¶¶ 191-283. In fact, Broderson openly admits that the termination of Mandsager was discussed during the secret meetings between her, Brackett, and Saucedo. D0058 ¶ 218. During these secret meetings, and as the District Court found, Defendants repeatedly attempted to establish and manipulate a "plan" to terminate Mandsager and "work smarter" than Mandsager to terminate him. D0058 ¶ 261. Defendants intentionally withheld the fact that they were having secret meetings as well as the content of those meetings from the public, other Council Members, as well as their own HR Consultant, Patti Seda, who will be discussed in more detail below. D0058 ¶¶ 246-247.

Mandsager's Disability

While Defendants were having secret meetings and exchanging secret text messages about Mandsager, he was busy working as City Administrator while dealing with significant health issues, including neuropathy, chronic inflammatory demyelinating polyneuropathy, radiculoplexus neuropathy, and enlarged nerve roots, causing severe pain in his back, numbness, sharp pains, tingling sensations, headaches, muscle aches, weight gain, and tension. D0058 ¶ 138.

In fact, when asked if she would have shared her text messages absent his lawsuit, Broderson responded that she would not have. D0058 ¶ 253.

Mandsager's health issues caused him to often work from home and take sick leave as necessary to visit his doctors at Mayo and elsewhere in the summer of 2019. D0058 ¶¶ 139-167. Mandsager was diligent in making Defendants aware of his health issues, hospital visits, days off, and accommodations, as he continued to work hard for the benefit of the City while balancing his health issues in 2019. D0058 ¶¶ 139-167. On October 25, 2019, unaware that Defendants had been discussing his disability behind his back in secret text messages, Mandsager filed for and was approved by the City for FMLA leave. D0058 ¶ 146.

This is not a case where Defendants can honestly deny Mandsager's health issues, as they all admit that Plaintiff's health issues were obvious while around him in 2019, as he was often using a cane as a walking aid, and his health issues were "a concern for all."[7] D0058 ¶¶ 152, 157, 272. Brockert testified that in the summer of 2019, "I believe there was a lot of time when he was absent that maybe things weren't quite getting covered the way they should have…" D0058 ¶ 153. The City's HR Manager confirmed that in 2019, Mandsager's ADA accommodations included working from home on occasion, a stand-up/sit-down desk, and a flexible schedule. D0058 ¶¶ 162-163. Council Member Fitzgerald specifically testified that

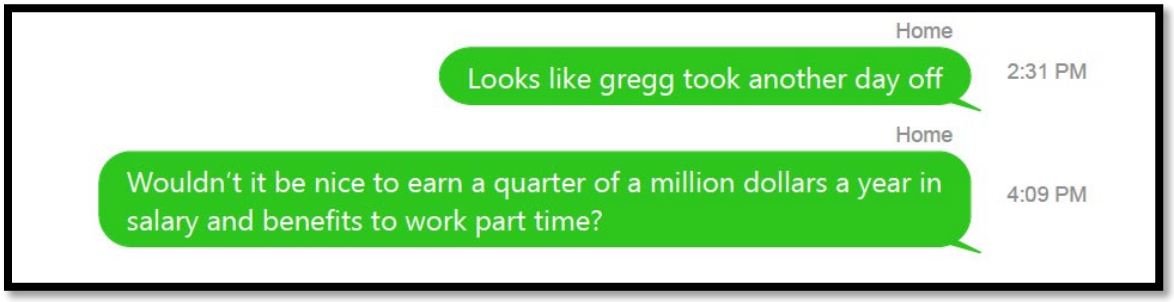
[7] Despite the clear evidence of his disability, repeated updates to keep all informed, and Defendants' own admissions that Mandsager's disability was obvious as were his accommodations, Counsel for Defendants improperly refers to an alleged "vague knowledge of Mandsager's health." (Appellant's Brief, p. 36).

he witnessed Plaintiff get retaliated against by Defendants due to his health during closed sessions while discussing Mandsager's merit pay. D0058 ¶ 155.

Secret text messages confirm an expressed animus towards Mandsager's disability and accommodations.

While Defendants made every attempt to limit public record of their discriminatory intent and feelings towards Mandsager's disability and work accommodations, text messages were eventually produced in this lawsuit setting forth how Defendants used Mandsager's health issues to sway the deciding vote of Saucedo and secure the votes to terminate Mandsager. D0058 ¶¶ 164, 166, 202, 205, 248, 257, 259.

Shortly after the defamation settlement did not result in Mandsager's termination per Broderson's wishes, she texted Brackett, the following concerning Plaintiff's health:



D0058 ¶ 202.

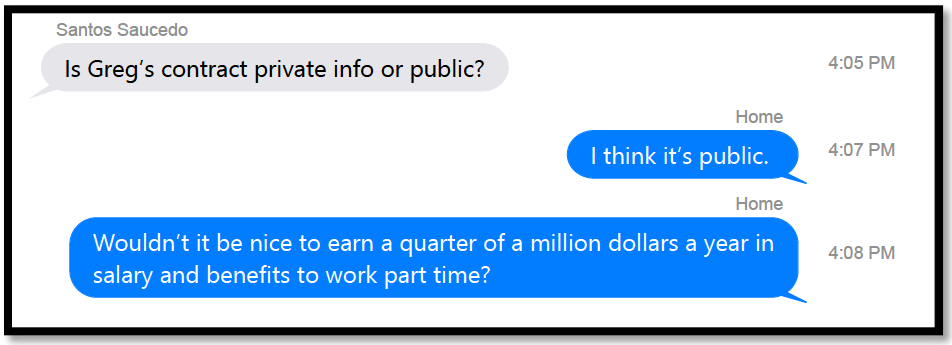
Broderson admitted that Plaintiff's absence from work bothered her. D0058 ¶ 205. Broderson also testified that she believed Mandsager's absence from work

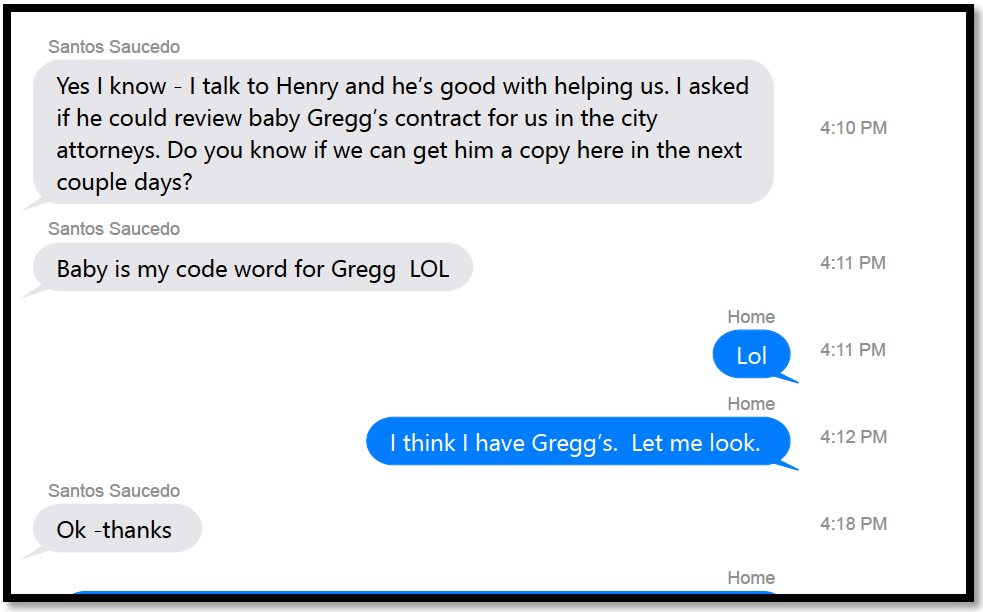
due to his health issues made her job more difficult and would cause her to respond with the rhetorical question: "He's gone again?" D0058 ¶ 164. Brackett made comments about Mandsager's health in a public setting prior to his termination. D0058 ¶ 166.

Also on July 19, 2019, Defendant Broderson began her documented work on Saucedo's motivation to terminate through use of Mandsager's disability in the following exchange:

D0058 ¶ 257.

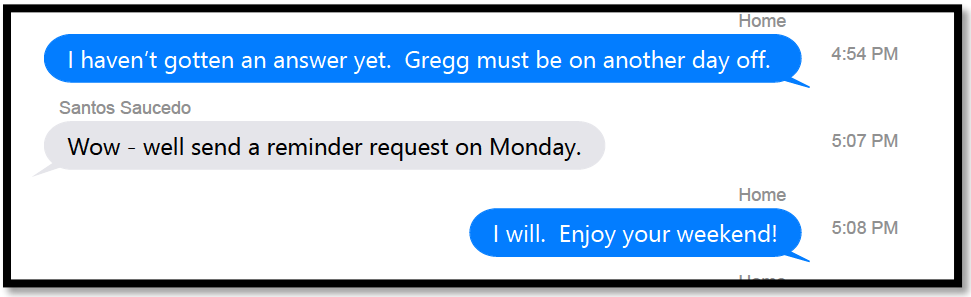
The conversation with Saucedo continued beyond just the "another day off" and "imagine that" comment, and Broderson again emphasized her claim that "wouldn't it be nice to earn a quarter of a million dollars a year in salary and benefits to work part time:





D0058 ¶ 259.

On August 9th, Defendant Broderson and Defendant Saucedo once again commiserated and complained about Plaintiff taking another day off due to his health issues:



D0058 ¶ 259.

Malcolm, meanwhile, openly admitted that Mandsager's time off from work and work from home schedule was the motivation for his vote. D0058 ¶ 160.

The text exchanges produced in this litigation confirm Mandsager's original suspicion when this Petition was filed that Defendant Broderson intentionally interfered with his contract with the City, and that Mandsager's disability was a motivating factor in getting Saucedo and others to vote for his termination. D0058 ¶¶ 249, 262.

December 5, 2019 - The City terminates Mandsager claiming a general "lack of confidence."

On December 5, 2019, Defendants Brackett, Brockert, Saucedo, and Malcolm voted to terminate Mandsager's employment as the City Administrator for the City of Muscatine. D0058 ¶¶ 64-65. Despite Iowa Code requiring statement of the reasons for termination, the only reason provided for the Council's action during the December 5, 2019, Council meeting was a baseless allegation of "lack of confidence." D0058 ¶ 111-112. Insubordination was *not* alleged as the basis of termination during the public hearing, and not acts of insubordination were alleged. D0058 ¶ 111-112.

Notably, when pressed by others, Defendants all refused to give examples and provided no insight as to the alleged "lack of confidence" during the public hearing. D0058 ¶ 113. In fact, Saucedo claimed (incorrectly) on the record that "no reason has to be given" to support terminating Mandsager. D0058 ¶¶ 114. Brockert in her sworn testimony could not get her story straight and claimed that Saucedo did all of her talking for her despite Saucedo's "no reason" statement. D0058 ¶¶ 116-118.

Brackett stayed silent on alleged "lack of confidence," claiming he did not believe he needed to justify termination. D0058 ¶115. Malcolm similarly provided no statement on the record to support the alleged "lack of confidence." D0058 ¶ 119. Defendants knew at the time that their actions were improper and were already texting within days of the vote that they needed to establish a "campaign" and "brainstorm" how to get ahead of the bad publicity associated with Mandsager's termination. D0058 ¶ 277.

December 23, 2019 - The City's Written Order of Removal claims "lost confidence in your willingness to perform your duties."

On December 23, 2019, Muscatine mailed a written Order of Removal to Plaintiff. D0058 ¶ 128. The Order of Removal stated: "you are being removed from office because a majority of the Council has lost confidence in your willingness to perform your duties. As an example, there have been multiple issues during public meetings where a majority of council ruled in one direction and you pushed repeatedly in an opposite direction." D0058 ¶ 129. No specific examples were given, and no reference to either the ad hoc committee or Code Change was mentioned in the written Order. D0058 ¶ 129. Notably, though, the Written Order of Removal differed from what was stated during the Council Meeting on December 5, 2019, to include willingness to perform his duties. D0058 ¶ 130. Brackett, who was the only Council Member who contributed to the Written Order approval

process, understood that he had the ability to put into the Order any and all examples that supported termination. D0058 ¶ 131.

The City's independent HR representative characterized Defendants' actions at the time as a "callous disregard for employment law."

In January 2019, the City of Muscatine contracted with Patti Seda, an HR expert with 25 years of experience, to develop a new performance review process for the City Administrator. D0058 ¶¶ 48-50. Mandsager provided no resistance to the new review process. D0058 ¶¶ 48-50. Shortly after establishing the new review process, Seda presented a new proposal to the City to conduct the 2019 review of Mandsager, indicating a September-January time frame for completion, which was approved by the City Council and executed by Defendant Broderson on or about August 27, 2019. D0058 ¶¶ 57-60.[8]

In the middle of her review of Mandsager, Seda became aware of Defendants' first attempt to place as a proposed agenda item for Council meeting of "discussion as to the possible action to end the City Administrator's contract." D0058 ¶ 61. She responded, questioning the integrity of and objectivity of the process and asked for

[8] At various times during testimony, Defendants attempted to claim that Seda was not hired to perform an actual review of Mandsager. Instead, they insisted that she was only hired to create a new process of review. (See Appellant's Brief, p. 28 – claiming incorrectly that "Seda was just hired to create an assessment tool"). Defendants' attempt to deny a second contract entered into by the City and Seda to perform the actual review after the first contract was satisfied creating the assessment tool is simply untruthful in light of the fact that there is a written second contract entered into by the City and Seda. D0058 ¶¶ 57-60.

information the Council had (any insubordination?) that would supersede the information she was presented in the review to justify the agenda item. D0058 ¶¶ 62-63. Not a single Council member provided Seda with information supporting the initial attempt to place Mandsager's job at issue or a single shred of evidence of insubordination to Seda. D0058 ¶ 63.

When the Council moved forward with terminating Mandsager in December 2019, Seda fired a warning shot to Defendants that the action was "a callous disregard for employment law." D0058 ¶ 64. Defendants completely ignore this evidence in their moving papers.

Seda, an independent HR professional, hired by the City, still stands by the email that she sent despite the Defendants' improper personal attack towards her in this litigation. D0058 ¶ 64. With respect to Seda's statement "unless there is information to which I am not aware," Seda testified that no one with the City has ever made her aware of additional information in response to her statement. D0058 ¶ 65. Notably, Seda testified that she was not trying to advocate for Mandsager, but she was simply could not see herself staying silent and sitting on the sidelines while the Council acted against Mandsager that she considered a "callous disregard for employment law." D0058 ¶¶ 64-65.[9]

[9] In addition to HR professional Seda's warnings to Defendants, the City's own HR employee, Stephanie Romagnoli, testified that she viewed the termination of Gregg's contract as the City Administrator as "unjustified." D0058 ¶¶ 97-103.

Defendants, though, intentionally ignored Seda's warning emails. D0058 ¶ 231. Notably, Seda confirmed that the only evidence she was made aware of during her work for the City concerning Plaintiff's lack of "willingness to perform your duties" was Plaintiff's time off work or away from work to deal with his health issues – his disability. D0058 ¶ 132. Seda similarly confirmed that not a single department head under Plaintiff's supervision expressed to her that Plaintiff showed an unwillingness to perform his job duties other than due to his health issues. D0058 ¶ 133.[10] Perhaps most importantly, Seda confirmed that not a single Defendant ever expressed to her that "they'd lost confident in Gregg's willingness to perform his duties as City Administrator." D0058 ¶ 134.

Saucedo admits that he ignored the advice of the City's HR Consultant, Patti Seda, when he voted to terminate the contract of Plaintiff. D0058 ¶ 68. Brockert admits that the above email was a "warning issued from Patti Seda to her and the Council not to take termination action at the end of 2019 concerning Plaintiff." D0058 ¶ 69. Yet, not a single Council member responded to Seda with information to contradict her statement. D0058 ¶ 70. Brackett went so far in his deposition too allege that Seda, the City's paid HR consultant was a liar and was "lying" in her

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[10] In addition to HR professional Seda's testimony that there was no evidence showing Mandsager was unwilling to perform his duties, City HR employee Romagnoli similarly confirmed that the only thing making Mandsager "unwilling" was time off to address health issues. D0058 ¶ 135.

December 5, 2019, email. D0058 ¶¶ 72-75. Instead of picking up the phone and discussing her email, Brackett chose to instead "protect myself at that point in time," a clear admission of his wrongdoing later confirmed through review of the secret text messages. D0058 ¶ 75.

Council Member Harvey forwarded the Seda email to Defendants after he received it, highlighting that he was in "total agreement" with Seda and "not aware of any reasons why Council would even be considering, let alone discussing, the possible termination of Mandsager's contract." D0058 ¶ 80. Harvey referred to Defendants' actions as a "witch hunt." D0058 ¶ 80. In addition to not responding to Seda directly, Defendant Brackett and others did not respond to fellow Council Member Harvey's email concerning Seda's December 5, 2019, email." D0058 ¶ 81.

Notably, Brackett and Brockert both testified they would have used Seda's 2019 performance review to justify termination of Plaintiff if it came back supporting a conclusion that he was insubordinate, but of course, it did not support that conclusion. D0058 ¶¶ 82, 85. Patti Seda testified that at the time of her deposition, she still has no idea what the offered reason was for Mandsager's termination. D0058 ¶ 95.

Defendants' contention that Mandsager was terminated due to the Ad Hoc committee is dishonest and pretextual.

Defendants argue only two alleged acts of insubordination. First, they argue Mandsager's alleged insubordination towards a proposed ad hoc committee which was discussed amongst the parties back in the spring of 2018. D0058 ¶ 301. Mandsager's only issue with the formation of the committee was to make sure that it was legal to form such a committee, so he checked with the City Attorney, as he is required to do under the circumstances. D0058 ¶ 301.

When asked during his deposition what else Plaintiff was to do if he had questioned about the legality of something other than go to the City Attorney, Saucedo admitted that Plaintiff's conduct was the proper course of action, noting "I wouldn't know who else he could ask." D0058 ¶ 302. Brackett confirmed that the ad hoc committee he requested was formed, and that Plaintiff would have no way to prevent it from being formed. D0058 ¶ 303. The ad hoc committee formation was a non-issue where Mandsager simply did his job in seeking a legal opinion as to the legality of the committee after requested by Brackett. D0058 ¶¶ 301-303. As noted above, Mandsager received multiple merit-based pay increases *after* Brackett brought the ad hoc committee idea to the Council for discussion.

Defendants' contention that Mandsager was terminated due to the Code Change is dishonest and pretextual.

Defendants next argue Mandsager's alleged insubordination towards changes made to the City Code justified termination. Changes to the City Code were entirely within the responsibility and duties of the City Council. D0058 ¶¶ 284-285, 209. The Code Change at issue alleged by Defendants dealt with changing the communication method and having direct reporting to Council Members from Department heads, bypassing the City Administrator. D0058 ¶¶ 286, 298.

This Code Change led by Muscatine's Blue Wave of elected officials dead set on finding a legal justification for Mandsager's termination appeared to most at the time to be a purported solution without a problem. D0058 ¶¶ 286, 298. Notably, Mandsager had no control or authority to make changes to the Code without the express direction of the City Council, and he did nothing to prevent the Council's action. D0058 ¶ 288. He did, however, suspect at the time that something was afoul with the motivation and action of the Council in its claimed desire to change the Code. D0058 ¶ 300. Now, after receiving and reviewing the secret text messages, Mandsager can confirm his intuition was right, something was certainly afoul with Defendants' intentions.

While Defendants' Counsel claims in this litigation that Plaintiff was trying to circumvent the Code Change through manipulation of the employee handbook, it was actually the City's HR-Manager, Stephanie Romagnoli, who was in charge of

overseeing employee handbook policy changes. D0058 ¶¶ 289-290, 293. In fact, it was Romagnoli who drafted the handbook update memo with assistance from City Attorney, Matt Brick, in early October 2019 to address the change in the Code concerning direct communication with employees by Council Members. D0058 ¶ 291. Romagnoli explained that the handbook update memo was put in place to enforce the Code Change, but also ensure that issues brought to the attention of others were not overlooked or dropped because of lack of adequate communication with the Code change bypassing the City Administrator. D0058 ¶ 292.

Notably, Romagnoli, not Mandsager, was asked to go before the Council and explain the employee handbook changes, and the Council took no action other than to ask for the removal of the word "immediate" in response once it was explained to them what was being done. D0058 ¶ 294. Brockert admitted that there was nothing wrong with the Code Change process in 2019, and Plaintiff did nothing to violate his contract during this process. D0058 ¶ 295. Saucedo similarly testified that there was nothing wrong with a City Administrator voicing his opinion relative to Council action prior to action being taken. D0058 ¶¶ 296-298. The public record confirms that there was never any formal action taken by the Council where Mandsager ignored or refused to follow Council's action. D0058 ¶ 299.

Instead, secret text messages between Malcolm and Brackett confirmed that they knew there was no basis for an insubordination termination, as Malcom texted

Brackett in November "if this doesn't happen by Dec 5th, we will not be able to cancel the contract." D0058 ¶ 278.[11] Secret text messages between Broderson and Brackett similarly revealed that they there was no basis for terminating Mandsager upon a claim of insubordination, and that they needed "to update Oz and Nadine" that "our plan" of termination needed to occur now, not later. D0058 ¶ 230.

Similarly, secret text messages between Saucedo and Broderson reveal that they knew the Code Change would be relevant in Mandsager's "removal process." D0058 ¶ 263. Saucedo recognized that they needed Seda's review to come back as a basis of insubordination, but instead they decided to "put together a plan" and "strategize" because Saucedo declared "I'm with you and getting rid of them…we just need to come up with a plan." D0058 ¶ 264.

Text messages exchanged in October reveal that Saucedo was still trying to come up with a legal reason for terminating Mandsager, hoping that they could "find something he has done wrong while he is out [on FMLA leave]. D0058 ¶ 274. On November 6, 2019, Broderson and Saucedo exchanged the texts when discussing the fact that they had to set forth their basis for termination pursuant to Iowa law at a

[11] Despite the clear context of the email exchange, Malcolm refused in his deposition to admit his role in the plan to terminate Mandsager and claimed that what happened on December 5 was "unexpected on my part." D0058 ¶¶ 279-281. In fact, Malcolm lied and testified that he was referring to Seda's contract, not Mandsager in his text message. D0058 ¶ 281.

public hearing, concluding that they will just say “no confidence” instead of providing actual evidence of claimed insubordination. D0058 ¶ 276.

ARGUMENT

Standard of Review

Pursuant to Iowa R. App. P. 6.903(3), there is no dispute amongst the parties as to error preservation, scope of review, and standard of review on any issue of argument below.

I. THE DISTRICT COURT TWICE CORRECTLY DENIED SUMMARY JDUGMENT AS MANDSAGER PRESENTED DIRECT EVIDENCE OF DISABILITY DISCRIMINATION AND RETALIATION MAKING *FEEBACK* INAPPLICALBE TO THIS CASE.

Discrimination cases may be established through either direct or indirect evidence. *Feeback v. Swift Pork Co.*, 988 N.W.2d 340, 347 (Iowa 2023); *Godfrey v. State*, 962 N.W.2d 84, (Iowa 2021)(noting that under ICRA there is generally no requirement that there be direct evidence of a defendant's discriminatory motive)(overruled on other grounds by *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023); *Hedlund v. State*, 930 N.W.2d 707 (Iowa 2019)(citing *King v. United States*, 553 F.3d 1156 (8th Cir. 2009); see also *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891 (Iowa 1990); *State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979)(rejecting formalism of valuing direct over indirect evidence).

Direct evidence of discriminatory intent is evidence that "if believed, proves the fact of discriminatory intent without inference or presumption." *Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005). *Feeback* specifically limited

modification of the *McDonnell Douglas* framework for summary judgment on ICRA discrimination claims resting on indirect evidence. *Feeback*, 988 N.W.2d at 347.

Discovery in this case revealed direct evidence of Defendants' discriminatory motive to be considered by the jury in determining Mandsager's ICRA disability and retaliation claims under Counts I and II. Accordingly, the Court's ruling on the Renewed Summary Judgment holding that *Feeback* was inapplicable to the facts of this case, and its denial of Defendants' renewed Motion for Summary Judgment was proper and should be affirmed on this Interlocutory Appeal.

A. Defendants' secret text messages and sworn admissions are direct evidence of a discriminatory motive to terminate Mandsager due to his disabilities and work accommodations.

Defendants briefing attempts to ignore the secret meetings and texts messages wherein Defendants express their anger, animus, and frustration with Mandsager's disability, his accommodations, his time off work, and his FMLA filing. Instead of addressing the actual evidence in the case, Defendants incorrectly claim that Mandsager's direct evidence is *only* that "Defendants knew of [Mandsager's] disability and his accommodations." (Appellant's Brief, p. 32-33). Defendants' contention is incorrect and ignores the direct evidence of Defendants' own text messages and the admissions regarding the text messages given during depositions.

Defendants' text messages reveal that not only did they know of Mandsager's disability, his accommodations in 2019, and his health deteriorating, but Defendants

intentionally used Mandsager's disability to drive animus against Mandsager and obtain a deciding vote from Saucedo to terminate Mandsager in 2019. It is important to remember that Saucedo was not on board for terminating Mandsager due to the prior lawsuit against Broderson. He couldn't be. He thought Broderson got off on a technicality after he voted to remove her from office.[12]

Instead, Broderson, Brackett, Brockert, and Malcolm needed something more to sway Saucedo to their side after April 2019. Enter Mandsager's disability into the secret discussions. Broderson and Brackett began to pray on Saucedo's beliefs and used the quarter million dollars for part time work allegation associated with Mandsager's disability to swing him into their corner and vote for termination.

While not ruling on the issue of direct vs. indirect evidence, the District Court still recognized Mandsager's direct evidence in denying Defendants' first motion for summary judgment when in held:

> "[T]here is active participation amongst the Defendants expressing animosity for Plaintiff having to take time off of work. In response to a comment by Broderson that Plaintiff took "another day off," Defendant Saucedo replies "Wow imagine that." Defendant Saucedo in one text also refers to Plaintiff as "baby Gregg," and explicitly

[12] The fact dispute is really highlighted by Defendants' briefing wherein they claim the minority (Blue Wave) became a majority because Saucedo joined the vote due to the Code Change. But the Code Change was not in issue until October 2019 after months and months of scheming by Defendants through secret meetings and text messages. The reality is that the text messages show that Saucedo became part of the majority after Broderson and others prayed on his prejudices towards Mandsager's health, disability, time away from work, and accommodations.

> states that "Baby is my code word for [Plaintiff]." Defendant Brockert testified that she believed that Plaintiff's absences were causing things to not "quite [get] covered the way they should have." One council member testified that Defendants retaliated against Plaintiff's disability in closed sessions while discussing merit pay. There are also text messages between Defendants talking about their "plan" to get rid of Plaintiff."

The District Court recognized the direct evidence in denying Defendant's renewed motion for summary judgment when it held that "Defendants did not show any additional facts or evidence that would require this Court to disturb its earlier ruling." Accordingly, because *Feeback* specifically limited modification of the *McDonnell Douglas* framework for summary judgment on ICRA discrimination claims resting on indirect evidence, and this is a direct evidence case, the District Court's rulings denying summary judgment as to Counts I and II should be affirmed.

II. EVEN IF MANDSAGER'S EVIDENCE IS CONSIDERED INDIRECT, THE DISTRICT COURT CORRECTLY RULED TWICE THAT THERE IS AMPLE EVIDENCE THAT DEFENDANTS' NOW-OFFERED REASONS FOR TERMIATNION ARE ILLEGIMATE OR PRETEXTUAL.

Under *Feeback,* "employees "must carry the initial burden of establishing a prima facie case of discrimination." *Id.* "Then, the employer must 'articulate some legitimate, nondiscriminatory reason' for its employment action." *Id.* "At that point, the burden shifts back to the employee to demonstrate the employer's proffered reason is pretextual or, while true, was not the only reason for his termination and that his age was another motivating factor." *Id.*

A. The District Court held that Mandsager carried the initial burden of establishing a prima facie case of disability discrimination.

Under *Feeback*, "employees "must carry the initial burden of establishing a prima facie case of discrimination." *Id.* "Employees do so by showing that they are members of a protected group, were qualified for their positions, and the circumstances of their discharge raised an inference of discrimination." *Id.*

Defendants' briefing does not appear to challenge the District Court's analysis of this prong of the *Feeback* standard. Mandsager was clearly a member of a protected group based on his disability. He was qualified for his position. In fact, he had raving reviews and merit-based pay raises all 10-years while employed as the City Administrator at Muscatine. Finally, the circumstances of Mandsager's termination raise an inference of discrimination based on the secret text messages and statements made during closed session pertaining to Mandsager's disability and accommodations. Accordingly, the District Court correctly held that:

> "A reasonable jury could infer that Defendants, with knowledge of Plaintiff's disabilities and dissatisfied with his failure to adhere to a more traditional in-person work schedule, sought to terminate him based on his disabilities."

The Court's determination of the first prong of *Feeback* should be affirmed by this appellate court.

B. The District Court held that Defendants' alleged nondiscriminatory employment action was allegedly based on insubordination.

Under the second prong of *Feeback*, the employer must 'articulate some legitimate, nondiscriminatory reason' for its employment action." *Id.* The District Court held that Defendants alleged insubordination, which, *if proven*, is considered a legitimate, nondiscriminatory reason for termination. *Id.* at 348. Thus, the Court found that the burden shifting goes back to Mandsager to prove that the insubordination allegation is pretext under *Feeback*.[13]

C. The District Court twice correctly held that Mandsager demonstrated the insubordination reason is pretextual.

The District Court *twice* correctly held that there is sufficient evidence for the jury to determine that Defendants' now-offered reasons of insubordination for termination are pretextual, generating a fact question for the jury. Defendants, though, contend that the District Court on the renewed summary judgment "erred by declining to engage in any analysis of *Feeback*." (Appellant's Brief, p. 34). To the contrary, the District Court properly analyzed the case under *Feeback* in concluding even if Defendants had an "honest belief" that Mandsager was insubordinate (prong

[13] Mandsager does not concede that insubordination occurred, of course. However, Mandsager does agree that *Feeback* supports a finding that insubordination can be the basis of a nondiscriminatory employment action, if proven.

2), there was ample evidence to suggest that the insubordination claim was pretextual under the third prong of *Feeback.*

Namely, the District Court ruled on the same pretext argument when it held the first time around:

> "The Court finds that Defendants have failed to demonstrate that a reasonable jury taking all reasonable inferences in favor of Plaintiff must find a lack of pretext. **A reasonable jury could infer that Defendants, with knowledge of Plaintiff's disabilities and dissatisfied with his failure to adhere to a more traditional in-person work schedule, sought to terminate him based on his disabilities and used an alleged refusal to go along with council objectives as a pretextual justification for the termination.** Summary Judgment is not appropriate under the McDonnell Douglas standard. Likewise, there is a dispute of fact as to whether Defendants have established their affirmative defense under the *Price Waterhouse* standard."

D0080, p. 13. (emphasis added).

With respect to the Renewed Motion for Summary Judgment, the District Court again rejected Defendants' third bite at the apple argument, emphasizing that "Defendants did not show any additional facts or evidence that would require this Court to disturb its earlier ruling." D0133, pp. 3-4. The Court further noted that the District Court had already ruled on the issue of pretext, finding a fact question on pretext for the jury to determine under both pre-*Feeback* and after the *Feeback* decision. D0133, p. 3. Accordingly, the District Court held that this is not an "honest belief rule" case. D0133, p. 4.

Despite this, Defendants argue that under *Feeback* and *Avery*, Mandsager had the burden during the renewed motion to show: (1) the Defendants' explanation of Mandsager's insubordination had no basis in fact; or (2) that a prohibited reason (his health and requested medical leave) was more likely what motivated the Defendants rather than insubordination. (Appellant's Brief, p. 35-36). Defendants go on to assert that "Mandsager offered nothing to meet his burden in his Resistance to the Renewed Motion." (Appellant's Brief, p. 36). If is unclear if Defendants are alleging the "nothing" is an alleged procedural or substantive claim against Mandsager. The argument clearly fails as a procedural argument.[14]

If Defendants' argument is that Mandsager lacked substantive proof, it fails as well. Two District Court judges reviewed the evidence, the law, and ruled in Mandsager's favor on two different occasions. This is now Defendants' fourth bite of the apple to avoid a jury trial on the disputed facts in the case. In both District

[14] Defendants' briefing makes reference to "even if Mandsager had offered an argument related to pretext…" (Appellant's Brief, p. 36). Defendants' statement seems to ignore the very first page of Mandsager's brief and the Court's prior Order where it specifically found that "an alleged refusal to go along with council objectives was a pretextual justification for termination." D0112, Plaintiff's Memorandum of Law. Defendants' argument also ignores Mandsager's Statement of Disputed Facts in Resistance to Defendants' Renewed Motion for Summary Judgment in which Mandsager adopted paragraphs 1-307 of Plaintiff's Statement of Disputed Facts. D0110, ¶ 308. Simply put, the pretext argument did not change from Defendant's first motion, and it would be unnecessary for Mandsager to do more than make reference to the evidence, argument, and holding of the Court when Defendants sought a second or third bite of the apple.

Court opinions, the Court reviewed the evidence and found a dispute as to the pretextual nature of the "honest belief" and/or "legitimate business reason." Rightfully so.

i. Defendants' explanation of Mandsager's alleged insubordination lacks basis in fact as a matter of law and is for the jury to determine.

Despite the District Court's rejection of the argument, and conclusion that it is a factual question for the jury, Defendants allege to the appellate court that "insubordination is demonstrated throughout the record," claiming Mandsager was "repeatedly insubordinate." (Appellant's Brief, p. 36). They only two examples: (1) the ad hoc committee issue in 2018 and (2) the Code Change from October 2019. (Appellant's Brief, p. 36).

The District Court correctly held that Defendants' contention that Mandsager was insubordinate and terminated due to the Ad Hoc committee lacks a basis in fact as a matter of law and is, thus, pretextual. The ad hoc committee was discussed amongst the parties back in the spring of 2018, and Mandsager's only issue was to make sure that it was legal to form such a committee, so he checked with the City Attorney. D0058 ¶ 301. When asked during his deposition what else Plaintiff was to do if he had questioned about the legality of something other than go to the City Attorney, Saucedo admitted that Mandsager's conduct was the proper course of action, noting "I wouldn't know who else he could ask." D0058 ¶ 302. Brackett

confirmed that the ad hoc committee he requested was formed, and that Plaintiff would have no way to prevent it from being formed. D0058 ¶ 303.

Defendants fail to establish the alleged insubordination concerning the ad hoc committee of 2018 as the honest basis of his December 2019 termination as a matter of law. In fact, there are no particularized facts alleged as to what the alleged insubordination was or how Defendants honestly believed and relied on the ad hoc committee formation, and Mandsager's request to get a legal opinion as to whether it was legal to form, as the basis of termination.

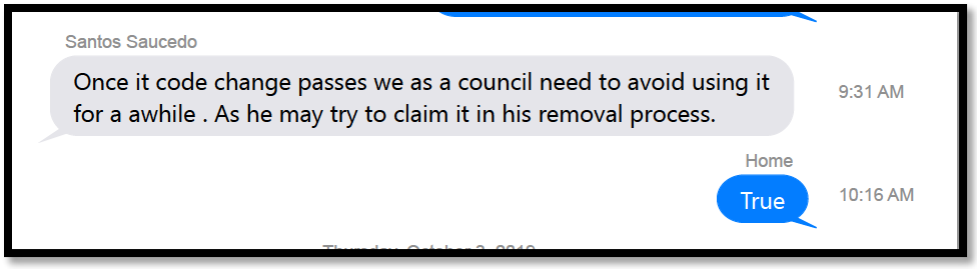
Moreover, reliance on the ad hoc committee from 1 ½ years prior is similarly weak and pretextual. The ad hoc committee was discussed amongst the parties back in the spring of 2018, and Plaintiff's only issue was to make sure that it was legal to form such a committee, so he checked with the City Attorney. This was not an on-going issue amongst the parties, if even considered an issue of insubordination at all. In the meantime, Mandsager was awarded merit-based pay increases. Moreover, the ad hoc committee issues was never raised with Seda or the Council as an alleged act of insubordination.

Courts have refused to permit an employer to use an honest belief defense in disability discrimination cases under the Americans with Disabilities Act (ADA) when the employer's belief was not reasonably grounded on particularized facts. *Jones v. Nissan North America, Inc.*, 438 Fed.Appx. 388 (6th Cir. 2011);

Schwendeman v. Marietta City Schools, 436 F.Supp.3d 1045 (S.D. Ohio 2020). The Sixth Circuit, for example, has emphasized that for an employer to successfully invoke the honest belief rule in ADA cases, it must demonstrate that its belief was not only honest but also reasonably based on particular facts that were before it at the time of employment action. This requirement ensures that employment actions are founded on fact and not on unfounded fear, prejudice, ignorance, or mythology. *Smith v. Chrysler Corp.*, 155 F.3d 799 (1998). See also *Feeback* at 349-350 (emphasizing that the issue is the good faith belief of the employer, i.e., that it must be "honest").

Defendants similarly failed to establish the alleged insubordination concerning the alleged issues concerning the Code Change in October 2019 as the honest basis of Mandsager's December 2019 termination as a matter of law. The record reflects that the Code Change was intentionally put into place by Defendants to elicit an anticipated angst or insubordination by Mandsager. It did not elicit insubordination by Mandsager.

The illegitimate nature of the Code Change is further highlighted by a secret text sent by Defendant Saucedo to Defendant Broderson:



Changes to the City Code were entirely within the responsibility and duties of the City Council. The Code Change at issue in this case dealing with direct reporting to Council Members from Department heads appeared to most to be a purported solution without a problem. Notably, Mandsager had no control or authority to make changes to the Code without the express direction of the City Council, and he did nothing to prevent the Council's action. He did, however, suspect at the time that something was afoul with the motivation and action of the Council in its claimed desire to change the Code. Looking back now, he was right.

While Defendants claim in this litigation that Plaintiff was insubordinate as a matter of law in trying to circumvent the Code Change through manipulation of the Employee Handbook (Appellant's Brief, p. 29), it was the City's HR-Manager, Stephanie Romagnoli, who was in charge of overseeing employee handbook policy changes. In fact, it was Romagnoli who drafted the handbook update memo with assistance from City Attorney, Matt Brick, in early October 2019 to address the change in the Code concerning direct communication with employees by Council Members. Romagnoli explained that the handbook update memo was put in place

to enforce the Code Change, but also ensure that issues brought to the attention of others were not overlooked or dropped because of lack of adequate communication with the Code change bypassing the City Administrator.

Notably, Romagnoli, not Mandsager, was asked to go before the Council and explain the employee handbook changes, and the Council took no action other than to ask for the removal of the word "immediate" in response once it was explained to them what was being done. Brockert admitted that there was nothing wrong with the Code Change process in 2019, and Plaintiff did nothing to violate his contract during this process. Saucedo similarly testified that there was nothing wrong with a City Administrator voicing his opinion relative to Council action prior to action being taken. The public record confirms that there was never any formal action taken by the Council where Mandsager ignored or refused to follow Council's action.

Secret text messages between Malcolm and Brackett confirmed that they knew there was no basis for an insubordination termination, as Malcom texted Brackett in November "if this doesn't happen by Dec 5th, we will not be able to cancel the contract." Secret text messages between Broderson and Brackett similarly revealed that they there was no basis for terminating Mandsager upon a claim of insubordination, and that they needed "to update Oz and Nadine" that "our plan" of termination needed to occur now, not later.

Secret text messages between Saucedo and Broderson also reveal that they knew the Code Change would be relevant in Mandsager's "removal process." Those same text messages between the two revealed that Saucedo recognized that they needed Seda's review to come back as a basis of insubordination, but instead they decided to "put together a plan" and "strategize" because Saucedo declared "I'm with you and getting rid of them…we just need to come up with a plan." Yet, Seda fired the warning shots at Defendants and emphasized that they had no evidence of insubordination and that their actions were a "callous disregard for employment law."

Instead of responding with evidence, they simply chose to ignore their independent HR-consultant and move forward with the "plan." In fact, text messages exchanged in October reveal that Saucedo was still trying to come up with a legal reason for terminating Mandsager, hoping that they could "find something he has done wrong while he is out [on FMLA leave]. They finally decided on November 6, 2019, through a text message between Broderson and Saucedo that they will just say "no confidence" instead of actually providing evidence of insubordination. Of course, Defendants could have disclosed their secret text messages back in 2019, but they chose not to do so, hiding the discriminatory angst from the public and Mandsager.

Instead of addressing the overwhelming evidence concerning Defendants' discriminatory intent, Counsel seeks to focus on an alleged "fake time issue with Brick to make it seem like any termination was a result of Mandsager's medical leave." The attempt to paint Mandsager and Brick as frauds is not well received, and simply not a true reflection of reality. It was not Mandsager or Brick who sent the discriminatory text messages in July 2019. Mandsager and Brick had no idea that Defendants were sending secret text messages at the time concerning Mandsager's time off from work, quarter million-dollar part time work, baby Gregg, and others.

If not direct evidence, the natural inference from these text messages is that these were not the only complaints rendered about Mandsager's disability. As the District Court noted, Brackett brought up Mandsager's disability during merit-based conversations in closed sessions. Presumably, the tens, if not hundreds, of secret meetings involved discussing Mandsager's disability, noting that they needed to overcome that by "working smarter" than Mandsager.

Meanwhile, while Brick clearly suspected his client had ill intentions, and Seda called out her client for a callous disregard for employment law, there was no "fake timing issue" for Mandsager's undisputed medical conditions or FMLA leave, which was properly awarded upon request by the City. At best, it is for the jury to

determine the alleged "death knell" asserted by Defendant to the pretext arguments, not the Court, as determined twice by the District Court.

D. The District Court's holdings concerning insubordination as pretext is supported by Defendants' own HR-Consultant and HR-Manager, who all expressed opinions unfavorable to Defendants while this was occurring.

There were two HR professionals who were watching this drama as it unfolded for the City of Muscatine - Patti Seda and Stephanie Romagnoli. Both saw Defendants' actions in real time and viewed them as improper.

Seda was brought in *at the request of* Defendants in 2019 to (1) develop a new process for review of the City Administrator position and then later (2) perform review of Mandsager for 2019. Seda twice called out Defendants for their improper conduct in attempting to terminated Mandsager, and she specifically asked for any "information, or a position, that will supersede the information she obtained during the performance review." No one provided Ms. Seda with any "information, or a position, that would potentially supersede information presented in this [performance review] process."

To the extent Ms. Seda's first warning message wasn't clear enough, she sent her second email on December 5, 2019, calling out Defendants for their "callous disregard for employment law." She warned them of the "significant risk" of their actions. Defendants chose, though, to ignore the advice of their paid consultant, going rogue, and have reverted in this litigation to calling her a "liar." When other

Council members tried to engage in meaningful conversation with Defendants at the time, they were ignored.

It appears that Defendants' original game plan of bringing in an outside consultant to review Mandsager was in hopes she would give them evidence in support of termination, and that strategy backfired greatly. In fact, Brackett admits that the 2019 Seda performance review could have been used to justify termination of Plaintiff had it come back critical of his performance, but of course, it was not. Malcolm contended in his deposition that if the Seda 2019 performance review was completed and supported termination he "would not have cited that as grounds for termination [of Plaintiff]." Even worse, Defendant Saucedo tried to claim in his deposition that the Seda 2019 performance review had nothing to do with his decision on Plaintiff's termination; however, his text messages reveal a desire to wait and see if her report was favorable before termination, indicating that Defendant Saucedo has lied under oath again.

Independent HR Consultant Seda wasn't alone in seeing this as wrong in the real-time drama of Defendant's actions. Defendant's full time HR-Manager recognized that Plaintiff's termination was wrongful at the time as well. Stephanie Romagnoli, who holds a master's degree in organizational management, is the Human Resources Manager for the City of Muscatine, and has worked for the City of Muscatine since July 1996 in the field of human resources. Romagnoli testified

that she viewed the termination of Gregg's contract as the City Administrator as "unjustified." Romagnoli confirmed that she was not aware of any complaints raised by the City's department heads to Seda during Gregg's 2019 performance review.

Defendants have not retained any experts in this case. They have not retained any other HR specialists or attorneys to even counteract the HR professionals in this case who saw the trainwreck coming.

E. Defendants' evidence of alleged insubordination not specifically expressed in the Council Meeting or Written Order of Removal should not be considered by the Court as admissible evidence.

Defendants' reliance on alleged insubordination claims not expressly disclosed in the public hearing of termination or Written Order of removal should not be considered by the Court. Defendants should be estopped from alleging the proffered insubordination defense and its two alleged examples of insubordination pursuant to Iowa Code § 372.15. It is well settled law in Iowa that Iowa Code § 372.15 is a "notification procedure for discharge" of appointed officials such as Plaintiff. See *Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 963 F.Supp. 805 (N.D. Iowa 1997); see also *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646 (Iowa 2021). Here, Defendants failed to properly use the "notification procedure for discharge" to set forth the alleged specific reasons for discharge now alleged as "insubordination" in both the open public hearing and in the Written Order of Removal required under Iowa Code § 372.15.

III. On the issue of preemption, *Grahek v. Voluntary Hosp. Co-op. Ass'n of Iowa, Inc.* is the governing law and holds no preemption of Mandsager's Count V and VI intentional interference with contract claims against Broderson.

The issue raised in Section II of Appellant's Brief was previously decided by the Supreme Court in *Grahek v. Voluntary Hosp. Co-op. Ass'n of Iowa, Inc.*, 473 N.W.2d 31 (Iowa 1991). *Grahek* held that because third parties cannot discharge an employee, a tort claim for intentional interference with a contract would not be preempted by the ICRA. *Id.* at 35-36.

The *Grahek* Court reasoned that the tort of intentional interference with a contract necessarily requires the tort be committed by someone not a party to the contract. *Id.* at 35. Because it was alleged in *Grahek* that VHA is not a party to the VHI contract, the Court held that "the tort claim would not be preempted by [ICRA]. *Id.* The Court stated its holding that "acts of third parties are not unfair or discriminatory practices for purposes of [ICRA] and actions against such third parties are not preempted by [ICRA]. *Id.* Notably, the *Grahek* decision was recently cited with approval by this Court in *Valdez v. W. Des Moines Cmty. Sch.*, 992 N.W.2d 613, fn. 8 (Iowa 2023); see also *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017)(overruled on other grounds by *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023).

The Supreme Court also discussed and applied the *Grahek* decision to individual supervisory liability in *Vivian v. Madison*, 601 N.W.2d 872 (Iowa 1999). Citing its analysis in both *Grahek* and *Sahai v. Davies*, 557 N.W.2d 898 (Iowa1997),

the *Vivian* Court made clear that a party able to control the hiring and firing is subject to individual liability claims under ICRA; however, those who are not are still subject to tort claims outside of the ICRA. *Id.* Accordingly, it is settled law through *Grahek* that Broderson, in her individual capacity, and not subject to ICRA jurisdiction pursuant to the Court's prior Order, is a proper defendant for her own intentional torts.

A. At the urging of Defendants, the District Court held that Broderson does not have individual liability under the ICRA.

Critical to this analysis is the fact that Mandsager filed alternative theories of liability against Broderson, alleging individual liability under the ICRA in both her capacity as Mayor and in her individual capacity as well as the alternate claims under Counts V and VI for intentional torts. D0001, Counts I-II, V-VI. The alternative pleadings were done so that if the Court dismissed Broderson under the ICRA, her individual liability for her conduct would still be at issue for the jury to determine under *Grahek*.

It was Defendants who chose to argue in its Motion for Summary Judgment that *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 34 (Iowa 2021) supported that Broderson did not have any individual liability under the ICRA. Defendants argued that Broderson was not a proper individual defendant under the ICRA Counts because she did not have a vote to dismiss Mandsager as the City Administrator. The District Court agreed and dismissed the claims against Broderson under the

ICRA. The consequences of that Ruling, though, is that Broderson cannot use the ICRA as a shield to other intentional tort theories as stated under *Grahek*.

B. After dismissing the ICRA claims against Broderson, The District Court held that Broderson's individual liability survived summary judgment.

Having found that Broderson's liability, if any, falls outside of the ICRA, the District Court analyzed the tort theories alleged in Counts V and VI against Broderson in both her capacity as Mayor and in her individual capacity. The Court held that Broderson was not a party to the employment contract in her individual capacity, and thus her liability for torts alleged in Counts V and VI for interfering with the contract were proper to move forward legally and factually.

Specifically, the District Court held:

> Here, there is evidence that Broderson was hostile towards Plaintiff based on his absences from work and their prior lawsuits against one another. There is also evidence that Broderson was significantly involved in plans to have Plaintiff terminated from his position, despite not being a voting member of the council authorized to effectuate his removal. A reasonable jury viewing the evidence in the light most favorable to Plaintiff could infer that Broderson interfered with Plaintiff's business advantage in continuing as city administrator and that her primary purpose in doing so was to injure or financially destroy Plaintiff.

The facts of *Grahek* are similar to the facts in this matter with respect to how the Court analyzed Broderson's liability for tort. Grahek was employed as a clinical coordinator and consultant with VHI and St. Luke's. *Id.* at 33. He held separate

employment with VHA. *Id.* VHI terminated Grahek's employment with VHI when he was 61 years old. *Id.* Grahek brought an age discrimination case against VHI and a *separate* Count against VHA alleging intentional interference with the contract between VHI and Grahek. *Id.* at 35-36.

As noted above, The *Grahek* Court permitted the tort claims to proceed against VHA, reasoning that the tort of intentional interference with a contract necessarily requires the tort be committed by someone not a party to the contract. *Id.* at 35. Because it was alleged that VHA is not a party to the VHI contract, the Court held that "the tort claim would not be preempted by [ICRA]. *Id.* The Court stated its holding that "acts of third parties are not unfair or discriminatory practices for purposes of [ICRA] and actions against such third parties are not preempted by [ICRA]. *Id.*

Here, the District Court specifically held that Broderson in her individual capacity was not a party to Mandsager's contract, which was a similar finding in *Grahek* relative to VHA, and thus the tort claims should not be preempted. Accordingly, it was proper for the District Court to hold that "a reasonable jury viewing the evidence in the light most favorable to Plaintiff could infer that Broderson interfered with Mandsager's business advantage in continuing as city administrator and that her primary purpose in doing so was to injure or financially destroy Mandsager."

C. The Supreme Court's decision in *McCoy* did not impact the District Court's prior ruling denying Broderson's Motion for Summary Judgment under Count V and VI of Plaintiff's Petition in her individual capacity.

Broderson seeks reconsideration of the District Court's holding in the renewed motion based on the *McCoy* decision, arguing for ICRA preemption. See *McCoy v. Cardella*, 992 N.W.2d 223 (Iowa 2023). However, the Court's holding in *McCoy* did not expressly address ICRA preemption and does not govern the facts of this case:

> "As explained below, we hold that the district court erred in concluding that McCoy's claim was not preempted by the IWCA. Because we reverse the district court's ruling on Cardella's motion for judgment notwithstanding the verdict on this basis, **we do not address ICRA preemption** or any of Cardella's trial-related challenges." (emphasis added).

Id.

Accordingly, the District Court was not in error in denying the renewed summary judgment on Counts V and VI against Broderson in her individual capacity based on Broderson's argument that *McCoy* signaled a change in the law since the District Court's first Order denying Broderson's summary judgment as to Counts V and VI in her individual capacity.

i. *McCoy* does not impact the Court's ruling denying summary judgment because the Court already held that the ICRA does not apply to Broderson in her individual capacity.

Broderson asked this Court to use the ICRA as a shield to her individual liability under *Rumsey*. She was successful. But that was not enough. She now asks this Court to use the ICRA as a sword to her tort claims based on her intentional interference with the Council's decision to terminate Mandsager's contract. The *Grahek* Court recognized that it is inconsistent to allow a defendant to escape individual liability under the ICRA and the intentional torts for interfering with a contract or business advantage. *McCoy* does not overrule *Grahek*.

In fact, a reading of *McCoy* supports that *Grahek* is still good law and supports affirming the District Court's two denials of summary judgment as to Broderson's individual liability under Count V and VI. Namely, *McCoy* was decided on the express provision of exclusive remedy found in Iowa Code § 85.20. *Id.* The exclusivity provision of § 85.20 applied in *McCoy* because the lawsuit was brought by McCoy against his employer, Cardella & Associates. *Id.*

Had McCoy's tort claims been brought against some third-party (or co-employee for gross negligence), and not his employer, the Court would have obviously upheld the legal basis of the tort claims, as third-party claims under the ICWA are well recognized as outside of the exclusive remedy provision of Chapter

85.20 and under § 85.22. See *Michael Eberhart Const. v. Curtin*, 674 N.W.2d 123 (Iowa 2004).

The District Court's denial of the renewed summary judgment is also consistent with the case law supporting that implied preemption is generally disfavored and found only when "imperatively required." *Freeman*, 848 N.W.2d at 86 (citing *Fabricius v. Montgomery Elevator Co.*, 121 N.W.2d 361, 362 (1963)). "The legislature is presumed to know the existing state of the law when a statute is enacted." *Jahnke v. Incorporated City of Des Moines*, 191 N.W.2d 780, 787 (Iowa 1971).

ii. *McCoy* does not impact the Court's ruling denying summary judgment because the Court held that the evidence regarding Broderson included the prior lawsuit claim, which falls outside of ICRA.

The District Court previously held:

> "The Court finds the fact pattern in this current case substantially analogous to *Iowa Coal Min. Co., Inc.* **Here, there is evidence that Broderson was hostile towards Plaintiff based on his absences from work and their prior lawsuits against one another.** There is also evidence that Broderson was significantly involved in plans to have Plaintiff terminated from his position, despite not being a voting member of the council authorized to effectuate his removal. A reasonable jury viewing the evidence in the light most favorable to Plaintiff could infer that Broderson interfered with Plaintiff's business advantage in continuing as city administrator and that her primary purpose in doing so was to injure or financially destroy Plaintiff. The Court denies summary judgment as to Counts V and VI of the Petition."

It is well settled that if the ICRA does not apply to the facts of an individual Defendant, preemption or exclusive remedy does not apply. *Knutson v. Sioux Tools, Inc.*, 990 F. Supp. 1114 (N.D. Iowa 1998). Here, the facts in dispute concerning Broderson's motivation include the prior lawsuits against one another. If the jury finds that her motivation to interfere with Mandsager's employment was the prior lawsuit against each other, the ICRA is completely irrelevant. This is not to say that her motivation did not result in an execution of that motivation by praying on Saucedo's angst towards Mandsager's absences from work, disability, pay, and accommodations. But those are issues for the jury to determine and render a verdict as to each party's respective liability. Accordingly, Defendants' Appeal should be summarily denied.

CONCLUSION

For the reasons stated above, the District Court's two Orders denying summary judgment should be affirmed and this case remanded back to the District Court for trial.

REQUEST FOR ORAL ARGUMENT

Mandsager respectfully requests that his matter be heard orally upon submission of this case to either the Supreme Court or Court of Appeals.

Dated: October 11, 2024.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 11,341 words (including images and excluding captions, tables of contents, tables of authorities, statements of the issues, signature blocks, and certificates). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14.

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CERTIFICATE OF FILING AND SERVICE

I certify that I filed this Brief with the Clerk of the Supreme Court using the Iowa Electronic Document Management System ("EDMS") on October 11, 2024. I further certify that on October 11, 2024, a copy of this Brief was served using the EDMS system, upon the following:

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