No. 20-1037

IN THE SUPREME COURT OF IOWA

THE ESTATE OF SUSAN FARRELL, by its administrator, Jesse Farrell, and as Representative for the claims of JESSE FARRELL, individually, JESSE FARRELL, as next friend of R. F., a minor, PEGGY MASCHKE, individually, and STEPHEN MICHALSKI, individually,

Plaintiffs,

v.

STATE OF IOWA; CITY OF WAUKEE; CITY OF WEST DES MOINES, IOWA; PETERSON CONTRACTORS, INC.; ROADSAFE TRAFFIC SYSTEMS, INC.; VOLTMER ELECTRIC, INC.; PAR ELECTRICAL CONTRACTORS, INC., MIDAMERICAN ENERGY COMPANY; and, KIRKHAM, MICHAEL & ASSOCIATES, INC.,

Defendants.

Appeal from the Polk County District Court, District Court No. LACL140694, the Honorable Judge Heather Lauber, presiding.

FINAL BRIEF
CITY OF WEST DES MOINES, CITY OF WAUKEE, AND STATE OF IOWA

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ROUTING STATEMENT: THE IOWA SUPREME COURT SHOULD RETAIN AND RESOLVE THIS CASE

This case involves a head-on motor vehicle collision that occurred on Interstate 80 west of the Grand Prairie Parkway Interchange. Plaintiffs have sued seeking damages for the death of Des Moines Police Officer, Susan Farrell, who was a passenger in the vehicle struck by another vehicle driven by Benjamin Beary, who is a not a party to this case. Plaintiffs allege that the City of West Des Moines, State of Iowa, and City of Waukee (hereinafter "Governmental Parties") opened and operated the Grand Prairie Parkway Interchange allegedly lacking adequate safety mechanisms such as lighting, signage, and road markings. Plaintiffs' lawsuit seeks to make the Governmental Parties insurers of highway safety and require blanket protection of motorists from other motorists who break the law and drive negligently.

The Governmental Parties moved for judgment on the pleadings based on the public-duty doctrine. The public-duty doctrine serves a cogent and important role by allowing public entities to enact laws and construct public improvements for the protection of the public without exposing taxpayers to open-ended liability from those efforts. *See The*

Law of Municipal Corporations § 53:18, at 251. The Governmental Parties "have to balance numerous competing public priorities, all of which may be important to the general health, safety, and welfare." *Johnson v. Humboldt Cty.*, 913 N.W.2d 256, 266-267 (Iowa 2018) (other citations omitted). The many demands on the Governmental Parties coupled with limited resources "provide a sound justification for the public-duty doctrine." *Id.*

The District Court denied the motion. The Governmental Parties sought and obtained interlocutory appeal.

This case should be retained and resolved by the Iowa Supreme Court because the appeal: (1) requires clarification and enunciating of principles governing a known concern about public-duty doctrine cases where nonfeasance can be misconstrued as misfeasance; (2) presents an issue of broad public importance requiring the ultimate decision to be made by the Iowa Supreme Court; and, (3) the District Court's Order denying judgment on the pleadings in favor of the Governmental Parties conflicts with published decisions of the Iowa Supreme Court. *See* Iowa R. App. P. 6.1101(2)(b, d, f).

1. The Iowa Supreme Court should retain this appeal to clarify and enunciate principles governing the gray area where nonfeasance can be mischaracterized as misfeasance.

The Iowa Supreme Court recently acknowledged that in cases involving the public-duty doctrine there exists a gray area where cases may be characterized as nonfeasance or misfeasance, but in that case the Court was not required to and, consequently, did not enunciate principles governing such gray-area cases. *See Breese v. City of Burlington,* 945 N.W.2d 12, 21 (Iowa 2020). This case squarely presents a gray-area situation where the District Court was persuaded by creative plaintiffs, who have mischaracterized acts of nonfeasance as misfeasance in order to avoid the public-duty doctrine. As such, this appeal presents an opportunity for the Iowa Supreme Court to enunciate legal principles on a substantial question in public-duty doctrine cases involving that acknowledged a gray area. *See* Iowa R. App. P. 6.1101(2)(f).

2. The Iowa Supreme Court should retain this appeal because public-duty doctrine cases involving the gray area affect all Iowa governmental entities and threaten to reduce the doctrine to pleading as a game of skill.

The public-duty doctrine is a no-duty determination based on sound policy that is designed to counter the potential for limitless

governmental liability if affirmative duties were imposed for every municipal undertaking. *See Johnson,* 913 N.W.2d at 262. The public-duty doctrine and its antithesis, the potential for limitless governmental liability, are expected to arise as frequently in cases as they have in the past. *See, e.g., Kempf v. Iowa County*, Case No. LACV 089663 (Iowa District Court, Linn County, March 26, 2019), *Orcutt v. City of Nevada,* 2019 WL 1981164 (Iowa District Court, Story County, March 24 2019), *Sumner-Johnson v. Manatts, Inc., Roadsafe Traffic Systems, Inc., and State of Iowa,* Case No. LACV 026503 (Iowa District Court, Mills County, October 4, 2018), *Johnson v. Humboldt Cty.*, 2016 WL 11566199 (District Court of Iowa, Humboldt County, September 23, 2016), *Whicker v. State of Iowa*, 2011 WL 8342352, (District Court of Iowa, Polk County, November 21, 2011), *and*, *Dooley v. City of Cedar Rapids*, No. 09-1926, 2011 Iowa App. LEXIS 238, at *6-16 (Ct. App. Mar. 30, 2011) (public duty doctrine cases involving general users of the public roads).

Because the Court has identified the potential for cases of nonfeasance to be mischaracterized as misfeasance, it can be expected that future cases will be plead accordingly. As such, there is a real threat that the decisions on the merits of a no-duty determination are

eliminated and application of the public-duty doctrine determined by pleading as a game of skill. It was the Iowa Supreme Court that first acknowledged the potential for gray-area public-duty doctrine cases and it is fitting that the Iowa Supreme Court retain the case to address the situation, bring clarity to the law, and promote no-duty determinations on the merits. As such, the pending gray-area public-duty doctrine appeal raises a fundamental and urgent issue of broad public importance affecting all Iowa governmental entities that is unanswered in the existing case law and, consequently, requires ultimate determination by the Iowa Supreme Court. *See* Iowa R. App. P. 6.1102(2)(d).

3. The Iowa Supreme Court should retain this appeal because the District Court's Order denying judgment on the pleadings conflicts with existing Iowa Supreme Court precedent.

The District Court Order denying the Governmental Parties' motion for judgment on the pleadings conflicts with published decisions of the Iowa Supreme Court in that the District Court's Order obligates governmental parties to protect members of the general public from harm caused by other members of the general public. (Order on MJP, p. 9, App. 321). *See* Iowa R. App. P. 6.1101(b), *and compare, e.g., Estate of McFarlin v. State*, 881 N.W.2d 51, 60, 63

(Iowa 2016), *Raas v. State*, 799 N.W.2d 444,449 (Iowa 2007), *Kolbe v. State*, 625 N.W.2d 721, 726 (Iowa 2001); and *Sankey v. Richenberger*, 456 N.W.2d 206, 208 (Iowa 1990). The case at bar parallels *Estate of McFarlin, Raas, Kolbe,* and *Sankey* in that it is a case where the Governmental Parties are alleged to have failed to protect a member of the general traveling public (Plaintiffs' Decedent, Officer Farrell) from another member of the general traveling public (Mr. Beary) who caused the harm. *See id.*

The District Court also improperly relied on case law from Rhode Island that creates an exception to the public-duty doctrine for egregious acts. (Order on MJP, pp. 9-10, App. 321-322). That exception that has not been adopted in Iowa or any other jurisdiction and conflicts with analogous Iowa precedent. *See, e.g., Siewert v. State*, No. 60291-8-I, 2008 Wash. App. LEXIS 15, at *5 (Ct. App. Jan. 7, 2008) (noting the Rhode Island exception and that "no other jurisdiction has embraced the egregious conduct exception"); *Johnson*, 913 N.W.2d at 265 (rejected an analogous exception to the public duty doctrine). Finally, the District Court Order failed to adhere to the standard for reviewing allegations when assessing the motion for judgment on the pleadings. *See* Stanton v. Des Moines, 420 N.W.2d

480, 482 (Iowa 1988) *and Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016) (the Court has to accept the well-pleaded factual allegations and ignore the legal conclusions).

In summary, the Governmental Parties request that this case be retained by the Iowa Supreme Court to: clarify and enunciate principles governing the gray area in public-duty doctrine cases; address this issue of broad public importance affecting all Iowa governmental entities in promoting resolution of the public-duty doctrine on the merits; and, reverse the District Court's Order which conflicts with existing Iowa Supreme Court precedent and enter judgment on the pleadings in favor of the Governmental Parties. *See* Iowa R. App. P. 6.1101(2)(b, d, f).

STATEMENT OF THE CASE

On September 26, 2018, Plaintiffs moved for leave to file their First Amended Petition at Law and Jury Demand. (Motion for Leave to File). On October 9, 2018, the District Court granted the motion deeming the amended petition filed. (Order Granting leave to file First Amended Petition). On November 5, 2018, West Des Moines and the State of Iowa filed an answer to the First Amended Petition asserting, in pertinent part, the public-duty doctrine as an affirmative defense.

(WDSM & State of Iowa Answer, para. 91). On February 13, 2019, Waukee filed an answer to the First Amended Petition also asserting, in pertinent part, the public-duty doctrine as an affirmative defense. (Waukee Answer, para 90).

On July 12, 2019, the Governmental Parties jointly filed for judgment on the pleadings arguing that the public-duty doctrine bars Plaintiffs' claims. (MJP). On August 2, 2019, Plaintiffs filed a resistance. (Resistance to MJP). Six days later the Governmental Parties filed their Reply. (Reply in support of MJP). On August 9, 2019, the District Court entertained extensive oral argument for a full hour. (Order Setting Hearing on MJP; 8.9.19 Transcript, Tr. 1:18, 34:20).

On June 12, 2020, the Iowa Supreme Court released its most recent public-duty doctrine decision. *See Breese,* 945 N.W.2d 12 (Iowa 2020). On June 18, 2020, Plaintiffs filed a motion seeking leave to file a supplemental resistance and brief arguing *Breese* supported their resistance to judgment on the pleadings. (Plaintiffs' Supp Resistance). On June 24, 2020, the Governmental Parties filed a joinder in Plaintiffs' motion, filed for leave to submit supplemental authority, and provided a supplemental brief discussing *Breese* in relation to the

pending motion for judgment on the pleadings. (Joinder/Supp Brief in support of MJP).

On July 12, 2020, and exactly one year after the Governmental Parties filed their Motion for Judgment on the Pleadings, the District Court entered its order denying the motion for judgment on the pleadings. (Order on MJP, App. 313-323).

The District Court's Order provided analysis and rationale in addressing the application of the public-duty doctrine and its effect in removing any duty of the Governmental Parties to Officer Farrell. (Order on MJP, pp. 1-6, App. 313-318). The District Court properly analyzed and determined that Officer Farrell did not have any special relationship with the Governmental Parties at the time of the events giving rise to Plaintiffs' suit. (Order on MJP, pp. 6-9, App. 318-321). In contrast to its analysis on the rationale for the public-duty doctrine and lack of a special relationship, the District Court summarily and without enunciated rationale held the public-duty doctrine to be inapplicable because "the Plaintiffs have alleged [the Governmental Parties] engaged in affirmative acts of negligence." (Order on MJP, p. 9, App. 321). In short, the District Court held that the Governmental

Parties were alleged to commit misfeasance to which the public-duty doctrine does not apply. (Order on MJP, p. 9, App. 321).

Despite not being raised by the Parties, the District Court also cited to and relied upon a case from Rhode Island that created an exception to the public-duty doctrine for egregious conduct. (Order on MJP, pp. 9-10, App. 321-322).

On August 11, 2020, and within the permissible thirty-days, the Governmental Parties filed a Joint Application for Interlocutory Appeal and Joint Motion to Stay. (Application for Interlocutory Appeal). On August 20, 2020, Plaintiffs filed a statement of non-resistance and consented to interlocutory appeal. (Plaintiffs' Consent to Interlocutory Appeal).

On September 4, 2020, the Iowa Supreme Court granted the interlocutory appeal, stayed the District Court proceedings pending appeal, and ordered further proceedings in accordance with the Iowa Rules of Appellate Procedure. (Order granting Interlocutory Appeal).

The pertinent pleadings leading up to this appeal raise the public-duty doctrine as a defense testing Plaintiffs' First Amended Petition under the well-pleaded facts on a motion for judgment on the pleadings. The District Court properly held the doctrine applicable and

found that Officer Farrell did not have any special relationship that would create an exception to the public-duty doctrine. However, under the well-pleaded facts and as argued below, the District Court erred in its legal analysis by: holding that Plaintiffs' claims amounted to misfeasance; applying the Rhode Island egregious conduct exception to the public-duty doctrine; and, in considering Plaintiffs' legal conclusions of gross negligence.

STATEMENT OF FACTS (ALLEGATIONS)

Because this appeal arises from the District Court's denial of a motion for judgment on the pleadings, this Statement of Facts recites the Plaintiffs' pertinent well-pleaded facts and ignores their legal conclusions and any supplemental material outside the First Amended Petition. *See Hurd v. Odgaard*, 297 N.W.2d 355, 356 (Iowa 1980), *Stanton,* 420 N.W.2d at 482, *and Hedlund*, 875 N.W.2d at 724 (review of motion for judgment on the pleadings must be based on the well-pleaded facts, ignoring a plaintiff's legal conclusions, and ignoring matters outside the pleadings).

It is anticipated that Plaintiffs will attempt to supplement the well-pleaded facts by submitting exhibits and information not contained within their First Amended Petition as they did before the

District Court in resistance to the Governmental Parties' Motion for Judgment on the Pleadings. However, this Court must ascertain whether Plaintiffs' First Amended Petition presents appropriate issues for trial under the well-pleaded facts alone. *See id., and, Roush v. Mahaska State Bank,* 605 N.W.2d 6, 8 (Iowa 2000) (motion for judgment on the pleadings tests the sufficiency of the pleadings).

1. Background Facts

Anticipating that Plaintiffs' additional materials will be presented to this Court as they were to the District Court, the following limited facts have been drawn from Plaintiffs' supplemental material and included solely for background and context. The inclusion of these background facts may strike the Court as disingenuous having just recited the law requiring that these facts be ignored in the legal analysis. However, the Governmental Parties provide this information to provide context as to how the collision underlying this case occurred.

Just after Midnight on March 26, 2016, Benjamin Beary, a non-party to this action, drove his vehicle the wrong-way down Interstate 80 at 102.91 miles per hour and head-on into a vehicle traveling from 79.55 to 87 miles per hour and in which Des Moines Police Officer, Susan Farrell, was a passenger. (Plaintiffs' Exhibit 19 to Resistance to

MJP, pp. 1-3, 6-7, App. 237-238, 240-243). The collision occurred in the eastbound lanes of Interstate 80 at mile marker 117.25 or about three-quarters of a mile to the west of the Exit 118, Grand Prairie Parkway Interchange. (Plaintiffs' Exhibit 19 to Resistance to MJP, p. 3, App. 234). There were no view obstructions in the area of Interstate 80 where the collision occurred. (Plaintiffs' Exhibit 19 to Resistance to MJP, p. 3, App. 234). The roadway evidence revealed no pre-collision skid marks. (Plaintiffs' Exhibit 19 to Resistance to MJP, p. 3, App. 234). The collision resulted in substantial damage to the two vehicles and the death of all who were involved. (Plaintiffs' Exhibit 19 to Resistance to MJP, pp. 4-6, App. 235-237). Mr. Beary tested positive for alcohol with a blood alcohol concentration of .223 and tested positive for marijuana with a level of 52 ng/ml of tetrahydro-cannabinol (THC). (Plaintiffs' Exhibit 19 to Resistance to MJP, p. 7, App. 238).

2. Well-pleaded facts

On March 26, 2016, Mr. Beary made an incorrect turn on the Grand Prairie Parkway Interchange and traveled in a Westerly direction in the Eastbound lanes of Interstate 80 and head-on into a vehicle in which Des Moines Police Officer, Susan Farrell, was a

passenger. (First Amended Petition, paras. 46-48). Plaintiffs subsequently brought the above captioned lawsuit against the Governmental Parties and the entities that the Governmental Parties hired to design, engineer, and construct the Grand Prairie Parkway Interchange (hereinafter the "Construction Parties"). (First Amended Petition, paras. 21-45). Plaintiffs divided their First Amended Petition into common-law negligence and nuisance claims against the Construction Parties; and, common-law negligence, nuisance, and premises liability claims against the Governmental Parties. (First Amended Petition, paras. 51-57, 58-62, 63-68, 69-75, 76-83).

Plaintiffs alleged that the Grand Prairie Parkway Interchange failed to have basic safety features (road markings, lighting, and signage) completed before opening the Interchange and failed to comply with then existing state-of-the art engineering safety standards, criteria, and design[1]. (First Amended Petition, paras. 35, 36, 40, 42, 43). Taken together, Plaintiffs' allegations claim the Governmental Parties allegedly failed to protect one member of the general traveling public (Officer Farrell) from another member of the

[1] It should be noted that the Governmental Parties dispute Plaintiffs' allegations for all purposes other than for argument in this Motion.

general traveling public (Mr. Beary) by failing to have basic safety features (road markings, lighting, and signage) completed before opening the Interchange and failing to comply with then existing state-of-the art engineering safety standards, criteria, and design. (First Amended Petition, paras. 35, 36, 40, 42, 43, 46-48). These allegations speak in terms of nonfeasance. *See Breese,* 945 N.W.2d 12, 19-20 (noting distinction between affirmative conduct by the governmental entity (misfeasance) and failing to prevent another from doing harm (nonfeasance)). Such failures by the Governmental Parties are encompassed by the public-duty doctrine. *See id.*

However, in their First Amended Petition, Plaintiffs creatively manipulate the alleged nonfeasance to create the appearance of misfeasance – alleging that the Governmental Parties opened and operated the Interchange lacking basic safety features like road markings, lighting, and signage or constructing the Interchange in the state-of-the art. (First Amended Petition, paras. 36, 51, 52, 70, 71, 79). In this way, Plaintiffs purport to base their claims against the Governmental Parties as negligent affirmative conduct of choosing to open and operate the Interchange with an alleged lack of basic safety features, thereby, twisting the allegations to appear as misfeasance

when in actuality the gravamen of their allegations is nonfeasance for the Governmental Parties failure to prevent another from doing harm. (First Amended Petition, paras. 51, 52, 55, 70, 71, 79, 80, 81). This is made clear when assessing the allegations from the perspective of the instrumentality of harm – Mr. Beary whose vehicle collided with the vehicle in which Officer Farrell was a passenger on Interstate 80.

Regarding the allegations made by Plaintiffs in their First Amended Petition, the duties in designing, engineering, constructing, opening and operating the Grand Prairie Parkway Interchange are duties for the protection of the travelling public at-large. (First Amended Petition). Plaintiffs have not alleged the breach of any statute, let alone a statute creating a duty to a special identifiable group to which Officer Farrell belongs. (First Amended Petition). Furthermore, Plaintiffs have neither alleged nor could they allege any special relationship between Officer Farrell and the Governmental Parties or that Officer Farrell was a member of a particularized class separate from the public at-large to whom the Governmental Parties owed a general duty. (First Amended Petition).

Based on the allegations in Plaintiffs' First Amended petition, the public-duty doctrine precludes Plaintiffs from establishing that the

Governmental Parties owed a duty to Officer Farrell beyond what is owed to the public in general. *See Johnson*, 913 N.W.2d at 259-267 (negligence, premises liability, and public nuisance claims for users of a public road barred by the public-duty doctrine). The gravamen of Plaintiffs' claims allege nonfeasance resulting from a failure of the Governmental Parties to protect Officer Farrell, a member of the general traveling public, from somebody else's instrumentality of harm, namely Mr. Beary. *See Breese,* 945 N.W.2d at 18 (citing *Johnson*, 913 N.W.2d at 261, *Estate of McFarlin*, 881 N.W.2d at 63, *Raas*, 729 N.W.2d at 446, *Kolbe*, 625 N.W.2d at 724-25, *Sankey*, 456 N.W.2d at 208-09). This is the classic case where the public-duty doctrine applies because the Governmental Parties are alleged to have a common-law duty to act affirmatively, and the Governmental Parties' alleged wrongdoing is a failure to take positive action for the protection of Officer Farrell." *See Breese*, 945 N.W.2d at 19-20 (quoting 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick*, The Law of Torts* § 345, at 375 (2d ed. 2011), *and, see Estate of McFarlin*, 881 N.W.2d at 58-64 (applying the public-duty doctrine to common-law duties). As such, the public-duty doctrine eliminates liability of the Governmental Parties on Plaintiffs' claims. *See id.* Because Plaintiffs cannot establish

the requisite special relationship that constitutes an exception to the public-duty doctrine, and their allegations properly viewed speak in terms of nonfeasance, the public-duty doctrine bars their claims. The District Court erred in denying judgment on the pleadings in favor of the Governmental Parties by finding that Plaintiffs alleged misfeasance and applying an inapplicable exception to the public-duty doctrine that is unsupported by Iowa law. *See id., and,* Iowa R. Civ. P. 1.954.

ARGUMENT

A. The Governmental Parties have preserved error on the public-duty doctrine issues that are raised in this appeal.

Fundamentally, issues must ordinarily be raised before and decided by the District Court before this Court will consider them on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). In this case, the Governmental Parties: raised the public-duty doctrine as an affirmative defense in the Answers to the First Amended Petition; the Governmental Parties raised the public-duty doctrine in the District Court by a motion for judgment on the pleadings; Plaintiffs resisted the motion; and, the District Court ruled on the public-duty doctrine defense in its order denying judgment on the pleadings. (WDSM & State of Iowa Answer, para. 91; Waukee Answer, para 90;

MJP; Resistance to MJP; Order on MJP). As such, error on the issues of the public-duty doctrine is preserved for this appeal. *See id.*

B. This Court reviews the District Court order denying judgment on the pleadings for errors at law assuming Plaintiffs' well-pleaded allegations to be true.

This Court "reviews a district court's ruling on a motion for judgment on the pleadings for the correction of errors at law." *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 914 N.W.2d 273, 280 (Iowa 2018), *and, see,* Iowa R. App. P. 6.907.

> Iowa Rule of Civil Procedure 1.954 . . . allows any party, at any time, on motion, to have any judgment to which the party is entitled under the uncontroverted facts *stated in all the pleadings*. The function of such a motion is to test the sufficiency of the pleadings to present appropriate issues for trial. The district court should only grant the motion *if the pleadings, taken alone*, entitle a party to judgment.

Meinders v. Dunkerton Cmty. Sch. Dist., 645 N.W.2d 632, 633 (Iowa 2002) (internal citations removed, emphasis added) (citing Iowa R. Civ. P. 1.954, *and, Roush v. Mahaska State Bank*, 605 N.W.2d 6, 8 (Iowa 2000)). Analysis of a judgment on the pleadings requires the Court to assess the pleadings alone and determine whether judgment is appropriate. *Hurd v. Odgaard*, 297 N.W.2d 355, 356 (Iowa 1980) (citing A. Vestal and P. Wilson, 1 Iowa Practice § 19.01 (1974) (other citations omitted). When analyzing a motion for judgment on the

pleadings, "[m]atters outside the pleadings should not be considered." *Id.* Unlike the Federal Rules of Appellate Procedure, there is no mechanism in Iowa to convert a motion for judgment on the pleadings into a motion for summary judgment by considering matters outside the pleadings. *See id.* (other citations omitted).

The Court reviews a motion for judgment on the pleadings in a manner like a motion to dismiss. *Stanton,* 420 N.W.2d at 482. Like a motion to dismiss, the Court "accepts as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Hedlund*, 875 N.W.2d at 724 (other citations omitted).

A motion for judgment on the pleadings is a proper mechanism to rid the docket of claims barred by the public-duty doctrine. *See, e.g., Raas*, 729 N.W.2d at 446-450 (granting motion to dismiss on the basis of the public duty doctrine).

This Court should review the District Court's Order denying judgment on the pleadings for errors of law, accepting as true only the Plaintiffs' well-pleaded facts, ignoring their legal conclusions, and ignoring any supplemental material outside the First Amended Petition. *See id., Stanton,* 420 N.W.2d at 482, *Hedlund*, 875 N.W.2d at 724, *Hurd*, 297 N.W.2d at 356, *Griffioen,* 914 N.W.2d at 280, *and*

Iowa R. App. P. 6.907. Under that standard, this Court should make a no-duty determination holding that Plaintiffs have no right of recovery against the Governmental Parties under the public-duty doctrine, overrule the District Court thereby granting the motion for judgment on the pleadings, and rid the docket of Plaintiffs' claims against the Governmental Parties in accordance with the public-duty doctrine. *See id., and, e.g, Raas*, 729 N.W.2d at 446-450.

C. For sound public-policy reasons, the public-duty doctrine eliminates liability for Plaintiffs' claims against the Governmental Parties.

Governmental entities "have to balance numerous competing public priorities, all of which may be important to the general health, safety, and welfare." *See Johnson*, 913 N.W.2d at 266-267. These demands coupled with the limited resources of governmental entities provide a sound justification for eliminating liability in certain cases. *See id.* (citing Restatement (Third) § 37, cmt. *i.; and* 18 Eugene McQuillin, *The Law of Municipal Corporations* § 53:18, at 253-54 (3d rev. ed. 2013). One of those cases in which liability is eliminated occurs when the governmental entities owe a duty to the public generally. *See Breese,* 945 N.W.2d at 18 (quoting 18 Eugene McQuillin, *McQuillin on Municipal Corporations* § 53.18 (3d ed. 2006). In that circumstance,

governmental entities are held to have no liability to an individual member of that group. *See Breese,* 945 N.W.2d at 18 (quoting 18 Eugene McQuillin, *McQuillin on Municipal Corporations* § 53.18 (3d ed. 2006). This no-duty rule is known as the public-duty doctrine. *See id., Johnson*, 913 N.W.2d at 263 (referring to the public-duty doctrine as a no-duty determination), *accord*, *Breese,* 945 N.W.2d at 18.

The public-duty doctrine is an exception to the general rule that "[a]n actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." *See Estate of McFarlin,* 881 N.W.2d at 59-60, *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009), *and* Restatement (Third) of Torts: *Liability for Physical and Emotional Harm*, § 7(a) at 90). "In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification." *See Thompson*, 774 N.W.2d at 834 (citing Restatement (Third) of Torts: *Liability for Physical and Emotional Harm*, § 7(b) at 90).

> A no-duty ruling represents a determination, a purely legal question, that no liability should be imposed on actors in a category of cases. Such a ruling should be explained and justified based on articulated policies or principles that

> justify exempting these actors from liability or modifying the ordinary duty of reasonable care. These reasons of policy and principle do not depend on the foreseeability of harm based on the specific facts of a case. They should be articulated directly without obscuring references to foreseeability.

Restatement (Third) of Torts: *Liability for Physical and Emotional Harm*, § 7 cmt. i. As a no-duty rule, the public-duty doctrine has been held to have continued vitality under the Restatement (Third) of Torts. *Estate of McFarlin*, 881 N.W.2d at 60.

In the case at bar, the public-duty doctrine is dispositive of Plaintiffs' case. Each of Plaintiffs' claims against the Governmental Parties requires (1) proof of duty as an element. Plaintiffs' causes of action rely on a duty, (2) liability for which the public-duty doctrine eliminates. Officer Farrell was (3) a general member of the traveling public and there exists no special relationship between the Governmental Parties and Officer Farrell. As such, taken together, the public-duty doctrine eliminates liability of the Governmental Parties on all of Plaintiffs' claims.

1. Plaintiffs' claims against the Governmental Parties require duty as an element.

"The threshold question in any tort case is whether the defendant owed the plaintiff a duty of care." *Dooley v. City of Cedar Rapids*, No.

09-1926, 2011 Iowa App. LEXIS 238, at *6 (Iowa Ct. App. Mar. 30, 2011) (citing *Mastbergen v. City of Sheldon*, 515 N.W.2d 3, 4 (Iowa 1994)). In their First Amended Petition, Plaintiffs assert common-law claims for negligence, nuisance, and premises liability against the Governmental Parties. (First Amended Petition, paras. 50-57, 69-83). Each of Plaintiffs' claims requires proof of a duty as a required element. *See Thompson*, 774 N.W.2d at 834 (among other things "[a]n actionable claim of negligence requires the existence of a duty to conform to a standard of conduct to protect others"); *Kellogg v. City of Albia*, 908 N.W.2d 822, 839 (Iowa 2018) (discussing nuisance and its varieties including nuisance based on negligence); and, *Koenig v. Koenig*, 766 N.W.2d 635, 646 (Iowa 2009) (eliminating visitor status in premises liability claims and applying duty of reasonable care). Furthermore, as argued below, each of Plaintiffs' causes of action rely on a duty, liability for which the public-duty doctrine eliminates. *See, e.g., Johnson*, 913 N.W.2d at 259-267 (negligence, premises liability, and public nuisance claims for users of a public road barred by the public-duty doctrine).

2. Each of Plaintiffs' causes of action rely on a duty, liability for which the public-duty doctrine eliminates.

"Under the public-duty doctrine, a duty to all is a duty to none." *Breese*, 945 N.W.2d at 18 (internal punctuation omitted) (citing 18 Eugene McQuillin, *McQuillin on Municipal Corporations* § 53.18 (3d ed. 2006)). The public-duty doctrine generally applies when the allegation is "a government failure to protect the general public from somebody else's instrumentality [of harm]." *See Breese,* 945 N.W.2d at 18 (citing *Johnson*, 913 N.W.2d at 261, *Estate of McFarlin*, 881 N.W.2d at 63, *Raas*, 729 N.W.2d at 446, *Kolbe*, 625 N.W.2d at 724-25, *Sankey*, 456 N.W.2d at 208-09).

The classic case where the public-duty doctrine arises is when a "duty is imposed by statute [(or common-law)] that requires [a governmental entity] to act affirmatively, and the [governmental entity's] wrongdoing is a failure to take positive action for the protection of the plaintiff." *See Breese*, 945 N.W.2d at 19-20 (quoting 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 345, at 375 (2d ed. 2011), *and, see Estate of McFarlin*, 881 N.W.2d at 58-64 (applying the public-duty doctrine to common-law duties).

The public-duty doctrine serves to remove the risk of "limitless potential liability that might be visited on government entities if

affirmative duties were imposed on them for every undertaking. . . ." *See Johnson*, 913 N.W.2d at 262 (citing Restatement (Third) § 37 cmt. *i*, at 7 (Am. Law Inst. 2012)). For this reason, among others, the Iowa Supreme Court has continually reiterated "the validity of the public-duty doctrine in cases involving claims against a governmental entity for failing to fulfill safety-related duties." *Breese*, 945 N.W.2d at 19-20 (citing *Johnson*, 913 N.W.2d at 260-62 (summarizing Iowa's public-duty doctrine cases). "If a duty is owed to the public generally, there is no liability." *Breese*, 945 N.W.2d at 19 (citing *Johnson*, 913 N.W.2d at 260 and *Estate of McFarlin*, 881 N.W.2d at 58).

In *Estate of McFarlin v. State,* the public-duty doctrine was held to bar a plaintiffs claims related to the death of a ten-year boy who was mortally injured when the boat in which he was traveling struck a submerged dredge pipe on Storm Lake. *Estate of McFarlin,* 881 N.W.2d at 52. The plaintiff alleged that the State was liable for permitting the dredging without adequate signage, concealing a danger from boaters, endangering boaters with the dangerous condition; and, for failing to warn and failing to establish speed limits or warnings. *See id.* at 55-56. The State moved for summary judgment based on, among other things, the public-duty doctrine. *Id.* at 56. The District Court

granted the motion, the Court of Appeals affirmed the district court and further review ensued. *Id.* On further review, the Iowa Supreme Court rejected the plaintiff's common law claims. *Id.* at 58-64. According to the Court, the State's safety-related duties were owed to the public in general and liability of the State was barred by the public-duty doctrine. *Id.*

The same result occurs in the case at bar despite Plaintiff's allegations that there were inadequate signs, roadway markings or lighting on Grand Prairie Parkway. (First Amended Petition, paras. 24, 35-45, 51-57, 69-75, 76-83). Such safety-related duties are owed to the public in general. *See Estate of McFarlin,* 881 N.W.2d at 58-64. The same is true if Plaintiffs raise claims for concealing a danger, endangering the traveling public with a dangerous condition, or failing to warn. *See id.* The public-duty doctrine would bar liability to the Governmental Parties just at it did with the State in *Estate of McFarlin*. *See id.* Ownership of the Grand Prairie Parkway Interchange does not change the analysis because like the lake in *Estate of McFarlin,* the Interchange is held in trust for the public benefit and open to the public. *See id.*

Regulation, management, and control over the Grand Prairie Parkway Interchange by the Governmental Parties does not defeat the application of the public-duty doctrine either. *See id.* at 52-53, 64. In *Estate of McFarlin,* the State had regulatory oversight of the dredging, the State allowed the dredging project to occur on the lake, and the State authorized the Chapter 28E entity to dredge the lake. *Id.* at 52-53, 64. As part of the permitting process, the State had to ascertain whether the State's interests were being protected. *Id.* at 53. As applied to the case at bar, the public-duty doctrine bars liability even if the Governmental Parties are alleged to have control over the Grand Prairie Parkway Interchange, oversight of the project, or permitted the other parties to design and construct the Interchange. *See id.*

While the State did not control the day to day dredging activities in *Estate of McFarlin,* which were completed by the 28E entity, the regulatory oversight duties for dredging were for the benefit of the public at-large – a general duty to the public for which the public-duty doctrine bars liability. *See id.* at 64. The State, furthermore, paid the 28E entity for the costs of dredging. *Id.* The State could have ordered the removal of the dredge. *Johnson*, 913 N.W.2d at 266 (referring to *Estate of McFarlin).* Notwithstanding this control over the dredging,

the Court still held that the public-duty doctrine was applicable. *Estate of McFarlin,* 881 N.W.2d at 62-64. The same is true in the case at bar. Even if the Governmental Parties had oversight and paid the other parties to design and construct the Interchange and could have ordered that project be halted or designed and constructed in a different manner, it does not defeat the public duty doctrine under the reasoning of *Estate of McFarlin*. *See id.* at 62-64, *and Johnson*, 913 N.W.2d at 266.

In *Johnson v. Humboldt County*, the plaintiff sued the county for permitting an unsafe condition to exist adjacent to a highway claiming: that the county was obligated to remove obstructions from the highway right-of-way, failed to do so, and the plaintiff was injured after driving off the road and striking the obstruction. *Johnson*, 913 N.W.2d at 258-259. The county raised the public-duty doctrine as a defense. *Id.* at 259. Like the case at bar, the plaintiff in *Johnson* brought claims for negligence, nuisance, and premises liability. *Id.* at 259. The District Court entered judgment as a matter of law in favor of the county on the basis of the public-duty doctrine – that the county only owed a duty to the public at large including the plaintiff who was a general user of

Iowa's roadways. *Id.* The plaintiff appealed and the Iowa Supreme Court retained the case. *Id.* at 260.

The Iowa Supreme Court affirmed the District Court holding that the public-duty doctrine barred the plaintiff's case. *Id.* at 267. The case made clear that duties regarding a highway are owed to all users of the public roads and subject to the public-duty doctrine. *Id.* at 261.

In the case at bar, Plaintiffs' allegations raise a duty to all users of the public roads, as such, there is a duty to none. *See Breese*, 945 N.W.2d at 18 (internal punctuation omitted) (citing 18 Eugene McQuillin, *McQuillin on Municipal Corporations* § 53.18 (3d ed. 2006)). Plaintiffs' allegations are of the Governmental Parties "failure to protect the general public from somebody else's instrumentality [of harm]. *See Breese,* 945 N.W.2d at 18 (citations omitted). There is no question that Mr. Beary was the instrumentality of harm in that his vehicle collided head-on with the vehicle in which Officer Farrell was a passenger. (First Amended Petition, paras. 46-48).

This case presents the classic case where the public-duty doctrine applies because there is an affirmative duty of reasonable care imposed by common law on the Governmental Parties to open and operate the Grand Prairie Parkway Interchange with adequate safety mechanisms

and the alleged wrongdoing is the Governmental Parties' failure to take positive action for the protection of Officer Farrell from Mr. Beary – the positive action being adequate lighting, signage, and road markings. *See Breese*, 945 N.W.2d at 19-20 (quoting 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 345, at 375 (2d ed. 2011), *and, see Estate of McFarlin*, 881 N.W.2d at 58-64 (applying the public-duty doctrine to common-law duties).

Applying the public-duty doctrine in the case at bar serves to remove the risk of "limitless potential liability that might be visited on [the Governmental Parties] entities if affirmative duties were imposed" to make the general members of the traveling public, like Officer Farrell, safe from other members of the general traveling public. *See Johnson*, 913 N.W.2d at 262 (citing Restatement (Third) § 37 cmt. *i*, at 7 (Am. Law Inst. 2012)). As with the prior public-duty doctrine cases involving claims against a governmental entity for failing to fulfill safety-related duties, the public-duty doctrine must apply to defeat Plaintiffs' claims. *See Breese*, 945 N.W.2d at 19-20 (citing *Johnson*, 913 N.W.2d at 260-62 (summarizing Iowa's public-duty doctrine cases).

3. There is no special relationship between Officer Farrell and the Governmental Parties.

While the public-duty doctrine operates as an exception to the Restatement Third's general duty requiring an actor to exercise reasonable care, there is also an exception to the doctrine for special relationships. *See Estate of McFarlin*, 881 N.W.2d at 59-60.

> The public-duty doctrine is often explained as preventing government tort liability for obligations owed generally to the public, such as providing fire or police protection. *Only when the duty is narrowed to the injured victim or a prescribed class of persons does a tort duty exist.*

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 7 reporter's note cmt. *g*, at 93-94 (Am. Law Inst. 2010) (internal punctuation omitted, emphasis added) (cited with approval and support for the continued vitality of the public-duty doctrine by *Estate of McFarlin*, 881 N.W.2d at 59-60). As such, there is a narrow exception to the public-duty doctrine where the governmental entity owes a duty to an injured plaintiff, individually, or as a member of a prescribed class of persons. *See id.*

Under the Iowa case law, this is referred to as the special relationship exception to the public-duty doctrine. *See, e.g., Estate of McFarlin*, 881 N.W.2d at 61-63. The exception could arise in two ways. *See, e.g. Kolbe,* 625 N.W.2d at 728-730, *and, Estate of McFarlin*, 881

N.W.2d at 60-61. First, a statute or duty may be directed at protecting a "special identifiable group." *See, e.g., Kolbe,* 625 N.W.2d at 728-730. Second, there could be a special relationship between the injured plaintiff and the governmental entity. *See, e.g., Estate of McFarlin*, 881 N.W.2d at 60-61.

In *Johnson v. Humboldt County*, the plaintiff sued the county for permitting an unsafe condition to exist adjacent to a highway claiming: that the county was obligated to remove obstructions from the highway right-of-way, failed to do so, and the plaintiff was injured after driving off the road and striking the obstruction. *Johnson*, 913 N.W.2d at 258-259. The county raised the public-duty doctrine as a defense. *Id.* at 259. Like the case at bar, the plaintiff in *Johnson* brought claims for negligence, nuisance, and premises liability. *Id.* at 259. The District Court entered judgment as a matter of law in favor of the county on the basis of the public-duty doctrine – that the county only owed a duty to the public at large, there was no special relationship between the plaintiff and the county because the plaintiff was a general user of Iowa's roadways. *Id.* The plaintiff appealed and the Iowa Supreme Court retained the case. *Id.* at 260.

The Iowa Supreme Court affirmed the District Court holding that the public-duty doctrine barred the plaintiff's case. *Id.* at 267. The case made clear that duties regarding a highway are owed to all users of the public roads and subject to the public-duty doctrine. *Id.* at 261. Users of the public roads are not a specialized class that would take them outside the scope of the public-duty doctrine. *Id.* at 262. Because Plaintiff has made no allegation in their First Amended Petition that Officer Farrell is a member of a specialized class, the special relationship exception does not apply and the public-duty doctrine blocks liability of the Governmental Parties. *See id., and,* Iowa R. Civ. P. 1.954.

The District Court properly held that there was no special relationship that would work as an exception to the public-duty doctrine. (Order on MJP, pp. 6-9, App. 318-321). While Plaintiffs have not filed a cross-appeal, as a successful party they may assert on appeal that the District Court's order on the motion for judgment on the pleadings be sustained on a ground urged but rejected by the District Court. *See Venard v. Winter*, 524 N.W.2d 13, 16 (Iowa 1992). In this regard, Plaintiffs' primary but unsuccessful defense to judgment on the pleadings before the District Court was that Officer Farrell had a

special relationship that would defeat the public-duty doctrine. (Resistance to MJP, p. 18; Order on MJP, p. 7-8). Plaintiffs also unsuccessfully argued that the public-duty doctrine is inapplicable because the Governmental Parties induced Officer Farrell to rely upon the Governmental Parties to act affirmatively and properly. (Resistance to MJP, p. 18; Order on MJP, p. 8-9). Plaintiffs also unsuccessfully argued that the public-duty doctrine should be discarded or overruled. (Resistance to MJP, p. 19). As to this argument, *Breese v. City of Burlington*, is dispositive – the public-duty doctrine remains valid. *Breese,* 945 N.W.2d at 18-21. Anticipating that Plaintiffs' will raise on appeal arguments about special relationship and inducement, they will be addressed in more detail.

In the proceedings before the District Court, Plaintiffs argued that the public-duty doctrine is inapplicable because of Officer Farrell's status as a law enforcement officer. Plaintiffs were unclear which of the two theories they relied upon – that Officer Farrell's status as law enforcement officer showed the requisite "special identifiable group" or there was a special relationship. *See id., and, Kolbe,* 625 N.W.2d at 728-30. Plaintiffs simply asserted that Officer Farrell is in a "special identifiable group" different from the public-at-

large because she was a law enforcement officer under certain obligations to her employer, which is not a party to this case. (Plaintiffs' Resistance to MJP, pp. 30-31).

For this proposition, Plaintiffs relied on *Wilson v. Nepstad*, which has been criticized in regard to the public-duty doctrine and called into question by *Johnson v. Humboldt County,* and *Estate of McFarlin v. State*. *Cf. Wilson v. Nepstad*, 282 N.W.2d 664 (Iowa 1979) *with Johnson,* 913 N.W.2d at 256 *and Estate of McFarlin,* 881 N.W.2d at 63. *Wilson* was a case in which a municipality was sued for negligently inspecting an apartment building, which subsequently caught fire causing injuries and death to the occupants. *Wilson,* 282 N.W.2d at 666. *Wilson* had no factual or, now that the case has been mostly rejected by subsequent cases, no legal significance to the case at bar. *See id.* Furthermore, for the propositions in *Wilson* that remain good law, Plaintiffs' reliance on *Wilson* is misplaced. *Wilson* discusses whether "ordinances and statutes were designed for the protection of a special, identifiable group of persons." *See Wilson,* 282 N.W.2d at 672, *accord, Kolbe,* 625 N.W.2d at 728-730. In this regard, the *Wilson* Court looked at statutes related to fire inspection and compliance statutes to determine whether they were directed at

protections for the general public or that "special, identifiable group of persons" to which the plaintiff belonged. *See id.* The Court considered whether the "purpose of the statutes was in securing rights or privileges to which all members of the public are entitled." *Id.*

As it relates to the factual situation of the case at bar, the above analysis is satisfied regarding duties benefiting the rightful users of Iowa's roads. *See Kolbe,* 625 N.W.2d at 728-730, *and, Estate of McFarlin*, 881 N.W.2d at 61. The Iowa Supreme Court has previously held that statutes benefiting the rightful users of Iowa's roads are for the benefit of the public-at-large to which the public-duty doctrine applies. *See id.* As to motorists on the public roads, the Supreme Court has held that a governmental party owes a duty to the public-at-large and there is no special relationship between a plaintiff-motorist on the public road and the governmental entity because the plaintiff was a general user of Iowa's roadways. *See Johnson*, 913 N.W.2d at 259. Governmental duties regarding public roadways are owed to all users of the roads and subject to the public-duty doctrine. *See id.* at 261. And, as discussed above the allegations in Plaintiffs' First Amended Petition all relate to duties and obligations applicable to the general traveling public. Plaintiffs' allegations form no basis to

establish that the duties and obligations were for "special, identifiable group of persons" to which Officer Farrell belonged. *See id., and, Kolbe,* 625 N.W.2d at 728-30.

Plaintiffs argued to the District Court that Officer Farrell was like a private invitee to a golf course, for which there is a special relationship that defeats the public-duty doctrine. However, Officer Farrell was simply a general user of the public roadway to which the Governmental Parties owed a duty to the general-public. *See id., cf. Summy v. City of Des Moines,* 708 N.W.2d 333, 344 (Iowa 2006), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.,* 880 N.W.2d 699, 708 & n.3 (Iowa 2016).

The fact that Officer Farrell was a law enforcement officer and obligated by her employer (not a party to this case) to travel on I-80 is of no consequence to the special relationship issue. Those factors do nothing to establish the requisite special relationship with the Governmental Parties. Officer Farrell, like all members of the traveling public, was free to traverse the public roads, including Interstate-80. *See Estate of McFarlin*, 881 N.W.2d at 61. Use of the public roads does not establish a special relationship that would defeat the public-duty doctrine. *See id.*

If the Court accepted Plaintiffs' special relationship argument and allowed Plaintiffs to recover against the Governmental Parties, it would be difficult to set a limiting principle on the scope of governmental liability for third-party conduct. Consequently, such a ruling would require all governmental entities in Iowa, including the Governmental Parties in this case, to insure against accidents caused by other drivers. There would be a risk of significant liability for governmental entities should Plaintiffs' argument prevail and a special relationship be formed on account of Officer Farrell's employment related requirement to travel Interstate-80. In those circumstances, any commercial truck driver or business related trip could establish a special relationship to governmental entities that would raise the concerns sought to be eliminated by the public-duty doctrine. *See Johnson*, 913 N.W.2d at 266-67 (citing Restatement (Third) § 37, cmt. *i.;* and 18 Eugene McQuillin, *The Law of Municipal Corporations* § 53:18, at 251 (3d rev. ed. 2013) (discussing the risk of "limitless potential liability that might be visited on [the Governmental Parties] entities if affirmative duties were imposed" to make the general members of the traveling public, like Officer Farrell, safe from other members of the general traveling public).

In some jurisdictions, the public-duty doctrine may be avoided if a "public entity undertakes to provide assistance by promise or conduct which induces the plaintiff to rely upon action by the public entity." *The Law of Torts*, § 346. This exception to the public-duty doctrine comes with specific requirements set out in Footnote 7 of *The Law of Torts*. *Id.* fn. 7. First, specific assurances of safety are required. *See Braswell v. Braswell*, 410 S.E.2d 897,902 (N.C. 1991) (general assurance insufficient), *Fried v. Archer*, 775 A.2d 430, 442 (Md. 2002) (general assurance insufficient), *Smith v. Jones*, 632 N.W.2d 509, 515 (Mich. App. 2001) (general assurance insufficient), *and, Kent v. City of Columbia Falls*, 350 P.3d 9, 14 (Mont. 2015) (requiring both express assurances in response to the plaintiff's specific inquiry and direct contact between plaintiff and the public entity). Second, in some cases there must be direct contact and exchange of safety assurance in response to a plaintiff's specific inquiry). *Kent*, 350 P.3d at 14; *and, Bowden v. Monroe County Commission*, 800 S.E.2d 252, 259 (W. Va. 2017).

There is no case in Iowa that Counsel for the Governmental Parties found applying this safety-inducement exception to the public-duty doctrine. Nevertheless, Plaintiffs have argued that the District

Court should apply the concept to defeat the public-duty doctrine. According to Plaintiffs, the promotion surrounding the opening of the Grand Prairie Parkway Interchange induced the public to believe it was a safe design, would reduce traffic, and, solely by inference, lead the public to believe the "required safety features [were] in place when it opened up (and kept open) the Interchange . . . [including the contractually required safety features]." (Plaintiffs' Resistance, p. 33). In addition to the legal infirmities, Plaintiffs' argument fails for at least three reasons.

First, the standards for judgment on the pleadings preclude the Court from considering Plaintiffs' claims about public inducement because they were not part of the pleadings. *See* Iowa R. Civ. P. 1.954, *Meinders*, 645 N.W.2d at 633, *and, Hurd*, 297 N.W.2d at 356. Second, Plaintiffs do not attempt to claim the promotion surrounding the Grand Prairie Parkway Interchange included claims that the contractual obligations have been satisfied or mention required safety features. *See Braswell*, 410 S.E.2d at 902, *Fried*, 775 A.2d at 442, *Smith*, 632 N.W.2d at 515, *and, Kent*, 350 P.3d at 14. Third, the promotion surrounding the Interchange amounts to no more than general assurances of safety and there is no evidence of direct contact

between the Governmental Parties and Officer Farrell providing express assurances in response to Officer Farrell's specific inquiry. In fact, there was no assertion of any direct contact between Officer Farrell and the Governmental Parties relating to the Grand Prairie Parkway Interchange. *See Kent*, 350 P.3d at 14; *and, Bowden*, 800 S.E. at 259.

No matter the theory asserted by Plaintiffs, there is no viable special relationship exception that would defeat the public-duty doctrine in the case at bar. *See Estate of McFarlin*, 881 N.W.2d at 59-60. The District Court Order on the Motion for Judgment on the Pleadings cannot be affirmed on the special relationship exception, even as a theory argued before and rejected by the District Court. *See Venard*, 524 N.W.2d at 16.

The public-duty doctrine applies because the case at bar fits the classic case where there is an affirmative duty of reasonable care imposed by common law on the Governmental Parties to open and operate the Grand Prairie Parkway Interchange with adequate safety mechanisms, such as lighting, signage, and road markings; and the alleged wrongdoing is the Governmental Parties' failure to take positive action for the protection of Officer Farrell from Mr. Beary, the

instrumentality of harm. *See Breese*, 945 N.W.2d at 19-20 (quoting 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 345, at 375 (2d ed. 2011), *and, see Estate of McFarlin*, 881 N.W.2d at 58-64 (applying the public-duty doctrine to common-law duties). The Court erred in rejecting the proper application of the public-duty doctrine by finding that Plaintiffs' claims alleged misfeasance and applying an exception to the public-duty doctrine found nowhere but Rhode Island.

D. The District Court erred in rejecting the public-duty doctrine by holding that Plaintiffs alleged misfeasance and by applying a Rhode Island egregious conduct exception, both of which are inconsistent with Iowa precedent.

The District Court's Order on the motion for judgment on the pleadings commits legal error by (1) holding that Plaintiffs' have made allegations of misfeasance that defeat the public-duty doctrine and (2) by holding that the public-duty doctrine was defeated by Rhode Island exception for egregious conduct.

1. The District Court erred by holding that Plaintiffs have made allegations of misfeasance that defeat the public-duty doctrine.

The public-duty doctrine has developed in Iowa through the litigation and appeal of many cases. As with any doctrine, it continues

to mature and evolve with each case usually presenting a nuance not directly answered in existing case law. In this appeal, the otherwise cogent public-duty doctrine has been thwarted by creative plaintiffs who have pled claims of nonfeasance in a nuanced manner that has convinced the District Court that they have alleged misfeasance. (First Amended Petition, paras. 35, 36, 40-43, 51-57, 58-62, 63-68, 69-75, 76-83).

The Iowa Supreme Court acknowledged that in some public-duty doctrine cases there may be a gray area where claims of negligence could be viewed as either nonfeasance for which the doctrine applies or misfeasance for which the doctrine does not apply. *See Breese*, 945 N.W.2d at 21. That potential gray area arises, however, only when viewing the potential existence of duty in a manner prohibited under Iowa law. Sound Iowa precedent provides the proper analysis in making a no-duty determination such as with the public-duty doctrine. Adhering to this precedent when making a no-duty determination under the public-duty doctrine eliminates the potential for gray area cases by: (a) focusing on the instrumentality of harm; and, (b) refusing to permit foreseeability to cloud the no-duty determination.

a. The instrumentality of harm plays a central role in the analysis of the public-duty doctrine.

In its most recent public-duty doctrine case, *Breese v. City of Burlington*, the Iowa Supreme Court set out a comprehensive standard for assessing a no-duty determination. *Breese*, 945 N.W.2d at 17-21.

In *Breese*, a plaintiff was injured after striking a tree branch while riding her bicycle on a sewer box that was connected to a public pathway. *Id.* at 15. The City erected the sewer box and the public pathway and connected them together. *Id.* at 21. The *Breese* plaintiffs argued that the City of Burlington failed to place guardrails; failed to warn that the path reached hazardous heights and had no safe turn around point; and failed warn users of the trail that the sewer box was not part of the trail system; and, by failing to provide these measures, the City gave the sewer box the appearance that it was part of the City's trail system. *Id.* at 15.

The City moved for summary judgment based, in pertinent part, on the public duty doctrine. *Id.* at 16. The District Court granted the City's motion for summary judgment, the plaintiffs appealed, and the Iowa Supreme Court retained the case. *Id.* at 16-17. On appeal, the plaintiffs argued, in pertinent part, that the public duty doctrine should not have applied to bar their claims reasoning that the doctrine does

not apply when a government affirmatively acts and does so negligently. *Id.* at 17.

In deciding *Breese, t*he Iowa Supreme Court reviewed and summarized the prior Iowa public-duty doctrine cases. *Id.* at 17-21. The main lesson of these prior cases established that, unless there is a special relationship between the government party and the plaintiff, the public-duty doctrine applies when there is a duty requiring a governmental entity to act affirmatively and the government entity's wrongdoing is a failure to take positive action for the protection of the plaintiff. *Id.* at 19-20 (citing *Johnson*, 913 N.W.2d at 266, 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 345 at 375 (2d ed. 2011) (reciting the classic case involving statutory duties), *see, also, Estate of McFarlin*, 881 N.W.2d at 58-64 (the public duty doctrine also applies to common-law duties). In other words, the public-duty doctrine applies when a governmental entity fails to prevent another party from doing harm, but does not apply when affirmative acts of the government actually cause the harm. *Id.* at 20. The Court characterized this distinction as one of nonfeasance versus misfeasance. *Id.* at 20.

Reflecting on past public-duty doctrine cases, the Iowa Supreme Court found that, while some of those cases did not speak in terms of the dichotomy of nonfeasance and misfeasance, the outcomes supported that distinction. *Id.* at 20-21. As such, the public-duty doctrine was held to apply when a plaintiff's theory was that a governmental entity "should have done more to protect boaters from a dredge pipe in the lake that another entity controlled and operated." *Id.* at 20 (citing *Estate of McFarlin,* 881 N.W.2d at 60). The doctrine applied when a "plaintiff's theory was that the [governmental entity] should have protected [plaintiff] from two dangerous inmates." *Id.* at 20 (citing *Raas,* 729 N.W.2d at 449). The doctrine applied when a "plaintiff's theory was that the [governmental entity] should have denied a licensed to an unqualified driver." *Id.* at 20 (citing *Kolbe*, 625 N.W.2d at 726). The doctrine also applied when a plaintiff's theory "was that the [governmental entity] should have stopped a shooting." *Id.* at 20 (citing *Sankey,* 456 N.W.2d at 208).

Consistent with the Court's recitation of past-outcomes cases in which the public-duty doctrine was held applicable, is *Johnson v. Humboldt County*. *See Johnson*, 913 N.W.2d at 267. In that case, the plaintiff's theory was that the governmental entity failed to cause "the

removal of [a] concrete embankment from the ditch [into which the plaintiff's vehicle crashed]." *Id.* at 258. The concrete embankment was constructed by a non-party and on the non-party's private property and in the governmental entity's roadway right-of-way easement. *Id.* at 259. The takeaway was that the public-duty doctrine applied because the governmental entity failed to protect the plaintiff from another's instrumentality of harm. *See id.* at 266-67.

The case at bar parallels *Johnson, Sankey, Kolbe, Raas, and Estate of McFarlin* in that Plaintiffs allege that the Governmental Parties should have done more to protect Officer Farrell from the instrumentality of harm, Mr. Beary, by having adequate safety measures in place. *See id., Sankey,* 456 N.W.2d at 208, *Kolbe*, 625 N.W.2d at 726, *Raas,* 729 N.W.2d at 449, *and McFarlin,* 881 N.W.2d at 60. However, similar to the allegations in *Breese v. City of Burlington* and *Summy v. City of Des Moines*, the Plaintiffs in the case at bar allege that the Governmental Parties were actively negligent in failing to utilize adequate safety measures. (First Amended Petition, paras. 35, 36, 40-43). *See* Breese, 945 N.W.2d at 17, *and Summy,* 708 N.W.2d at 336. This is the nuance of the case at bar. Plaintiffs have effectively alleged "mis-nonfeasance" and the District Court was

mistakenly convinced that the allegations raised misfeasance so as to defeat the public-duty doctrine. (Order on MJP. p. 9). That is error under Iowa precedent.

There are two pertinent lessons from these prior public-duty doctrine cases. First, they all involve application of the main lesson recited in *Breese* – the public-duty doctrine applies when a governmental entity wrongly fails to take positive action for the protection of the plaintiff. *Breese,* 945 N.W.2d at 19-20, *Johnson*, 913 N.W.2d at 266, *The Law of Torts* § 345 at 375, *and, Estate of McFarlin*, 881 N.W.2d at 58-64. The second lesson from these past public-duty doctrine cases is that applicability of the doctrine superficially seems to depend on how a plaintiff pleads their theory of negligence. In each of those cases in which the public-duty doctrine was held to apply, the plaintiffs' theories were that the governmental entity failed to protect the plaintiff from harm caused by another. *See Johnson*, 913 N.W.2d at 266-267, *McFarlin,* 881 N.W.2d at 60, *Raas,* 729 N.W.2d at 449, *Kolbe*, 625 N.W.2d at 726, *and, Sankey,* 456 N.W.2d at 208. The outcomes of those cases suggest that control over the application of the public-duty doctrine can rest in the hands of the plaintiffs and how they plead their tort theories. *See id.* Thus, in an effort to defeat the

application of the public-duty doctrine, the doctrine could be subject to simple pleading manipulation, as in the current situation, rather than a cogent policy based no-duty determination.

The Iowa Supreme Court thoughtfully recognized this concern in *Breese* – that there could be a gray area where cases can be characterized as examples of either misfeasance or nonfeasance based upon the petition. *Breese*, 945 N.W.2d at 21. In other words, the Court anticipated that creative plaintiffs could plead their way around the public-duty doctrine by reframing acts of nonfeasance as acts of misfeasance. *See id.* As the Iowa Supreme Court found, a creative plaintiff could have described the situation in *Kolbe* as affirmative conduct to the extent the state granted a license to a driver. *See id.* (citing *Kolbe*, 625 N.W.2d at 724-25).

By making this observation, the Court did not identify some hybrid of the nonfeasance/misfeasance dichotomy where a governmental entity affirmatively acts to cause the harm by wrongfully failing to take positive action for the protection of the plaintiff from another's instrumentality. *See Breese*, 945 N.W.2d at 21. If such a hybrid nonfeasance/misfeasance theory were permissible, the plaintiff in *Kolbe* could have alleged that the governmental entity chose to

license a dangerous driver while wrongfully failing to conduct an adequate investigation that would have protected the plaintiff. Such a situation would swallow whole the public-duty doctrine and eliminate its application when a governmental entity wrongly fails to take positive action for the protection of the plaintiff. *See Breese,* 945 N.W.2d at 19-20, *Johnson*, 913 N.W.2d at 266, *The Law of Torts* § 345 at 375, *and, Estate of McFarlin*, 881 N.W.2d at 58-64.

The Court's observation about nonfeasance and misfeasance serves as a warning or notice that public-duty doctrine cases ought not be decided based solely on the theory of negligence advanced by a plaintiff. In this regard, the Iowa Supreme Court reflected,

> What is clear is that we have generally applied the public-duty doctrine when the allegation is a government failure to adequately enforce criminal or regulatory laws for the benefit of the general public, as in *Raas, Kolbe*, and *Sankey*, or a government failure to protect the general public from somebody else's instrumentality, as in *Johnson* and *Estate of McFarlin*. *Compare Raas*, 729 N.W.2d at 446, *and Kolbe*, 625 N.W.2d at 724-25, *and Sankey*, 456 N.W.2d at 208-09, *with Johnson*, 913 N.W.2d at 261, *and Estate of McFarlin*, 881 N.W.2d at 63.

Breese, 945 N.W.2d at 21. Thus, in *Breese* the Court found that the City was affirmatively negligent in connecting the sewer box to the public pathway and affirmatively negligent in not making it safe or warn the public that the sewer box was not part of the trail system. *Id.*

at 21. The key to *Breese* is that the governmental entity actively created the instrumentality that harmed plaintiff. *See id.* There was no third party actor. *See id.* As the Court noted, *Breese* did not fall in to either category (failure to enforce a criminal or regulatory law or failure to protect the general public from somebody else' instrumentality). *See id.*

Failing to keep the instrumentality of harm in mind leads to the potential for gray-area public-duty doctrine cases that cannot be reasonably predicted and can only be known in retrospect by the outcome. In *Breese,* the Iowa Supreme Court engaged in a thought experiment in which it speculated that it "could potentially have decided" that the public-duty doctrine would not apply in *Summy v. the City of Des Moines* based upon grounds of affirmative negligence. *See Breese,* 945 N.W.2d at 21 (referring to *Summy,* 708 N.W.2d at 335).). It should be noted that in the *Summy* decision, the Supreme Court's discussion of the public duty doctrine is one paragraph holding "the City's duty was owed to invitees of the golf course, not the public at large" rendering the public-duty doctrine inapplicable due to the special relationship. *Summy, 708 N.W.2d at 344.* The *Breese* Court surmised that the governmental entity in *Summy* "designed,

developed, and maintained the allegedly dangerous golf course. These were affirmative acts." *Breese,* 945 N.W.2d at 21.

The *Breese* Court is correct in that supposition only if it would be willing to ignore the instrumentality of harm. In its *Summy* opinion, the Iowa Supreme Court was not so willing and, by inference, must have ascertained the case to be one of nonfeasance where the instrumentality of harm was not the golf course, but a user that hit an errant drive off a tee box lacking a protective fence that would have kept the errant ball from harming the plaintiff. *See Summy*, 708 N.W.2d at 335-36. In the words of the *Breese* opinion, the *Summy* Court viewed that case as one where the governmental entity "fail[ed] to protect the general public from somebody else's instrumentality." *See Breese*, 945 N.W.2d at 21. Viewing *Summy v. City of Des Moines* in retrospect through the lens of *Breese v. City of Burlington,* we know that it would be improper to assess the case for the special relationship exception to the public duty doctrine unless it is a case of nonfeasance. *See Breese,* 945 N.W.2d at 20-21 (citing *Cope v. Utah Valley State Coll.*, 342 P.3d 243, 252-53 (Utah 2014). "[T]he special relationship exception makes sense only in the context of omissions in which a government actor had a duty to act and failed to do so." *Id.*

Applying these lessons to the case at bar and keeping in mind the instrumentality of harm removes this case from the gray area where misfeasance can be mischaracterized as nonfeasance. Doing so only requires a focus on the instrumentality of harm, which is paramount when analyzing the public-duty doctrine. *See Breese,* 945 N.W.2d at 21.

What separates the case at bar from those like *Breese* is that Officer Farrell was harmed by the actions of Benjamin Beary. (First Amended Petition, paras. 45-48). The case at bar is one where the Governmental Parties have allegedly failed to protect one member of the general traveling public (Officer Farrell) from another member of the general traveling public (Mr. Beary) who was the instrumentality of harm. *See Breese*, 945 N.W.2d at 21. The case at bar is meaningfully different from *Breese*, because the plaintiff in *Breese* was harmed by the governmentally designed and controlled property – the instrumentality of harm was the sewer box and not another member of the general public. *Cf. Breese*, 945 N.W.2d at 21.

In addition, to accept Plaintiffs' allegations of "mis-nonfeasance" – actively opening and operating the Interchange by failing to have adequate safety measures for the protection of Officer Farrell – it

would require the Court to improperly inject the concept of foreseeability into the no-duty determination. *See Thompson*, 774 N.W.2d at 834 (citing Restatement (Third) of Torts: *Liability for Physical and Emotional Harm*, § 7(b) at 90).

b. Foreseeability does not play a role in no-duty determinations like the public-duty doctrine.

When making a no-duty determination, as with the public-duty doctrine, it is a purely legal question that should be based on articulated policies or principles and cannot "depend on foreseeability of harm based on the specific facts of a case." Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 7 cmt. i. To the extent the 2006 *Summy* opinion could be considered a misfeasance case, it would require the concept of foreseeability to enter the no-duty determination. But we know that cannot occur now that Iowa has adopted the Restatement (Third) of Torts in the 2009 case, *Thompson v. Kaczinski*. See *Thompson,* 774 N.W.2d at 835.

> The Restatement (Third) drafters acknowledge that courts have frequently used foreseeability in no-duty determinations, but have now explicitly disapproved the practice in the Restatement (Third) and limited no-duty rulings to articulated policy or principle in order to facilitate more transparent explanations of the reasons for a no-duty ruling and to protect the traditional function of the jury as factfinder. We find the drafters' clarification of

> the duty analysis in the Restatement (Third) compelling, and we now, therefore, adopt it.

Thompson, 774 N.W.2d at 835 (internal punctuation and citations omitted). The removal of foreseeability in relation to the public-duty doctrine was acknowledged in *Johnson v. Humboldt County*. *See Johnson,* 913 N.W.2d at 265 (citing *Thompson*, 774 N.W.2d at 835). In rejecting a proposed exception to the public-duty doctrine requiring the existence of grave danger of highway safety, the Court found that it was "an argument about foreseeability, not duty, and it no longer holds water under the Restatement (Third) of Torts." *See id.*

Plaintiffs' theory that the Governmental Parties committed misfeasance by choosing to open and operate the Interchange while failing to have adequate safety measures requires foreseeability to bridge the instrumentality of harm to the Grand Prairie Parkway Interchange from the collision on Interstate 80 between Mr. Beary's vehicle and the vehicle in which Officer Farrell was a passenger. *See id.*

The Court should reject Plaintiffs' effort to inject foreseeability into the no-duty determination, focus on the instrumentality of harm, and find that Plaintiffs' allegations are of nonfeasance like in *Johnson, McFarlin, Raas, Kolbe, and Sankey*, where the governmental entities

allegedly failed to protect the plaintiff from harm caused by another. *See Johnson*, 913 N.W.2d at 266-267, *McFarlin,* 881 N.W.2d at 60, *Raas,* 729 N.W.2d at 449, *Kolbe*, 625 N.W.2d at 726, *and, Sankey,* 456 N.W.2d at 208. The District Court should be overruled and judgment on the pleadings entered in favor of the Governmental Parties based on the public-duty doctrine, free from improper considerations of foreseeability.

2. The District Court erred by holding that the Rhode Island egregious conduct exception defeats the public-duty doctrine.

In the District Court's decision denying judgment on the pleadings, it raised an exception to the public-duty doctrine that was not brought up by any of the Parties. (Order on MJP, pp. 9-10, App 321-322). In this regard, the District Court cited to *Tedesco v. Connors*, 871 A.2d 920, 924 (R.I. 2005) (quoting *Haley v. Town of Lincoln*, 611 A.2d 845, 849 (R.I. 1992)). (Order on MJP, p. 10, App. 322). These Rhode Island cases create an exception to the public duty doctrine for egregious conduct. *See id.* To determine whether this Rhode Island exception applies Rhode Island Courts consider:

> (1) whether that entity created or allowed for the persistence of circumstances that forced a reasonably prudent person into a position of extreme peril; (2) whether that entity had actual or constructive knowledge

> of the perilous circumstances; and (3) whether that entity having been afforded a reasonable amount of time to eliminate the dangerous condition, failed to do so.

See id. (internal punctuation omitted).

The District Court found that the Plaintiffs alleged gross negligence and held that Plaintiffs' allegations in that regard "may satisfy the [Rhode Island] egregious conduct exception to the public duty doctrine." (Order on MJP, pp. 9-10, App. 321-322). According to the District Court, it could not conclude, therefore, that the Governmental Parties would be entitled to judgment under any state of facts and denied the motion for judgment on the pleadings. (Order on MJP, p. 10, App. 322).

The Rhode Island exception to the public-duty doctrine has not been adopted, referred to, or relied upon by any Iowa Court. Furthermore, it does not appear to be used anywhere but Rhode Island. *See, e.g., Siewert v. State*, No. 60291-8-I, 2008 Wash. App. LEXIS 15, at *5 (Ct. App. Jan. 7, 2008) (noting the Rhode Island exception and that "no other jurisdiction has embraced the egregious conduct exception"). As such, the District Court's holding in this regard is error. *See id.*

The holding is also error because it is inconsistent with Iowa precedent. In *Johnson v. Humboldt County*, the Iowa Supreme Court rejected an analogous exception to the public duty doctrine. *See Johnson*, 913 N.W.2d at 265. The plaintiff in that case suggested the Iowa Supreme Court adopt an exception for "grave danger" associated with highway safety. *Id.* As discussed above, the Court rejected the "grave danger" exception reasoning that because the "grave danger" exception was an argument about foreseeability, not duty, and it "no longer holds water under the Restatement (Third) of Torts." *Id.* (citing *Thompson*, 774 N.W.2d at 835 (siding with the Restatement (Third) of Torts and rejecting foreseeability in no-duty determinations). The Rhode Island egregious conduct exception to the public-duty doctrine also speaks to foreseeability and, thus, plays no role in no-duty determinations like the public-duty doctrine. *See Johnson*, 913 N.W.2d at 265. It was error for the District Court to inject foreseeability in to the no-duty determination and reject the public-duty doctrine.

Finally, the District Court's ruling on the motion for judgment on the pleadings is error because the District Court did not limit its review of Plaintiffs' First Amended Petition to the well-pled facts when coming

to the egregious conduct exception. *See Stanton,* 420 N.W.2d at 482 (motions for judgment on the pleadings are reviewed in a manner like a motion to dismiss); and, *Hedlund*, 875 N.W.2d at 724 (like with a motion to dismiss, the Court is to accept as true the well-pleaded factual allegations and ignore the legal conclusions). Instead, the District Court considered Plaintiffs' legal conclusion pleading gross negligence. *Cf. id.*

The District Court's Order denying judgment on the pleadings should be overruled as to its holding applying the Rhode Island egregious conduct exception.

CONCLUSION

This Court should overrule the District Court and enter judgment on the pleadings in favor of the Governmental Parties applying the public-duty doctrine. The District Court erred in applying the Rhode Island egregious conduct exception, which is inconsistent with Iowa precedent. The District Court erred in finding that Plaintiffs' claims of "mis-nonfeasance" defeated the public duty doctrine without properly assessing the instrumentality of damage and injecting the concept of foreseeability into the no-duty determination. If Plaintiffs' attempt to save the District Court's Order by raising rejected theories, such as the

special relationship exception, those theories should be rejected. Officer Farrell had no special relationship with the Governmental Parties as she was simply a member of the general traveling public to which the Governmental Parties owed a general duty to all. In the end, this is a case where there is an affirmative duty of reasonable care imposed by common law on the Governmental Parties to open and operate the Grand Prairie Parkway Interchange with adequate safety mechanisms, such as lighting, signage, and road markings; and the alleged wrongdoing is the Governmental Parties' failure to take positive action for the protection of Officer Farrell from Mr. Beary. *See Breese*, 945 N.W.2d at 19-20 (quoting 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 345, at 375 (2d ed. 2011), *and, see Estate of McFarlin*, 881 N.W.2d at 58-64 (applying the public-duty doctrine to common-law duties). The case parallels the circumstances in *Johnson, Estate of McFarlin, Raas, Kolbe, and Sankey*, where the governmental entities allegedly failed to protect the plaintiff from harm caused by another. *See Johnson*, 913 N.W.2d at 266-267, *Estate of McFarlin,* 881 N.W.2d at 60, *Raas,* 729 N.W.2d at 449, *Kolbe*, 625 N.W.2d at 726, *and, Sankey,* 456 N.W.2d at 208.

REQUEST FOR SUBMISSION ON BRIEFS

This appeal requires enunciation of legal principles governing the public-duty doctrine in the gray area where nonfeasance can be inappropriately disguised as misfeasance by creative plaintiffs. The appeal will be resolved by this legal issue with an evidentiary record consisting solely of the allegations in Plaintiffs' Petition. Because the allegations are to be assumed true under the standard of review, the Court is unlikely to have factual questions unresolved by the written briefs. As such, it is respectfully suggested that oral argument is not likely to assist the decisional process. *See* Iowa R. App. P. 6.908(2).

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The actual cost of printing or duplicating this brief is $0.00 per document.

/s/ Robert Livingston Dated: March 18, 2021

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