IN THE SUPREME COURT OF IOWA

No. 22–0293

MARCELINO ALVAREZ-VICTORIANO,

Appellant,

vs.

CITY OF WATERLOO, IOWA, OFFICER C.J. NICHOLS, in his/her Individual and Official Capacity, and WATERLOO POLICE DEPARTMENT,

Appellees.

Appeal from the Iowa District Court for Black Hawk County
Joel A. Dalrymple, District Judge

BRIEF OF AMICUS CURIAE STATE OF IOWA SUPPORTING APPELLANT

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INTEREST AND FUNDING OF AMICUS CURIAE

The Attorney General has a statutory duty to participate in appellate court proceedings in which the State is interested. *See* Iowa Code § 13.2(1)(*a*). And the State has a duty to defend and indemnify all state employees against any tort claim filed under the Iowa Tort Claims Act. *Id.* § 669.21(1). Indeed, about 800 state tort claims are currently pending before the Attorney General, and at least seven cases under the Act are now on appeal before this Court.

So the State has a substantial interest in the proper interpretation of new Iowa Code section 670.4A(3), which was enacted at the same time as an identical amendment to the Iowa Tort Claims Act. *See id.* § 669.14A(3). The Legislature enacted both provisions to provide government defendants substantial new protections against lawsuits. And the State has a significant interest in ensuring that those protections are properly interpreted. This is particularly so since this Court has historically interpreted identical language within both tort claims acts interchangeably.

No party's counsel authored this brief in whole or in part. No party's counsel contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief, except to the extent that all Iowa taxpayers fund the Iowa Attorney General's Office.

ARGUMENT

Amicus Curiae State of Iowa agrees with Appellant Alvarez-Victoriano—at least in part and without regard to the ultimate merits of his claim—that the district court erred in refusing to let him voluntarily dismiss his petition without prejudice under Iowa Rule of Civil Procedure 1.943.

To be clear, the district court properly concluded that Iowa Code section 670.4A(3) applies to Alvarez-Victoriano's petition because applying a new statute governing pleading standards to petitions filed after the statute's effective date does not implicate retroactivity concerns. *Hrbek v. State*, 958 N.W.2d 779, 782 (Iowa 2021). But the district court went astray in holding that section 670.4A(3) prevented Alvarez-Victoriano from voluntarily dismissing his petition without prejudice.

True, the new statute makes significant changes to the law governing tort claims against governments, including adopting the stricter federal pleading requirements. But it doesn't sweep as wide as the district court did here. As in federal court, tort plaintiffs may replead unless repleading would be futile. And plaintiffs retain the power to voluntarily and unilaterally dismiss under Rule 1.943. The district court thus lacked jurisdiction to take any action after the proper voluntary dismissal. This Court should reverse the district court and remand for dismissal without prejudice.

I. Section 670.4(3) adopts federal pleading requirements for tort claims against government defendants.

In 2021, the Legislature amended the Iowa Tort Claims Act and the Iowa Municipal Tort Claims Act. *See* Act of June 17, 2021 (Senate File 342), ch. 183, §§ 12–16, 2021 Iowa Acts 715, 719 (codified at Iowa Code §§ 669.14A, 669.26, 670.4A, 670.14 (2022)). The amendments make a number of significant changes to the law governing when taxpayer funds will be used to satisfy or defend tort claims against the government. Relevant here, new section 670.4A(3)—identically enacted in section 669.14A(3)—makes three changes to how plaintiffs must plead—and courts must review—tort claims against the State and municipalities.

First, tort petitions must contain specific factual allegations against the government defendant. Second, a petition's factual allegations must show that its legal claims are plausible. Finally, a petition must establish that the claims do not invade governmental immunities, including qualified immunity. Each change adopts a well-established federal pleading requirements. And by providing for "dismissal with prejudice" of defective pleadings, the statute clarifies that defendants can seek early resolution of these issues at the motion-to-dismiss stage. Iowa Code § 669.14A(3); *cf. Struck v. Mercy Health Servs.-Iowa Corp.*, No. 20-1228, 2022 WL 1194011, at *4–5 (Iowa Apr. 22, 2022).

A. Petitions must contain specific factual allegations.

First, the Legislature increased the degree of factual specificity required in petitions stating tort claims against the government. Tort plaintiffs must now "*state with particularity* the circumstances constituting the violation." Iowa Code § 670.4A(3) (emphasis added); *see also id.* § 669.14A(3). The particularity requirement is identical to that found in Federal Rule of Civil Procedure 9(b). *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.").

The policy behind this amendment is not new. Nearly thirty years ago, the Supreme Court of the United States considered whether to require—through judicial fiat rather than rule amendment—heightened pleading for local governments faced with an influx of tort suits in the wake of the *Monell*[1] decision. *See Leatherman v. Tarrant Cty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993). The municipalities argued that although Rule 9(b) did not expressly include *Monell* claims within the list of claims requiring heightened pleading, the reality of increased and costly litigation favored imposing heightened pleading requirements to facilitate early resolution of insubstantial suits. *Id.* at 167–68. The

[1] *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658 (1978).

Court disagreed, declining to undermine the plain language of the Federal Rules of Civil Procedure in response to policy arguments. *Id.* at 168.

The Court explained "[t]he phenomenon of litigation against municipal corporations based on claimed constitutional violations by their employees dates from our decision in *Monell*, . . . where we for the first time construed § 1983 to allow such municipal liability." *Id.* And "[p]erhaps if Rules 8 and 9 were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity requirement of Rule 9(b)." *Id.* But such policy changes "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.*

Just as municipalities saw an influx in costs following the *Monell* decision, so too did Iowa municipalities see an influx in litigation costs following this Court's *Godfrey* decision. *See generally Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). And just as the Supreme Court of the United States contemplated, the Legislature chose to adopt the policy of facilitating early resolution of meritless tort claims by imposing a heightened pleading standard.

Turning to the standard, stating allegations with particularity "requires plaintiffs to plead 'the who, what, when, where, and how: the first paragraph of any newspaper story.'" *Summerhill v. Terminix, Inc.*, 637 F.3d 877, 880 (8th Cir. 2011) (quoting *Great*

Plains Tr. Co. v. Union Pac. R.R. Co., 492 F.3d 986, 995 (8th Cir. 2007)). The "particularity requirement demands a higher degree of notice than required for other claims . . . and is intended to enable the defendant to respond specifically and quickly to the potentially damaging allegations." *United States ex rel. Costner v. URS Consultants, Inc.*, 317 F.3d 883, 888 (8th Cir. 2003). Conclusory or vague allegations of illegal or improper conduct do not satisfy the standard. *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F.3d 417, 421 (8th Cir. 2020). Thus, claims against the government brought under the tort claims acts are no longer subject to Iowa's general notice-pleading standards, but rather must contain sufficient facts to inform the government defendants of the specific allegations of misconduct.

B. Petitions must raise plausible claims.

Next, section 670.4A(3) requires tort plaintiffs to "plead a *plausible* violation." Iowa Code § 670.4A(3) (emphasis added); *see also* § 669.14A(3). Again, the policy behind this amendment is not new—the Legislature adopted the plausibility standard currently used in federal courts.

To plead a plausible claim, the petition's specific factual allegations must "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009). Although a plaintiff need not prove probability to survive an initial plausibility review, the petition must still raise "more than a sheer possibility that a defendant has acted unlawfully." *Id.* If a petition contains facts "'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

"[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the [petition] has *alleged*—but it has not *shown*—that the pleader is entitled to relief." *Id.* (emphasis added) (citation and internal quotation marks omitted). Discerning "whether a [petition] states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

The "practical significance" of the plausibility standard is that "something beyond the mere possibility of" unlawful conduct "must be alleged, lest a plaintiff with a largely groundless claim be allowed to take up the time of a number of people, with the right to do so representing an *in terrorem* increment of the settlement value." *Twombly*, 550 U.S. at 557–58 (cleaned up). When a petition's allegations cannot give rise to a reasonable inference of defendant liability, "this basic deficiency should . . . be exposed at the

point of minimum expenditure of time and money by the parties and the court." *Id.* (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216, at 233–34 (3d ed. 2004)). Still, "a well-pleaded [petition] may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Id.* at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Ultimately, a plaintiff must not only allege particular facts, but those facts must also show the defendants are liable for the particular torts.

C. Petitions must not invade governmental immunities.

Finally, section 670.4A(3) requires petitions to show "that the law was clearly established at the time of the alleged violation." Iowa Code § 670.4A(3); *see also* § 669.14A(3). This aligns with section 670.4A(1), which provides a statutory immunity for the government and its officers—immunity for conduct that did not violate clearly established law. And because the statute expressly requires "dismissal with prejudice" based on a "failure to plead that the law was clearly established," this final change as well may be resolved through a motion to dismiss. Iowa Code § 670.4A(3).

Again, the policy behind this amendment is not new. Government defendants have long been entitled to legislatively and judi-

cially crafted civil immunities. And immunity questions are quintessentially appropriate to resolve at the pleading stage. *See, e.g.*, *Venckus v. City of Iowa City*, 930 N.W.2d 792, 803–05 (Iowa 2019) (granting prosecutors' motion to dismiss claims arising out actions taken during the judicial process because prosecutors were immune from such claims); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) ("[W]e repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.").

Qualified immunity is "an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Such immunity "is both a defense to liability *and* a limited 'entitlement not to stand trial or face the other burdens of litigation.'" *Ashcroft*, 556 U.S. at 672 (quoting *Mitchell*, 472 U.S. at 526) (emphasis added). Indeed, the doctrine is concerned not only with the ultimate damages liability, but also "the general costs of subjecting officials to the risks of trial—distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service." *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1985). And "even such pretrial matters as discovery are to be avoided if possible, as

'[i]nquiries of this kind can be peculiarly disruptive of effective government.'" *Mitchell*, 472 U.S. at 526 (quoting *Harlow*, 457 U.S. at 817) (alteration in original).

When an unviable suit improperly advances, "potentially lost benefits of qualified immunity include the costs and expenses of litigation, and discovery in particular, which is a type of burden distinct from appeals and other lawyer-driven aspects of a case." *Payne v. Britten*, 749 F.3d 697, 700–01 (8th Cir. 2014). These afflictions are why a "district court may not force public officials into subsequent stages of district court litigation without first ruling on a properly presented motion to dismiss asserting the defense of qualified immunity." *Id.*

Section 670.4A(3) is not a magic words requirement. Nor can it be satisfied by merely making a conclusory assertion of clearly established law. Rather, the section empowers the court to act as a gatekeeper and prevent immune defendants from improperly facing suit. *Cf. Struck*, 2022 WL 1194011, at 1, 4–5 (explaining that section 147.140 applying to medical malpractice cases similarly "was enacted to enable early dismissal of meritless malpractice actions").

Just as in federal court, a reviewing court must discern "whether the facts as alleged plausibly state a claim and whether the claim asserts a violation of a clearly established right." *Id.* at 702. And just as in federal court, the burden of overcoming qualified

immunity falls on the plaintiff. *See Cox v. Glanz*, 800 F.3d 1231, 1245 (10th Cir. 2015) (explaining the "unique briefing burdens of the nonmovant plaintiff in the qualified-immunity context" and collecting cases). If the plaintiff cannot clear these thresholds, then section 670.4A bars the claim and the case must not continue.

II. Section 670.4A(3) doesn't prevent plaintiffs from exercising their existing rights under Iowa law to amend or voluntarily dismiss and refile to bring a petition that complies with its pleading requirements.

Failing to meet these new pleading requirements "shall result in dismissal with prejudice." Iowa Code § 670.4A(3); *see also* 669.14A(3). But the statute's text doesn't limit a plaintiff's intermediate ability to amend or voluntarily dismiss and refile to attempt to cure pleading defects before a court rules on the petition's compliance with section 670.4A(3). And neither the purpose, nor prior caselaw, nor the interests of justice support implying that restriction without explicit text overriding the longstanding rights of plaintiffs under the Iowa Rules of Civil Procedure.

A. Repleading or refiling does not conflict with section 670.4A(3) or undermine its purpose.

Because the statue applies federal pleading standards to the tort claims acts, the federal approach to this question is highly instructive. In federal courts, "[t]he general rule is to freely permit plaintiffs to amend their complaint 'once as a matter of course.'"

Law Offices of David Freydin, P.C. v. Chamara, 24 F.4th 1122, 1133 (7th Cir. 2022) (quoting *Arlin-Golf, LLC v. Village of Arlington Heights*, 631 F.3d 818, 823 (7th Cir. 2011)). "Ordinarily, a party must be given at least one opportunity to amend before the district court dismisses the complaint." *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005).

Our rules of civil procedure similarly allow amending a petition "once as a matter of course at any time before a responsive pleading is served." Iowa R. Civ. P. 1.402(4). A motion to dismiss is not a responsive pleading. *See* Iowa R. Civ. P. 1.401. Thus, if a defendant's motion to dismiss identifies deficiencies warranting dismissal, a plaintiff should be entitled, as a matter of course, an opportunity to replead and cure the identified deficiencies.[2] Once a plaintiff repleads, a defendant is again entitled to raise all defenses, immunities, and other appropriate grounds for dismissal, including those under section 670.4A(3). *See* Iowa R. Civ. P. 1.421.

But a plaintiff cannot amend in perpetuity. A court should not "allow an amendment (1) where there has been undue delay, bad

[2] Of course, a plaintiff is also free to stand on the petition and decline to replead, at which point dismissal with prejudice could be warranted if the plaintiff fails to show the petition satisfies the heightened pleading thresholds. But here, Alvarez-Victoriano indeed sought and was denied an initial opportunity to cure pleading deficiencies.

faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Corsello*, 428 F.3d 1014 (quoting *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001)). This Court has recognized futility as a basis to deny a motion to amend. *See, e.g.*, *Midthun v. Pasternak*, 420 N.W.2d 465, 468 (Iowa 1988) ("[W]here a proposed amendment to a petition appears on its face to be legally ineffectual, it is properly denied."); *Bailiff v. Adams Cty. Conf. Bd.*, 650 N.W.2d 621, 626 (Iowa 2002) (affirming denial of motion to amend because the "amendments would have been futile"). Thus, government defendants have tools to forcefully resist successive attempts to evade dismissal by amending a nonviable petition. Upon a showing that further amendment is futile or otherwise disallowed, the case will be dismissed with prejudice.

Another option for plaintiffs—and the option invoked in this case—is to voluntarily dismiss the suit and refile. Iowa R. Civ. P. 1.943. The "plain language of rule 1.943" instructs that "the court retains no discretion to prevent" a plaintiff from dismissing her case up until ten days before trial. *Lawson v. Kurtzhals*, 792 N.W.2d 251, 256 (Iowa 2010). In such instances, "the dismissal terminates the court's jurisdiction of the action." *Smith v. Lally*, 379 N.W.2d 914, 916 (Iowa 1986).

But like amending, plaintiffs may not dismiss and refile suits in perpetuity. Rather, plaintiffs are generally only allowed one voluntary dismissal without prejudice. Iowa R. Civ. P. 1.943. A subsequent voluntary dismissal "operate[s] as an adjudication against [the plaintiff] on the merits, unless otherwise ordered by the court, or in the interests of justice." *Id.*; *see also Smith*, 379 N.W.2d at 916 (explaining the "the two-dismissal rule" was implemented to forestall the "harassing effect" of "[r]epeated filings and dismissals").

A plaintiff who voluntarily dismisses a case under Rule 1.943 may refile the lawsuit within the limitations period, or if the period has expired, within six months of the voluntary dismissal. Iowa Code § 614.10. "The purpose of a savings statute is to prevent minor or technical mistakes from precluding a plaintiff from obtaining his day in court and having his claim decided on the merits." *Furnald v. Hughes*, 804 N.W.2d 273, 276 (Iowa 2011). Yet the permission to refile within the savings window is limited: if the dismissal resulted from "negligence in [the case's] prosecution," then the savings statute does not apply. Iowa Code § 614.10. Thus, preexisting law provides adequate checks to ensure defendants are not repeatedly hauled to court to defend the same unviable claims.

When interpreting a statute, "all relevant legislative enactments must be harmonized, each with the other, so as to give meaning to all if possible." *Messina v. Iowa Dept. of Job Serv.*, 341 N.W.2d

52, 56 (Iowa 1983). It is true that the rules of civil procedure make "clear that statutes may 'provide different procedure in particular courts or cases.'" *In re Marriage of Thatcher*, 864 N.W.2d 533, 540 (Iowa 2015) (quoting Iowa R. Civ. P. 1.101). And when a statute explicitly contradicts a rule of civil procedure, the statute governs. *Id.*

But section 670.4A(3) does not explicitly contradict Rules 1.402 or 1.943—it is silent on the intermediate ability to replead or refile. "[T]he mere absence of language in the . . . rules specifically authorizing or describing a particular judicial procedure should not, and does not, give rise to a negative implication of prohibition." *Davis v. Iowa Dist. Ct. for Scott Cty.*, 943 N.W.2d 58, 63 (Iowa 2020) (quoting *G. Heileman Brewing Co. v. Joseph Oat Corp.*, 781 F.2d 648, 652 (7th Cir. 1989) (en banc)) (alteration in original). Nor should it be read to silently preempt these longstanding rules of civil procedure.

Of course, the Court may also consider the purpose of section 670.4A(3). *See Struck*, 2022 WL 1194011, at *5. The clear purpose of the section is to incorporate federal pleading practices, enabling government defendants both to ascertain the nature of the claims against them and to dismiss nonviable claims quickly without incurring discovery costs. Depriving plaintiffs of an opportunity to show viability serves none of these goals.

Instead, the Court should harmonize section 670.4A(3) with the rules of civil procedure and prior precedent. Taking all legislative enactments into account, here is how the statute should operate: A plaintiff sues a municipality, raising claims under the municipal tort claims act. If the municipal defendant believes the petition fails to state a plausible claim, contains insufficient facts, or invades immunities, the defendant can move to dismiss under section 670.4A(3). At this point, the plaintiff may stand on the petition, amend as a matter of course, or voluntarily dismiss and refile a new petition. If the plaintiff repleads or refiles, the defendant may again move to dismiss upon receipt of the new or amended petition. Then, the district court may rule on the motion and decide whether the plaintiff has pleaded sufficient facts, raised a plausible claim, and whether any immunities apply. Failure to meet these thresholds will result in the petition being dismissed with prejudice.

If the plaintiff wants to amend a *second* time in response the renewed motion to dismiss, then the plaintiff needs leave of court. Iowa R. Civ. P. 1.402(4). In response to a motion to amend, the defendant may resist the motion and argue that amendment would be futile, cause undue prejudice, or should otherwise be denied because of undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies. The court can then decide whether to allow amendment. And if so, a defendant could again seek dismissal.

B. Allowing an initial opportunity to replead or refile is not unduly prejudicial to government defendants.

Contrary to the City's arguments in the district court, government defendants are not prejudiced by allowing plaintiffs an initial opportunity to replead or refile. The City first pointed to *Blair v. Werner Enterprises* and argued the case created an "exception" to a Rule 1.943 without-prejudice dismissal when "'the defendant has acquired some substantial right or advantage in the course of the proceeding which would be lost or rendered inefficient by such a termination, or where the defendant thereby would be deprived of a just defense.'" Defendants' Motion to Set Aside & Resistance to Plaintiff's Voluntary Dismissal, at 3 (quoting *Blair v. Werner Enters.*, 675 N.W.2d 533, 537 (Iowa 2004)). The City argued that allowing Alvarez-Victoriano to refile a better petition would "deprive Defendants of the obvious advantage and just defense of dismissal with prejudice for failure to comply with the statute." *Id.* But this argument fails for two reasons.

First, it omits critical language from *Blair*. The *Blair* court also explained that overcoming a without-prejudice dismissal requires that a defendant be deprived "of some substantive rights concerning *defenses not available in a second suit or that may be endangered by the dismissal*, and not the mere ordinary inconveniences of double litigation which in the eyes of the law would be

compensated by costs." *Blair*, 675 N.W.2d at 537 (quoting 27 C.J.S. Dismissal Nonsuit 24, at 254 (1999)) (emphasis added). Here, the heightened pleading standards apply with equal force to initial and subsequent petitions. Seeking dismissal under 670.4A(3) is just as available to the City upon receipt of an amended or refiled petition as it is upon receipt of an initial petition. The City has not been irrecoverably deprived of a defense.

Second, *Blair* does not actually recognize any "exception" to Rule 1.943 and more recent caselaw counsels against such a reading. Six years after *Blair*, Rule 1.943 was interpreted to mean "the court retains *no discretion to prevent*" dismissals more than ten days before trial. *Lawson*, 792 N.W.2d at 256 (emphasis added). Moreover, *Blair* did not directly interpret Rule 1.943 and instead turned on "a party's right to continue seeking contribution after dismissal of the underlying case." *Blair*, 675 N.W.2d at 537. Even so, the *Blair* court affirmed dismissal, finding that the defendant who had already conducted discovery and who would be deprived of a forum for a counterclaim was not impermissibly prejudiced. *Id.* Against that backdrop, it is hard to conceive how the City—which has neither incurred discovery costs nor lost a favorable forum—is unduly prejudiced by having to file a second motion to dismiss.

The City also pointed to *Venard v. Winter* to support it argument that the Legislature intended to supersede Rule 1.943. *See*

Defendants' Motion to Set Aside & Resistance to Plaintiff's Voluntary Dismissal, at 4. But *Venard* actually supports Alvarez-Victoriano. In *Venard*, a legal malpractice plaintiff failed to designate an expert by the statutory deadline. 524 N.W.2d 163, 164 (Iowa 1994). When the defendant moved for summary judgment on this basis, the plaintiff voluntarily dismissed the suit under now-Rule 1.943. *Id.* The plaintiff refiled the suit five days later. *Id.* The defendant moved to dismiss, arguing the expert-deadline statute conflicted with the voluntary-dismissal rule and that allowing a second bite at the apple would render the expert-deadline requirement meaningless. *Id.* at 167. This Court disagreed.

The Court found "nothing in the language of section 688.11 to suggest a conflict with rule [1.943]." *Id.* Indeed, the expert-deadline section "says *nothing* about dismissal of *any* lawsuit." *Id.* And if "the legislature had intended a relationship between rule [1.943] and section 688.11, it could have easily said so." *Id.* The court continued, explaining "[t]he motive of the dismissing party plays no part in a voluntary dismissal under rule [1.943]. Under the rule, [the plaintiff] was entitled to dismiss the first action without prejudice for any reason." *Id.* at 168.

So too here. There is nothing in the language of section 670.4A(3) conflicting with Rules 1.402(4) or 1.943. The heightened-

pleading-standard provision says nothing about amending or voluntarily dismissing a petition. If the Legislature had intended to preempt the rules of civil procedure governing amended pleadings and voluntarily dismissals, it could have easily said so. And the motive of Alvarez-Victoriano's dismissal is irrelevant—he may dismiss his first action without prejudice for any reason, including to avoid dismissal for deficient initial pleading.

CONCLUSION

In the wake of expanded tort liability following *Godfrey*, the Legislature adopted federal pleading practices to facilitate swifter resolution of insubstantial tort claims. These are significant changes and should be given their full meaning and scope. But the Legislature didn't alter longstanding law offering plaintiffs the chance to correct defective pleadings. Because the district court improperly deprived Alvarez-Victoriano of that chance, this Court should reverse and remand for dismissal without prejudice.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d), 6.903(1)(g)(1), and 6.906(4) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 4,400 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Samuel P. Langholz*
Assistant Solicitor General

CERTIFICATE OF FILING AND SERVICE

I certify that on April 25, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ *Samuel P. Langholz*
Assistant Solicitor General

CONSENT OF PARTIES TO FILING

This amicus brief is filed accompanied by the written consent of all parties under Rule 6.906(1), as shown below:

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From: Brad Strouse <strouse@cflaw.com>
Sent: Friday, April 22, 2022 11:26 AM
To: Langholz, Sam; Bruce Gettman
Cc: Register, Tessa [AG]
Subject: RE: 22-0293 - Alvarez-Victoriano v. City of Waterloo

Sam,

Appellees/Defendants consent to the State of Iowa filing an amicus brief.

Thanks,

Brad

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From: Molly <Molly@hamiltonlawfirmpc.com>
Sent: Friday, April 22, 2022 12:10 PM
To: Langholz, Sam
Cc: Brad Strouse; Bruce Gettman; Steve
Subject: Alvarez

Sam- I have been traveling and I'm not sure that my previous email went through. We consent to the amicus per your previous email. Thanks Molly

Sent from my iPhone