
IN THE
SUPREME COURT OF IOWA

Supreme Court No. 21-1992
Johnson County No. LACV082557

GERI L. WHITE,

Plaintiff-Appellant,

v.

**MICHAEL KARKRIDER, CITY OF IOWA CITY, CHRIS WISMAN, AND
JOHNSON COUNTY,**

Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County
The Honorable Chad Kepros, Judge

**AMICUS CURIAE BRIEF FOR
THE IOWA COUNTY ATTORNEYS' ASSOCIATION AND IOWA
STATE ASSOCIATION OF COUNTIES**

AARON W. AHRENDSEN, AT0012634
ASSISTANT CARROLL COUNTY ATTORNEY
823 North Main Street
Carroll, IA 51401
Ph: (712) 792-8013
Email: aahrendsen@carrollcountyattorney.org
*Additional counsel listed on page 2

JOHN C. WERDEN, AT0008430
CARROLL COUNTY ATTORNEY
823 North Main Street
Carroll, IA 51401
Ph: (712) 792-8013
Email: jwerden@carrollcountyattorney.org

ATTORNEYS FOR AMICUS CURIAE

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on July 6, 2022, I served this document on all other parties to this appeal electronically through the Iowa Supreme Court’s EDMS system.

I further certify that on July 6, 2022, I filed this document electronically with the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1st Floor, 1111 East Court Avenue, Des Moines, Iowa 50319, by EDMS.

/s/ Aaron W. Ahrendsen
Aaron W. Ahrendsen, AT0012634
Assistant Carroll County Attorney
823 North Main Street
Carroll, IA 51401
Ph: (712) 792-8013
Email: aahrendsen@carrollcountyattorney.org
ATTORNEY FOR AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF CONTENTS..... 4

TABLE OF AUTHORITIES 5

IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE..... 7

SUMMARY OF THE ARGUMENT 9

ARGUMENT 10

 I. THIS COURT SHOULD OVERRULE *GODFREY* AS IT WAS
 DEMONSTRABLY ERRONEOUS WHEN IT WAS DECIDED
 BECAUSE DIRECT CAUSES OF ACTION FOR DAMAGES UNDER
 THE IOWA CONSTITUTION HAD NEVER PREVIOUSLY EXISTED
 AND ACTIONS FOR DAMAGES HAD ALWAYS PREVIOUSLY
 BEEN BASED ON EITHER LEGISLATIVE AUTHORIZATION OR
 COMMON LAW, WHICH IS REQUIRED BY THE PLAIN
 LANGUAGE OF THE IOWA CONSTITUTION. 10

 II. *GODFREY* CLAIMS FOR MONEY DAMAGES UNDER THE IOWA
 CONSTITUTION SHOULD NOT BE EXTENDED TO
 MUNICIPALITIES BECAUSE OF THE HISTORY OF BUDGETARY
 CONSTRAINTS AND THE LEGISLATURE’S CLEAR DIRECTIVE
 THAT MUNICIPAL ACTORS SHOULD BE IMMUNE FROM SUIT
 FOR MONEY DAMAGE CLAIMS UNDER THE IOWA
 CONSTITUTION..... 15

CONCLUSION..... 19

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS..... 20

CERTIFICATE OF COMPLIANCE AUTHORSHIP 20

TABLE OF AUTHORITIES

U.S. Supreme Court

<i>Anderson v. Creighton</i> , 483 U. S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)	14
<i>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</i> , 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971)	13
<i>Egbert v. Boule</i> , ___ U.S. ___, ___ S. Ct. ___, 213 L. Ed. 2d 54 (2022) ...	13, 14, 16
<i>Ziglar v. Abbasi</i> , 582 U. S., at ___, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (slip op., at 11)	14

Iowa Supreme Court

<i>Baldwin v. City of Estherville</i> , 915 N.W.2d 259 (Iowa 2018).....	10, 17
<i>Baldwin v. City of Estherville</i> , 929 N.W.2d 691 (Iowa 2019).....	10, 18
<i>Farnum v. G.D. Searle & Co.</i> , 339 N.W.2d 392 (Iowa 1983)	16
<i>Godfrey v. State</i> , 898 N.W.2d 844 (Iowa 2017).....	9, 12, 13, 16
<i>Johnston v. Iowa DOT</i> , 958 N.W.2d 180 (Iowa 2021).....	12
<i>Lennette v. State</i> , No. 20-1148, slip op. at 48-50 (Iowa June 10, 2022)	13
<i>Miller v. Westfield Ins.</i> , 606 N.W.2d 301 (Iowa 2000)	12
<i>Planned Parenthood of the Heartland v. Reynolds ex rel. State & Iowa Bd. of Med.</i> , No. 21-0856, slip op. at 76-79 (Iowa June 17, 2022)	12
<i>State ex rel. Iowa Dep't of Health v. Van Wyk</i> , 320 N.W.2d 599 (Iowa 1982)	12
<i>State v. Johnson</i> , 257 Iowa 1052, 135 N.W.2d 518 (1965).....	12
<i>State v. Kilby</i> , 961 N.W.2d 374 (Iowa 2021)	12
<i>State v. Pettijohn</i> , 899 N.W.2d 1 (Iowa 2017)	12
<i>Thomas v. Gavin</i> , 838 N.W.2d 518 (Iowa 2013).....	15
<i>Venckus v. City of Iowa</i> , 930 N.W.2d 792 (Iowa 2019).....	11, 15

Statutes

Iowa Code § 670.14 (2021)	17
Iowa Code § 670.4(1)(e).....	10
Iowa Code § 670.4A(1)(a) (2021)	17

Constitutional Provisions

Iowa Const. art. XII, § 1 13

IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Iowa County Attorneys' Association ("ICAA") is a nonpartisan association of Iowa's county attorneys and their assistants. The county attorney is the chief law enforcement officer for his or her county. In addition, the county attorney is the principal legal advisor to other county elected officials and the county as a corporate entity. In this role the county attorney regularly gives legal advice regarding the employment relationship including the hiring, discipline, compensation, and discharge of county employees. The primary purposes of the association are to encourage and maintain close coordination among county attorneys and to promote the uniform and efficient administration of the criminal and juvenile justice systems of Iowa.

The Iowa State Association of Counties (ISAC) is a private, nonprofit corporation whose members are county officials from Iowa's 99 counties. ISAC's mission is to promote effective and responsible county government for the people of Iowa.

ICAA and ISAC have substantial interest in this litigation and submit this brief to the Iowa Supreme Court as amicus curiae because this case presents important questions regarding the availability of direct causes of

action for damages under the Iowa Constitution and its application to municipal actors. The answer to this question is of substantial interest to ICAA and ISAC.

SUMMARY OF THE ARGUMENT

The Court should overrule *Godfrey* as *Godfrey* was demonstrably erroneous when decided. The plain language of the Iowa Constitution does not support a *Godfrey* type claim and such a cause of action has never existed in Iowa until *Godfrey* in 2017. Further, the invention of constitutional torts in *Godfrey* was not and is not supported by precedent, custom, or tradition. While stare decisis plays an important role in our system of jurisprudence, it does not require the Court to stand by a case that was wrongly decided. *Godfrey* was wrongly decided at its inception and should be overruled.

In the alternative, if the Court were to uphold *Godfrey*, the Court should decline to extend *Godfrey* claims to municipal actors. There has been a history of budgetary concerns for municipalities that has resulted in protective legislative treatment for municipal actors. The legislature has also recently reaffirmed its concern for liability of municipal actors for a claim of money damages under the Iowa Constitution. The expansion of *Godfrey* to municipal actors would create broad ranging civil liability that would unduly interfere with municipal actors discharging their official duties.

ARGUMENT

- I. THIS COURT SHOULD OVERRULE *GODFREY* AS IT WAS DEMONSTRABLY ERRONEOUS WHEN IT WAS DECIDED BECAUSE DIRECT CAUSES OF ACTION FOR DAMAGES UNDER THE IOWA CONSTITUTION HAD NEVER PREVIOUSLY EXISTED AND ACTIONS FOR DAMAGES HAD ALWAYS PREVIOUSLY BEEN BASED ON EITHER LEGISLATIVE AUTHORIZATION OR COMMON LAW, WHICH IS REQUIRED BY THE PLAIN LANGUAGE OF THE IOWA CONSTITUTION.**

The primary question presented in this case is whether direct actions for damages under the Iowa Constitution pled against state actors, as recognized in *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), should be extended to apply to municipal actors. However, the Court should first determine an initial question—whether the Court’s decision in *Godfrey* is settled law. It is not.

Direct actions for damages under the Iowa Constitution’s equal protection and due process provisions (or what have been referred to as “*Godfrey* claims”) found at article I, section 6 and 9 have only existed since 2017 when first recognized by a plurality of the Court in *Godfrey*. Since *Godfrey*, the Court has not yet been asked to revisit the shaky foundation of *Godfrey* itself, but instead has been called on to further clarify issues left open by the *Godfrey* decision.

The first came in *Baldwin v. City of Estherville* (hereinafter “Baldwin I”) when the Court was asked to answer a certified question relating to the affirmative defense of qualified immunity and its application to direct actions for damages under the Iowa Constitution’s article I, sections 1 and 8. 915 N.W.2d 259 (Iowa 2018). The Court determined that “[a] defendant who pleads and proves as an affirmative defense that he or she exercised all due care to conform with the requirements of the law was entitled to qualified immunity on an individual’s claim for damages” under the article I, sections 1 and 8 of the Iowa Constitution. *Id.* at 260-61.

The Baldwin case visited the Court again the following term when additional certified questions were posed to the court. The first certified question presented to the Court was a question left open in Baldwin I, which was whether the provisions of the Iowa Municipal Tort Claims Act (“IMTCA”) would apply to constitutional tort claims against public officials and public agencies. *Baldwin v. City of Estherville*, 929 N.W.2d 691, 695-98 (Iowa 2019) (hereinafter “Baldwin II”). The Court determined IMTCA applies and noted that based on IMTCA, punitive damages and attorney fees were unavailable against the municipality due to Iowa Code § 670.4(1)(e). *Id.* at 698-99.

Shortly after Baldwin II, the Court ruled in *Venckus v. City of Iowa*, 930 N.W.2d 792 (Iowa 2019). In *Venckus*, a defendant acquitted of sexual abuse asserted common law claims and state constitutional claims against the police investigator, the prosecutors, and the municipalities involved with the case. *Id.* at 798. One of the key issues in *Venckus* related to the statute of limitations contained in Iowa Code § 670.5 and its application not only to the common law claims but also the constitutional claims. *Id.* at 808. The Court held the limitations period contained in Iowa Code § 670.5 controlled both the common law claims and the constitutional claims. *Id.* at 808-09.

The Court has continued to define and limit the scope of *Godfrey* since its inception; however, the Court has not yet been presented with the foundational question of whether *Godfrey* is good law. *Godfrey* only garnered a plurality of the Court, and a strong dissent was authored highlighting the weaknesses of the *Godfrey* decision. The Court has never passed on the vitality of the *Godfrey* decision, which continues to be questioned in fractured and piecemeal litigation. The Court should take up the invitation in this case and overrule *Godfrey*.

Stare decisis plays an import role in our system of jurisprudence but it is not without limits and surely does not require the Court to stand by a case that was wrongly decided. “[H]igh courts have not only the right but the

duty to change a past decision if it is erroneous” *State v. Johnson*, 257 Iowa 1052, 1056, 135 N.W.2d 518, 521 (1965); *see also State ex rel. Iowa Dep’t of Health v. Van Wyk*, 320 N.W.2d 599, 607 (Iowa 1982) (McCormick, J., dissenting) (“The court is always free to correct its own mistakes, and legislative inaction is not a bar to doing so.”). The Court has previously stated *stare decisis* does not prevent it “from reconsidering, repairing, correcting, or abandoning past judicial announcements when error is manifest” *Johnston v. Iowa DOT*, 958 N.W.2d 180, 191 (Iowa 2021) (McDermott, J., dissenting) (quoting *Miller v. Westfield Ins.*, 606 N.W.2d 301, 306 (Iowa 2000) (en banc)); *see also Planned Parenthood of the Heartland v. Reynolds ex rel. State & Iowa Bd. of Med.*, No. 21-0856, slip op. at 76-79 (Iowa June 17, 2022) (overruling 2018 opinion holding there was a fundamental right to abortion under the Iowa Constitution); *State v. Kilby*, 961 N.W.2d 374, 381-82 (Iowa 2021) (overruling *State v. Pettijohn*, 899 N.W.2d 1 (Iowa 2017), which held article I, section 8 of the Iowa Constitution requires a search warrant for a breathalyzer test of an intoxicated boater, as manifestly erroneous).

Godfrey was erroneous when decided and should not be allowed to stand for the reasons contained in Justice Mansfield’s strong dissent. *See Godfrey*, 898 N.W.2d at 881-99 (Mansfield, J., dissenting). Justice

McDonald also recently wrote that he would overrule *Godfrey* as demonstrably erroneous. *Lennette v. State*, No. 20-1148, slip op. at 48-50 (Iowa June 10, 2022) (McDonald, J., concurring).¹ There is no constitutional text that supports the holding in *Godfrey*. In fact, the text of the constitution implores the opposite result. *See* Iowa Const. art. XII, § 1 (“This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void. The general assembly shall pass all laws necessary to carry this constitution into effect.”).

Further, the *Godfrey* decision was heavily based on support from *Bivens*. *See generally Godfrey*, 898 N.W.2d at 844-880 (citing or quoting from *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), one hundred and thirty-six times). As the dissent in *Godfrey* noted, since *Bivens* the U.S. Supreme Court has continually declined to extend *Bivens* to create new causes of action. *Id.* at 889 (Mansfield, J., dissenting). The U.S. Supreme Court’s most recent review of *Bivens* in *Egbert v. Boule*, ___ U.S. ___, ___ S. Ct. ___, 213 L. Ed. 2d 54 (2022), reaffirms declining to extend *Bivens* to create new causes of action.

¹ Lennette sought to extend *Godfrey* to recognize constitutional tort claims for alleged violations of the inalienable rights, seizure and search, and due process clauses of the Iowa Constitution. *See* Iowa Const. art. 1, §§ 1, 8, 9.

In *Egbert*, Boule filed suit against Egbert alleging a Fourth Amendment violation for excessive force and a First Amendment violation for unlawful retaliation under the theory that *Bivens* should extend to provide a damage remedy under those constitutional provisions. *Id.* ___ U.S. at ___, ___ S. Ct. at ___, 213 L. Ed. 2d at 64. In rejecting Boule’s claims, the Court noted it had declined to extend *Bivens* eleven times to authorize damage actions for constitutional violations and that “recognizing a *Bivens* action is a ‘disfavored judicial activity.’” *Id.* ___ U.S. at ___, ___ S. Ct. at ___, 213 L. Ed. 2d at 61, 65 (quoting *Ziglar v. Abbasi*, 582 U. S., at ___, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (slip op., at 11)). The Court also noted “[r]ecognizing any new *Bivens* action ‘entail[s] substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.’” *Id.* at 70 (quoting *Anderson v. Creighton*, 483 U. S. 635, 638, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)) (second alteration in original).

Accordingly, this case presents an opportunity for the Court to correct its previous error and the Court should expressly overrule *Godfrey*.

II. GODFREY CLAIMS FOR MONEY DAMAGES UNDER THE IOWA CONSTITUTION SHOULD NOT BE EXTENDED TO MUNICIPALITIES BECAUSE OF THE HISTORY OF BUDGETARY CONSTRAINTS AND THE LEGISLATURE’S CLEAR DIRECTIVE THAT MUNICIPAL ACTORS SHOULD

BE IMMUNE FROM SUIT FOR MONEY DAMAGE CLAIMS UNDER THE IOWA CONSTITUTION.

In the alternative, if the Court accepts *Godfrey* as good law, the Court should decline to extend *Godfrey* claims to municipal actors. The decision in *Venckus* provides some guidance on this issue. In *Venckus*, the Court was, in part, reviewing constitutional claims plead against municipal officers and the application of the Iowa Municipal Tort Claims Act (“IMTCA”). *Venckus*, 930 N.W.2d at 806-10. Specifically, *Venckus* questioned whether his constitutional claims were controlled by the IMTCA to which the Court answered they were. *Id.* at 807-08.

As noted in *Venckus*, “[t]he substance of any legal claim asserted under the IMTCA must arise from some source—common law, statute, or constitution—independent of the IMTCA.” *Id.* at 809-10. The IMTCA “allows people to assert claims against municipalities, their officers, and their employees that otherwise would have been barred by the doctrine of sovereign immunity.” *Id.* at 809 (citing *Thomas v. Gavin*, 838 N.W.2d 518, 521 (Iowa 2013)). Here the claim is that the Iowa Constitution provides such a source for a claim against municipal actors.

Historically municipalities “operate under greater fiscal constraints than the state does” which should cause special consideration before the

Iowa Constitution direct action floodgates are opened against municipal actors. *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 392, 397 (Iowa 1983). Not only would law enforcement be subject to new causes of action under the extension of *Godfrey*, but its expansion would apply to any number of municipal departments and its employees. This result would be contrary to policy choices established historically by the legislature.

As noted above, the U.S. Supreme Court noted in *Egbert v. Boule*, ___ U.S. ___, ___ S. Ct. ___, 213 L. Ed. 2d 54, 70 (2022), the recognition of a new *Bivens* claim creates “fear of personal and monetary liability and harassing litigation [that] will unduly inhibit officials in the discharge of their duties.” This same concept applies to municipal actors. If the Court were to officially extend *Godfrey* claims to municipal actors, a new wave of litigation will erupt at great personal and financial risk to municipal actors. This risk has been managed by the legislature under the IMTCA to its satisfaction. Not only would a *Godfrey* cause of action be applicable to law enforcement, but it would also apply to any number of other municipal actors with far reaching results. *See, c.f., Godfrey*, 898 N.W.2d at 898-899 (Mansfield, J., dissenting) (giving examples of the potential *Godfrey* claims that could be made).

The Iowa legislature has also managed municipal risk with qualified immunity. A change to the qualified immunity statute under the IMTCA was recently signed into law and can be found in Iowa Code § 670.4A(1)(a) (2021). The recent change to IMTCA also included the language “[t]his chapter shall not be construed to be a waiver of sovereign immunity for a claim for money damages under the Constitution of the State of Iowa.” Iowa Code § 670.14 (2021). *Baldwin I* held that “with respect to a damage claim under article I, sections 1 and 8, a government official whose conduct is being challenged will not be subject to damages liability if she or he pleads and proves as an affirmative defense that she or he exercised all due care to conform to the requirements of the law.”² *Baldwin*, 915 N.W.2d at 281. *Baldwin II* determined the IMTCA applied to *Godfrey* claims and “expressly

² *Baldwin I* left open a number of questions as noted by the Court:

We leave open a number of other issues. These include the possibility that constitutional claims other than unlawful search and seizure may have a higher mens rea requirement, such as intent, embedded within the constitutional provision itself. In other words, it may take more than negligence just to violate the Iowa Constitution. They also include the possibility that common law absolute immunities, such as judicial immunity or quasi-judicial immunity, could apply to state constitutional claims. And they include the potential applicability of provisions in chapters 669 and 670 other than sections 669.14 and 670.4. We do not address those issues today.

Baldwin, 915 N.W.2d at 281.

dictates immunities in tort previously given to municipalities.” *Baldwin*, 929 N.W.2d at 697 (“The IMTCA expressly dictates immunities for defendant municipalities.”). The legislature’s clear intent with the amendment to the qualified immunity statute shows an express desire for municipalities to be immune from suit on constitutional claims for money damages.

Accordingly, the Court should decline to extend *Godfrey* to municipal actors.

CONCLUSION

The Court should take the opportunity in this case to overrule *Godfrey* as *Godfrey* was demonstrably erroneous. In the alternative, the Court should decline to extend *Godfrey* to municipal actors.

Respectfully submitted,

/s/ Aaron W. Ahrendsen
Aaron W. Ahrendsen, AT0012634
Assistant Carroll County Attorney
823 North Main Street
Carroll, IA 51401
Ph: (712) 792-8013
Email: aahrendsen@carrollcountyattorney.org
ATTORNEY FOR AMICUS CURIAE

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2,566 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). Further, this brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

/s/ Aaron W. Ahrendsen July 6, 2022
Aaron W. Ahrendsen, AT0012634
ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF COMPLIANCE AUTHORSHIP

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), counsel herein authored this brief in whole in combination with members of the ICAA and ISAC. 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.

/s/ Aaron W. Ahrendsen July 6, 2022
Aaron W. Ahrendsen, AT0012634
ATTORNEY FOR AMICUS CURIAE