

IN THE SUPREME COURT OF IOWA

---

Supreme Court No. 21-1992  
Iowa District Court for Johnson County 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

---

**AMICUS CURIAE BRIEF of  
IOWA LEAGUE OF CITIES**

---

Jason C. Palmer AT0006089  
Benjamin J. Kenkel AT0014368  
BRADSHAW, FOWLER, PROCTOR &  
FAIRGRAVE, P.C.  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309-8004  
Phone: (515) 246-5891  
Fax: (515) 246-5808  
E-Mail: palmer.jason@bradshawlaw.com  
E-Mail: kenkel.benjamin@bradshawlaw.com

ATTORNEY FOR AMICI CURIAE:  
IOWA LEAGUE OF CITIES

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... 2

TABLE OF AUTHORITIES ..... 3

STATEMENT OF THE IDENTITY OF THE AMICI CURIAE ..... 5

STATEMENT OF THE PREPARATION OF BRIEF ..... 6

ARGUMENT ..... 7

**I. MAINTAINING THE LEGISLATURE’S PLENARY POWER  
OVER MUNICIPALITIES IS CONSISTENT WITH IOWA’S  
CONSTITUTIONAL ORDER ..... 10**

**II. THE SHEER BREADTH AND DEPTH OF LEGAL ISSUES  
ARISING FROM *GODFREY* CLAIMS SUPPORTS LEAVING  
LEGISLATIVE AUTHORITY AS THE SOLE SOURCE OF  
MUNICIPAL LIABILITY..... 14**

**III. AWARDING MONETARY DAMAGES AGAINST  
MUNICIPALITIES FOR CONSTITUTIONAL TORTS IS  
AGAINST THE PUBLIC INTEREST ..... 18**

CONCLUSION..... 20

CERTIFICATE OF COMPLIANCE..... 21

CERTIFICATE OF FILING AND SERVICE ..... 21

## TABLE OF AUTHORITIES

### Cases

<i>Ackelson v. Manley Toy Direct, L.L.C.</i> , 832 N.W.2d 678 (Iowa 2013) .....	12
<i>Baker v. City of Iowa City</i> , 750 N.W.2d 93 (Iowa 2008) .....	16
<i>Baldwin v. City of Estherville</i> , 915 N.W.2d 259 (Iowa 2018).....	8, 15
<i>Baldwin v. City of Estherville</i> , 929 N.W.2d 691 (Iowa 2019).....	8
<i>Berent v. City of Iowa City</i> , 738 N.W.2d 193 (Iowa 2007).....	11
<i>Board of Water Works Trustees v. SAC Cty. Bd. of Supervisors</i> , 890 N.W.2d 50 (Iowa 2017) .....	17
<i>Boyer v. Iowa High School Athletic Ass’n</i> , 127 N.W.2d 606 (Iowa 1964) .....	11, 12
<i>Brutsche v. Inc. Town of Coon Rapids</i> , 272 N.W. 624 (Iowa 1937).....	13
<i>Charles Hewitt &amp; Sons Co. v. Keller</i> , 275 N.W. 94 (Iowa 1937) .....	7
<i>City of Clinton v. Cedar Rapids &amp; M.R.R. Co.</i> , 24 Iowa 455 (1868).....	7
<i>Florey v. City of Burlington</i> , 73 N.W.2d 770 (Iowa 1955) .....	11
<i>Godfrey v. State</i> , 898 N.W.2d 844 (Iowa 2017) .....	7, 8, 10, 14
<i>Godfrey v. State</i> , 962 N.W.2d 84 (Iowa 2021) .....	8
<i>Goodell v. Humboldt Cty.</i> , 575 N.W.2d 486 (Iowa 1998).....	16
<i>Hensler v. City of Davenport</i> , 790 N.W.2d 569 (Iowa 2010) .....	16
<i>In re Disinterment of Body of Jarvis</i> , 58 N.W.2d 24 (Iowa 1953).....	13
<i>Iowa Elec. Light &amp; Power Co. v. Incorp. Town of Grand Junction</i> , 264 N.W. 84 (Iowa 1935) .....	16

<i>Iowa Grocery Indus. Ass’n v. City of Des Moines</i> , 712 N.W.2d 675 (Iowa 2006).....	11
<i>Klouda v. Sixth Judicial Dist. Dept. of Correctional Servs.</i> , 642 N.W.2d 255 (Iowa 2002).....	12
<i>Meinders v. Dunkerton Cmty. School Dist.</i> , 645 N.W.2d 632 (Iowa 2002) .....	10
<i>See State v. Ochoa</i> , 792 N.W.2d 260 (Iowa 2010).....	15
<i>State ex rel. Halbach v. Claussen</i> , 250 N.W. 195 (Iowa 1933).....	14
<i>State v. Phillips</i> , 610 N.W.2d 840 (Iowa 2000).....	12
<i>Venckus v. City of Iowa City</i> , 930 N.W.2d 792 (Iowa 2019) .....	8
<i>Wagner v. State</i> , 952 N.W.2d 843 (Iowa 2020) .....	8

**Statutes**

Iowa Code § 670.2(1) .....	8
Iowa Code § 670.4(2) .....	8
Iowa Code § 670.14.....	9, 13

**Constitutional Provisions**

Iowa Const. art. III, § 1 .....	12
Iowa Const. art. III, § 38A.....	11, 16
Iowa Const. art. III, § 39A.....	16
Iowa Const. art. XII, § 1 .....	16

## **STATEMENT OF THE IDENTITY OF THE AMICI CURIAE**

The Iowa League of Cities has existed since 1898 and consists today of more than 850 Iowa cities, governed by members through an Executive Board of officials that is balanced by geographic region and city size. The League serves as a resource and source of guidance for its members in areas of local governance, public policy, and shared interest in issues affecting municipalities across the state of Iowa.

The interests of the Iowa League of Cities represent the interests of its members across Iowa who frequently encounter litigation arising out of the actions of municipal employees stemming from activities performed on behalf of their employer in protecting and serving their local communities. For years, Iowa's municipalities have operated under the framework of the Iowa Municipal Tort Claims Act when confronted with liability claims against their employees. The brief of the amici curiae seeks to provide helpful perspective as to why direct constitutional liability claims are ill-suited to Iowa's municipalities pursuant to Iowa law and policy. The brief also seeks to provide perspective as to why this Court must reject Plaintiff-Appellant's invitation to judicially expand the reach of *Godfrey* claims to create new sources of liability which have not applied to Iowa's

municipalities at any point in Iowa's history, and which the Iowa legislature has never imposed.

**STATEMENT OF THE PREPARATION OF BRIEF**

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), the undersigned states no counsel of record of any party authored any part of this brief or contributed money to fund the preparation or submission of the brief. The Iowa League of Cities is the entity that contributed money to fund the preparation and submission of the brief.

## ARGUMENT

“Counties and other municipal corporations are, of course, the creatures of the Legislature; they exist by reason of statutes enacted within the power of the Legislature.” *Charles Hewitt & Sons Co. v. Keller*, 275 N.W. 94, 97 (Iowa 1937). As legislative creatures, Iowa’s municipal corporations “derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control.” *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (1868).

The Iowa legislature exerts plenary power over the existence of Iowa’s municipal corporations and as such, the legislature alone has the power to determine the rights, obligations, or “mere existence” of municipalities as a going concern. *Id.* Contrary to the suggestion of the Plaintiff, absent legislative authorization, Iowa’s municipalities should not be subjected to direct constitutional tort claims, or *Godfrey* claims. *See Godfrey v. State*, 898 N.W.2d 844, 875–76 (Iowa 2017) (hereinafter *Godfrey II*). While *Godfrey II* and its progeny recognized that state actors could be liable for conduct violative of a limited number of Iowa Constitutional provisions, the decision did not change—and could not change—the relationship between Iowa’s municipalities and the legislature. *See id.*

While never expressly reaching the distinct question of *Godfrey II*'s applicability to Iowa's municipalities, the Iowa Supreme Court has steadily curtailed and limited the extent of *Godfrey* claims since recognizing a stand-alone constitutional tort claim. *See Godfrey v. State*, 962 N.W.2d 84 (Iowa 2021) (*Godfrey III*); *Wagner v. State*, 952 N.W.2d 843 (Iowa 2020); *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019); *Baldwin v. City of Estherville*, 929 N.W.2d 691 (Iowa 2019) (*Baldwin II*); *Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018) (*Baldwin I*). A consistent theme throughout each of *Godfrey II*'s progeny is that damage remedies under the Iowa Constitution should be implied only when legislative remedies are "inadequate." *Godfrey II*, 898 N.W.2d at 880; *Wagner*, 952 N.W.2d at 851; *Baldwin I*, 915 N.W.2d at 265.

Pursuant to its plenary power, the Iowa legislature has afforded expansive remedies against municipalities, stating that, "Except as otherwise provided in [Chapter 670], every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties." Iowa Code § 670.2(1). The legislature further clarified that, "The remedy against the municipality provided by section 670.2 shall be exclusive of any other civil action or proceeding by reason of the same subject matter . . . ." Iowa Code § 670.4(2). And recently, the

legislature reiterated that Iowa Code Chapter 670 “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. Pursuant to the legislature’s own determination as expressed in Iowa Code section 670.14, the remedies contained in Iowa Code sections 670.2 and 670.4 afford plaintiffs an “adequate” means by which to pursue damages remedies against municipalities and their employees as determined by the Iowa legislature. *See id.*

This Court should decline White’s invitation to abandon the legislature’s plenary power over the liability exposure of Iowa’s municipalities when White has not supplied suitable legal or public policy reasons as to why the legislature’s apportionment of liability exposure in Iowa Code Chapter 670 is “inadequate.” In reality, rather than infringing on the legislature’s plenary power over the existence, rights, and obligations of municipalities, this Court should re-affirm that the legislature as the elected representatives of the people of the State of Iowa remains the sole arbitrator to “abridge and control” what causes of action are available when bringing a claim for monetary damages against a municipality.

Ultimately, the plenary power of the Iowa legislature over Iowa’s municipalities fortifies the rights of Iowa’s citizens by placing accountability

and oversight over municipalities in the hands of their elected representatives. For these reasons and the reasons provided in more detail below, the amici respectfully request that the Court reject White's invitation to expand the reach of *Godfrey* money damage claims to encompass municipalities, and affirm the district court's dismissal of White's constitutional tort claims in favor of the Defendants in the case at bar.

**I. MAINTAINING THE LEGISLATURE'S PLENARY POWER OVER MUNICIPALITIES IS CONSISTENT WITH IOWA'S CONSTITUTIONAL ORDER**

As explained in Defendant-Appellees' Brief and Justice Mansfield's dissent in *Godfrey II*, over the course of 160 years and until 2017, Iowa courts did not recognize a direct constitutional damage claim arising from the Iowa Constitution. *See Godfrey II*, 898 N.W.2d at 884 (Mansfield, J. dissenting). White seeks to expand the shadow of *Godfrey II* by subjecting Iowa's municipal corporations and quasi-corporations to the same ahistorical liability. This Court should reject the invitation.

History demonstrates that a well-established tenet of law requires that in order to bring a private cause of action against a municipality, the plaintiff must tether their claim to some legislative-created statutory authority explicitly or implicitly creating such an action. *See Meinders v. Dunkerton Cmty. School Dist.*, 645 N.W.2d 632, 635 (Iowa 2002); *Boyer v. Iowa High*

*School Athletic Ass'n*, 127 N.W.2d 606, 607 (Iowa 1964); *Florey v. City of Burlington*, 73 N.W.2d 770, 774 (Iowa 1955) (“That the legislature has entrusted to municipality to maintain parks located within their borders is sufficient to make them liable if their failure to perform the duty of safe maintenance results in . . . causing injury to one exercising due care in availing himself of the facilities offered”).

Municipal corporations and quasi-corporations including cities, towns, and counties remain creations of legislative power, despite the relaxation of legislative control over some aspects of their operations. *See* Iowa Const. art. III, § 38A (the “Home Rule Amendment”); *Berent v. City of Iowa City*, 738 N.W.2d 193, 196 (Iowa 2007). The enactment of the Home Rule Amendment allocated no areas or subject matter to exclusive municipal control, and the state legislature maintains the ability to preempt local law. *Berent*, 738 N.W.2d at 196 (citing *Iowa Grocery Indus. Ass’n v. City of Des Moines*, 712 N.W.2d 675, 678–79 (Iowa 2006)). Therefore, despite some constitutional allowances for how day-to-day functions are performed, legislative authority over municipalities remains supreme.

Undergirding the long-standing principle of legislative authority is the doctrine of separation of powers, which bars one branch of government from exercising powers properly belonging to a separate branch of government

unless expressly directed or permitted by the Iowa Constitution. Iowa Const. art. III, § 1. “The doctrine requires that a branch of government not impair another in the performance of its *constitutional* duties.” *Klouda v. Sixth Judicial Dist. Dept. of Correctional Servs.*, 642 N.W.2d 255, 260 (Iowa 2002) (citation omitted). A violation of the doctrine occurs when one branch of government purports to use powers forbidden to it, “or attempts to use powers granted by the constitution to another branch.” *Id.* (quoting *State v. Phillips*, 610 N.W.2d 840, 842 (Iowa 2000)). However, there are no rigid boundaries to the doctrine and where some functions inevitably intersect, “harmonious cooperation among the three branches of government becomes fundamental to our system of government.” *Id.* (quotations and brackets omitted).

In this vein, Iowa courts have consistently held that the realm of Iowa public policy and municipal regulation is almost exclusively governed by the legislature, including the extent and scope of municipal liability. *See Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 688 (Iowa 2013) (recognizing an issue “injected with public policy considerations [is] particularly appropriate for legislative consideration”); *Boyer*, 127 N.W.2d at 612 (“[W]hether or not the state or any of its political subdivisions or governmental agencies are to be immune from liability for torts is largely a

matter of public policy. The legislature, not the courts, ordinarily determines the public policy of the state.”); *In re Disinterment of Body of Jarvis*, 58 N.W.2d 24, 27 (Iowa 1953); *Brutsche v. Inc. Town of Coon Rapids*, 272 N.W. 624, 632 (Iowa 1937) (“If there be any question of public policy involved . . . such policy is a legislative one.”).

White seeks to erode the long-held principle of legislative authority over municipalities by injecting the judicial branch into issues of public policy. By making *Godfrey* claims applicable beyond the very limited circumstances of *Godfrey II*, White would have this Court wade further into policy considerations which are unique to municipalities above and beyond the complex issues involving state actors. Further, White’s proposed judicial abrogation of legislative authority is in direct conflict with the legislatures own determination that public policy does not warrant constitutional-tort money damages be a recoverable source of liability from municipalities. *See* Iowa Code § 670.14. White’s position risks upsetting the harmonious cooperation of the branches of government as it relates to the boundaries of tort liability and municipal governance.

As previous Iowa cases affirm, legislative authority over the tort liability of municipalities is a matter of public policy best left to Iowa’s elected representatives. The Iowa Supreme Court long ago recognized that

questions involving weighty public policies such as the scope of municipal liability are best left to the deliberative process inherent in Iowa's legislative bodies. As further explained below, the concerns which support conferring to the legislature issues of public policy as they relate to municipal liability and governance remain important and valid.

## **II. THE SHEER BREADTH AND DEPTH OF LEGAL ISSUES ARISING FROM *GODFREY* CLAIMS SUPPORTS LEAVING LEGISLATIVE AUTHORITY AS THE SOLE SOURCE OF MUNICIPAL LIABILITY**

The recent vintage of *Godfrey* claims means that many legal issues arising from these types of claims remain unanswered. For instance, have *Godfrey* claims always existed but only recently been plead as valid claims? *See State ex rel. Halbach v. Claussen*, 250 N.W. 195, 200 (Iowa 1933) (“The Constitution, as stated, is in no sense self-executing.”). If, despite historical precedent, *Godfrey* claims have always existed, to what extent do new statutory causes of action—or the legislative repeal of causes of action—limit or expand a recognized constitutional tort? *See Godfrey II*, 898 N.W.2d at 881 (recognizing adequate statutory remedies bars an independent constitutional claim “under these circumstances”) (Cady, C.J., concurring in part). If a new legislative cause of action is created and purports to limit or eliminate a constitutional tort, what remedy or relief must the statute afford a plaintiff in order to “adequately” remedy the constitutional violation? *See*

*id.*; *Baldwin I*, 915 N.W.2d at 265 (“[W]here state law does not provide an adequate compensatory damage remedy.”).

These, and a myriad of other questions, are left unanswered by the text of the Iowa Constitution and the opinion in *Godfrey*. Instead, Iowa courts have resorted to examining similar—but not identical—state constitutional provisions and precedent to attempt to answer some of these questions. *See Baldwin I*, 915 N.W.2d at 268–75 (examining other states application of government immunity to constitutional tort claims). Inherent in this methodology is the necessary presumption that the persuasive authority’s policy considerations, community values, and constitutional provisions translate to Iowa’s constitutional framework. *See Baldwin I*, 915 N.W.2d at 272 (recognizing Iowa and California constitutional provisions differ markedly in scope and application). While persuasive authority is a traditional and sound approach for providing context on discrete constitutional issues, the sheer breadth and depth of the questions raised by *Godfrey* claims makes this approach decidedly more complicated and risks delegating “the power to engage in authoritative constitutional interpretation under the state constitution.” *See State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) (citations omitted).

Respectfully, amici believe that a simpler and more constitutionally-sound approach is available; an approach that was disregarded in *Godfrey* but which—at least as applied to municipalities—lends itself to clarity and finality. The Iowa Constitution was amended in 1968 and 1978 to afford municipal governments the limited power of legislative home rule subject to the superior authority of the legislature. *Hensler v. City of Davenport*, 790 N.W.2d 569, 584–85 (Iowa 2010); *Goodell v. Humboldt Cty.*, 575 N.W.2d 486, 492 (Iowa 1998); Iowa Const. art. III, §§ 38A, 39A. Subject to constitutional limitations or prohibitions, therefore, the legislature maintains supreme and plenary power over all municipalities within the state. *See Baker v. City of Iowa City*, 750 N.W.2d 93, 99 (Iowa 2008); *Iowa Elec. Light & Power Co. v. Incorp. Town of Grand Junction*, 264 N.W. 84, 86 (Iowa 1935).

The Iowa Constitution also provides that, “The general assembly shall pass all laws necessary to carry this constitution into effect.” Iowa Const. art. XII, § 1. Pursuant to article XII, section 1, the general assembly has the constitutional authority and obligation to “pass all laws necessary” to effectuate the provisions of the Iowa Constitution. *Id.* Presuming the legislature does maintain plenary power over municipalities, article XII, section 1 of the Iowa Constitution clearly defines the scope of legislative

authority to expand or abridge the right of a plaintiff to bring a *Godfrey* claim against a municipality.

Under amici’s proposed path, and as relevant for *Godfrey* claims, article XII, section 1 would end the constitutional analysis. If the Iowa Legislature has either explicitly or implicitly authorized a private cause of action for money damages arising from a violation of the Iowa Constitution against a municipality, then a plaintiff’s claim which is appropriately tethered to that statutory authorization may proceed. Conversely, if the Iowa Legislature has not authorized a claim for money damages, then no private cause of action may be maintained and the plaintiff’s claim must be dismissed. Further, the absence or affirmative denial via legislative authority for a money damages claim is clearly permissible because there is no clear precedent or public policy demonstrating that claims for money damages are “necessary” to effectuate the provisions of the Iowa Constitution. *See Board of Water Works Trustees v. SAC Cty. Bd. of Supervisors*, 890 N.W.2d 50, 57–58 (Iowa 2017) (reiterating that drainage districts, whose existence is explicitly authorized by the Iowa Constitution, cannot be sued for money damages despite causing legally cognizable injuries to third parties).

This Court has an opportunity to cauterize the ongoing uncertainty and litigation arising from *Godfrey II* and keep the issue of money damages

for municipalities alleged constitutional violations with the Iowa Legislature. Voters and government officials alike are overwhelmingly motivated to do what is right for their communities. As such, there is no reason to doubt their commitment or capability to take necessary steps and afford plaintiffs adequate relief for constitutional violations, if determined to be necessary.

This motivation will always exist, and does not depend upon the municipality being assessed monetary damages to be acted upon. If at any point voters feel that additional remedies are necessary beyond what the legislature has authorized, the voters themselves will be able to install new officials into office who can address the voters concerns through legislation addressing the needs of the community. The Iowa Constitution imparts on voters the power to select community members to represent them who reflect the values and concerns of the voters. This Court should not disrupt what the Iowa Constitution has already preserved.

### **III. AWARDING MONETARY DAMAGES AGAINST MUNICIPALITIES FOR CONSTITUTIONAL TORTS IS AGAINST THE PUBLIC INTEREST**

Awarding monetary damages arising against a municipality for violating an undefined constitutional tort would not only punish the municipality itself, it would also directly punish the innocent residents of the municipality. The citizens of the municipality are not in control of its daily

operations. In many cases, the citizens may be entirely unaware an official engaged in any wrongdoing. It would be wholly unjust for these innocent individuals to be punished in the form of higher taxes and/or reduced services as a result of conduct that they themselves played no part in and were unaware of.

Municipalities take many forms and their financial means are varied and inconsistent. The instability and the resulting Pandora's Box which would follow if municipalities were suddenly subject to money damages for *Godfrey* claims without any forewarning or budgetary planning would have far-reaching consequences on untold number of necessary public services including needed infrastructure repairs, capital campaign projects, and other necessary every-day community services furnished by municipalities across Iowa.

Iowa's communities and the citizens residing therein should be the ultimate decisionmakers regarding whether they ought to shoulder the additional taxes or reduced services which would result from imposing constitutional tort money damages against municipalities. It would be wholly inappropriate and against Iowa's policy of local rule to impose unplanned money damages arising from constitutional torts that remained unrecognized until 2017 upon municipalities and their innocent residents.

## CONCLUSION

For the reasons set forth above, this Court should hold that *Godfrey* claims do not extend to apply to Iowa's municipalities and affirm the district court's dismissal of White's direct constitutional tort claims.

Respectfully submitted,

*/s/ Benjamin J. Kenkel*

---

Jason C. Palmer AT0006089

Benjamin J. Kenkel AT0014368

BRADSHAW, FOWLER, PROCTOR &  
FAIRGRAVE, P.C.

801 Grand Avenue, Suite 3700

Des Moines, IA 50309-8004

Phone: (515) 246-5891

Fax: (515) 246-5808

E-Mail: palmer.jason@bradshawlaw.com

E-Mail: kenkel.benjamin@bradshawlaw.com

**CERTIFICATE OF COMPLIANCE**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 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 Times New Roman font in 14-point size and contains 3,079 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Benjamin J. Kenkel  
Benjamin J. Kenkel AT0014368

August 8, 2022  
Date

**CERTIFICATE OF FILING AND SERVICE**

The undersigned certifies a copy of this Final Amicus Curiae Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and was served via EDMS on August 8, 2022.

/s/ Benjamin J. Kenkel  
Benjamin J. Kenkel AT0014368