

IN THE SUPREME COURT OF IOWA

No. 22-0239

JIM NAHAS,

Plaintiff-Appellee,

v.

POLK COUNTY, IOWA, TOM HOCKENSMITH (individually and in his official capacity), ANGELA CONNOLLY (individually and in her official capacity), STEVE VAN OORT (individually and in his official capacity), ROBERT BROWNELL (individually and in his official capacity), and JOHN NORRIS (individually and in his official capacity),

Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DALLAS COUNTY CASE NO. LACV043294
THE HONORABLE BRAD MCCALL, PRESIDING

APPELLANTS' FINAL REPLY BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.....	5
ARGUMENT.....	6
I. Iowa Code Section 670.4A is Constitutional and Can Constitutionally be Applied to Mr. Nahas’s Employment Suit.....	6
CONCLUSION.....	12
REQUEST FOR ORAL ARGUMENT.....	12
CERTIFICATE OF COMPLIANCE.....	13
CERTIFICATE OF SERVICE.....	14

TABLE OF AUTHORITIES

Cases:	<u>Page(s)</u>
<i>Anderson Fin. Servs., LLC v. Miller</i> , 769 N.W.2d 575 (Iowa 2009).....	9
<i>Baldwin v. Estherville</i> , 915 N.W.2d 259 (Iowa 2018).....	7
<i>Godfrey v. State</i> , 898 N.W.2d 844 (Iowa 2017)	7
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982).....	7, 11
<i>Moose v. Rich</i> , 253 N.W.2d 565 (Iowa 1977)	11
<i>Rodriguez v. City of Passaic</i> , 730 F. Supp. 1314 (N.J. Dist. Ct. Feb. 21, 1990).....	11
<i>Venckus v. City of Iowa City et al.</i> , 930 N.W.2d 792 (Iowa 2019)	8
<i>Wagner v. State</i> , 952 N.W.2d 843 (Iowa 2020).....	8
 Statutes and Regulations:	
Iowa Code § 670.4A	<i>passim</i>

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Iowa Code Section 670.4A is Constitutional and Can Constitutionally be Applied to Mr. Nahas's Employment Suit.

AUTHORITIES

Baldwin v. Estherville, 915 N.W.2d 259 (Iowa 2018)

Godfrey v. State, 898 N.W.2d 844 (Iowa 2017)

Harlow v. Fitzgerald, 457 U.S. 800 (1982)

Wagner v. State, 952 N.W.2d 843 (Iowa 2020)

Venckus v. City of Iowa City et al., 930 N.W.2d 792 (Iowa 2019)

Anderson Fin. Servs., LLC v. Miller, 769 N.W.2d 575 (Iowa 2009)

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Rodriguez v. City of Passaic, 730 F. Supp. 1314 (N.J. Dist. Ct. Feb. 21, 1990)

Iowa Code § 670.4A

ARGUMENT

I. Iowa Code Section 670.4A is Constitutional and Can Constitutionally be Applied to Mr. Nahas's Employment Suit.

On appeal, Mr. Nahas asserts that the qualified immunity provisions in Iowa Code section 670.4A are unconstitutional in *toto* and the substantive changes of the law cannot be constitutionally applied to his lawsuit.¹ Both arguments miss the mark.

A. Iowa Code Section 670.4A is Facially Constitutional. In support of his argument that the codification of qualified immunity violates the Iowa

¹ Mr. Nahas does not appear to make a constitutional argument that the new pleading requirements of Iowa Code section 670.4A cannot apply to him. Instead he continues to assert that the Second Amended Petition satisfies his burden. Mr. Nahas misses the point. The issue is whether the First Amended Petition satisfied the pleading requirements in Iowa Code section 670.4A(3), and it plainly does not. The legislature prescribed the mandatory remedy for a plaintiff's failure to abide by these demands—dismissal with prejudice. The Court's liberal rules allowing amendments does not and cannot change this requirement. In any event, Mr. Nahas voluntarily amended his Petition as explicitly allowed by the Iowa Rules of Civil Procedure *prior* to the County raising section 670.4A in a Motion to Dismiss. Neither the law nor equity allows him a third bite at the apple.

Constitution, Mr. Nahas cites *Baldwin v. Estherville*, 915 N.W.2d 259 (Iowa 2018). *Baldwin* was one of the first cases to concern direct constitutional claims under the Iowa Constitution after the Iowa Supreme Court's decision in *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). In *Baldwin*, the federal court certified a question regarding the applicability of common law qualified immunity to constitutional claims. *Baldwin*, 915 N.W.2d at 260. The Iowa Supreme Court agreed that common law immunities may apply to state constitutional claims, but adopted a deviation of qualified immunity, which it deemed "all due care." *Id.* at 281.

In reaching its decision adopting "all do care," the Court did recognize some commentary critiques of qualified immunity and the United States Supreme Court's decision in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Nothing in *Baldwin*, however, suggests that the Iowa Supreme Court believed the *Harlow* qualified immunity standard to be unconstitutional. Instead, the Court merely held that it preferred the "all due care" standard for common law claims. Nothing in *Baldwin* suggests that the legislature could not

adopt statutory regulations and immunities governing constitutional torts. In fact, the opposite is true.

The Iowa Supreme Court has repeatedly recognized and upheld the legislature's regulation of constitutional torts. In *Wagner v. State*, 952 N.W.2d 843 (Iowa 2020), the Court determined that the Iowa Tort Claims Act governed constitutional torts, including statute of limitations, exhaustion of administrative remedies, and the like. More importantly, in *Venckus v. City of Iowa City et al.*, 930 N.W.2d 792 (Iowa 2019), the Court held that the Iowa Municipal Tort Claims Act, Iowa Code chapter 670, governed constitutional torts against counties and county officials. The Court went on to note, "The *Baldwin* immunity is in addition to any other common law immunities or defenses available and not a comprehensive substitute immunity." *Id.* at 802.

The Iowa General Assembly did not violate the constitution when it codified qualified immunity in the Iowa Municipal Tort Claims Act. As a derivation of sovereign immunity, the legislature was well within this Court's precedent to determine the procedural and substantive

grounds upon which municipalities and its officials can be sued for monetary damages.

B. Iowa Code Section 670.4A is Constitutional as Applied to Mr. Nahas’s Lawsuit. On appeal, the Plaintiff reasserts his claim that Iowa Code section 670.4A cannot “retroactively” be applied to his lawsuit. As explored in its opening brief, Polk County does not believe this is a case of retroactive application as the action of legal consequence, the action regulated by the statute, was the filing of the brief—not the events leading up to Mr. Nahas’s termination. In any event, Polk County believes “retroactive” application of Iowa Code section 670.4A to this lawsuit is both consistent with legislative intent and constitutional.

Mr. Nahas asserts that because the legislature failed to insert an explicit retroactive provision regarding section 670.4A, that is the end of the analysis. Such an argument is contrary to this Court’s precedent. Without an explicit directive, statutes are *presumed* prospective, but that presumption can be overcome by looking at the totality of the circumstances. *Anderson Fin. Servs., LLC v. Miller*, 769

N.W.2d 575, 578 (Iowa 2009). The legislature intended the new qualified immunity provisions to apply to cases, like Mr. Nahas's, which had yet to be *filed* on the date the statute was effective, much less fully adjudicated.

First, the legislature took the unusual step of making the entire bill, Senate File 342, effective immediately upon enactment and not effective on the next July 1. This provision is even more extraordinary when the bill was not enacted until June 17. The legislature deemed the provisions, including section 670.4A, so significant they could not wait two weeks to be effective. Second, the new statute relates only to remedies—and does not relate substantive rights. Contrary to Mr. Nahas's assertions, section 670.4A does not affect the legality of his termination or the circumstances thereto. Section 670.4A does not alter the law on wrongful termination or amend Iowa's sunshine laws. Iowa's extortion laws are unchanged.

Codifying qualified immunity instead regulates only when and how municipalities and their officials can be held liable for monetary damages for such actions. Polk County does not

believe *Moose v. Rich*, 253 N.W.2d 565 (Iowa 1977), which found a statute immunizing co-employees for workers' compensation claims could only be applied prospectively, is inapposite. First, the analysis in *Moose* is conclusory. Second, it appears that the statute went into effect *after* *Moose* filed suit, contrary to the case at hand. Third, invocations of sovereign immunity are substantively different.

Applying the qualified immunity provisions of section 670.4A to Mr. Nahas's suit does not violate his right to due process. The parties agree that the new statute was based upon and mirrors the United States Supreme Court's language in the *Harlow* decision. "Virtually every reported federal decision considering the retroactivity of *Harlow* of which this court is aware found in favor of retroactivity." *Rodriguez v. City of Passaic*, 730 F. Supp. 1314, 1326 n.18 (N.J. Dist. Ct. Feb. 21, 1990). The reason for this dearth of support is because *Harlow*'s qualified immunity has been deemed remedial and not substantive—despite any hardship to a particular plaintiff. There is simply no support for Mr. Nahas's

contention that the statute is unconstitutional as applied to him.

CONCLUSION

For the reasons expressed above, Polk County respectfully urges this Court to reverse the decision of the district court, grant its Motion to Dismiss, and grant any and all other relief it deems appropriate.

REQUEST FOR ORAL ARGUMENT

Defendants-Appellants respectfully request to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Reply Brief complies with the type-volume limitation, typeface, and the type-style requirements of Iowa Rule of Appellate Procedure 6.903. This Proof Brief was prepared in Microsoft Word using Bookman Old Style font, size 14. The number of words is 1407, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

Date: August 18, 2022

/s/ Meghan L. Gavin

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I electronically filed the foregoing document with the Clerk of Court using the electronic filing system which will send notification of such filing to the following:

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