

IN THE IOWA SUPREME COURT

No. 22-1010

CORY BURNETT,

Appellant,

v.

PHILLIP SMITH and STATE OF IOWA,

Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
THE HONORABLE LARS G. ANDERSON, JUDGE

FINAL AMICUS CURIAE BRIEF OF IOWA LEAGUE OF CITIES

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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 an entity that contributed money to fund the preparation and submission of the brief.

ARGUMENT

I. GOVERNMENTAL DAMAGE LIABILITY FOR CONSTITUTIONAL TORTS SHOULD BE DECIDED BY THE LEGISLATURE, NOT THE COURTS.

If the Iowa Supreme Court permits the continued expansion of *Godfrey* claims to new types of defendants and new Iowa constitutional provisions, Iowa’s municipalities are potentially vulnerable to many new classes of damage claims, with no supporting policy determination that any such claim is a desired use of Iowans’ limited, local taxpayer funds. *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). The facts of the instant case are yet another example of how the *Godfrey* case generated a font of governmental liability—without authorization under the Iowa Constitution, by the Iowa legislature, or under Iowa Supreme Court precedent. Damage liability for alleged violations of the Iowa Constitution should be determined by the legislature, not the courts. This Court should therefore either overturn *Godfrey* or limit its reach to the precise facts of the *Godfrey* case itself.

The Iowa Supreme Court has previously declined to create rights and remedies when doing so implicates policy considerations more appropriate for the legislature. *See Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678 (Iowa 2013) (declining to imply a punitive damage remedy into the Iowa Civil Rights Act and recognizing “the issue is injected with public policy considerations, making it an issue particularly appropriate for legislative consideration. . . .”); *Boyer v. Iowa*

High Sch. Athletic Ass'n, 256 Iowa 337, 347, 127 N.W.2d 606, 612 (1964) (declining plaintiffs' request to judicially abrogate the doctrine of governmental immunity, and stating that "whether 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."); cf. *Garrison v. New Fashion Pork, LLP*, 977 N.W.2d 67, 85 (Iowa 2022) ("The people, then, have vested *the* legislative authority, *inherent in them*, in the general assembly.") (quoting *Steward v. Bd. Of Supervisors*, 30 Iowa 9, 18—19 (1870)) (emphasis in original).

Serious policy considerations impacting Iowa's 944 cities are implicated by the expansion of a *Godfrey* claim beyond its original legal and factual scope. Iowa municipalities face special circumstances that make the expansion of constitutional torts impactful to municipal budgets and operations. "Municipalities operate under greater fiscal constraints than the state does and municipalities have special problems with respect to formulating and implementing budgets." *Venckus v. Iowa City*, 930 N.W.2d 792, 809 (2019) (citations omitted). For example, Iowa city budgets in the past year changed significantly as a variety of factors impacted municipal finances—including changes to Iowa's property tax system in 2021 (property taxes are the largest source of municipal revenue); reduction of the state's backfill payments to local governments; the 2020 Census results that affect certain

revenue streams; and the continued economic impacts of Covid. *See* Iowa League of Cities Budget Special Report Fiscal Years (FY) 2022-23, available at <https://www.bluetoad.com/publication/?m=29474&I=1&p=7pn=>, Budget Special Report : Budget Report 2021 (bluetoad.com) (site last visited October 5, 2022), p. 1.

The cost of insurance for municipalities can also fluctuate, depending on events that can cause insurance rates to rise dramatically, such as natural disasters. *Id.* p. 11.

Expanding municipal liability necessarily impacts municipal planning and budgets, making budgets less predictable and subject to depletion by money judgments resulting from this new class of claims. Municipal staffing, programming, and services depend upon municipal budgets. Municipal services span the spectrum of Iowans' civic life, from local parks and recreation, police service, fire protection, public works, transportation, libraries, and housing assistance —the bread and butter of local governance. Additionally, cities must maintain infrastructure- roads, bridges, facilities, utilities, parks, trails, etc. And Iowa city budgets are of course all unique based upon the needs and priorities of any given community. The Iowa legislature should be the body to decide whether and how liability for alleged constitutional torts will be spread across Iowa's varying local governmental entities and taxpayers.

Beyond budgets, the judicial creation of unpredictable liability could have a chilling effect on the zeal with which municipalities and their employees undertake

their responsibilities. *See Egbert v. Boule*, 142 S.Ct. 1793, 1807, 213 L.Ed.2d 54 (2022), (“[A]ny 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.’”) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). As the Iowa Supreme Court has recognized, “the line between good police work and overzealous police work can be razor thin. It is certainly fair to exclude the evidence from any ensuing criminal proceeding whenever the line is crossed, even slightly. But if the law enforcement officer also is subject to a damage action, this could lead him or her to be reluctant to act at all in a gray area.” *Baldwin v. City of Estherville*, 915 N.W.2d 259, 277 (2018). And for other types of municipal employees there is a similar cloud of liability that is formed by the unpredictable possibilities related to a potential *Godfrey* claim. The challenge of recruiting and retaining public servants, especially law enforcement and teachers, may be exacerbated by expanding damage claims against these persons. Without a statute describing the conduct that is actionable, municipalities cannot predict the parameters of constitutional tort causes of action. The Iowa legislature that should weigh these policy considerations and decide whether damages are an appropriate remedy for alleged violations of the Iowa Constitution.

CONCLUSION

This Court should either overturn *Godfrey* or cabin its application to the particular facts and circumstances of the *Godfrey* case itself. Iowa municipalities are vulnerable to the broad expansion of local government liability that comes with applying *Godfrey* in legal and factual contexts beyond its original scope.

Respectfully submitted,

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

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 958 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. 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 2012 in 14 pt. Times New Roman.

/s/ Elizabeth J. Craig _____

Elizabeth J. Craig

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that the foregoing Amicus Curiae Brief was filed with the Clerk of the Iowa Supreme Court and served on all counsel of record by using the EDMS filing system.

/s/ Elizabeth J. Craig _____

Elizabeth J. Craig

CERTIFICATE OF COST

The undersigned certifies that there was no cost associated with the production of this Amicus Curiae Brief.

/s/ Elizabeth J. Craig _____

Elizabeth J. Craig