ELECTRONICALLY FILED JAN 18, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

No. 23-1199

1000 FRIENDS OF IOWA, et al.,

Plaintiffs-Appellants,

v.

POLK COUNTY BOARD OF SUPERVISORS,

Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JEANIE KNUCKLE VAUDT, PRESIDING

APPELLEE'S FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court properly determined that the Plaintiffs failed to pled sufficient facts to confer standing under Iowa Code section 670.4A(3) to challenge a rezoning application?

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Iowa Code section 670.4A(3)

Iowa Rule of Civil Procedure 1.421

II. Whether the district court properly determined that the Plaintiffs failed to pled sufficient facts to confer standing under Iowa Rule of Civil Procedure 1.421 to challenge a rezoning application?

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Iowa Code section 335.18

ROUTING STATEMENT

While this case does touch on the nascent heightened pleading standards in Iowa Code section 670.4A(3), ultimately the issue in this case is whether the individually-named Plaintiffs and the organization have standing to challenge a rezoning application. Resolution of this case rests on existing legal principles, therefore this case should be transferred to the Court of Appeals. Iowa R. App. 6.1101(2).

STATEMENT OF THE CASE

1000 Friends of Iowa, Bill Barnes, Inc., Bradley E. and Teresa Coulson, Sondra K. Feldstein Revocable Trust, and Stuart I. Feldstein Revocable Trust appeal the dismissal of their Petition for Writ of Certiorari and Declaratory Judgment against the Polk County Board of Supervisors. Plaintiffs brought the writ challenging the Board's discretionary decision to rezone a portion of the former Giesler Family Pumpkin Patch from an Agricultural Use Zone to a Mixed Use Zone classification.

While the Plaintiffs set forth in great detail the challenged governmental action, the Petition is wholly devoid of factual allegations as to how the change in zoning classification specifically and particularly affects these Plaintiffs—above and beyond those of the half a million other residents of Polk County, Iowa. As a result, the district court properly dismissed the writ.

FACTUAL AND PROCEDURAL HISTORY

On March 7, 2023, the Plaintiffs, 1000 Friends of Iowa and named individual Polk County property owners, brought a

Petition for Writ of Certiorari and Declaratory Judgment, challenging the Polk County Board of Supervisors' decision granting the Family Leader Foundation's rezoning application. (Petition; App. 4). The Family Leader Foundation requested a change in the zoning classification of the property previously utilized as the Geisler Family Pumpkin Patch from an Agricultural Use Zone to a Mixed Use Zone. (Petition ¶ 12; App. 7). After a public hearing and three readings, the Board of Supervisors approved the application. (Petition ¶ 23; App. 12-13). The Plaintiffs alleged the change in the zoning classification violates both the Future Land Use Map in the Polk County 2050 Comprehensive Plan and the Polk County Zoning Ordinance, and constitutes illegal spot zoning. (Petition; App. 4). The Plaintiffs sought a declaratory order that the change in zoning classification is unlawful. (Petition at p. 19; App. 22). Polk County filed a Motion to Dismiss asserting that the Plaintiffs have not pled facts sufficient to demonstrate their specific and personal interest in the subject rezoning under both the newly codified Iowa Code section 670.4A(3) and Iowa Rule of Civil Procedure 1.421. (Motion to

Dismiss; App. 27). The Plaintiffs did not file an amended petition further articulating their particularized interests and the matter proceeded to hearing before the Honorable Judge Vaudt.[1] (Ruling at p. 1; App. 69). The district court granted the County's motion dismissing the above-captioned matter with prejudice. (Ruling; App. 69). Plaintiffs filed a timely Notice of Appeal. (Notice of Appeal; App. 82).

ARGUMENT

I. The District Court Properly Determined that the Plaintiffs Failed to Plead Sufficient Facts to Confer Standing under Iowa Code section 670.4A(3) to Challenge a Rezoning Application.

A. Standard of Review & Error Preservation. This Court reviews a district court's grant of a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). The Board agrees that Plaintiffs preserved

[1] The Plaintiffs argue that Iowa Code section 670.4A(3) eliminated the remedy of amendment. Appellants' Brief at 30. This is incorrect. A motion to dismiss is not a responsive pleading under the Iowa Rules of Civil Procedure. Plaintiffs retained the ability to amend the Petition at any time prior to the hearing and district court's ruling without leave of the Court. Plaintiffs did not do so and allowed the district court to adjudicate adequacy of their pleading. Section 670.4A(3) narrows the district court's remedies—not the Plaintiffs.

error. (Ruling; App. 69–75). Plaintiffs, however, incorrectly assert that the Board did not raise the heightened pleading requirements in its Motion to Dismiss. (Appellants' Brief at 11). The Board explicitly raised the issue, citing and quoting the new statute, as well as the only recorded appellate decision, *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 181 (Iowa 2023). (Motion to Dismiss at p. 6; App. 32).

B. Argument. In the 2021, the Iowa General Assembly made significant statutory changes to the liability of municipalities and its officers and employees, in creating heightened pleading requirements for plaintiffs bringing claims against public entities. *See Nahas v. Polk Cnty. et al.*, 991 N.W.2d 770, 781 (Iowa 2023) (recognizing the heightened pleading standards). These heightened pleading standards apply to all lawsuits filed after the June 2021, even if the conduct at issue predated the law's enactment. *Nahas*, 991 N.W.2d at 781. Under these new requirements, the Board is entitled to the immediate dismissal with prejudice of the above-captioned matter. This ground for dismissal is

statutory and separate and distinct from dismissal under Iowa Rule of Civil Procedure 1.421.

The Iowa General Assembly amended the Iowa Municipal Tort Claims Act ("IMTCA") by adding section 670.4A, entitled Qualified Immunity. That new section provides:

> 1. Notwithstanding any other provision of law, an employee or officer subject to a claim brought under this chapter shall not be liable for monetary damages if any of the following apply:
>
> *a*. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation, or at the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law.
>
> *b*. A court of competent jurisdiction has issued a final decision on the merits holding, without reversal, vacatur, or preemption, that the specific conduct alleged to be unlawful was consistent with the law.
>
> 2. A municipality shall not be liable for any claim brought under this chapter where the employee or officer was determined to be protected by qualified immunity under subsection 1.
>
> 3. A plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was

> clearly established at the time of the alleged violation shall result in dismissal with prejudice.
>
> 4. Any decision by the district court denying qualified immunity shall be immediately appealable.

S.F. 342, 89th Gen. Assembly (2021).

Complying with the new, heightened pleading requirements of section 670.4A is not simply a matter of citing the statute and stating that the claims set forth are "clearly established." A valid claim is not made solely by including the so-called "magic words." As the Iowa Supreme Court recognized, "The heightened pleading requirement in section 670.4A(3) has three components." *Victoriano*, 984 N.W.2d at 181. To successfully bring an action under the statute the plaintiff must: (1) state with particularity the circumstances constituting the violation; (2) plead a plausible violation of law; and (3) plead that the law was clearly established at the time of the alleged violation. *Id.* As the first two requirements of section 670.4A(3) are based upon federal pleading standards, Iowa courts can and should rely upon federal caselaw to determine whether the requirements of Iowa Code section 670.4A(3) have been meet. *Nahas*, 991 N.W2d at 781–82

(citing extensive federal law on the meaning of particularity and plausibility in pleadings). The first two pleading requirements—particularity and plausibility—apply to all lawsuits filed after June 2021. *Id.* at 781.

Plaintiffs assert that the heightened pleading standards do not apply as their Writ was brought under Iowa Code section 335.18 and the heightened pleading requirements apply only to claims "brought under" the IMTCA. Plaintiffs misunderstand the new law and Iowa Code chapter 670, as it currently exists. First, the IMTCA does not create causes of action; it mandates the *procedural* requirements for bringing statutory, common law, equitable, and constitutional claims against municipalities and their officers and employees. *See S.O. ex rel. J.O. Sr. v. Carlisle Sch. Dist.*, No. 07-2096, 2009 WL 605994 (Iowa Ct. App. 2009) (applying the statute of limitations period in the IMTCA for plaintiffs' Iowa Code chapter 232 claim against a school employee in the employee's personal capacity). The IMTCA is a waiver of sovereign immunity allowing plaintiffs to bring claims that otherwise would have been barred. *Venckus v. City of Iowa City*, 930

N.W.2d 792, 809 (Iowa 2019). The broad applicability of the IMTCA is evidenced in its definition of tort, which far exceeds the common law definition. Iowa Code § 670.1(4).

Iowa Code section 670.1(14) defines tort as "*every civil wrong* which results in . . . injury to personal or property rights and includes but is not restricted to actions based upon . . . error or omission . . . breach of duty, whether statutory or other . . . or impairment of any right under any constitutional provision, statute or rule of law" (emphasis supplied). By its explicit terms, "tort" in the IMTCA is not limited to claims for monetary damages. *See Sutton v. Council Bluffs Water Works*, 990 N.W.2d 795, 798 (Iowa 2023) (rejecting interpretation that limited the IMTCA to fault-related causes of action). In fact, the "monetary damages" language is limited to the application of qualified immunity. *See* Iowa Code § 670.4(1). Such a limitation makes sense as qualified immunity would not shield government actors from other forms of redress like injunctive relief. As the Iowa Supreme Court recognized in *Nahas*, moreover, the pleading requirements in section 670.4A(3), are

separate and distinct from the application of qualified immunity. *Nahas*, 991 N.W.2d at 781.

Under the rules of statutory interpretation set forth by the Iowa General Assembly, the issue here is not a matter of picking which statute applies—Iowa Code section 335.18 or the IMTCA—but the parties' and the Court's duty to harmonize the statutes. *See, e g.*, *State v. Dann*, 591 N.W.2d 635 (Iowa 1999) ("One principle of statutory construction is that, in construing a statute, the court must be mindful of the state of the law when it was enacted and seek to harmonize that statute, if possible, with other statutes on the same subject matter."). Under Iowa Code section 4.7, "If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision." The IMTCA is a general statute setting forth the procedural requirements for bringing suit against municipalities, officers, and employees, while section 335.18 creates the specific cause of action to challenge a zoning

decision. Nothing in sections 335.18 and 670.4A(3) conflict. There is simply no reason why the statutes cannot be harmonize and both given effect.

Harmonization is also consistent with legislative intent. When the legislature elected to create the heightened pleading standards, a plethora causes of action already existed against municipalities. *See* Iowa Code § 4.8 (noting that if the statutes are in conflict, the newest enactment prevails). The legislature did not explicitly carve out these provisions, like zoning challenges, from the new statute. In fact, they did the opposite. The General Assembly used explicit broadly applicable language throughout Iowa Code section 670.4A. *See* Iowa Code § 670.1 (Notwithstanding *any other* provision of law . . . .) (emphasis supplied).

While the Board asserts that the heightened pleading requirements do apply to this action and the Plaintiffs have failed to plead with particularity their personal and legal interest requiring dismissal, the Board also contends this circumspect pleading fails general notice pleading standards—as discussed below.

II. The District Court Properly Determined that the Plaintiffs Failed to Plead Sufficient Facts to Confer Standing under Iowa Rule of Civil Procedure 1.421 to Challenge a Rezoning Application.

A. Standard of Review. This Court reviews a district court's grant of a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). The Board agrees that Plaintiffs preserved error. (Ruling; App. 69–75). This Court can affirm the district court on any ground raised below and reasserted on appeal. *St. Malachy Roman Cath. Congregation of Geneso v. Ingram*, 841 N.W.2d 338, 351 n.9 (Iowa 2013) ("It is well-settled that we may affirm a district court ruling on an alternative ground provided the ground was urged in that court.").

B. Argument. Iowa Code section 335.18 provides, "Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer . . . may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. . . ." The question raised in the Motion to Dismiss

was whether the Plaintiffs were "aggrieved" by the approval of the Family Leader's rezoning application so as to confer standing to challenge the decision.

Standing in Iowa is comprised of two elements. In order to pursue a claim, a plaintiff "must (1) have a specific personal interest in the litigation and (2) be injuriously affected." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). Though these two elements have much in common, they are separate requirements. *Godfrey v. State*, 752 N.W.2d 413, 418. The first requirement—that plaintiffs have a personal or legal interest in the litigation—recognizes that in order to have standing one must have a specific interest in the action, apart from the general interest of the public at large. *Id.* at 419. The second requirement—that plaintiffs be injured in fact—requires the plaintiffs to "show some 'specific and perceptible harm' from the challenged action, distinguished from those citizens who are outside the subject of the action but claim to be affected.' " *Id.* (quoting *United States v. Students Challenging Regulatory*

Agency Procedures, 412 U.S. 669, 689 n.14, 93 S. Ct. 2405, 2417 n.14 (1973)).

Iowa's two-pronged standing doctrine parallels the federal doctrine, even though federal standing is jurisdictional, while standing in Iowa is prudential. *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008); *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 867, 869 (Iowa 2005) (discussing Article III "case" and "controversy" requirements). As a result, federal case law will often serve as persuasive authority in determining the applicability of Iowa's standing doctrine. When standing is at issue, "the focus is on the party, not on the claim." *Alons*, 698 N.W.2d at 864. In other words, the merits of the plaintiffs' claim are irrelevant to the question of standing. *Citizens*, 686 N.W.2d at 475 ("Whether litigants have standing does not depend on the legal merit of their claims, but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it."). Plaintiffs have the burden to establish standing. *FOCUS v. Allegheny County Ct. of Common Pleas*, 75 F.3d 834, 838 (3d Cir. 1996).

Iowa courts have expanded on standing requirements specific to zoning challenges. The Iowa Court of Appeals addressed a similar situation over forty years ago in *Reynolds v. Dittmer*, 312 N.W.2d 75 (Iowa Ct. App. 1981). After recognizing that Iowa's standing doctrine applies to zoning challenges, the Court looked to other jurisdictions to evaluate whether the challengers had a specific and personal interest in the rezoning as opposed to the general interest that all residents possessed. The Court found the factors utilized by the Florida Supreme Court most persuasive. Those factors included: "(1) proximity of the person's property to the property to be zoned or rezoned; (2) character of the neighborhood, including existence of common restrictive covenants and set-back requirements; (3) type of change proposed; and (4) whether the person is one entitled to receive notice under the zoning ordinance." *Id.* at 78 (citing *Renard v. Dade Cnty.*, 261 So.2d 832, 837 (Fl. 1972). Applying these factors in the case at hand, the Plaintiffs have not sufficiently pled facts demonstrating their specific and personal interest in the property.

First, the Plaintiffs have not alleged that they own property within the area subject to rezoning or adjacent thereto. The proximity between the area subject to rezoning and the individual Plaintiffs' property is unclear from the face of the Petition. The Petition lists only the Plaintiffs' addresses—not their distance or proximity to the rezoned subject property. Neither the Board nor the court has the obligation to determine the location of the Plaintiffs' properties—either by driving distance or as the crow flies.

Second, other than a general proclamation that the individual Plaintiffs intended to live in agricultural area and want the area to remain agricultural, the Petition does not articulate the individual Plaintiffs' concerns about the rezoning. Instead, the Petition quotes extensively from the recommendations of Polk County staff against the rezoning. Polk County staff, by definition, were articulating generalized concerns for the citizens of the County as a whole and not the specific, personal concerns of these Plaintiffs. On appeal, Plaintiffs claim "it is not unreasonable to infer the Individual Plaintiffs adopted as their own the statements made by County

Staff, local residents and elected officials regarding the potentially adverse impacts of the Board's action." Appellants' Brief at 52. Reasonable or not, the simple fact is that the Plaintiffs did *not* explicitly adopt these statements as their own. As such they cannot rely upon the generalized statements presented by other individuals.

Third, while Plaintiffs are correct that this application rezoned the subject property from agricultural use to mixed use, this rezoning decision did not occur in a vacuum nor was it a significant change in the character of the subject property. As the Plaintiffs acknowledge, the subject property was previously being used for years as a commercial enterprise—a pumpkin patch and events space. In this context, the rezoning application was not as groundbreaking as a traditional rezoning decision.

And finally, while Iowa does not limit zoning challenges to residents within a particular proximity, the Plaintiffs do not allege they were entitled to notice of the rezoning application, despite the County's decision to liberally notify neighboring properties.

1000 Friends of Iowa similarly lacks standing to challenge this zoning decision. "An organization may rest its right to sue on the rights of its members." *Covington v. Reynolds ex rel. State*, 2020 WL 4514691*4 (Iowa Ct. App. August 5, 2020); *see also Arizonians for Official English v. Arizona*, 520 U.S. 43, 65–66 (1997) (holding an organization has standing only if its members would have standing individually). To achieve representational standing, an organization "must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Hunt v. Washington Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977). 1000 Friends does not allege that any of its members has a specific and personal interest in the rezoning. As a result, the organization lacks standing to challenge this decision.

1000 Friends misconstrues the Board's argument about organizational standing. The Board did not allege that *only* environmental organizations have standing. Instead, the

Board argued below that courts have relaxed organizational standing requirements for environmental organizations as strict adherence to standing rules might prevent anyone from suing. *See Puntenney v. Iowa Utilities Bd.*, 928 N.W.2d 829 (Iowa 2019); *Bushby v. Washington Cnty. Conserv. Bd.*, 654 N.W.2d 494 (Iowa 2002). 1000 Friends is not an environmental organization akin to the Sierra Club, nor can Plaintiffs aver that they use the subject area as it is not public space. More importantly, unlike these environmental cases, it is not difficult to imagine—even in a rural setting—land owners who would have standing to challenge this zoning decision. The Individual Plaintiffs may in fact have standing to bring this challenge. Unfortunately, Plaintiffs did not sufficiently plead facts and particularized interests upon which this Court could recognize their standing to sue. As a result, the above-captioned matter must be dismissed.

CONCLUSION

For the reasons expressed above, Polk County respectfully urges this Court to affirm the district court's,

grant the County's motion to dismiss, and grant any and all other relief it deems appropriate.

REQUEST FOR ORAL ARGUMENT

Defendant-Appellee respectfully requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Proof 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 3,325, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

Date: January 18, 2024

/s/Meghan L. Gavin

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, 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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