

**IN THE SUPREME COURT OF IOWA**

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**No. 23-1729**

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**DR. ALLEN DIERCKS and DIANE HOLST**

**Plaintiffs-Appellants,**

**v.**

**SCOTT COUNTY, IOWA, an Iowa County  
and KERRI TOMPKINS, Scott County Auditor**

**Defendants-Appellees.**

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**APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
THE HONORABLE HENRY LATHAM,  
SEVENTH JUDICIAL DISTRICT  
Scott County Equity No. EQCE136057**

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**PLAINTIFFS-APPELLANTS FINAL BRIEF  
and REQUEST FOR ORAL ARGUMENT**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... 4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW..... 8

ROUTING STATEMENT..... 11

STATEMENT OF THE CASE..... 12

STATEMENT OF THE FACTS..... 15

ARGUMENT..... 21

    I.    The district court erred in ruling that the first and last names of the applicants for Scott County Supervisor are confidential, pursuant to § 22.7(18) of the Iowa Open Records Act. Applicants names are a public record..... 21

        Scope and Standard of Review/Preservation of Error..... 21

            A. This is purely a legal issue for our supreme court to determine..... 22

            B. The purpose of Iowa’s Freedom of Information Act is for the disclosure of public records to its citizens..... 23

            C. The *City of Sioux City v. Greater Sioux City Press Club* holding does not make the names or resumes for the office of County Supervisor confidential. *Press Club* not controlling here..... 26

    II.   The Board of Supervisors holds its executive powers as the Employer for the County..... 33

        Scope and Standard of Review/Preservation of Error..... 33

            A. The Legislature has granted sovereign powers to a Board of County Supervisors..... 34

            B. A County Supervisor’s job duties are defined and authorized by our legislature, thus establishing they are a Public Employer..... 38

III. The district court erred by shifting the Burden of Proof to Plaintiffs to show a Compelling Reason for the Receipt of these Public Records..... 44

Scope and Standard of Review/Preservation of Error..... 45

A. There is No Requirement for Plaintiffs to Show a Compelling Reason for the Receipt of these Public Records..... 46

CONCLUSION..... 50

REQUEST FOR ORAL ARGUMENT.....50

CERTIFICATE OF COST..... 51

CERTIFICATE OF COMPLIANCE..... 51

CERTIFICATE OF SERVICE AND FILING..... 51

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<b><u>Iowa Supreme Court</u></b>	
<i>Andrew v. Hamilton Cnty. Pub. Hosp.</i> , 960 N.W.2d 481, 488 (Iowa 2021).....	21, 33, 45
<i>Belin v. Reynolds</i> , 989 N.W.2d 166, 173 (Iowa 2023).....	11, 47, 48, 49
<i>City of Dubuque v. Dubuque Racing Ass’n, Ltd.</i> , 420 N.W.2d 450, 452 (Iowa 1988).....	26, 47
<i>City of Riverdale v. Diercks</i> , 806 N.W.2d 643, 652, 664, 668 (Iowa 2011).....	23, 24, 25
<i>City of Sioux City v. Greater Sioux City Press Club</i> , 421 N.W.2d 895, 896, 898 (Iowa 1988).....	18, <i>Passim</i>
<i>City of West Branch v. Miller</i> , 546 N.W.2d 598, 602 (Iowa 1996).....	25
<i>Clymer v. City of Cedar Rapids</i> , 601 N.W.2d 42, 45 (Iowa 1999).....	23
<i>Commerce Bank v. McGowen</i> , 956 N.W.2d 128, 133 (Iowa 2021).....	28
<i>DeLaMater v. Marion Civil Service Commission</i> , 554 N.W.2d 875, 878 (Iowa 1996).....	24
<i>Gabrilson v. Flynn</i> , 554 N.W.2d 267, 271, 275 (Iowa 1996).....	18, 23
<i>Gannon v. Board of Regents</i> , 692 N.W.2d, 38 (Iowa 2005).....	24
<i>Hall v. Broadlawns Med. Ctr.</i> , 811 N.W.2d 478, 485 (Iowa 2012).....	23

<i>Hutton v. State</i> , 16 N.W.2d 18, 19 (Iowa 1944).....	35
<i>Iowa Film Prod. Servs. v. Iowa Dep't. of Econ. Dev.</i> , 818 N.W.2d 207, 219 (Iowa 2012).....	24
<i>KMEG Television, Inc. v. Iowa St. Bd. of Regents</i> , 440 N.W.2d 382, 384 (Iowa 1989).....	24
<i>Krull v. Thermogas Co.</i> , 522 N.W.2d 607, 612 (Iowa 1994).....	25
<i>Livingood v. City of Des Moines</i> , 991 N.W.2d 733,740 (Iowa 2023).....	21, 33, 45
<i>Marcus v. Young</i> , 538 N.W.2d, 285, 290 (Iowa 1995).....	24
<i>Morris v. Legends Fieldhouse Bar and Grill, LLC</i> , 958 N.W.2d 817, 821 (Iowa 2021).....	21, 33, 45
<i>Northeast Council on Substance Abuse, Inc. v. Iowa Dep't. of Pub. Health</i> , 513 N.W.2d 757, 759 (Iowa 1994).....	22, 34, 45
<i>Pitz v. US Cellular Operating Co. of Dubuque</i> , 989 N.W.2d 636, 643 (Iowa 2023).....	43
<i>Rathman v. Bd. of Dirs. of the Davenport Cmty. Sch. Dist.</i> , 580 N.W.2d 773, 777 (Iowa 1998).....	24
<i>Ripperger v. Iowa Public Information Board</i> , 967 N.W.2d 540, 554-5 (Iowa 2021).....	48
<i>State v. Pinckney</i> , 276 N.W.2d 433, 436 (Iowa 1979).....	34
<b><u>Iowa Court of Appeals</u></b>	
<i>Wings v. Dunlap</i> , 527 N.W.2d 407, 410 (Iowa App. 1994).....	47

**Iowa State Statutes**

§ 22.1(3).....25, 47

§ 22.2.....23

§ 22.7.....24, 30, 31

§ 22.7(11).....34, 45

§ 22.7(11)(a).....11, 33, 43

§ 22.7(18).....11, 13, 18, 21, 27, 28, 32, 37, 38, 43, 48, 49

§ 22.10(2).....46, 47, 48, 49

§ 69.8.....41

§ 69.14.....12, 15, 41

§ 69.14A.....15, 32, 33, 41

§ 69.14A(1).....41

Chapter 331.....32, 34, 35, 38

§ 331.301(2).....38

§ 331.303.....39

§ 331.321.....39

§ 331.322.....39

§ 331.324.....39

§ 331.341.....39

§ 331.361.....39

§ 331.401.....39

§ 670.1(3).....33, 42

§ 670.2.....42

**Iowa Constitution**

Iowa Const. Article XII, § 11.....41, 42

**Rules**

Iowa R. Civ. P. 1.904.....14, 22, 34, 46, 48

Iowa R. Civ. P. 1.981(3).....21, 33, 45

Iowa App. R. 6.1101(2).....11

**Other Authorities**

**U.S. Code**

29 U.S. Code § 208(e)(2).....40

29 U.S. Code § 630(f).....40

400 U.S. Code § 2000e(f).....40

**Miscellaneous**

“Sunlight is said to be the best of disinfectants.” Justice Louise Brandeis,  
*What Publicity Can Do*, Harper’s Weekly, December 20, 1913.....23

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**I. Whether the first and last names of the Scott County applicants and their resumes, submitted to the Scott County Vacancy Committee, to fill a vacancy for the office of Scott County Supervisor, are a public record or are confidential, pursuant to Chapter 22, “Open Records”, of the Iowa Code?**

*City of Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 452 (Iowa 1988)

*City of Riverdale v. Diercks*, 806 N.W.2d 643, 652, 664, 668 (Iowa 2011)

*City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 896, 898 (Iowa 1988)

*City of West Branch v. Miller*, 546 N.W.2d 598, 602 (Iowa 1996)

*Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999)

*Commerce Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021)

*DeLaMater v. Marion Civil Service Commission*, 554 N.W.2d 875, 878 (Iowa 1996)

*Gabrilson v. Flynn*, 554 N.W.2d 267, 271, 275 (Iowa 1996)

*Gannon v. Board of Regents*, 692 N.W.2d, 38 (Iowa 2005)

*Hall v. Broadlawns Med. Ctr.*, 811 N.W.2d 478, 485 (Iowa 2012)

*Iowa Film Prod. Servs. v. Iowa Dep’t. of Econ. Dev.*, 818 N.W.2d 207, 219 (Iowa 2012)

*KMEG Television, Inc. v. Iowa St. Bd. of Regents*, 440 N.W.2d 382, 384 (Iowa 1989)

*Krull v. Thermogas Co.*, 522 N.W.2d 607, 612 (Iowa 1994)

*Marcus v. Young*, 538 N.W.2d, 285, 290 (Iowa 1995)

*Rathman v. Bd. of Dirs. of the Davenport Cmty. Sch. Dist.*, 580 N.W.2d 773, 777 (Iowa 1998)

§ 22.1(3)

§ 22.7(11)(a)

§ 22.7(18)

§ 69.14A

§ 670.1(3)

## **II. Whether a County Supervisor is an Employer for the County or is an Employee of the County?**

*Hutton v. State*, 16 N.W.2d 18, 19 (Iowa 1944)

*Pitz v. US Cellular Operating Co. of Dubuque*, 989 N.W.2d 636, 643 (Iowa 2023)

*State v. Pinckney*, 276 N.W.2d 433, 436 (Iowa 1979)

§ 22.7(11)(a)

§ 22.7(18)

§ 69.8

§ 69.14A

Chapter 331

§ 331.301(2)

§ 331.303

§ 331.321

§ 331.322

§ 331.324

§ 331.341

§ 331.361

§ 331.401

§ 670.1(3)

§ 670.2

Iowa Const. Article XII, § 11

29 U.S. Code § 208(e)(2)

29 U.S. Code § 630(f)

400 U.S. Code § 2000e(f)

**III. Whether the district court erroneously shifted the burden of proof to the public records requestors, pursuant to § 22.10(2) of the Iowa Code, “Civil Enforcement”, to require the requestors to first show a compelling reason for receipt of the names of candidates for County Supervisor?**

*Belin v. Reynolds*, 989 N.W.2d 166, 173 (Iowa 2023)

*City of Dubuque v. Dubuque Racing Ass’n, Ltd.*, 420 N.W.2d 450, 452 (Iowa 1988)

*Ripperger v. Iowa Public Information Board*, 967 N.W.2d 540, 554-5 (Iowa 2021)

*Wings v. Dunlap*, 527 N.W.2d 407, 410 (Iowa App. 1994)

§ 22.1(3)

§ 22.7

§ 22.7(11)

§ 22.7(18)

§ 22.10(2)

Iowa R. Civ. P. 1.904

## ROUTING STATEMENT

This public records case should be retained by the Iowa Supreme Court. It presents issues of first impression and/or clarification and pertains to a matter of important public concern, pursuant to appellate rule 6.1101(2).

This Chapter 22 interpretation pertains to a substantial legal issue of first impression – “*Can the government keep the names of candidates for public office and their resumes secret?*” Plaintiffs respectfully request this Court should address, as matter of first impression, whether the names of candidates for public office are a public record.

This case presents a fundamental issue of broad public importance that will reoccur in Iowa at multiple governmental levels on a regular and continuing basis.

This case will allow the Court to enunciate further on Court’s 2023 decision in *Belin v. Reynolds* regarding a requestor’s burden of proof and on the interaction of § 22.7(11)(a) and § 22.7(18) of the Act.

There is an imperative need for clarity and direction both to the government and to public records requestors on this important issue.

## STATEMENT OF THE CASE

Plaintiffs Dr. Allen Diercks (Dr. Diercks) and Diane Holst (Holst) seek disclosure of public records under the control of Defendants Scott County, Iowa (County) and records custodian Kerri Tompkins (Tompkins), Scott County Auditor, arising out of two public records requests made on January 27, 2023 and January 31, 2023, for the names and resumes of the individuals who applied to be appointed to the Scott County Board of Supervisors. *Pet.*, ¶¶26 and 28. (App. 013-014). *Answer: Admitted.* (App. 030).

The County convened a § 69.14 Vacancy Committee (Committee) to appoint a new County Supervisor, when incumbent member Knobbe resigned after winning the 2022 fall general election for County Treasurer. The Committee advertised for candidates in the Quad City Times and received 27 applicants. After the names and resumes of candidates were submitted to the County, the Committee chairwoman, Defendant Tompkins, told each applicant they could keep their first and last names and resumes confidential.

On January 26, 2023 the Committee proceeded to discuss and vote on certain applicants by an assigned number, not a name, and selected one of the applicants, Rita Rawson (Rawson), who had requested secrecy, as the new Scott County Supervisor. *January 26, 2023 Vacancy Committee*

*minutes of meeting, Pet., Ex. 3.* (App. 025). On January 27, 2023 Rawson was sworn into office as County Supervisor.

Plaintiff Holst filed her FOIA request on January 27, 2023 for all of the candidates' names and resumes who applied for County Supervisor. Plaintiff Dr. Diercks filed his FOIA request on January 31, 2023, also making a request for all of the candidates' names who applied for County Supervisor. Dr. Diercks also requested any motion or resolution approved by the County declaring these names would be confidential.

Defendants released 14 of the candidate names and their resumes and withheld 13 of the candidate names and their resumes, claiming the 13 were confidential pursuant to § 22.7(18) of the Act.

On April 6, 2023 Plaintiffs filed a petition in the Scott County district court seeking equitable relief by declaratory judgment and injunctive relief to enforce the Chapter 22 Public Records Act against Scott County and Kerri Tompkins, Scott County Auditor and the Committee records custodian, for their failure to provide these public records to Dr. Diercks and Diane Holst. *Pet.* (App. 010-028). On April 28, 2023 Defendants filed their Answer to Petition. *Answer.* (App. 029-033).

On June 6, 2023 Plaintiffs filed their Motion for Summary Judgment, (App. 034), Statement of Undisputed Material Facts in Support of Motion for

Summary Judgment (App. 054-060) and Memorandum of Law in Support of Motion for Summary Judgment with two exhibits. (App. 035-053).

On July 5, 2023 Defendants filed their Counter-Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment and Affidavit of Knobbe. (App. 066-074, 087-088). On July 18, 2023 Plaintiffs filed their Resistance to Defendants' Counter-Motion for Summary Judgment, (App. 089-090) and filed the Affidavit of Plaintiff Holst. (App. 103-107). Oral argument was held before the Court on July 20, 2023. On September 8, 2023 the district court issued its ruling, denying Plaintiffs' motion for summary judgment and granting summary judgment to Defendants. *Ruling on the Cross-Motions for Summary Judgment*. (App. 108-112).

On September 15, 2023 Plaintiffs filed a Rule 1.904 Motion to Amend and Enlarge. (App. 113-116). On October 9, 2023 the district court denied Plaintiffs' Motion to Amend and Enlarge. (App. 117-118). On October 20, 2023 Plaintiffs filed Notice of Appeal to our Supreme Court. (App. 119).

## STATEMENT OF FACTS

A vacancy occurred on the Board of Supervisors (Board) after Board member Tony Knobbe (Knobbe) resigned in December of 2022 to become the Scott County Treasurer. § 69.14A of the Iowa Code empowers a Vacancy Committee (Committee) to make an appointment to the office of County Supervisor.

The three members of the 2023 Committee were Tompkins (Auditor), Knobbe (Treasurer) and Rita Vargas (Recorder). The Committee, pursuant to § 69.14 of the Iowa Code, voted to accept citizen resumes by e-mail, which were e-mailed to *auditor@scottcountyiowa.gov*. *January 5, 2023 Vacancy Committee Minutes of Meeting, Pet., Ex. 1*. (App. 022-023). The Board did not approve any secrecy of the applicant names or resumes for County Supervisor by passage of a resolution, either before or after the submission of the resumes. *September 8, 2023 Ruling on Cross-Motions for Summary Judgment, p. 1, sentence 2-3*. (App. 108).

The Committee first met on January 5, 2023. At this meeting, the Committee decided to appoint a citizen to fill the vacancy. The Committee voted to advertise in the local media for applicant resumes. *January 5, 2023 Vacancy Committee Minutes of Meeting, Pet., Ex. 1*. (App. 022-023). The Committee did not approve a motion or resolution to make the applicant

names or their resumes secret at their January 5, 2023 meeting or thereafter. *January 5, 2023 Vacancy Committee Minutes of Meeting, Pet., Ex. 1.* (App. 022-023). A total of twenty-seven (27) applicants from Scott County submitted resumes to the Committee to be County Supervisor. *September 8, 2023 Ruling on cross-motions for summary judgment, p. 1, sentences 4-6.* (App. 108). No applicant requested their name and resume be secret when they e-mailed their resume to the Committee. *Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment, ¶21.* (App. 055)

The January 5, 2023 2:00 p.m. Vacancy Committee minutes state the following:

Knobbe made a motion to appoint, Tompkins seconded. All Ayes.

Knobbe asked what would be expected from applicants. All agreed on a resume and cover letter.

Tompkins said resume and cover letter should be submitted to [auditor@scottcountyiowa.gov](mailto:auditor@scottcountyiowa.gov) and she would then forward to the other two committee members.

*January 5, 2023 2:00 p.m. Vacancy Committee Minutes of Meeting, Pet., Ex. 1, p. 2, ¶4-6.* (App. 023).

Defendant Tompkins decided to prompt applicants to request that their names be secret from the public after the receipt of the twenty-seven (27) resumes. Thirteen (13) applicants requested secrecy in response to Tompkins' prompting, after the County received their resumes by e-mail.

*“County Chart of Candidates”*, showing 13 of 27 names redacted from the “Name” column, *Pet., Ex. 2. (App. 024).*<sup>1</sup>

On January 26, 2023 at 2:00 p.m., 21 days later, the Committee met for a second and final time. The Committee voted by numbers, (1 through 27), to nominate certain applicants for County Supervisor. *“County Chart of Candidates”*, with 13 of 27 names redacted from the “Name” column, *Pet., Ex. 2. (App. 024).* Candidate numbers 14, 15, 16, 20 were discussed by numbers at the January 26, 2023 Committee meeting, to keep the name of the candidate secret and shield them from public knowledge. The Committee then approved the appointment of number 16 as a Scott County Supervisor. *January 26, 2023 Vacancy Committee Minutes of Meeting, Pet., ¶25. (App. 013), Ex. 3. (App. 025).* Only the Committee knew the name of the individual behind the number. The personal identity of number 16, Rita Rawson, was not disclosed publicly at the January 26, 2023 meeting until after the vote was taken for her selection as Supervisor.

On January 27, 2023 Holst, a former Scott County Supervisor, made her Freedom of Information Request (FOIA) by a letter to the county

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<sup>1</sup> The County chart of candidates consists of 27 lines. The four columns are entitled ‘candidate number’, ‘name’, ‘date resume received’ and ‘confidential’. See *“County Chart of Candidates”*, *Pet., Ex. 2. (App. 024).*

attorney's office, requesting the names of all Scott County residents applying for the public office of Scott County Supervisor. *January 27, 2023 Letter from Diane Holst to assistant county attorney, Pet., ¶26, Ex. 4.* (App. 013 and 026). *Answer: Admitted.* (App. 030). The County's responded to Holst on January 27, 2023, and claimed that the names of thirteen of the applicants were confidential pursuant to § 22.7(18) of the Iowa Code. *January 27, 2023 letter from an assistant county attorney to Diane Holst, Pet., Ex. 5.* (App. 027). Defendants cited two Iowa cases to support their assertion of secrecy of these thirteen (13) names of applicants. *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988); *Gabrilson v. Flynn*, 554 N.W.2d 267, 271 (Iowa 1996). *January 27, 2023 letter from assistant county attorney to Holst, Pet., Ex. 5.* (App. 027).

On January 31, 2023 at 11:03 a.m. Dr. Diercks e-mailed the assistant county attorney, through his attorney, and requested the following records:

- a. A list showing the first and last name of the 27 applicants and copy of each application submitted for the 2022-23 Scott County Supervisor vacancy.
- b. The Minutes of the meeting, Motions voted upon and the Video of the January 26, 2023 Special Scott County meeting held by the County Recorder, Treasurer and Auditor.
- c. Any and all public notices, postings, published notices, advertisements and/or other notices regarding the Supervisor vacancy and intent of the County to appoint a Scott County resident to fill the position.

- d. Any motions, resolutions and/or ordinances approved by the Board of Supervisors regarding the vacancy created by Mr. Knobbe's resignation from the Scott County Board.
- e. A signed copy of Tony Knobbe's resignation letter to Scott County.
- f. All E-mails, E-mail attachments and Text messages, on a county cell phone or privately owned cell phone, sent to or received by Scott County Recorder Rita Vargas, Scott County Auditor Kerri Tompkins and/or Scott County Treasurer Tony Knobbe regarding the vacancy on the Board of Supervisors, between November 8, 2022 and January 30, 2023.

*Pet.*, ¶28. (App. 014) *Ex. 6.* (App. 028). *Answer: Admitted.* (App. 030).

The County refused to produce 13 applicants' names. The County provided a chart showing that thirteen (13) of the first and last names of applicants were deleted, leaving fourteen (14) names on the chart. *Pet., Ex. 2 "County Chart of Candidates"*. (App. 024). Paragraph (d.) of the Dr. Diercks January 31, 2023 FOIA request requested any motion, resolution or ordinance approved by the Board to assert confidentiality. The County did not provide any documents responsive to paragraph (d.) of Dr. Diercks January 31, 2023 FOIA request because there were none.

On April 4, 2023 Plaintiffs brought their Chapter 22 petition asking the Court to (1) declare the requested records are public under Iowa Code Chapter 22; (2) order the Defendants to produce the names of each applicant along with their cover letter and application; (3) enter a Writ of Mandamus compelling production of records responsive to Holst's and Diercks's

requests made on January 27 and 31, 2023; (4) order the Defendants to refrain from any future violations; (5) find that any claim of privilege or confidentiality either does not exist or that it was waived; (6) find that the Defendants' position on the legal issues are without merit; (7) find that the Defendants violated the Iowa Open Records Act; (8) order the Defendants to pay all costs and reasonable attorney fees associated with this action; (9) assess monetary damages against the County; and (10) assess monetary damages against Tompkins. *September 8, 2023 district court ruling on Cross-Motions for Summary Judgment, p. 2, ¶ 1.* (App. 109).

Plaintiff's April 4, 2023 petition asserted this was a case of first impression. *Pet., p. 10, ¶70.* (App. 019). *Answer: Denied.* (App. 032).

## ARGUMENT

### **I. The District Court Errored in Ruling That the First and Last Names of the Applicants for Scott County Supervisor are Confidential, pursuant to § 22.7(18) of the Iowa Open Records Act. Applicants Names are a Public Record.**

#### **Scope and Standard of Review**

This Court reviews the district court’s ruling on a motion for summary judgment for correction of errors of law. *Livingood v. City of Des Moines*, 991 N.W.2d 733,740 (Iowa 2023). A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 488 (Iowa 2021).

Summary judgment is granted “*if the pleadings, depositions, answer to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law*”. Iowa R. Civ. P. 1.981(3).

On a motion for summary judgment, the Court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record. *Morris v. Legends Fieldhouse Bar and Grill, LLC*, 958 N.W.2d 817, 821 (Iowa 2021).

Our supreme court’s review of actions brought under Iowa Code chapter 22 is de novo. *Northeast Council on Substance Abuse, Inc. v. Iowa Dep’t. of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1994).

### **Preservation of Error**

Error was preserved by obtaining a ruling on Plaintiffs’ motion for summary judgment on September 8, 2023. Plaintiffs timely filed an Iowa R. Civ. P. 1.904 motion on September 15, 2023 to amend the ruling. Plaintiffs obtained a ruling on the Iowa R. Civ. P. 1.904 motion from the district court on October 8, 2023. A timely notice of appeal was filed in the district court and with our supreme court on October 20, 2023.

#### **A. This is Purely a Legal Issue for our Supreme Court to Determine.**

In this appeal, there is no factual dispute. “The facts central to this issue are not in dispute.” *September 8, 2023 Ruling on Cross-Motions for Summary Judgment*, p. 1, ¶1, sentence 1. (App. 108). “Defendants basically agree with the factual background as set forth in Plaintiffs’ Memorandum but denies the argumentative statement that the facts of the case establish an important distinction from the Press Club facts.” *September 8, 2023 Ruling on Cross-Motions for Summary Judgment*, p. 1, fn. 1. (App. 108). “The parties agree on the facts central to this dispute, so the main question the Court must answer is which party is legally correct as a matter of law.”

September 8, 2023 Ruling on Cross-Motions for Summary Judgment, p. 3,  
¶1. (App. 110).

Accordingly, this is purely a legal issue for our supreme court to decide.

**B. The Purpose of Iowa’s Freedom of Information Act Is for the Disclosure of Public Records to Its Citizens.**

“Sunlight is said to be the best of disinfectants.” Justice Louis Brandeis, *What Publicity Can Do*, Harper’s Weekly, December 20, 1913. (Quoted by Justice Waterman in *City of Riverdale v. Diercks*, 806 N.W.2d 643 (Iowa 2011)).

Iowa Code Chapter 22 is our state’s Freedom of Information Act (“Act”). The Act provides that “every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record”. § 22.2 of the Iowa Code. “There is a presumption of disclosure under our freedom of information statutes.” *Hall v. Broadlawns Med. Ctr.*, 811 N.W.2d 478, 485 (Iowa 2012). See also *Gabrilson v. Flynn*, 554 N.W.2d 267, 271 (Iowa 1996).

“Disclosure is the rule, and one seeking the protection of one of the statute’s exemptions bears the burden of demonstrating the exemption’s applicability.” [underlining added]. *Clymer v. City of Cedar Rapids*, 601

N.W.2d 42, 45 (Iowa 1999). “The purpose of the statute is to open the doors of government to public scrutiny and to prevent government from secreting its decision making activities from the public on whose behalf is its duty to act.” *Marcus v. Young*, 538 N.W.2d, 285, 290 (Iowa 1995), *City of Riverdale* at 652, *Rathman v. Bd. of Dirs. of the Davenport Cmty. Sch. Dist.*, 580 N.W.2d 773, 777 (Iowa 1998). Iowa Courts have interpreted the disclosure provisions of the Act broadly and the exemptions listed under § 22.7 narrowly. *DeLaMater v. Marion Civil Service Commission*, 554 N.W.2d 875, 878 (Iowa 1996).

Defendants have disregarded the clear standards enunciated in our Open Records Act. The Act is always liberally construed by the Court in favor of the release of public records. *Rathman* at 777, *Gannon v. Board of Regents*, 692 N.W.2d, 38 (Iowa 2005), *KMEG Television, Inc. v. Iowa St. Bd. of Regents*, 440 N.W.2d 382, 384 (Iowa 1989). Our supreme court has clearly held that § 22.7 exemptions are narrowly construed. *Gannon* at 38; *Iowa Film Prod. Servs. v. Iowa Dep’t. of Econ. Dev.*, 818 N.W.2d 207, 219 (Iowa 2012).

In interpreting statutes, the Court’s goal is to determine legislative intent. When the language of a statute is plain and its meaning is clear, the Court does not reach for meaning beyond its express terms. Nor should the

Court resort to statutory rules of construction to determine legislative intent. When the statute's language is not clear and plain, the Court does resort to well-established rules of statutory construction. One such rule provides that the Court is bound by what the legislature said, rather than what it should or might have said. *Krull v. Thermogas Co.*, 522 N.W.2d 607, 612 (Iowa 1994).

The district court may not, but did in this case, under the guise of statutory construction, enlarge or otherwise change the terms of a statute. *City of Riverdale* at 664. Finally, “[w]e may consider the language used in the statute, the objects sought to be accomplished, the evils and mischiefs sought to be remedied and place a reasonable construction on the statute which will best effect its purpose rather than one which will defeat it.” *City of Riverdale* at 668, *City of West Branch v. Miller*, 546 N.W.2d 598, 602 (Iowa 1996).

The Court begins with the words of the statute. § 22.1(3) of the Act defines public records as:

- (a) “Public records” includes all records, documents, tape, or other information, stored or preserved in any medium, *of or belonging to...any...city...or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.* (italics added)

Our supreme court has explored the contours of the § 22.1(3)

phrase “*of or belonging to*” in several cases. Our supreme court relied upon the plain meaning of these words and determined: “A document *of* the government is a document that was produced by or originated from the government. *City of Dubuque v. Dubuque Racing Ass’n, Ltd*, 420 N.W.2d 450, 452 (Iowa 1988). Documents *belonging to* the government would include those documents that originate from other sources but are held by public officers in their official capacity.” *City of Dubuque* at 452.

Accordingly, an e-mail and resume sent to and received by a public official (Tompkins), from a citizen applying to be a public official, is a document “of or belonging” to the government. *City of Dubuque* at 452.

**C. The *City of Sioux City v. Greater Sioux City Press Club* Holding Does Not Make the Names or Resumes for the Office of County Supervisor Confidential. *Press Club*<sup>2</sup> is Not Controlling Here.**

On January 6, 2023, the County published a public notice in the *Quad City Times* notifying the public of their right to apply for this public office and directing their resumes submitted for County Supervisor to be e-mailed to Tompkins. *Plaintiffs’ June 6, 2023 Memorandum of Law in Support of Motion for Summary Judgment, Ex. 1, January 18, 2023 Published “Notice of Appointment of Board of Supervisor”*. (App. 052). The Committee’s

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<sup>2</sup> *The City of Sioux City v. Greater Sioux City Press Club* decision is hereafter referred to as “***Press Club***”.

January 6, 2023 published notice did not state that an applicant's name would be made confidential by the County. When applicants submitted their name and resume for County Supervisor it was with the understanding they would be made public. No applicant requested secrecy when they submitted their resume for County Supervisor with Tompkins. Thus, the applicants submitted their resumes to the County Auditor's public e-mail address knowing that their first and last name would be a public record.

Defendants mistakenly rely upon § 22.7(18) of the Iowa Code for confidentiality for almost one-half (13) of 27 of the applicants' names for County Supervisor. Neither § 22.7(18) nor *Press Club* make these thirteen applicants' names for a public office confidential.

§ 22.7(18) of the Public Records Act states:

Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "*persons outside of government*" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

- a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

- b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.
- c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

This Court gives the words of § 22.7(18) of the Iowa Code their “fair and ordinary” meaning in light of the relevant context. *Commerce Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021).

This is a case of first impression. The district court erred in simply following the Iowa Supreme Court’s holding in *Press Club*, 421 N.W.2d 895 (Iowa 1988) to justify its decision to maintain the confidentiality of thirteen (13) of the County Supervisor applicants’ names. *September 8, 2023 Ruling on cross-motions for summary judgment*, p. 3, ¶2. (App. 110). *Press Club* is not dispositive of this case. The district court erred when it stated that “*Applicants for employment fall within this exception to disclosure*”. *September 8, 2023 Ruling on cross-motions for summary judgment*, p. 3, ¶2.

(App. 110). This statement by the district court falsely presumes a County Supervisor has applied for county employment as an Employee. They did not. The district court never ruled on whether a County Supervisor is an Employer or an Employee of the County, even though that crucial issue was extensively briefed by both parties. *Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment, with 2 Exhibits*. (App. 035-053). *September 8, 2023 Ruling on Cross-Motions for Summary Judgment*. (App. 108-112).

Contrary to the district court ruling, the *Press Club* holding is distinguishable. *Press Club* is not binding here because of two salient factual distinctions. First, candidates for the public office of County Supervisor do not become employees of the County if selected by the Committee for public office. Second, neither the County nor the Committee adopted a resolution making these names secret prior to or after the submission date of the 27 resumes. In *Press Club*, the Iowa Supreme Court upheld confidentiality when a municipal resolution was first passed by the Sioux City city council, declaring that the identities of all city manager applicants must be kept confidential because “*otherwise qualified applicants will not make application for the position of City Manager if their applications are made public because of possible repercussion with their*

*present employer.” Press Club at 896.*

County Supervisors act under state statutory authority as Employers for the County. A citizen has the right to run for or apply for public office. A candidate’s name for a public office is a public record. In *Press Club*, the court further noted that the statute’s legislative history indicated employment applications were among the types of communications the Iowa legislature had in mind when carving out the exception in subsection 18. *Id.* at 898. The legislative history is bereft of any history making a candidate’s name for public office a secret. Applicants for a public office are not making employment applications.

Significantly, in *Press Club*, prior to accepting applications, the Sioux City city council adopted Resolution No. 86/T-005012 entitled:

RESOLUTION DETERMINING THAT APPLICATIONS FOR CITY MANAGER WILL BE DISCOURAGED IF AVAILABLE FOR GENERAL PUBLIC EXAMINATION.

WHEREAS the City Council is presently accepting applications for the position of City Manager for the City of Sioux City, Iowa; and

WHEREAS the City Council has been advised and does believe that otherwise qualified applicants will not make application for the position of City Manager if their applications are made public because of possible repercussion with their present employer; and

WHEREAS the City Council is advised and does believe that, pursuant to Section 22.7, of the Iowa Code, as amended, the Council may find that otherwise qualified applicants would be discouraged

from making applications if their applications were available for general public examination.

NOW THEREFORE, BE, AND IT IS HEREBY RESOLVED by the City Council of the City of Sioux City, Iowa, that it hereby determines that otherwise qualified applicants for the position of City Manager of the City of Sioux City, Iowa, will be discouraged from making application for the position if their application is available for general public examination.

BE IT FURTHER RESOLVED that the applications for City Manager be and the same are hereby ordered to remain confidential pursuant to the authority granted by Section 22.7, the Code of Iowa.

PASSED & APPROVED: October 20, 1986

*Press Club* at 896.

This municipal resolution was approved by the Sioux City city council making all applications confidential, before the Sioux City application process was commenced. *Press Club* at 896. The resolution specified the reason for not disclosing the manager applicants' names was "*because of possible repercussion from their present employer*" and "*that otherwise qualified applicants would be discouraged from making applications if their application were available for general public examination*". See *first, second and third Whereas clause of Sioux City Resolution, No. 86/T-005012. Press Club* at 896. After passage of Resolution 86/T-005012 the City of Sioux City advertised in various trade journals for the city manager applications. *Press Club* at 896.

In the present case, in contrast, no resolution was ever passed at any

time by the Board, regarding the necessity of secrecy of these County Supervisor applicants. Further, the public notice published by the Committee requesting resumes, made pursuant to § 69.14A of the Iowa Code, did not declare that applicants' names or resumes could be or would be confidential. *Plaintiffs' memorandum of law in support of motion for summary judgment*, published "Notice of Appointment of Board of Supervisor", *Ex. 1*. (App. 052).

The takeaway from *Press Club* is that the application of § 22.7(18) to the identity of a public official job applicant is not appropriate because the government agency has no basis to reasonably believe that disclosing them would discourage people from submitting their application. In *Press Club*, the applicants were applying for a full-time city manager position that would unquestionably make her or him an employee of that City. In the present case, the Defendants received a fairly large number of applicants for a public office, indicating that applicants were not discouraged from applying, even though they believed their names and resumes would be a public record.

Applications for Scott County Supervisor are for a public office that jointly supervises Scott County with four other Board members. A County Supervisor is not an employee, but instead is a *public official*. Our state legislature implemented Chapter 331 of the Iowa Code, "*County Home Rule*

*Implementation*”, which clearly and repeatedly shows that a county public official is not an employee. See also § 69.14A of the Iowa Code; § 670.1(3) of the Iowa Code; § 22.7(11)(a) of the Iowa Code.

## **II. The Board of Supervisors Holds its Executive Powers as the Employer for the County.**

### **Scope and Standard of Review**

This Court reviews the district court’s ruling on a motion for summary judgment for correction of errors of law. *Livingood v. City of Des Moines*, 991 N.W.2d 733,740 (Iowa 2023). A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 488 (Iowa 2021).

Summary judgment is granted “*if the pleadings, depositions, answer to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law*”. Iowa R. Civ. P. 1.981(3).

On a motion for summary judgment, the Court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record. *Morris v. Legends Fieldhouse Bar and Grill, LLC*,

958 N.W.2d 817, 821 (Iowa 2021).

Our supreme court's review of the district's court legal application of § 22.7(11) of the Act is de novo. *Northeast Council on Substance Abuse, Inc. v. Iowa Dep't. of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1994).

### **Preservation of Error**

Error was preserved by obtaining a ruling on Plaintiffs' motion for summary judgment on September 8, 2023. Plaintiffs timely filed an Iowa R. Civ. P. 1.904 motion on September 15, 2023 to amend the ruling. Plaintiffs obtained a ruling on the Iowa R. Civ. P. 1.904 motion from the district court on October 8, 2023. A timely notice of appeal was filed in the district court and with our supreme court on October 20, 2023.

### **A. The Legislature has Granted Sovereign Powers to a Board of County Supervisors.**

“It is the unsupervised exercise of sovereign power which is the hallmark of a public office”. *State v. Pinckney*, 276 N.W.2d 433, 436 (Iowa 1979). County Supervisors are not subject to supervision and answer solely to the voters of Scott County. Supervisors perform their duties independently. A County Supervisor cannot be terminated by Scott County. The position of County Supervisor was created by our legislature. See Chapter 331 of the Iowa Code. County Supervisors have been

delegated sovereign powers by the legislature.

Our supreme court held long ago that the position held by a public official is distinct from a public employee, if five conditions are met:

- (1) It must be created by the constitution or legislature or through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of the government;
- (3) the duties and powers must be defined, directly or impliedly, by the legislature or through legislative authority;
- (4) the duties must be performed independently and without control of a superior power other than the law...
- (5) the office must have some permanency and continuity, and not be only temporary and occasional.

*Hutton v. State*, 16 N.W.2d 18, 19 (Iowa 1944).

In the present case all five of these conditions are met by a public official holding the office of County Supervisor. There is no question that the Iowa legislature delegated sovereign powers to the Board of County Supervisors. Chapter 331 of the Iowa Code. Chapter 331 defines the duties and powers of a County Supervisor in great detail. These duties are performed by a Supervisor without control over the Board by any supervisory power, such as the County Administrator. Finally, the office of County Supervisor is statutorily set as a four-year term that continues perpetually in the future, again indicating the sovereign power of the office.

On January 6, 2023 the assistant county attorney sent a letter to the Committee one day after the Committee approved the process for receiving

resumes. *Defendants Ex. E.* (App. 083). Defendants sought to justify secrecy of the candidate names for public office, by the use of the following January 6, 2023 letter from the assistant county attorney to the Committee.

The January 6, 2023 letter states:

Re: Appointment to County Supervisor  
From: Rob Cusack, assistant scott county attorney

Just a few suggestions on the upcoming appointment. The three of you are subject to the open meetings law, therefore, discussion between even two of you would constitute a violation of the open meetings law. Be careful in that regard.

Applications to fill the vacancy are to be submitted to the auditor by January 24<sup>th</sup>. The applications, and all the information they contain, including the names of applicants, are to be considered confidential if the applicants request confidentiality. Because requesting confidentiality is not a standard feature of an application or cover letter, I suggest that a follow up email be sent to each applicant asking if confidentiality is requested. [underlining added].

Confidentiality carries over to the open meeting to be held on January 26<sup>th</sup>. It will be awkward trying to discuss applicants without using their names, but you will have to determine some way to distinguish them – such as “applicant #1”. Further, there may be a need to narrow down the number of applicants before you even begin if there are a large number of applicants. Just depends on how many apply.

*January 6, 2023 letter to Committee members from the Scott County assistant county attorney. Plaintiffs’ Memorandum of Law in Support of Motion for Summary Judgment, p. 12. (App. 046). Defendants’ Ex. E. (App. 083).*

The problem with these suggestions is threefold. First, secrecy of a

County Supervisor's name is contrary to the words and the intent of § 22.7(18). Second, for *Press Club* to be controlling in the present case, the County or the Committee was first required to approve a resolution specifying their belief that the candidates' name must be confidential if the applicant requests secrecy when submitting their application, just as the governing body, the city council, did in *Press Club*. Third, no one can lawfully have repercussions from their present employer, by making an application for a public office. Notably, many candidates for public office are either self-employed, independent contractors or are retired. Thus, many candidates do not have an employer at the time of their application for public office.

The County's interpretation is flawed and is at odds with the plain language of § 22.7(18) of the Act. The County's interpretation of the § 22.7(18) would establish a dangerous future precedent in government. Defendants' contention means that in the future, all applicants could secretly apply for public office and the public body could secretly pick the public office holder by a number.

The assistant county attorney's letter is misguided. A County Supervisor is not an employee of the County. County Supervisors are elected by the voters of Scott County. Candidates running for or applying

for a public office have no expectation that their names will be private. Secrecy is not appropriate or mandated by the § 22.7(18) of the Open Records Act, regarding the name of a public official. When a member of the public runs for office or is sworn into office, his or her name cannot be confidential. A judicial candidate's name and application made to the Iowa State Judicial Nomination Commission are public records. The Iowa Court of Appeals website in 2023 clearly stated "Completed Application are Public Records Applications".<sup>3</sup> These judicial candidate names were always deemed a public record, just as the Supervisor candidates' names should be.

**B. A County Supervisor's Job Duties Are Defined and Authorized by Our Legislature, thus Establishing they are a Public Employer.**

Chapter 331 of the Iowa Code clearly enunciates and details the duties and powers a County Supervisor holds, which make them an Employer of the County. A County's powers are vested in the Board of Supervisors. § 331.301(2) of the Iowa Code. County Supervisors have extensive duties and powers pursuant to both state code and county code, relating to the

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<sup>3</sup> On July 14, 2023 the Judicial Nominating Commission interviewed applicants regarding 16 publicly name candidates for the Iowa Court of Appeals to select the finalist. Each name, application and writing sample was a public record.

supervision of county employees, approving county financial contracts, purchasing and selling real property, accepting bids on services, approving county financial budgets, approving the issuance of bonds, and voting bi-monthly on motions, resolutions and ordinances. § 331.322, “*Duties Relating to County and Township Officers*”; § 331.324, “*Duties and Powers Relating to County and Township Officers and Employers*”; § 331.341, “*Contracts*” and § 331.361, “*Duties and Powers of the Board Related to County Property*” of the Iowa Code. They are public officials who vote and make policy and are not employees of the County.

Notably, § 331.303, “*General Duties of the Board*”, of the Iowa Code contains a lengthy list of duties of a County Supervisor. They clearly show a County Supervisor is not an employee of the County. The Board approves the County Budget. § 331.401, “*Duties Related to Finances*”. The Board makes appointments to a large number of boards and commissions. § 331.321, “*Appointments – Removal*”. The Board negotiates and ratifies County contracts. § 331.341, “*Duties and Powers of the Board Relating to County Contracts*”. No County employee has authority to perform any of these functions nor can they be delegated. Scott County has no job description for a County Supervisor. *Pet.*, ¶6. (App. 011). *Answer: Admitted.* (App. 029).

Three leading federal civil rights, labor and employment law statutes clearly indicate that a County Supervisor is not an employee. *Title VII of the 1964 Civil Rights Act, 400 U.S. Code § 2000e(f)*, provides that the term “employee” does not include a person elected to a public office of a state or political subdivision. Similarly, *29 U.S. Code § 208(e)(2) of the Fair Labor Standards Act (FLSA)*, states that an “employee” does not include any individual who holds elective office of the state or of any political subdivision thereof. The Age Discrimination in Employment Act (ADEA) expressly excludes elected officials from the definition of an employee. *29 U.S. Code § 630(f)*.

Plaintiffs submitted uncontradicted evidentiary support for the fact that a County Supervisor is the Employer for the County, through Plaintiff Holst’s July 18, 2023 Affidavit. *July 18, 2023 signed Affidavit of Diane Holst, p. 1-2, ¶1-3.* (App. 103-104). Holst states her duties she held while she served as a Scott County Supervisor from January of 2015 through December 31, 2018. Holst’s affidavit establishes that a County Supervisor is an Employer. *July 18, 2023 signed Affidavit of Diane Holst, ¶4 through ¶13.* (App. 104-106).

The County’s budget, its sick leave and vacation policies also make clear distinctions between a County Supervisor and County employees. *July 18, 2023 Affidavit of Diane Holst, ¶7, 8, 9, 10, 11 and 12.* (App. 105-

106).

Another distinction with *Press Club* is shown by Iowa Code § 69.14(A). It provides that a vacant County Supervisor position may be filled by appointment by a designated committee of three county officers, the treasurer, auditor and recorder. § 69.8 “*Vacancies-How Filled*”; § 69.14(A) “*Filling Vacancy of Elected County Officer*”. Chapter 69 contains no language that makes this appointment process, including a candidate’s first and last name, secret. If the legislature wanted the names of candidates for public office kept confidential, they easily could have stated that in § 69.14 of the Code. The legislature did not do so.

As a matter of public policy, secrecy of the names of elected public officers is contrary to the American democratic election process. Of course, electors of the county may also file a petition requiring the vacancy to be filled by special election, up until fourteen days after any appointment by the Committee is made. § 69.14A(1) of the Iowa Code. There is no question, if a special election is opted for, all of the candidate names are a public record. Logic and common sense tell us that these candidate names, either appointed or elected, cannot be secret.

County Supervisors hold office by virtue of the Iowa Constitution. Article XII, § 11, “Offices Not Vacated”, states:

## Article XII

**Offices not vacated. Sec. 11.** Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire: but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed. [underlining added].

Article XII, § 11 of the Iowa Constitution.

Thus, the language of Article XII, § 11 of our Constitution, by the use of the word “office”, supports Plaintiffs’ contention that a County Supervisor is not an employee.

Further, chapter 670 of the Iowa Code, “Tort Liability of Government Subdivisions”, distinguishes and separates an *employee* from a *County Supervisor*, who is an *officer*. Chapter 670 makes a clear distinction between an officer and an employee. An officer “*includes but is not limited to the members of the governing body.*” § 670.1(3) of the Iowa Code. “*Every municipality, [the definition of a municipality includes a county], is subject to liability for its torts and those of its officers and employees....*” [bracketed words and underlining added]. § 670.2 of the Iowa Code, “Liability Imposed.” Thus, the tort claims statute differentiates

between a County officer and a County employee. A County Supervisor is an elected officer, and not an employee. *July 18, 2023 Affidavit of Diane Holst*, p. 2-3, ¶6. (App. 104-105). Our Iowa Supreme Court has found that the use of the conjunction “and” in a statute is dispositive and makes a clear legal distinction between the two corresponding words. *Pitz v. US Cellular Operating Co. of Dubuque*, 989 N.W.2d 636, 643 (Iowa 2023). Thus, the use of the word “and” between the words “officer” and “employee” means that a county elected officer is a distinct and separate position from a county employee.

The unambiguous language of § 22.7(11)(a) of the Act, recognizes a legal distinction between (a.) officials; (b.) officers; and (c.) employees of governmental bodies, by separately enunciating each of these three categories in the confidentiality section of the Act. This statutory language in the Act again further illuminates that chapter 22 recognizes that a County Supervisor is not an employee of the government. Simply because a County Supervisor is issued a paycheck by the County does not make her or him an employee. *July 18, 2023 Affidavit of Diane Holst*, p. 1, ¶1. (App. 103).

The Iowa Supreme Court has not previously considered whether the § 22.7(18) disclosure exception applies to names of candidates for *public*

*office. Press Club* is not dispositive here.<sup>4</sup> *Press Club* is factually very distinct from the present case facts. Plaintiffs pled that the present case is a case of first impression and argued that issue in district court. *Pet.*, ¶70. (App. 019). This case presents a deeper point, that candidate’s names kept secret for public office became a matter of public concern and has been reported in the press through multiple news stories. *June 6, 2023 Plaintiffs’ Statement of Undisputed Material Facts in Support of Motion for Summary Judgment*, ¶67. (App. 060).

Because a city manager reports exclusively to the city council and the city council has sole discretion over his/her appointment, it is reasonable for a city manager applicant to expect his/her application will only be reviewed by members of the city council, rather than made available to the public. On the other hand, applicants for a County Supervisor vacancy know that they will answer to their Scott County constituents, not the county administrator, if they are selected, and have no expectation of privacy to their first and last name. Thus, their names cannot be secret.

### **III. The District Court Errored by Shifting the Burden of Proof to Plaintiffs to Show a Compelling Reason for the Receipt of These Public Records.**

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<sup>4</sup> *Press Club* has not been revisited by the Iowa Supreme Court, since its issuance in 1988, regarding the present legal issue revolving around whether an applicant for public office is classified as an “Employer” or an “Employee”.

### **Scope and Standard of Review**

This Court reviews the district court's ruling on a motion for summary judgment for correction of errors of law. *Livingood v. City of Des Moines*, 991 N.W.2d 733,740 (Iowa 2023). A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 488 (Iowa 2021).

Summary judgment is granted “*if the pleadings, depositions, answer to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law*”. Iowa R. Civ. P. 1.981(3).

On a motion for summary judgment, the Court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record. *Morris v. Legends Fieldhouse Bar and Grill, LLC*, 958 N.W.2d 817, 821 (Iowa 2021).

Our supreme court's review of the district's court legal application of § 22.7(11) of the Act is de novo. *Northeast Council on Substance Abuse, Inc. v. Iowa Dep't. of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1994).

## **Preservation of Error**

Error was preserved by obtaining a ruling on Plaintiffs' motion for summary judgment on September 8, 2023. Plaintiffs timely filed an Iowa R. Civ. P. 1.904 motion on September 15, 2023 to amend the ruling. Plaintiffs obtained a ruling on the Iowa R. Civ. P. 1.904 motion from the district court on October 8, 2023. A timely notice of appeal was filed in the district court and with our supreme court on October 20, 2023.

### **A. There is No Requirement for Plaintiffs to Show a Compelling Reason for the Receipt of These Public Records.**

The district court erred in its ruling when it held that:

“The Plaintiffs have not provided a compelling reason to believe applicants filling this vacancy are not employees. As such, the information of the non-consenting applicants cannot now be made available.”

*September 8, 2023 district court ruling on cross-motions for summary judgment, p. 4, ¶1. (App. 111).*

One might be forgiven for not understanding what the district court is stating here. Clearly, there is no “compelling reason” provision Plaintiffs must satisfy under the Act to receive public records. § 22.10(2) of the Iowa Code requires a public records requestor demonstrate to the Court the satisfaction of three FOIA requirements. Once these three requirements are shown by the requestor, the burden of going forward shifts to the County to demonstrate compliance with the Act.

A chapter 22 party must (1) “demonstrate(s) to the Court that the defendant is subject to the requirements of this chapter, (2) that the records in question are government records and that (3) the defendant refused to make these records available for examination and copying by the Plaintiff.” [bracketed numbers added]. § 22.10(2) of the Act. See also *Belin v. Reynolds*, 989 N.W.2d 166, 173 (Iowa 2023).

Once these three requirements are met by the requestor, the burden of going forward shifts to the government to demonstrate compliance with the Act. § 22.10(2) of the Act; *Wings v. Dunlap*, 527 N.W.2d 407, 410 (Iowa App. 1994); *Belin* at 173. Defendants have admitted they are a government body. *Pet.*, ¶44. (App. 016). *Answer: Admitted.* (App. 031). The first test has been satisfied. There is also no question that these records are government records because they are records “of or belonging” to Scott County. *Pet.*, ¶46. (App. 017). *Answer: Admitted.* (App. 031). See also § 22.1(3) of the Iowa Code and *City of Dubuque* at 452. The County’s admission satisfies the second element. Defendant Tompkins was the custodian of the records held by the Committee. *Pet.*, ¶17 and 19. (App. 012 and 013). *Answer: Admitted.* (App. 030). This test is met.

Thus, all of these three tests are satisfied by Ms. Holst and Dr. Diercks and the burden then shifts to the County to show its compliance with the

Act. In 2023, the Iowa Supreme Court affirmed, that once these three requirements are met by a requestor, that the burden of proof shifts to the government to show compliance with the Act. *Belin* at 173, (In *Belin*, the Governor of Iowa claimed that the Governor's office complied with chapter 22. Our supreme court clearly disagreed and found she did not). See also *Ripperger v. Iowa Public Information Board*, 967 N.W.2d 540, 554-5 (Iowa 2021). The district court failed to follow the *Belin* holding in the present case.

What's more, plaintiffs had no burden or duty to show a compelling reason for receipt of these candidate names, pursuant to § 22.10(2) of the Act. § 22.7(18) does not allow the County to make these names secret. Plaintiffs clearly established that these submitted resumes are not employee applications. The County mistakenly relied upon *Press Club* for secrecy. The County extensively argued to the district court that a County Supervisor is not an employer. The County never refuted any of Plaintiffs' state and federal statutory authority or Holst's affidavit that the Board is the Employer for the County. The district court never ruled on this issue, even though Plaintiffs filed a rule 1.904 motion to amend and enlarge on that issue. *September 15, 2023 Plaintiffs' Rule 1.904 Motion to Amend and Enlarge*, p. 1-2, ¶2-4. (App. 113-114).

Plaintiffs requested a ruling from the Court on this legal issue, stated as follows: “*Whether a County Supervisor is an Employer or an Employee of the County*”. *Plaintiffs’ September 15, 2023 1.904 Motion to Amend and Enlarge*, p. 3, ¶8. (App. 115). Plaintiffs and Defendants had extensively briefed this critical case legal issue to the district court. The district court issued a two sentence Order denying Plaintiffs’ motion to amend and enlarge, without ruling on the Employer vs. Employee issue. *October 9, 2023 district court Order denying 1.904 motion to amend and enlarge (consisting of two sentences)*. (App. 117). Both state law and county code extensively show that a County Supervisor is an Employer for the County, placing her or him outside of the *Press Club* holding and § 22.7(18) of the Iowa Code.

There is no question there is nothing in § 22.10(2) that even refers to or requires a requestor to prove a compelling reason for receipt of the names of all applicants for County Supervisor. *Belin at 173*. Clearly, Defendants bore the burden of demonstrating § 22.7(18)’s applicability. Defendants failed to do so. The Court erred by placing the burden on Plaintiffs to show a compelling reason for receipt of the candidates’ names. The district court erroneously shifted a burden upon Plaintiffs to prove something never required by the Act.

**CONCLUSION**

Our Supreme Court should reverse the grant of summary judgment to Defendants-Appellees and grant summary judgment to Plaintiffs-Appellants.

**REQUST FOR ORAL ARGUMENT**

Plaintiffs – Appellants request oral argument before the Court.

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**CERTIFICATE OF COST**

I certify that the cost of printing Appellants' Final Brief was \$0.00.

/s/ Michael J. Meloy  
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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Iowa R. App P. 6.903(1)(d) because this Brief contains 8,841 words, excluding the parts of the brief exempted by Iowa R. App P. 6.903(1)(d).

This Brief complies with the typeface requirements of Iowa R. App P. 6.903(1)(d) and the type-style requirements of Iowa R. App P.6.903(1)(g)(1) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14 point Times New Roman.

/s/ Michael J. Meloy  
Michael J. Meloy

**CERTIFICATE OF SERVICE AND FILING**

I certify that on February 13, 2024, I filed Appellants Final Brief with the Clerk of the Appellate Court by electronically filing the document through the EDMS Electronic Filing System.

I further certify that on February 13, 2024, I served Appellants Brief on the Appellees by electronically serving Appellees counsel through the EDMS Electronic Filing System.

/s/ Michael J. Meloy  
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