IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1617
Fayette County No. LACV056238

ESTATE OF SHARON KAHN AND SUZANNE L. ROWE, AS ADMINISTRATOR OF THE ESTATE OF SHARON KAHN, AND ESTATE OF VICKI HODGES AND SUZANNE L. ROWE AND SIERRA D. REYES, AS CO-ADMINISTRATORS OF THE ESTATE OF VICKI HODGES,

Plaintiffs–Appellants,

vs.

CITY OF CLERMONT, IOWA, FAYETTE COUNTY CONSERVATION BOARD, FAYETTE COUNTY, IOWA, AND STATE OF IOWA,

Defendants–Appellees.

Appeal from the Iowa District Court
For Fayette County
The Honorable Laura Parrish, District Judge

FINAL BRIEF FOR STATE DEFENDANT-APPELLEE

BRENNA BIRD
Attorney General of Iowa

PATRICK C. VALENCIA
Deputy Solicitor General

ADAM KENWORTHY
Assistant Attorney General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
patrick.valencia@ag.iowa.gov
adam.kenworthy@ag.iowa.gov

ATTORNEYS FOR STATE DEFENDANT-APPELLEE

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II. Whether the State waived its sovereign immunity from suit for claims relating to its economic and political decisions on how to administer and oversee a water trail and dam-safety program, or for claims relating to injuries suffered on property the State opened to the public at no cost for the public's recreational use and thus for which no private person would be liable if they acted similarly?

Anderson v. State, 2 N.W.3d 807 (Iowa 2024)

Karon v. Elliott Aviation, 937 N.W.2d 334 (Iowa 2020)

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ROUTING STATEMENT

This action should be transferred to the Iowa Court of Appeals. This appeal, from the district court's grant of State Defendant's motion to dismiss, straightforwardly applies existing precedent. *Estate of McFarlin v. State*, 881 N.W.2d 51 (Iowa 2016). This Court in *McFarlin* explained that the public-duty doctrine precludes State liability when an injury occurs on waters the State holds in public trust but where the State did not own the dangerous instrumentality, nor did it commit an affirmative act causing the injury. The public-duty doctrine correctly informed the district court's decision to dismiss the case. Because *McFarlin* answers this question, this appeal should be routed to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(*a*).

STATEMENT OF THE CASE

Plaintiffs are the estates and surviving adult children of Sharon Kahn and Vicki Hodges, who went tubing on a portion of the Turkey River that flows through the City of Clermont, and who died when they then went over the Clermont Dam. Attachment to D0039, Am. Pet. ¶¶ 12, 34, 93–96 (09/09/2022), App. 236, 239, 245. Plaintiffs allege that some combination of Defendants—the City of Clermont, Fayette County, and State of Iowa—failed to safely operate and maintain the dam, specifically by failing to adequately place or maintain signs warning of the dam ahead, and by failing to install safety mechanisms ahead of the dam. Am. Pet. ¶¶ 70–92, 100, App. 243–246. Plaintiffs say Defendants should have placed more than the five poorly maintained signs, which Plaintiffs allege were not visible to those on the river. Am. Pet. ¶¶ 85–87, 90–92, 100, App. 244–246. And Plaintiffs allege the State failed to ensure that local entities operating the dam complied with the governing safety standards. Am. Pet. ¶ 100, App. 246.

So Plaintiffs sued the City, the County, the Fayette County Conservation Board, and the State. Plaintiffs alleged negligence, premises liability, and loss of consortium. Am. Pet. ¶¶ 99–110, 123–136, 166–168, App. 246–249, 252–255, 263. State Defendant moved to dismiss, asserting in part that Plaintiffs' claims were barred by the public-duty doctrine and the State's sovereign immunity. D0045, MTD at ¶ 5 (10/20/2022), App. 298; D0046, Br. ISO MTD at 3–12 (10/20/2022),

App. 302–311. The district court granted the State's motion to dismiss. D0079, Order Granting MTD at 1 (09/14/2023), App. 433.

Plaintiffs' claims against the State fail because no allegations say the State owns, operates, or controls the Clermont Dam. D0046, at 3–5, App. 302–304. And the public-duty doctrine precludes claims against the State for not protecting the public from harm caused by a third party's instrumentality, like a dam. *Id.*, App. 302–304. Because the State did not own the dam, the State did not owe Plaintiffs a duty of care. That was the district court's conclusion after applying *Estate of McFarlin v. State*. 881 N.W.2d 51 (Iowa 2016). *McFarlin*'s facts track this case, but instead of the underlying water being a river, in *McFarlin* it was a lake. 881 N.W.2d at 61–64.

The State owns the Turkey River riverbed in public trust for the benefit of the public. Am. Pet. at ¶¶ 14–15, App. 237. But local entities own the Clermont Dam. *Id.* ¶ 35, App. 239. And local entities applied for their portions of the Turkey River to be designated a "water trail" and for the Clermont Dam to be included in the State's low-head dam public hazard program. *Id.* ¶ 24–29, 48–53, App. 239, 240–241. The State approved and granted funds to the local entities to operate and maintain their water trail and dam. *Id.* ¶ 48–53, App. 240–241. The State's alleged failure to ensure that the local entities complied with state safety standards is merely an allegation of breach of a duty owed to the public at large, not specifically to Kahn and Hodges. D0046, at 3–4, App. 302–

303. The public-duty doctrine thus barred the claims. *Id.*, App. 302–303; D0079, at 1, App. 433.

More, Plaintiffs' claims fall outside the State's waiver of sovereign immunity. D0046, at 7–12, App. 306–311. The State did not waive its immunity from tort claims when those claims are based on the State's social, economic, or political discretionary acts or decisions. *Id.* at 10–12, App. 309–311. And the State's decisions surrounding the "water trail" designation, grant of funds, and later oversight sound in that discretion. *Id.*, App. 309–311.

Finally, the State is open to suit only to the extent a private individual would be liable. *Id.* at 5–7, App. 304–306. But no private individual, acting as the State is alleged to have acted here, would be liable in tort. *Id.*, App. 304–306. The State thus retains its sovereign immunity as to the claims asserted here. *Id.*, App. 304–306; D0079, at 1, App. 433.

The district court properly granted the State's motion to dismiss. D0079, at 1, App. 433. The judgment should be affirmed.

STATEMENT OF THE FACTS[1]

I. The Turkey River Water Trail and the Clermont Dam.

A. The unique role of waterways in Iowa and the Nation.

States, as sovereigns, gained title to the beds of bodies of navigable water when they entered the Union. *See Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 476 (1988); *see also PPL Montana, LLC v. Montana*, 565 U.S. 576, 590 (2012) (States "'hold the absolute right to all their navigable waters and the soils under them.'" (quoting *Martin v. Lessee of Waddell*, 16 Pet. 367, 410 (1842))). "[T]he power and the duty conferred upon the state under such title is to maintain and promote the navigation and navigability of such lake." *McFarlin*, 881 N.W.2d at 63 (quoting *Peck v. Alfred Olsen Constr. Co.*, 245 N.W. 131, 132–133 (1932)).

States, as "steward of our natural resources," thus hold title to the navigable water beds within their borders for the benefit of the public. *Id.* (quotation marks omitted) (defining the "public-trust doctrine"). Under that public-trust doctrine, "all persons have a right to use the navigable waters of the state, so long as they do not interfere with their use by other citizens, subject to regulation by the state under its police

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[1] The Court assumes the truth of a petition's factual allegations when reviewing a district court's grant of a motion to dismiss. *Fulps v. City of Urbandale*, 956 N.W.2d 469, 470 (Iowa 2021), *as amended* (Apr. 6, 2021). The State thus recounts, and accepts for purposes of this appeal, the facts as pleaded in Plaintiffs' Amended Petition.

powers." *Id.* (quoting *Witke v. State Conservation Comm'n*, 56 N.W.2d 582, 588 (1953)).

B. Iowa establishes agencies to oversee Iowa's navigable waters, who then promulgate safety-related rules and administer safety-related programs.

Recognizing the States' role in regulating water, the Iowa Legislature tasked the Iowa Department of Natural Resources (DNR) with the "primary responsibility for . . . water resources in this state." Iowa Code § 455A.2. Within DNR, the Natural Resource Commission establishes policies and rules to administer Iowa's laws on public waters, dams, and spillways. Iowa Code § 455A.5(6)(a) (instructing the Commission to administer chapters 461A, 462A, 462B, 464A, and 465C).

To create a safer experience on Iowa's navigable waters, the Legislature authorized those agencies to administer potentially hazardous water features, including water-trails and low-head dams, by giving money to local entities. Iowa Code § 464A.11; Iowa Admin. Code r. 571–30.52, 571–53(2); *see also* Am. Pet. ¶ 17, App. 237. A low-head dam is a "uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream." Iowa Admin. Code r. 571–30.51. The State has published materials referring to low-head dams as "drowning machines," because those dams pose a danger to the public. Am. Pet. at ¶ 45, App. 240. Under these programs, the State can fund "two types of projects: those that enhance water trails development and recreation and those that are limited to projects that

primarily enhance dam safety in order to reduce drownings." Iowa Admin. Code r. 571–30.52, 571–53(2).

Dam owners can apply for funding through the low-head dam public hazard program so that those owners can "undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa's navigable waters." Iowa Admin. Code r. 571–30.53(2). Under these rules, the State's role is limited to reviewing applications under the programs and disbursing funds to the dam owner who then implements their water-trail or low-head dam public hazard project. *See* Iowa Admin. Code r. 571–30.55–30.62.

II. Plaintiffs Sue the State, County, County Conservation Board, and City After Kahn and Hodges Drown in the Turkey River.

A. The Clermont Dam is a low-head dam on the Turkey River Water Trail.

The State of Iowa holds the Turkey River's riverbed in sovereign title in trust for the benefit of the public. Am. Pet. at ¶¶ 14–15, App. 237; *see also* Iowa Admin. Code r. 571–13.3.

The State designated the Turkey River as a State "water trail" under its Water Trails Development Program. Am. Pet. ¶¶ 17, 21, App. 237; Plaintiffs allege that state-designated water trails need to comply with safety standards for maintenance and signage and must have hazard warning signage installed and maintained consistent with

the State's safety standards. *Id.* at ¶¶ 24, 25, App. 238. The State promoted its designated water trails, including the Turkey River, on the DNR's website and elsewhere. *Id.* at ¶¶ 26–27, App. 238. The DNR maintained a water-trail crew to support state-designated water trails; these water trails were also given prioritized funding assistance from the State. *Id.* at ¶¶ 28–29, App. 238.

The City of Clermont owned a low-head dam located on the segment of the Turkey River flowing through its city limits—the Clermont Dam. *Id.* at ¶ 35, App. 239. It also owned property directly abutting the Turkey River near the dam, which included a portage exit to allow river users to exit the river and walk around the dam. *Id.* at ¶ 37, App. 239.

The City of Clermont requested and received a grant from the State under the low-head dam public hazard program to modify or remove the Clermont Dam. *Id.* at ¶ 50, App. 241. Plaintiffs allege another purpose of the program and grant was to warn the public of the dangers of low-head dams. *Id.* at ¶ 48, App. 240. Plaintiffs allege that as a condition of funding the State required dam owners—the grant recipients—to have low-head dam warning signs installed and to then maintain those signs, consistent with state safety standards. *Id.* at ¶ 53, App. 241. Plaintiffs allege that all Defendants, including the State, placed dam-hazard warning signs upstream from the Clermont Dam, because Defendants knew of the extreme danger the dam posed. *Id.* at ¶¶ 57–58, App. 241.

B. Hodges and Kahn drown in the Clermont Dam while tubing on the Turkey River Water Trail.

On June 8, 2020, Sharon Kahn and Vicki Hodges went tubing on a segment of the Turkey River that flows through the city limits of Clermont in Fayette County, Iowa. Am. Pet. ¶¶ 12, 34, App. 237, 239. River tubing is a recreational activity where an individual floats on an innertube and allows the river's current to carry the rider downstream. *Id.* at ¶ 13, App. 237. Kahn and Hodges entered the Turkey River at Access Point #71 in Fayette County that flows from north to south through the City of Clermont and eventually over the Clermont Dam. *Id.* at ¶¶ 63–67, App. 242. They intended to exit the river at Access Point #62, located south of the City of Clermont and downstream from the Clermont Dam. *Id.* at ¶ 69, App. 243.

Plaintiffs allege a sign was posted at Access Point #71 bearing the state-designated water trail logo and the logo of the DNR. *Id.* at ¶ 70, App. 243. Plaintiffs allege the sign was posted by the State, Fayette County Conservation Board, "and/or" Fayette County, and that two additional signs were posted at Access Point #71. *Id.* at ¶¶ 70, 72, App. 243. Plaintiffs allege that no signs or kiosks at Access Point #71 warned users of the downstream Clermont Dam. *Id.* at ¶¶ 73–77, App. 243. Plaintiffs also allege there were no warning signs or kiosks warning of the Clermont Dam at the next access point downstream, which was also upstream from the dam. *Id.* at ¶¶ 78–84, App. 244.

In all, Plaintiffs allege all or one of the named government entities placed five dam warning signs upstream from the Clermont Dam, and that these signs were not properly positioned. *Id.* at ¶¶ 85–87, 90–91, App. 244–245. Four were overgrown with weeds and not readily visible to users of the Turkey River. *Id.*, App. 244–245. Plaintiffs allege all or one of the named government entities failed to place or replace dam-hazard warning mitigation systems, such as buoys or overhanging cables. *Id.* at ¶¶ 88–89, App. 245. Overgrown weeds, brush, and trees also concealed the portage exit located on the City of Clermont's property. *Id.* at ¶ 92, App. 245.

On June 8, 2020, while tubing on the Turkey River, Kahn and Hodges floated by the warning signs and portage exit, unaware of the need to exit the river before the dam. *Id.* at ¶¶ 93–94, App. 245. They continued over the Clermont Dam, got stuck in the dam, and drowned. *Id.* at ¶¶ 93–96, App. 245.

C. Kahn and Hodges's estates and children bring suit.

Plaintiffs filed the original Petition on February 11, 2022, asserting against the State claims of negligence, premises liability, and loss of consortium. D0001, Petition (02/11/2022), App. 5–34. The State moved to dismiss the consortium claims brought by Kahn and Hodges's adult children, because the adult children did not first file separate tort claims with the State Appeal Board. D0012, State's Motion to Dismiss (05/17/2022); D0013, State's Brief in Support of Motion to Dismiss

(05/17/2022). The adult children then filed their separate claims with the Board, which were denied. Plaintiffs amended their Petition accordingly. D0039, Plaintiffs' Motion for Leave to File Plaintiffs' First Amended Petition, ¶¶ 5–16 (09/09/2022), App. 229–233.

After the district court granted leave to amend, State Defendant moved to dismiss Plaintiffs' claims, asserting in part that the claims were barred by the public-duty doctrine and the State's sovereign immunity. D0045, App. 297–299; D0046, App. 300–314. The district court granted the State's motion to dismiss. D0079, App. 433–434.

ARGUMENT

I. The Public-Duty Doctrine Precludes Plaintiffs' Claims.

A. Error preservation and standard of review.

The State moved to dismiss Plaintiffs' claims against it because those claims are foreclosed by the public-duty doctrine. D0045, State's Motion to Dismiss Amended Claims at ¶ 5 (10/20/2022), App. 298; D0046, State's Brief in Support of Motion to Dismiss Amended Claims at 3–5 (10/20/2022), App. 302–304. Plaintiffs resisted the public-duty doctrine's applicability in one paragraph, which simply stated that the State "had an active role in creating, promoting, funding and inviting users to the unsafe Turkey River Water Trail, and Plaintiffs are not claiming that the State of Iowa breached a uniquely governmental duty," and which then incorporated the "caselaw briefed in response to the County Defendants' [motion]." D0048, Pls.' Resistance to State's MTD at ¶ 9 (11/02/2022),

App. 317; *see also* D0019, Pls.' Resistance to County's MTD at 36–59 (05/27/2022), App. 115–138. The district court granted the State's motion to dismiss for the "reasons set forth in the [State's] motion." D0079, at 1, App. 433.

This Court reviews a district court's grant of a motion to dismiss for correction of errors at law. *See Karon v. Elliott Aviation*, 937 N.W.2d 334, 339 (Iowa 2020). Because Plaintiffs sued after Section 669.14A's enactment, that section's heightened pleading standard applies. *See Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 597–598 (Iowa 2023), *as amended* (Aug. 24, 2023); *cf. Nahas v. Polk Cnty.*, 991 N.W.2d 770, 780 (Iowa 2023) (holding same for Section 670.4A, which provides the municipal analogue to Section 669.14A's heightened pleading standard).

Plaintiffs failed to plead "with particularity the circumstances constituting the violation." Iowa Code § 669.14A(3). "Failure to plead a plausible violation . . . shall result in dismissal with prejudice." *Id.* The Court assumes the truth of the well-pleaded factual allegations of the operative petition, which here is the amended petition. *See Fulps v. City of Urbandale*, 956 N.W.2d 469, 470 (Iowa 2021), *as amended* (Apr. 6, 2021).

B. The State did not owe Plaintiffs any duty of care.

Plaintiffs' claims against the State fail because the State owed Plaintiffs no duty of care under the public-duty doctrine. "[I]n any tort case, the threshold question is whether the defendant owes a legal duty

to the plaintiff." *Stotts v. Eveleth*, 688 N.W.2d 803, 809 (Iowa 2004). That is a question of law. *See id.*; *Jain v. State*, 617 N.W.2d 293, 297 (Iowa 2000).

The public-duty doctrine restricts suing a "governmental entity for not protecting the public from harm caused by the activities of a third party." *Fulps*, 956 N.W.2d at 475. The doctrine considers "whether the governmental entity owed any enforceable duty to plaintiffs." *Breese v. City of Burlington*, 945 N.W.2d 12, 18 (Iowa 2020). "[I]f a duty is owed to the public generally, there is no liability to an individual member of that group," unless the government entity has a special relationship with that plaintiff giving rise to a special duty of care. *Johnson v. Humboldt Cnty.*, 913 N.W.2d 256, 260 (Iowa 2018) (quoting *McFarlin*, 881 N.W.2d at 58). The doctrine bars tort liability when (1) plaintiff's injury "was directly caused or inflicted by a third party or other independent force," and (2) plaintiff alleges the governmental entity failed its "uniquely governmental duty," such as that "imposed by statute, rule, or ordinance to protect the plaintiff from the third party or other independent force." *Est. of Farrell by Farrell v. State*, 974 N.W.2d 132, 138 (Iowa 2022) (quotation marks omitted).

The public-duty doctrine protects the government from liability stemming from alleged nonfeasance. If the failure to address a safety risk posed by "instrumentalities built, owned, operated, or controlled by anyone else" caused plaintiff's injuries, then the doctrine bars any

resulting tort claims against the government. *Breese*, 945 N.W.2d at 21. This Court describes this situation as the government entity's "nonfeasance." *Id.* at 19–21. Unlike in a nonfeasance case like this one, if the government entity's affirmative act negligently created a dangerous condition on its own property, then it is more likely the public-duty doctrine would not apply. This Court describes this situation as the government entity's "misfeasance." *Id.* at 19–21.

1. The public-duty doctrine precludes government liability when injury is caused by a third-party's instrumentality and a government-defendant's failure to comply with a duty it owes to the public.

The public-duty doctrine protects governments from liability when third parties fail to take affirmative steps to protect the public. The "classic case for invoking the public duty doctrine" is when a statute or regulation "requires the [government] defendant to act affirmatively" to benefit the public as a whole, and "the defendant's wrongdoing is a failure to take positive action for the protection of the plaintiff." 2 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, The Law of Torts § 345, at 375 (2d ed. 2011). This Court has explained that nonfeasance does not lead to that liability. Examples of the doctrine in action help put a finer point on things.

First, consider scenarios where the government's nonfeasance meant the public-duty doctrine barred tort claims. That includes when the government fails "to discharge a governmental duty for the benefit of

the public," like when "the government fails to adequately enforce criminal or regulatory laws for the benefit of the general public or . . . protect the general public from somebody else's instrumentality," *Fulps*, 956 N.W.2d at 475.

In *McFarlin*, the public-duty doctrine precluded tort claims against the State rising from an incident where a child died after the boat in which he was a passenger collided with a submerged dredge pipe in Storm Lake. 881 N.W.2d at 63. That plaintiff's theory was that the State owned and managed the lake and had control of the lake. The plaintiff reasoned the State was thus liable when it breached its duties to ensure the safety of the third-party operations on the Storm Lake waters, including by failing to adequately mark the pipe or give or place warnings.

But "[l]iability follows control, and an owner who transfers control to others is not liable for injuries." *Id.* at 64. The State did not own, operate, or maintain the instrumentality—the dredge pipe—that caused the injury; the local entities running the dredging operation did. Local entities owned the dredging operation and the pipe. *Id.* at 63–64. The State owned the Storm Lake lakebed and kept the lake open to the public for free. *Id.* So boaters could come and go as they wished, like drivers on a public road. *Id.* at 61. Those facts tipped the scales towards the State's conduct amounting to nonfeasance, and resulted in this Court applying the public-duty doctrine.

Though the State owned the lakebed, it owned the lakebed in public trust, so it owed a duty to the public "to maintain and promote the navigation and navigability of such lake." *Id.* at 63. The local entities owned, operated, and maintained the dredge pipe, and it was their affirmative acts—not the State's—that created the dangerous condition.

In *Johnson v. Humboldt County*, a passenger in a vehicle could not sue the county in tort after the vehicle's driver fell asleep and the vehicle went off the road into a ditch and struck an embankment. 913 N.W.2d 256, 256–261 (Iowa 2018). That plaintiff's theory was that the county negligently failed to remove from a private landowner's property the concrete embankment—which, though on a private owners' property the embankment, was in the county's right-of-way easement. *Id.* at 259. This Court explained that any duty of the State's to remove the embankment "would be a duty owed to all users of th[e] public road." *Id.* at 261. Because users of a public road are not a special class nor do they have a special relationship with the government owner of that road simply because the government opened the road for public traffic, the government's duty to comply with safety regulations for that road is a duty owed to the public and thus calls for the public-duty doctrine.

Raas v. State highlights the exception to the public-duty doctrine for situations where the government entity can be liable for violating what otherwise would be a duty owed to the public, because a special-relationship existed between the entity and plaintiff, giving rise to a

special duty of care. 729 N.W.2d 444 (Iowa 2007). In *Raas*, two people were injured by prison inmates who had escaped from an Iowa facility. *Id.* at 446. One was attacked off-premises some distance away while fishing in the Iowa River. *Id.* at 448–450. The second victim was attacked while on the State's property—the prison's parking lot—during visiting hours and thus an "invitee." *Id.* The plaintiffs' theory was the State should have done more but failed to meet its duty to protect the public by preventing inmates from escaping. The public-duty doctrine barred the first victim's claims, because the State committed no affirmative negligent act, but allowed the parking-lot victim to pursue his claims, because of his special relationship as invitee while in the prison parking lot. *Id.* at 449–450.

These cases show how the public-duty doctrine generally precludes liability for a government unless there is a special duty or relationship between the government and the plaintiff.

2. The public-duty doctrine does not bar claims where the government's own instrumentality and affirmative act causes injury.

Next consider recent cases where this Court found a government entity liable because the government-entity defendant's affirmative, negligent act—its misfeasance—"created a dangerous condition on government-owned property that caused the injury." *Id.*; *see Breese*, 945 N.W.2d at 19–20 (Misfeasance occurs "[w]here the affirmative acts of a public employee actually cause the harm.").

In *Farrell*, government defendants constructed and owned a highway interchange. 974 N.W.2d at 139. Under time pressure to open the new interchange, the defendants pressured the contractor to open the interchange to traffic before all final safety measures could be properly placed. *Id.* at 135–136. The interchange's design was the first of its kind in Iowa and caused much confusion to drivers. *Id.* A drunk driver took the interchange the wrong way, entered the highway traveling opposite the direction of traffic, and collided head on with a police cruiser, killing all occupants. *Id.* The police officer's estate sued the government defendants alleging their negligent design, construction, and operation—specifically the failure to close the interchange after discovering the dangerous condition—caused the officer's death. *Id.* This Court rejected the government defendants' assertion of the public-duty doctrine, because the governments owned the property and, by their affirmative acts, created the dangerous condition: "[T]he government defendants in this case remain liable for their own property and work." *Id.* at 139.

In *Fulps*, a plaintiff tripped and fell on an uneven sidewalk owned and maintained by the city-defendant. 956 N.W.2d at 470–471. The plaintiff alleged the city was negligent for its failure to maintain, repair, and warn about the known uneven sidewalk. *Id.* at 475. This Court found the city's ownership and maintenance of the sidewalk to be crucial in declining to allow the city to avoid liability under the public-duty

doctrine. *Id.* at 476–477. The city "is simply being held legally responsible for its own property and work." *Id.* at 470.

In *Breese*, the city-defendant constructed a paved public bike path and a sewer box, then connected the two. 945 N.W.2d at 21. That gave the appearance that the raised sewer box, with no guardrails, was part of the bike path. *Id.* The plaintiff cyclist, traversing the city's bike path, fell off the sewer box and this Court determined the city was affirmatively negligent. The sewer box instrumentality that led to the injury was erected, owned, and maintained by the city. And just like the injury caused by the poorly maintained city-owned sidewalk in *Fulps*, the city was "negligen[t] with respect to the city's own bike path, as opposed to a failure to address a third-party hazard," and thus liable. *Fulps*, 956 N.W.2d at 474.

Lastly, in *Maldonado Through Ochoa v. City of Sibley*, the Eighth Circuit considered Iowa's public-duty-doctrine precedents and held a city liable for its negligence in "locating and operating high voltage power facilities dangerously close to the building where [plaintiff] was working." 58 F.4th 1017, 1022 (8th Cir. 2023). The powerline was "owned and operated by the city, just like the interchange in *Farrell*, the sidewalk in *Fulps*, and the sewer box and bike path in *Breese*." *Id.* In other words, the court determined the negligence claim to be for the city's misfeasance relating to the city's own property and work. Each case finding liability

for a government defendant relied on affirmative acts and misfeasance by the government.

* * *

Unlike *McFarlin*, *Johnson*, and *Raas*, these cases show that a government defendant cannot avoid liability when the government-defendant owned the dangerous instrumentality, and its affirmative act created the dangerous condition. When it comes to the public-duty doctrine, those distinctions make all the difference.

3. Given its analogous facts, *McFarlin* instructs that the public-duty doctrine bars Plaintiffs' claims against the State.

"Liability follows control." *McFarlin*, 881 N.W.2d at 64. The State did not control the Clermont Dam. It did not own, operate, or maintain the dam. And the State does not dispute that the low-head dam creates some amount of danger. But the dam is a third-party instrumentality. Holding the State liable for injuries the dam caused requires holding the State liable for other entities' property and work. That would wrongly shift liability from the dam's owners to the State. That is precisely the ill that the public-duty doctrine is meant to avoid. Plaintiffs' contrary position requires reversing this Court's precedents on the unique role of the State as steward of natural resources and on the public-trust doctrine. *McFarlin* is analogous as to both facts and law, and *McFarlin* instructed the district court to dismiss here. Plaintiffs ignore *McFarlin*

in their brief apart from recognizing in their routing statement that, if applied, *McFarlin* might control the issue here. Pls.' Br. at 8.

1. The similarities between the allegations in *McFarlin* and here are significant and call for the same conclusion. In *McFarlin*, the State owned the lakebed in public trust, and it opened the lake for recreational use to the public at no cost. 881 N.W.2d at 55–56. The State approved the locations of the dredge pipe as part of its annual permitting process, and it marked hazards with buoys elsewhere in the lake. *Id.* The State knew of earlier accidents where boats collided with the dredge pipe, yet it still allowed the pipe to remain concealed and failed to adequately mark the location or to warn boaters or establish speed limits. *Id.*

But this Court still applied the public-duty doctrine to bar plaintiffs' claims. "Boaters may traverse the lake freely and come and go as they please, like motorists using public roads . . . . Boaters at Storm Lake, like motorists driving on Iowa roadways, are members of the general public, not a special class of 'rightful users of the lake' for purposes of the public-duty doctrine." 881 N.W.2d at 61. Because *McFarlin*'s plaintiffs were not part of a special class, and because the State did not own or operate the dredge pipe, the public-duty doctrine precluded those plaintiffs' claims against the State. It was, at most, a case of State nonfeasance for failing to ensure local entities complied with safety standards and regulations.

So too here. Plaintiffs allege similar facts to *McFarlin*'s plaintiffs and thus their claim against the State should be similarly dealt with. As

in *McFarlin*, the State owned the riverbed, it certified the "water trail" open for recreation, and it put up signs promoting the water trail. Also like in *McFarlin*, the State permitted local entities to own the low-head dam and to run the dam's maintenance and operations, it knew low-head dams' dangerous history elsewhere, yet, according to Plaintiffs, the State failed to ensure adequate safety signage and warnings. Am. Pet. ¶¶ 19, 30, 31, 45, 50, 57, 85–87, App. 237, 239–241, 244; Pls.' Br. 23–27. As Plaintiffs see it, that should be enough to allow liability under the public-duty doctrine. Not so, under *McFarlin*.

Indeed, *McFarlin*'s plaintiffs alleged more consequential State ownership than plaintiffs do here. There, the State owned the lake, actively managed it and the operations on the lake—including permitting and reimbursing the dredging operation. 881 N.W.2d at 55–56. Contrast that to here, where the State is not alleged to run the operations on the river. Local entities own the dam, applied to oversee the water trail designation, and accepted funds to operate the water trail. Pls.' Br. 23–29.

Plaintiffs allege the State developed general safety standards, certified the river as a water trail, and issued funds for improvement projects—and thus should have more strictly enforced its safety regulations on the dam's owners. Pls.' Br. 23–27 (collecting petition cites). But the State is less involved in this section of river than it was in the dredging operation at issue in *McFarlin*. There, the State gave annual

permits to the dredgers, and even would reimburse the local entities for the cost of the dredging if the State budget allowed. *McFarlin*, 881 N.W.2d at 55–56, 61. Here the State's role was in generally setting safety standards, certifying the trail, and providing grants to help enable local owners to make their own property safer, and allegedly also to place signs designating the water trail. Am. Pet. ¶¶ 19, 30, 31, 50, 57, 85–87, App. 237, 239, 241, 244; Pls.' Br. 25–27. But when it came to safety enforcement, that responsibility lied with the dam's owners. If the public-duty doctrine avoided liability for the State in *McFarlin*, then there should be no liability here.

The legally significant fact to glean from *McFarlin* and later cases is the lack of State ownership and control of the dam that caused the injury. Second to that is the lack of an affirmative State act causing the injury. Citing the State's ownership of waterways in public trust is not enough to give rise to State liability for injuries caused on those waters. If it were, then *McFarlin* would need to be overturned—but Plaintiffs do not even address *McFarlin* in their argument, *see* Pls.' Br. 19–39. Like the State's ownership of Storm Lake that did not include owning the dredge pipe therein, the State here holds the Turkey River riverbed in public trust but not the Clermont Dam. *McFarlin* settles the issue here. The district court properly agreed with the State and determined the public-duty doctrine applied.

2. Plaintiffs argue that the State's ownership of the riverbed in public trust, and its role in setting safety standards for its waterways, means the public-duty doctrine does not bar their claims. Pls.' Br. at 50–52. That position fundamentally misunderstands the unique role of water in our Nation, and of the State's ownership of waters in public trust.

The State's "ownership" of waters is not a typical property interest. As the "steward of our natural resources," the State receives "a burden rather than a benefit; that the power and the duty conferred upon the state under such title is to maintain and promote the navigation and navigability of such lake." *McFarlin*, 881 N.W.2d at 63–64. The ownership interest is, in short, a "public trust." *Id.* at 63–64. And because the public-trust doctrine confers on the State a duty owed to the public, it implicates the public-duty doctrine. "The public-trust doctrine and public-duty doctrine fit hand in glove." *Id.* at 63.

The public-trust and public-duty doctrines are not unique to *McFarlin* and Iowa; other States too hold waters in public trust. Other States have applied the public-duty doctrine in analogous situations. *See, e.g.*, *McCormick v. State, Dep't of Nat. Res.*, 673 N.E.2d 829 (Ind. Ct. App. 1996) (barring claims alleging State failed to act by not posting signs near a dam, because "[i]f the State owed any duty, it was a duty to the general public" and not a duty to "guarantee and assure the welfare of every member of the public"); *Ravenscroft v. Washington Water Power Co.*, 969 P.2d 75, 85–86 (Wash. 1998) (en banc) (public-duty doctrine barred

liability against county after boater injured by submerged tree stump in a dam reservoir, because water level was controlled by power company); *Bezanis v. Fox Waterway Agency*, 967 N.E.2d 393 (Ill. Ct. App. 2012) (State owed no duty to injured plaintiff, a swimmer who dove headfirst into a lake off boat, despite the State's awareness of the dangerous conditions and conduct); *Drugge v. State*, 837 P.2d 405, 406–407 (Mont. 1992) (State not liable for failing to post warnings about low-head dam because the dam's location was owned and operated by a city).

Plaintiffs argue (at 52–53) that even private trustees of trust property are liable for their misfeasance, so the State must be liable here despite the public-trust doctrine. That assumes misfeasance by the State—but there was no alleged State misfeasance. Indeed, even a private person who acted similarly to the State would not be liable here. *Compare* Iowa Code §§ 461C.2, 461C.3, 461C.6 with Pls.' Br. at 52–54.

4. Plaintiffs' attempts to paint the State's conduct as *mis*feasance fails.

Plaintiffs assert that the State's conduct amounted to misfeasance and so opens the State to liability. Though there can be "gray areas" in certain cases, *Breese*, 945 N.W.2d at 21, this Court's precedents draw precise lines between nonfeasance and misfeasance and are thus fatal to Plaintiffs' argument.

The Court applies the public-duty doctrine "when the allegation is a government failure to adequately enforce criminal or regulatory laws

for the benefit of the general public," like in *Raas*, or "a government failure to protect the general public from somebody else's instrumentality," like in *Johnson* and *McFarlin*. *Breese*, 945 N.W.2d at 21 (citing *Raas*, 729 N.W.2d at 446; *Johnson*, 913 N.W.2d at 261; *McFarlin*, 881 N.W.2d at 63). So when the government breaches a safety or enforcement duty that it owes to the public, and a third-party's instrumentality causes a plaintiff's injuries, then that is nonfeasance and the public-duty doctrine removes liability from the government-defendant.

1. Plaintiffs allege a series of inactions by the State, then mislabel that lack of action "misfeasance." *See, e.g.*, Pls.' Br. at 25–27 (summarizing allegations of State "misfeasance"). That is not enough. Plaintiffs allege that while the City owned the dam, the State failed to remove the known hazard from the river, failed to install an adequate portage exit, failed to ensure City and County compliance with State safety standards, and failed to install adequate signage warning of the City's dam. But each allegation amounts to "government failure to adequately enforce . . . regulatory laws for the benefit of the general public," or "a government failure to protect the general public from somebody else's instrumentality,"— scenarios in which this Court applies the public-duty doctrine to avoid liability. *Breese*, 945 N.W.2d at 21.

Just as in *Johnson*, where the government entity owned the roadway and easement, but not the embankment that caused the injury,

Plaintiffs here readily acknowledge the State did not own the Clermont Dam. *See* Am. Pet. ¶ 35, App. 239. And just as in *McFarlin*, where the State held the lakebed in public trust, and permitted and funded the dredging operation that caused the injury, here the State held the riverbed in public trust and approved of a grant to a local entity who owned, controlled, and operated the dam.

2. Plaintiffs also argue the State "had an active role in creating, promoting, funding and inviting users to the unsafe Turkey River Water Trail." D0048, at ¶ 9, App. 317; *see* Pls.' Br. at 10, 39. But designating the river as a "water trail" and promoting its recreational use is no different than designating an interstate highway and promoting its use to the public. Both are open to the public, for free, and neither creates a special relationship sufficient to avoid the public-duty doctrine. *See McFarlin*, 881 N.W.2d at 61–62 ("[A]ny duty of the State to enforce statutory obligations of the dredge operators was owed to the general public, just as the duty to enforce the rules of the road against dangerous drivers are owed to the public in general." (quotation marks omitted); *Johnson*, 913 N.W.2d at 261 (where a third-party's obstruction caused injury, "[a]ny duty to remove obstructions from the right-of-way corridor adjacent to the highway would be a duty owed to all users of this public road.").

Recall that the State in *McFarlin* permitted, located, and reimbursed the dredging operation on Storm Lake, yet because it did not operate and control the dredging, it was not responsible for safety

compliance by the local entity running the operation. That logic controls. Any certification and public funding of water trails and dam modifications and removals does not mean the State is then responsible for injuries that result from other entities' misfeasance, negligence, or other actions.

More, Plaintiffs even recognized that once the State certified the water trail, that then bestowed duties on the entity asking for that designation and receiving the related funds. MTD Hrg. Tr. 28:6–8. ("The county undertook the duty to warn and declaring this as a recreational watertrail, and then they failed to uphold that duty."); *id.* at 26:4–7 ("[T]he State of Iowa has created the ability to adopt the water trails but only if you undertake a duty to warn and you fulfill that duty."). That does not equate to imposing a duty on the State owed to Plaintiffs.

3. Plaintiffs then allege that the State and City and County Defendants inadequately placed signs warning about the dam's danger in inadequate locations and failed to maintain those signs. *See, e.g.*, Am. Pet. ¶¶ 57, 85–87, App. 241, 244. This attempt at painting the State's conduct as "misfeasance" fails too.

Placing signs warning of a dangerous instrumentality is different from installing, owning, and operating the dangerous instrumentality then failing to maintain it in a safe condition. *Cf. Fulps*, 956 N.W.2d at 470 (each government entity is only "legally responsible for its own property and work"). The State in *McFarlin* placed warning buoys

acknowledging hazards in Storm Lake, and it was alleged to have failed to adequately place such buoys around the local entity's dredge pipe. 881 N.W.2d at 64. It is unclear here whether there needed to be more, more visible, or better maintained signs. Even if that were the case, that responsibility does not lie with the State. Just as the State's allegedly insufficient warning buoys in *McFarlin* were not enough to prevent avoiding liability under the public-duty doctrine, because the State did not own, operate, and control the pipe, so too with the signs here. *Id.* Plaintiffs fail to explain why *McFarlin* is distinguishable.

Plaintiffs instead rely on *Fulps* and *Farrell* as having analogous facts and contend that those cases should control. *See, e.g.*, Pls.' Br. at 34–37. The trouble with that is there are key factual distinctions here.

Consider *Fulps*. Plaintiffs say that "[b]ased on the holding in *Fulps*," the "allegations of maintenance and control alone are sufficient" to avoid the public-duty doctrine. Pls.' Br. at 34. Though there are allegations that other governmental entities owned or controlled the dam, *see, e.g.*, Am. Pet. ¶¶ 35–37, App. 239, no allegations tie the State to the maintenance and control of the dam like there were with the dangerous instrumentality in *Fulps*. In *Fulps*, the government installed, owned, and failed to maintain the sidewalk. *Fulps*, 956 N.W.2d at 470–471, 476–477. In each case in which the public-duty doctrine did not avoid liability for the government defendant there were acts of misfeasance by that defendant. That is so in *Breese* (government installed, owned, and

maintained the bike path and sewer box), *Farrell* (government installed, owned, and maintained the highway interchange), and *Maldonado* (government installed, owned, and operated the power lines).

The facts here, as applied to the State, are also not like *Farrell*. Pls.' Br. at 35–37. In *Farrell*, the governments together built, owned, and operated the new highway interchange. 974 N.W.2d at 135–136, 139. In other words, the governments "created a dangerous condition" on their own property—approving a confusing design and forcing the premature opening—and are "simply being held legally responsible for its own property and work." *Id.* at 138 (quotation marks omitted). This Court's reasoning did not turn simply on the fact that the accident was on a public highway owned by the government. It turned on the government's role in affirmatively creating the dangerous situation on its own property—that is, the governments' misfeasance via negligently designing and prematurely opening the interchange. *Id.* at 138–139. The responsibility to maintain a hazard is triggered once you install or create the hazardous situation on your property. There is no allegation of such conduct by the State here.

At bottom, the State is responsible for the State's conduct, and it is important not to extend the State's liability to areas where it does not control. Each government entity is only "legally responsible for its own property and work." *Fulps*, 956 N.W.2d at 470. When multiple government entities are sued, but only one such entity's affirmative act

created the dangerous situation, the other government entities are not on the hook because they are also government entities. *Compare McFarlin*, 881 N.W.2d at 63–64 (public-duty doctrine barred claims against the State—who owned the lakebed and managed the lake but did not own and operate the dredging operation, which caused the injury and which was owned by local government entities), *with Farrell*, 974 N.W.2d at 139 (public-duty doctrine did not bar claims against multiple government defendants who, together, constructed and owned a highway interchange that caused the injury).

Plaintiffs seem to hold all defendant-government entities here responsible for one large allegation of "government" conduct. *See, e.g.*, Pls.' Br. at 23–24. Plaintiffs often lump together the State, County and City, but that does not amount to alleging with particularity what each defendant did. *See* Iowa Code § 669.14A(3). Analyzing instead only the State's alleged conduct, this case is like the State's ownership of the roadway but not the embankment in *Johnson*, and it is like the State's ownership of Storm Lake but not the dredge pipe in *McFarlin*. Because here the State merely holds the Turkey River riverbed in public trust and has no ownership or control over the Clermont Dam's operations or maintenance, the public-duty doctrine bars Plaintiffs' claims against the State.

* * *

As Plaintiffs say, "[i]n the case of nonfeasance, a governmental entity fails to act and such failure allows harm to occur." Pls.' Br. at 22. That nonfeasance means no liability under the public duty doctrine. That is this case with respect to the State. The district court's dismissal should be affirmed.

II. Sovereign Immunity Bars Plaintiffs' Tort Claims.

A. Error preservation and standard of review.

The State moved to dismiss Plaintiffs' claims based on the State's sovereign immunity, which bars Plaintiffs' claims relating to the State's discretionary decisions and to recreational activities on waters held in public trust. D0045 at ¶ 5, App. 298; D0046 at 5–12, App. 304–311. Plaintiffs resisted. D0048 at ¶¶ 11–12, App. 317–318. The district court granted the State's motion to dismiss. D0079 at 1, App. 433.

This Court reviews a district court's grant of a motion to dismiss for correction of errors at law. *See Karon*, 937 N.W.2d at 339.

B. Sovereign immunity prevents claims against the State relating to the State's exercise of its discretionary function to manage public waters.

Even assuming the State owed an affirmative duty of care to Plaintiffs (which it did not), the State remains immune from suit under the discretionary-function exception to the State's waiver of sovereign immunity. The Legislature retained the State's sovereign immunity for "[any] claim based . . . upon the exercise or performance or the failure to

exercise or perform a discretionary function or duty on the part of a state agency or an officer or employee of the state, whether or not the discretion is abused." Iowa Code § 669.14(1).

Discretionary-function immunity attaches to the State's discretionary acts and decisions, when based on considerations of public policy, even if the discretion is abused or negligence is alleged to have occurred. *Goodman v. City of LeClaire*, 587 N.W.2d 232, 237 (Iowa 1998); *Walker v. State*, 801 N.W.2d 548, 555 (Iowa 2011). Iowa courts analyze discretionary-function immunity under a two-prong test: (1) whether the act in question was a matter of discretion for the acting employee; and (2) if the act involved discretion by the employee, whether the judgment was of the sort that the exception was designed to protect. *See Walker*, 801 N.W.2d at 555.

This immunity seeks to prevent "judicial second guessing," *Walker*, 801 N.W.2d at 555 (quotation marks omitted), particularly of decisions where the decision maker "legitimately could have considered social, economic, or political policies when making judgments," *Graber v. City of Ankeny*, 656 N.W.2d 157, 165 (Iowa 2003). A governmental action immune under the discretionary-function exception therefore is one that "weighs competing ideals in order to promote those concerns of paramount importance over the less essential, opposing values." *Walker*, 801 N.W.2d at 563 (citations and quotations omitted).

Plaintiffs exclusively challenge State actions grounded in social, economic, and political policy decisions. Plaintiffs allege that eight State decisions or acts open the State to liability, including the State's:

> (1) designation of the Turkey River as a state Water Trail;
>
> (2) promotion of the TRWT and invitation to members of the public to use the TRWT, knowing of the danger of the Clermont Dam;
>
> (3) failure to place signs at the entrance to TRWT Access Point #71 warning of the Clermont Dam danger downstream,
>
> (4) negligent placement of warning signs in other locations along the TRWT,
>
> (5) failure to maintain the warning signs that were placed;
>
> (6) failure to place alternative dam hazard warning or mitigation systems, such as buoys or overhanging cables;
>
> (7) failure to clearly mark the portage exit from the TRWT before the dam;
>
> (8) failure to follow up on the grant funds given to Def City to remove or modify the Clermont Dam to ensure the dam was removed or modified before it promoted the TRWT as being safe for the public.

Pls.' Br. 56–57; Am. Pet. ¶¶ 97, 104, 126, 134, App. 245, 247, 253, 255.

Taking all alleged facts as true, the only affirmative acts alleged include the State (1) designating and promoting the Turkey River as a State Water Trail, (2) providing dam owners with funds to modify or remove their low-head dams, and (3) leaving oversight of low-head dam warning programs to grant recipients. The remaining allegations—including failing to place signs, negligently placing warning signs, failing to maintain existing warning signs, failing to mark the portage exit, and

failing to follow up on grant funds—all follow from the State's political and economic decisions to give grants to dam owners rather than directly managing low-head dams itself.

Whether to designate the Turkey River as a State Water Trail is a discretionary decision made with social, economic, and political policy in mind. The Legislature required the DNR to "establish a water trails and low-head dam public hazard program." Iowa Code § 464A.11. The DNR thus established the Water Trails Development Program and Low-Head Dam Public Hazard Program, which allow a committee to evaluate grant applications, administer grant funds, and designate certain trails as water trails. *See* Iowa Admin. Code r. 571–30.61. By designating the Turkey River as a water trail, the State exercised precisely the kind of social, political, and economic policy judgments left up to it by the legislature that the discretionary-function exception was meant to protect. So too with Plaintiffs' remaining allegations stemming from the State's role—as granted by statute and regulation—to promote water trails, provide dam owners with funds so that owners could modify or remove their low-head dams, and leave oversight of low-head dam warning programs to grant recipients.

Plaintiffs next challenge the State's alleged negligent placement and maintenance of warning signs, its failure to place adequate signs, and its failure to install and maintain a portage exit. But each of these acts or decisions derive from how the State chose to administer the Water

Trails Development Program and Low-Head Dam Public Hazard Program, as a grant program with limited oversight after the issuance of grants.

Choosing to address a problem by providing funds with limited oversight is precisely the kind of judgment the discretionary-function exception is meant to protect; these decisions weigh competing ideals to promote concerns of paramount importance like safety and ensuring funding over less essential, opposing values. *See Walker*, 801 N.W.2d at 563; *see also White v. City of Creston*, 2006 WL 2873408, at *2 (Iowa Ct. App. Oct. 11, 2006) (holding city's decision about where to place a water tower was within the discretionary-function exception).

In *Matthew v. State*, for example, the State certified residential living facilities for adults with disabilities. 2022 WL 2347520 (Iowa Ct. App. June 29, 2022). After a resident died in a fire, the estate sued the State, claiming the State certified the facility and so was responsible for ensuring the facility later, post-certification, maintained compliance with minimum fire-safety standards. *Id.* The Court of Appeals applied the discretionary-function exception, because the State's decision on how much oversight it should—or financially even could—provide to certified facilities was "the type of policy-related judgment the discretionary-function immunity was designed to shield." *Id.* at *4.

So too here. Plaintiffs, like those in *Matthew*, allege the State should have allocated its funds differently. As Plaintiffs see it, the State

should have provided more oversight and ensured more robust warning signs lined the river. But that is precisely what discretionary-function immunity is meant to protect: requiring the State to provide additional, or different, oversight or funding would lead to "judicial second-guessing" of legislative and administrative decisions grounded in social, economic, and political policy. *Goodman*, 587 N.W.2d at 237.

Finally, Plaintiffs assert the discretionary-function exception is unavailable here because the State's decisions involved "general safety considerations." *See* Pls.' Br. 57. But designating a "water trail" and implementing a legislative directive with a grant program that provides limited oversight is not just a "general safety consideration." It is a high-level economic and political policy decision that "weighs competing ideals." *Walker*, 801 N.W.2d at 563.

The State therefore is immune from suit under the discretionary-function exception to the State's waiver of its sovereign immunity. *See* Iowa Code § 669.14(1). The district court properly granted the State's motion to dismiss.

C. Sovereign immunity bars tort claims against the State because private individuals would not be liable for similar acts.

Contrary to Plaintiffs' assertions, their claims do seek to hold the State liable in tort in a different manner and to a different extent than they could hold a private individual acting similarly. Pls.' Br. at 30-31, 49-50,52-55; *id.* at 54-55 ("[S]ince these private actors could be held

liable, sovereign immunity has been waived."). So even if the Court determines the public-duty doctrine and discretionary-function immunity are inapplicable, the district court correctly dismissed the claims because the State's retained sovereign immunity bars the suit.

The Legislature partially waived the State's immunity from tort suits when it passed the Iowa Torts Claims Act. Iowa Code § 669.4; *see Anderson v. State*, 2 N.W.3d 807, 812–813 (Iowa 2024). But Plaintiffs' claims fall outside that partial waiver. The State's waiver is limited, as relevant here, "to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances." Iowa Code § 669.4(2). In other words, the State is liable for tort claims only if a private individual would be liable under the same set of facts. Plaintiffs assert that the State is liable just as a private individual would be, because private trustees would be liable in tort for similar alleged misfeasance as here. Pls.' Br. at 52–54. Not so.

No private individual, acting as the State is alleged to have acted here, would be liable in tort. Private land and waterway owners who open their land to the public without charge for recreational use are not liable in tort to individuals injured while recreating on the owner's land or waterways. *See* Iowa Code §§ 461C.2, 461C.3, 461C.6; Iowa Code § 461C.1 ("The purpose of this chapter is to encourage private holders of land to make land and water areas available to the public for a recreational purpose . . . by limiting a holder's liability toward persons

entering onto the holder's property for such purposes."). Land or water owners who open their lands for recreational use "do[] not owe a duty of care to keep the premises safe for entry or use . . . or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes." Iowa Code § 461C.3(1). And even a "holder of land who either directly or indirectly invites or permits without charge any person to use such property for a recreational purpose" does not then extend any assurances of safe premises, assume a duty of care to that user, or assume responsibility for injury caused. Iowa Code § 461C.4.

Plaintiffs seek to hold the State liable in tort in a different manner and to a different extent than they could hold a private individual. The State therefore has not waived sovereign immunity for such claims. The district court was correct to dismiss the case.

CONCLUSION

For these reasons, this Court should affirm the judgment.

REQUEST FOR NONORAL SUBMISSION

Because *McFarlin* governs this case, the State requests nonoral submission.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

/s/ Patrick C. Valencia
PATRICK C. VALENCIA
Deputy Solicitor General

/s/ Adam Kenworthy
ADAM KENWORTHY
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5164
(515)-281-4209 (fax)
patrick.valencia@ag.iowa.gov
adam.kenworthy@ag.iowa.gov

ATTORNEYS FOR STATE DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 9,447 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

/s/ Patrick C. Valencia
PATRICK C. VALENCIA

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 18th day of June, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ Patrick C. Valencia
PATRICK C. VALENCIA