IN THE IOWA SUPREME COURT
No. 24-0894

GREGG MANDSAGER,
Plaintiff-Appellee,

vs.

CITY OF MUSCATINE, DIANA BRODERSON, KELCEY BRACKETT, OSMOND MALCOLM, SANTOS SAUCEDO, and NADINE BROCKERT,
Defendants-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT IN MUSCATINE COUNTY CASE NO. LACV025982 RULING DATED APRIL 29, 2024

THE HONORABLE TAMRA ROBERTS,
DISTRICT COURT JUDGE

DEFENDANTS-APPELLANTS' REPLY BRIEF

(TRIAL DATE – September 22, 2025)

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ARGUMENT

I. *FEEBACK* AND THE "HONEST BELIEF RULE" APPLY TO THIS CASE.

A. Plaintiff Has No Direct Evidence; Therefore, *Feeback's* Burden-Shifting Framework Applies.

It remains abundantly clear from Plaintiff's briefing that he still fundamentally misunderstands what it means to have a case supported by direct evidence. "'[D]irect' refers to the causal strength of the proof, not whether it is circumstantial evidence." *Stansbury v. Sioux City Comm. Sch. District*, 986 N.W.2d 867 (Table), 2022 WL 2824284, *5 (Iowa Ct. App. July 20, 2022) (quoting *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004)). "Direct evidence is evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." *Ramlet v. E.F. Johnson Co*., 507 F.3d 1149, 1152 (8th Cir. 2007) (internal quotation omitted). "'[S]tray remarks in the workplace,' 'statements by nondecisionmakers,' and 'statements by decisionmakers unrelated to the decisional process' do not constitute direct evidence." *See Stansbury*, 2022 WL 2824284, at *5 (citing *King v. United States*, 553 F.3d 1156, 1160 (8th Cir. 2009)). Here, Mandsager fails to connect the purported discriminatory statements to the termination decision.

Rather, Mandsager contradicts himself. Here, the City Council made the decision to terminate. Therefore, to have direct evidence, Mandsager needed to tie the City Council's motivations directly to a discriminatory animus in the decisional process, and any focus on Broderson's motivation is misplaced. Broderson, by operation of the municipal code, was not a decisionmaker. Mandsager further betrays his own point by arguing that Defendants' motivations **were not disability-related at all** but were actually political in nature.[1] If that is the case, then Mandsager's discrimination and retaliation claims end here, and summary judgment on those claims is warranted.

Notwithstanding, Mandsager also posits that "secret . . . text messages" offer the direct evidence he seeks. *See* Appellee's Brief at p. 33. And, while Mandsager argues that the text messages show Defendants "intentionally used Mandsager's disability to drive animus against Mansager and obtain a deciding vote from Saucedo to terminate Mandsager in 2019" (*see* Appellee's Brief at pp. 33 – 34), Mandsager fails to provide any evidence to support his concocted theory. Mandsager merely cites an irrelevant part of the District Court's December 2022 summary judgment

[1] In his briefing, Mandsager repeatedly refers to an alleged "Blue Wave" motivating the Defendants. *See* Appellee's Brief at pp. 14, 15, & 34.

ruling[2] in which the District Court makes no determination on the question of direct evidence.

To the extent, however, Mandsager argues that the text messages referenced in the quoted portion of the District Court's December 2022 ruling (*see* Appellee's Brief at pp. 34 – 35) qualify as direct evidence, he is incorrect. Plaintiff arguably references five text messages—two of which comes from Broderson, a nondecisionmaker. The other three messages are from Saucedo and are not close enough in time to be considered direct evidence:

- **July 19, 2019:** Saucedo stated it was "time to discuss [Mandsager's] combative behavior, uncooperative actions and desire to just contact [the] City Attorney every change he gets." D0048, Defendants' Statement of Undisputed Facts ¶ 61. In this same text thread, Saucedo also calls Mandsager "baby Gregg" and says, "Baby is my code word for Gregg." D0061, Plaintiff's Statement of Disputed Fact, at ¶ 259.

- **July 19, 2019:** Broderson texts Brackett and Saucedo separately that Mandsager took "another day off." D0061, ¶ 202. Brackett did not respond; Saucedo responded and said, "Wow [emoji] imagine that."[3] D0061, at ¶ 257.

See King, 553 F.3d at 1161 (holding that comments made months before the selection did not relate to the decisional process and were not direct evidence); *see*

[2] The ruling Plaintiff references is not the subject of this appeal. This appeal addresses the District Court's April 2024 Summary Judgment Ruling.

[3] Importantly, this text exchange occurred the day following the July 18, 2019 City Council meeting where there was a consensus to discuss the Code Change and put it on the agenda for August. D0048 at ¶ 59. Defendants anticipated and observed that Mandsager was unhappy about the consensus at the meeting which was recorded on YouTube. D0048 at ¶¶ 56-59.

also Ramlet, 507 F.3d at 1153 (holding that comments made more than four months prior to the adverse employment action were not connected to the decisionmaking process and therefore were not direct evidence). These text messages occurred in July 2019, five months prior to Plaintiff's termination in December of 2019. D0061, at ¶¶ 257, 259. These text messages also do not reference Mandsager's disability or connect his disability to the termination decision. The remainder of the record only yields more of the same—communications amongst the Defendants that reference Mandsager's continued insubordination and their disdain for his behavior. D0048, ¶¶ 37, 58, 63, 172-77. Any allegation Mandsager makes to the contrary is disingenuous and unsupported by the record.

Mandsager also references the 2022 Ruling in which the District Court parroted his misrepresentation that "Council Member Fitzgerald testified that he witnessed Plaintiff get retaliated against due to his health during closed sessions while discussing his merit pay." D0061, at ¶ 155. A review of Plaintiff's record citation demonstrates that Councilmember Fitzgerald did notso testify. Instead, Fitzgerald testified that he had no examples of Mandsager being discriminated against on the basis of his disability. Fitzgerald also confirmed that he never saw or heard anyone hold Mandsager's health against him. D0060, Plf. MSJ Ex. 128 at 42:14-44:16. Plaintiff's misrepresentation is also highlighted by the audio recording of the 2018 Closed Session personnel performance of Mandsager where

Councilmembers seriously criticized Mandsager's performance calling him "combative", "inflexible", and noting that he ignored councilmembers and "argue[d] out of turn in what appeare[ed] to be an attempt to silence elected officials". D0048, at ¶¶ 84, 85, 91, 96. While councilmembers during the 2018 audio recording did state, for instance, "it's not okay for [Mandsager] to try and shut [the Council] down", councilmembers did not comment on his health. D0048 at ¶¶ 84, 95-103; *see also* D0045 at App. 841. Accordingly, Plaintiff has failed to establish any direct evidence, and this case is subject to the modified *McDonnell Douglas* burden-shifting framework set forth in *Feeback*. *See Feeback v. Swift Pork Co.*, 988 N.W.2d 340, 347 (Iowa 2023).

B. Mandsager Cannot Meet His Burden to Establish Pretext Under *Feeback* Because He Cannot Prove Defendants did not Honestly Believe the Proffered Reason for Termination.

At issue here is whether Plaintiff established pretext under *Feeback*'s modified *McDonnell Douglas* burden-shifting framework. Rather than follow this Court's clear dictates in *Feeback*, Plaintiff attempts to conceal his inability to prove pretext by doubting the application of the "honest belief rule" to the pretext analysis. And, while the District Court adopted Plaintiff's argument at renewed summary judgment, it did so in error. Neither Plaintiff nor the District Court proffered any support for this position, and, in fact, contradicted further authority.

Iowa courts since *Feeback* have clearly iterated that the pretext analysis requires disproving an employer's "honest belief". *See Avery v. Iowa Dept. of Human Services*, 995. N.W.2d 308 (Iowa Ct. App. 2023). In *Avery*, the Court stated:

> [A] material question of fact regarding pretext can be demonstrated in at least two ways: (1) by showing that the employer's explanation is unworthy of credence because it has no basis in fact; or (2) by persuading the court that a prohibited reason more likely motivated the employer.

Id. at 314. The Court's pretext inquiry under *Feeback* "is limited to whether the employer gave an **honest explanation** of its behavior." *Id.* (citing *Feeback*, 988 N.W.2d at 350) (emphasis added). But, Plaintiff's burden "requires more than merely discrediting the employer's proffered reason for the adverse employment decision." *Id.*

The Eighth Circuit finds the same. *See Main v. Ozark Health, Inc*., 959 F.3d 219, 325 (8th Cir. 2020). Overcoming the employer's asserted honest belief is part of Plaintiff's pretext burden, and it is then incumbent on the Plaintiff to demonstrate "an employer's explanation was unworthy of credence." *Id.* It is not enough that the plaintiff demonstrate Defendants' reason for termination was false. *Id.* It is also not enough to show the honest belief was "erroneous, unwise, or even unfair", as Mandsager seems to imply here. *Id.* at 325. Instead, the employee "must show 'both that the reason was false, *and* that discrimination was the real reason.'" *King v.*

Guardian ad Litem Board, 39 F.4th 979, 988 (8th Cir. 2022) (emphasis in original) (citations omitted)).

Mandsager seemingly adopts the *Avery* pretext analysis, as he spends a significant portion of his briefing trying to combat the City's honest explanation. Rather than finding support in the record for his position, Mandsager has instead concocted a story—one devoid of reality. The record in this case is rife with support for the City's honest belief that Mandsager was insubordinate, rising to the level of termination, and Mandsager has done nothing to legitimately disturb the record.

1. The "Honest Belief Rule" Is Not Limited To Cases Where The Employer Is Mistaken In Its Belief.

In his continuing effort to disguise his inability to prove pretext, Plaintiff calls into question the applicability of *Feeback*, thereby creating an issue of first impression—or at the very least, a substantial question of enunciating legal principles[4]—regarding what constitutes an "honest belief rule" case and when such a defense can be used. *See Feeback*, 988 N.W.2d at 347. In ruling on Defendants' Renewed Motion for Summary Judgment, the District Court erred when it ratified the Plaintiff's misguided interpretation of *Feeback*. D0133 at 4.

The District Court's adoption of Plaintiff's position that an employer must be mistaken in its belief to invoke the "honest belief rule" is neither recognized nor

[4] *See* Iowa R. App. P. 6.1101(2)(f).

defined and misunderstands *Feeback* entirely. Given the fact pattern in *Feeback*, Plaintiff's strained and proposed application of the "honest belief rule" makes little sense, and there is no compelling reason to adopt his interpretation. A clear reading of *Feeback* provides that whether the employee actually engaged in the conduct is **irrelevant** to the evaluation. *Id.* at 349. In *Feeback*, the plaintiff employee attempted to survive summary judgment by manufacturing a fact question on pretext. Specifically, Feeback argued that the text message he sent, which resulted in his termination, was an accident and, therefore, created a fact question as to whether he was insubordinate. *Id.* Whether he meant to send it and/or whether the employer was correct in its belief about his explanation were irrelevant for the purposes of summary judgment. *Id.* Rather, the Court focused on whether the employer honestly believed its reason for termination. *Id.*

The District Court's alternate reading of *Feeback* would entirely undo the protections *Feeback* set out to provide Iowa employers and would render summary judgment in any case out of reach. In fact, such a reading would allow, **and force**, the very thing courts have guarded against—courts sitting as "super-personnel departments", scrutinizing and questioning the business judgments of employers. *See Vroegh v. Iowa Dept. of Corrections*, 972 N.W.2d 686, 695 (Iowa 2022); *see also Main*, 959 F.3d at 325. Rather, the District Court decides the honest belief rule as an issue of law, not fact—it "is really just an aspect of the plaintiff's burden at

step three." *Main*, 959 F.3d at 325; *see also Sterlinski v. Cath. Bishop of Chi.*, 934 F.3d 568, 569, 571 (7th Cir. 2019) ("The answer lies in separating pretextual justifications from honest ones. . . . If the court finds that the reason is honest, it does not ask whether the reason is correct—it is enough that the employer believe its own reason in good faith. And the burden of showing pretext rests with the plaintiff."). Accordingly, and for the reasons stated here, it simply makes no sense to allow invocation of the "honest belief rule" only in circumstances in which the employer is mistaken in its belief.

Feeback very clearly adopts the "honest belief rule" as a part of the modified *McDonnell Douglas* burden-shifting framework and incorporates it into the pretext analysis; however, to the extent there is ambiguity surrounding when the rule applies, Defendants seek clarification from this Court. *See generally Feeback*, 988 N.W.2d 340. In so clarifying, Defendants urge this Court to follow *Avery* and precedent from the Eighth Circuit, which describes the "honest belief rule" as an intent-based principle applying when the employer produces evidence that it honestly believed the reasons for an adverse employment action regardless of whether the reason was true or false. *See Main*, 959 F.3d at 325 (rejecting plaintiff's argument that *Pulczinski* held the honest belief rule "only applies" in certain circumstances as the Court "ha[s] never held the applicability of the 'honest belief rule is so limited"); *see also Pulczinski v. Trinity Structural Towers, Inc*., 691 F.3d

996, 1003 (8th Cir. 2012) (explaining that if an employer "honestly believed the nondiscriminatory reason [it] gave for the action, pretext does not exist").

2. Plaintiff's Revisionist History And Attempts To Manufacture Pretext Are Betrayed By The Record.

While Plaintiff tells a compelling tale, his narrative lacks any support in the record. Plaintiff asks this Court to ignore the record entirely[5], and in its place, offers nothing more than speculation, conjecture, and outright fantasy to manufacture pretext and survive summary judgment. *See Campbell v. Kraft Heinz Food Co*., 465 F.Supp.3d 918, 924 (S.D. Iowa 2020) (a party must offer "more than mere speculation, conjecture, or fantasy" to survive summary judgment).

Plaintiff's attempts to conceal the most damning facts are betrayed by a close review of the record itself. While Mandsager attempts to paint Saucedo as the exemplar for his pretext argument—reasoning that Broderson and the other councilmembers convinced him to change his vote on termination, Mandsager misses the mark. Sequence matters in employment cases, and the timeline here

[5] Plaintiff asks this Court to ignore the timeline, prior evidentiary rulings excluding certain evidence, and even his collusion with the City Attorney, Matt Brick. In fact, Mandsager disingenuously asserts in his briefing "The attempt to paint Mandsager and Brick as frauds is not well received, and simply not a true reflection of reality." *See* Appellee's Brief at p. 46. It is undisputed that Brick received a 30-day suspension and public reprimand for his duplicitous activity. *See* D0100, Defendants' Renewed Statement of Additional Undisputed Facts at ¶¶ 1-18. The text messages between Brick and Mandsager also speak for themselves. D0048 ¶¶ 161-164, 166-168, 188-190, 219, and 221.

demonstrates that Mandsager and Saucedo did not like each other starting in at least September 2019 for reasons wholly unrelated to Mandsager's health and predating Mandsager's requests for accommodations. In fact, Mandsager emailed Brick on September 3, 2019, listing the reasons that Mandsager believed Saucedo wanted "to have [him] fired." D0048 at ¶ 141. Of note, Mandsager's health is not listed as reason. D0048 at ¶ 142. Rather, his list includes "4. Some of this must be related to Community Development, access to staff, and review and inspections." D0048 at ¶ 142. Consequently, in September of 2019, Mandsager conceded that Saucedo wanted him terminated for reasons including the Code Change (access to staff) and the ad hoc committee (inspections), not Mandsager's health/disability. D0048 at ¶ 142. Mandsager further asserts in his email to Brick that Saucedo is acting "highly inappropriately" for "personal reasons". D0045 at APP. 146.

While Mandsager argues that Saucedo suddenly developed a "prejudice" toward Mandsager's "health, disability, time away from work, and accommodations", the timing of this email demonstrates that Saucedo could not have had animus against Mandsager's "disability" accommodations or requests to work from home because the accommodations **had not yet been requested or made**. Instead, Mandsager did not request or receive accommodations until September 9,

2019—six days after he wrote the email that his job was in jeopardy. D0048 at ¶ 144. [6]

Unfortunately, within the confines of the rules of appellate procedure, Defendants cannot possibly expose each and every misstatement of the record, Defendants highlight the most egregious and obvious examples:

Facts Manufactured by Plaintiff	**Facts in the Record**
Mandsager boasts a 10-year history of positive job reviews.[7]	Criticisms from Mandsager's 3-hour audio recorded 2018 performance review (D0048 at ¶ 84): • Broderson wrote that Mandsager did not treat all council members with same respect and he singled out specific members to share information with while leaving others out. D0048 at ¶ 82. • Saucedo expressed a number of concerns about Mandsager's treatment of building inspectors and local businesses. D0048 at ¶ 85. • Brackett wrote that he observed Mandsager to be "combative and inflexible." D0048 at ¶¶ 88, 91.

[6] A running theme in this lawsuit is that Plaintiff perceives a threat to his job for reasons unrelated to his health and then Plaintiff weaponizes his health against the City to avoid consequences. Iowa law does not allow employees to engage in terminable conduct and then use a protected activity to avoid the consequences of their actions. *See Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 31 (Iowa 2021).

[7] Even if Mandsager had all positive reviews, evidence of a strong employment history does not create a genuine issue of fact regarding pretext and the employer's honest belief to defeat an employer's motion for summary judgment. *See Main*, 959 F.3d at 326.

	• Brackett told Mandsager that he was combative with a volunteer group completing a project at the cemetery, in creating the ad hoc committee, and during his performance review. D0048 at ¶¶ 88, 91-92. • Mandsager was told that he was allowed to bring up concerns but "it's not okay for [him] to try and shut [the Council] down." D0048 at ¶ 95. • Brackett stated, "While [Mandsager] seems to respond to email and phone calls in a timely manner, there are also times when [Mandsager] does not cooperate with requests and at other times argues out of turn in what appears to be an attempt to silence elected officials. [And,] ignores the requests that he does not agree with unless forced to do otherwise." D0048 at ¶ 96. • Brackett further stated in Mandsager's 2018 performance evaluation, "Needs to work with the council for solutions." D0048 at ¶ 98.
Mandsager alleges "yearly merit-based pay increases" and satisfaction with his job performance.	• At the end of his December 2018 performance review, Mandsager requested a 3% raise. He was denied and left the review with no pay increase. D0048 at ¶¶ 100-101. • Mandsager then approached Saucedo, who provided Mandsager a list of concerns

	upon which Mandsager could improve and, at the next meeting on 12/20/18, 1% raise passed with four "ayes" and three "nays". D0048 at ¶¶ 102-104. • After an email from Brackett on 12/30/18, with a request to add an agenda item for the Code Change, Mandsager emailed Brick that the 1% increase was "retaliation." D0048 at ¶¶ 49-51.
Mandsager alleges a Councilmember testified that Mandsager was retaliated against because of his disability in a discussion about his merit pay.	• Plaintiff has repeatedly proclaimed that Councilmember Fitzgerald testified that Mandsager was retaliated against on the basis of his disability. The discussion of a 3% pay increase was audio recorded. Mandsager did not receive the pay increase because of his increasingly insubordinate behavior. There are no statements about his health. • Fitzgerald testified that he had no examples of times Mandsager was discriminated against on the basis of his disability and Fitzgerald confirmed that he never saw or heard anyone hold Mandsager's health condition against him. D0060, Plf. Ex. 128 at 42:14-44:16 (9/30/2022).
Broderson has a "personal vendetta" after she was sued by Mandsager based on defamatory statements.	Plaintiff omits that Broderson and Mandsager sued *each other*. The parties settled their claims. • On 11/10/17, Mandsager sued Broderson and the City -

	Muscatine County Case No. LACV24298. • On 2/9/18, Broderson counterclaimed against him in the same case.
Mandsager alleges a long-term "plan" to terminate him contained in text messages between Defendants.	• The text messages demonstrate Defendants thought they were "planning" with Brick to address Mandsager's gamesmanship around his employment. D0048 at ¶ 155; D0061 at 220-21. • Mandsager omits his long-term planning with Brick to save his job and bring claims against the City based on what he and Brick perceived to be a threat to Mandsager's employment. D0100 at ¶¶ 4-5, 15, 17.
Mandsager was "unaware" that Defendants had problems with him when he filed for FMLA on 10/25/19.	• On 10/17/19, the City Council met at 7:00 pm. At the end of the meeting, Brackett moved to put Mandsager's termination on the November agenda. D0048 at ¶ 159 (citing D0045 at APP. 414-17). • At 8:35pm that evening, after he watched the Council meeting virtually, Mandsager texted Brick: "Might want to see YouTube…Didn't like memo to staff on code change (particularly the report to [Department Head] or [City Administrator]) nor having to sign doc even though amendment to handbook. Want that on the agenda too. #2 – regular agenda item to end my

	contract next regular meeting. They did not request a closed session. Nadine called in for meeting. I'll be requesting closed session. Action can follow. Can you attend? Not sure if we need memo. Guess it was a fun night!" D0048 at ¶ 161. • Mandsager then texted Brick: "Perhaps I should consider filing for LTD or FMLA in next couple weeks…" Brick responded Mandsager should "definitely" do that. D0100 ¶ 7. • Mandsager began the process "to file for FMLA, ADA, or LTD" that same evening around 8:54 pm. D0048 at ¶ 165. • On 10/18/19, Brick and Mandsager discussed sending emails to the Council regarding Mandsager's FMLA to delay the vote to terminate. D0048 at ¶¶ 166-69, D0100 ¶ 9. The Council still had no knowledge of the requested FMLA. D0048 at ¶ 170. • On 10/21/19, Broderson emailed Brackett, "Inside word is that Gregg is going to quickly file for FMLA so he can't be let go…" to which Brackett says he will consult Brick for advice. D0048 at ¶ 172.

Secret text messages confirm an animus towards Mandsager's disability and accommodations	• Plaintiff's cherry-picked text messages lack the context.[8] *See generally*, D0048, D0061, D0067, and D0100. • The text messages referenced demonstrate an employers' increasing frustration with an insubordinate employee. • The timing and context demonstrate no connection with Mandsager's disability or accommodations.
12/5/19 termination was for general "lack of confidence" rather than "insubordination"	• On advice of Brick, Defendants understood "the less said, the better." D0048 at ¶ 213. • Defendants discussed their reason for termination in detail on a recorded phone call on 10/25/19 with Brick. Brick agreed with the termination for insubordination. D0048 at ¶¶ 195-209.
12/23/19 Written Order says "lost confidence in willingness to perform your duties" and that differs from the reasons Mandsager was given at his termination meeting.	• Brackett expressed during the meeting he lacked confidence in Mandsager when a "majority of council" was in "one direction" and Mandsager "pushed repeatedly in an opposite direction." *Compare* D0048 at ¶¶ 236, 240 *with* 261. • Brick authored the 12/23/19 Written Order. D0048 at ¶ 263. Brick chose the language that Defendants had "lost confidence"

[8] Courts may not view evidence of pretext in isolation, and instead must view such evidence in its totality. *See Hairston v. Wormuth*, 6 F.4th 834, 844 (8th Cir. 2021).

	in Mandsager's "ability" to perform his job. D0048 at ¶ 263. • Brackett believed Mandsager was able to do the work but lacked confidence in his willingness to do what the council directs. D0048 at ¶ 264.
HR Representative Patti Seda called Defendants' actions "callous disregard for employment law."	• Brick's notes from meeting with Mandsager on 10/22/19 make it apparent that Brick's plan was to "call Patti" and get her to "send an email to Council shaming them" for taking action against Mandsager. D0067 at ¶ 1. • Seda testified she believed Mandsager was on FMLA when the 10/17 motion to terminate was made. D0048 at 230. She did not realize that Mandsager began the process of requesting leave after the 10/17/19 meeting and did not take FML until 10/28/19. D0048 at ¶ 231. • Seda's testimony confirmed the email she sent "shaming" the Council was premised on false information. D0048 at ¶ 230-31.
Ad Hoc Committee Reason is Dishonest and Pretextual	• On 10/25/19, Brick, Brackett and Saucedo had a recorded phone call. D0048 at ¶ 195. • Brackett and Saucedo expressed concerns about Mandsager's insubordination regarding the ad hoc committee and Code Change. D0048 at ¶¶ 206; 209.

Code Change Reason is Dishonest and Pretextual	• Mandsager considered himself a gatekeeper and whether he clued councilmembers in on certain communication depended on whether Mandsager liked them. D0048 at ¶¶ 41-46. • 11/20/18 - Brackett emailed Mandsager about the City Code preventing City employees from speaking to elected officials. Mandsager responded that per code all communication should go through the City Administrator. D0048 at ¶ 39-40. • 10/3/19 - Code Change passed. D0048 at ¶ 65. • 10/7/19 - Broderson signed the Code Change in her capacity as Mayor. D0061 ¶ 209. • 10/9/19 - Romagnoli (HR) circulated the Employee Handbook Change that circumvented the Code Change. D0048 at ¶ 69. • 10/10/19 - Mandsager sent an email to all City Department Heads regarding the Handbook Change impact on the Code Change. D0048 at ¶ 74. • The was an "exchange of texts on the Code Change" between the Defendants on 10/15/19, that led to a 10/17/19 meeting between Saucedo, Brackett, and Broderson. D0061 at ¶ 210.

	• 10/17/19 - Brackett moved to terminate Mandsager.[9]

Not only has Mandsager contrived a more favorable narrative, but he ignores the procedural history of this case. Because this case is before the Court on interlocutory appeal, the Court must review the case in the matter it was treated at the District Court. *See Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982) ("[W]e will consider and review a case on appeal in the manner it was treated below."). The District Court made several rulings on motions in limine[10] in this case, excluding particular evidence, which Mandsager now attempts to skirt. For instance:

- The District Court ruled that Mandsager is not permitted to introduce evidence of past work history and performance reviews to prove his character traits. D0098 at p. 3, Ruling on Defendants' Motion in Limine #3 – 11. For this reason, and for to the lack of support in the record cited

[9]The "culminating event" was Defendants' honest belief that Mandsager circumvented the Code Change with the Employee Handbook. *See Main*, 959 F.3d at 326; *see also* D0048 at ¶¶ 243, 244, 247, 249. Plaintiff argues that Defendants are mistaken about Mandsager's involvement in the Employee Handbook Change and attempt to pin the Employee Handbook Change on Mandsager's direct report, Romagnoli. Even accepting Plaintiff's unsupported version of events, it makes no difference. The record reflects Defendants honestly believed that Mandsager circumvented the Code Change in an act of insubordination.

[10] Importantly, said rulings are not on appeal.

above, this Court should not consider Mandsager's allegations concerning his 10-year history of positive job reviews.

- The District Court properly ruled that Seda, the human resources consultant, has not properly been designated as an expert and cannot, therefore, testify as to conclusions of law. D0098 at p. 5. Accordingly, any conclusions she made about Defendants' "disregard of employment law", although she recanted her statement as noted above, are not admissible and cannot be considered at summary judgment.
- The District Court also ruled that Plaintiff cannot allege or infer any open records/meetings violations as he has not pled the same. D0096 at p. 3, Ruling on Defendants' Motion in Limine #1. Categorizing any meetings and text messages as "secret" communications by Defendants assumes illegality and should not be considered at summary judgment.
- Finally, the District Court made a specific finding that Iowa Code § 372.15 does not require that a public employee's removal be for cause. The District Court further ruled that "there are no authorities that suggest that the reasons given in the notice [of Plaintiff's termination] are the only reasons Defendants may argue at trial." D0097 at p. 5, Ruling on Plaintiffs' Motion in Limine #1 – 11.

Mandsager cannot properly rely on evidence or insinuations deemed inadmissible.

As demonstrated herein, Mandsager's assertions find no support in the record before the Court. Instead, the documents, texts, emails, and recordings in the record tell a much different story, exposing Mandsager's distinct failure to generate a genuine issue of material fact on the issue of pretext to disrupt summary judgment.

II. THE DISTRICT COURT ERRED WHEN IT IGNORED THE ANALYSIS IN *MCCOY V. THOMAS L. CARDELLA & ASSOCIATES* AS TO THE PREEMPTION OF TORT CLAIMS.

A. *McCoy* Demands Preemption of Plaintiff's Tort Claims (Counts V and VI) Against Broderson.

In his briefing, Plaintiff challenges the applicability of *McCoy*, ignoring this Court's clear shot across the bow on issues of exclusivity and preemption. *See McCoy v. Thomas L. Cardella & Associates*, 992 N.W.2d 223 (Iowa 2023). It matters not that the *McCoy* Court focused on IWCA preemption and opined that it need not reach the issue of ICRA exclusivity/preemption—the Court certainly did not ignore the ICRA. *See id.* In a footnote, the Court cited to *Delgado-Zuniga* wherein the Iowa Court of Appeals "recognized only that where the employee chose to pursue an ICRA claim and relied on the very same facts to also pursue an IWCA claim—**to the point that there is only one circle in the Venn diagram of the two claims**—then the employee's election of remedies under the ICRA precluded his claim [] under the IWCA." *Id.* at 232 n.4 (citing *Delgado-Zuniga v. Dickey & Campbell Law Firm*, P.L.C., No. 17-0099, 2017 WL 4050285 (Iowa Ct. App. Sept.

13, 2017)) (emphasis added). Accordingly, the Court's intentions were clear—its ruling was intended for broader application.

Fatal to Plaintiff's claims is the fact that Plaintiff **concedes** the Venn diagram is a circle—that he pled "alternative theories" based on the **same set of facts** in the event that "the Court dismissed Broderson under the ICRA." *See* Appellee's Brief at p. 51. Plaintiff's theory that Broderson interfered with his at-will employment necessarily hinges on his allegations that he was subject to discrimination and/or retaliation prohibited to the ICRA. As pled, his discrimination and retaliation claims (Counts I and II) both invoke allegations that Broderson was hostile toward Plaintiff based on his absences from work and their prior lawsuits against one another—allegations he makes to support his tort claims. *See* Plaintiff's Petition, D0001. However, Mandsager's discrimination and retaliation claims were dismissed at summary judgment as against Broderson. *See* 12/2022 Ruling on Defendant's Motion for Summary Judgment, D0080. The Court disposed with those theories, and Mandsager "cannot [now] avoid the statutory processes for seeking redress against [] by manipulating common law theories to reach the jury." *McCoy*, 992 N.W.2d at 225.

B. Broderson is Not a Third Party to Mandsager's Contract and Therefore Mandsager's Tort Claims are not Insulated from Preemption.

However, Plaintiff tries to circumvent *McCoy*. Plaintiff's argument against preemption can be distilled down to his belief "that if the ICRA does not apply to the facts of an individual Defendant, preemption or exclusive remedy does not apply." *See* Appellee's Brief at p. 57. Put another way, Mandsager argues that because he reached a dead end on one theory, he necessarily has another avenue. That is not true—it is plausible, as is the case here, that Mandsager has neither viable ICRA claims nor viable tort claims against Broderson.

Plaintiff relies heavily on *Grahek* to support his proposed loophole to preemption; but, *Grahek* is factually distinguishable. *See Grahek v. Voluntary Hosp. Co-op. Ass'n of Iowa, Inc.*, 473 N.W.2d 31 (Iowa 1991). In *Grahek*, the plaintiff was terminated from his position with Defendant "VHI". *Id.* As a result of his termination, he claimed age discrimination, and while he failed to timely file his discrimination claim, he brought a number of other claims against the defendants under the same theory. *Id.* While employed at VHI, plaintiff simultaneously worked for an unrelated employer, Defendant "VHA", and in his lawsuit, he claimed that VHA intentionally interfered with his employment contract with VHI. *Id.* Over resistance from the defendants on grounds the claim was preempted by the ICRA, the Court allowed Grahek to proceed with his intentional interference claim against

VHA reasoning that "[i]t is not entirely clear from the record whether VHA was a party to the employment contract . . . . [and i]f VHA was not a party to the contract, the tort claim would not be preempted by the [ICRA]." *Id.* at 35 – 36.

First, the *Grahek* Court came to no firm conclusion on the issue because the record was not clear. *Id.* Mandsager reasons, though, that VHA was to Grahek as Broderson was to Mandsager, a third party to the employment contract who could then interfere with said contract. However, unlike the present case, VHA was a separate and distinct entity from Grahek's employer—VHI. *Id.*

Importantly, though, Mandsager cites a more factually analogous and enlightening case. *See* Appellee's Brief at p. 57 (citing *Knutson v. Sioux Tools, Inc.*, 990 F.Supp. 1114 (N.D. Iowa 1998)). In *Knutson*, the plaintiff brought a myriad of claims, including a claim for intentional interference with contract. *Id.* Amongst the defendants sued for intentional interference with contract were two supervisory employees of plaintiff's employer—Brown and Wilson. *Id.* Defendants argued the intentional interference claim was preempted by the ICRA, but the court left open the question on preemption because "it [was] not entirely clear from the record whether Brown and Wilson are **or effectively are** parties to Knutson's contract . . . ." *Id.* at 1121 (emphasis added). In other words, it was not clear to the court whether Brown and Wilson were capable, legally, of interference. *Id.* The court expanded on the "or effectively are" language, reasoning that agents of employers—"specifically,

owners, supervisors, and managers[—]were not third parties to the [] employment contract." *Id.* at 1125 (citing *Harbit v. Voss Petroleum, Inc.*, 553 N.W.2d 329, 331 (Iowa 1996) (granting summary judgment dismissing plaintiff's tortious interference claims because all defendants were either employers or their agents and not third parties to the employment contract)).

Consistent with the *Knutson* Court's reasoning, Defendant Broderson was not a third party to Mandsager's at-will employment contract. While she did not participate in the decision to terminate, Broderson was an agent of the City. She was the City's Mayor, its face and figurehead—by statute its CEO. *See* Iowa Code § 372.14. She was not so separate and distinct from the City, and certainly not in any of her dealings with Mandsager, such that Mandsager can frustrate preemption and/or bring a separate tort claim against her based on the same facts and allegations as his civil rights claims. *See Knutson*, 990 F.Supp. 1114. While Mandsager argues that this leaves him without redress, that is not the case. He has his ICRA claims against the City and Councilmembers.[11]

Not only does Mandsager's position lack a basis in the law, but Mandsager's logic as applied to Broderson would have unintended and alarming consequences in future cases. Again, Mandsager takes the position that because the District Court

[11] However, those claims suffer from a different fate as addressed in this appeal.

dismissed his ICRA claims against Broderson by operation of cases like *Rumsey*[12] and *f-Kimm*[13], wherein the Iowa Supreme Court limited the scope of individual liability for adverse employment actions, he is necessarily entitled to his tort claims against Broderson. This argument, if adopted, would open the floodgates to expose managerial or supervisory employees to unchecked individual tort liability, where these employees were not involved in the adverse employment action at issue. For instance, had the *Rumsey* Court determined that Mallaney and Coppock (the two individually named supervisors) did not have final decision-making authority to terminate the plaintiff, Mandsager's argument would have allowed Rumsey to bring separate tort claims against them. *See Rumsey*, 962 N.W.2d 9. Mandsager's argument could have had the effect of stripping Governor Reynolds or Pat Garrett, her communications director, of the law's protections in *Carver-Kimm*. *See Carver-Kimm*, 992 N.W.2d 591 (holding that Governor Reynolds mere influence over the decision to terminate the plaintiff, without authority to make such a decision, was insufficient to hold the Governor individually liable for wrongful discharge)[14]. If the law insulates individuals who were not involved in and/or had no authority to make

[12] *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W2d 9 (Iowa 2021).
[13] *Carver-Kimm v. Reynolds*, 992 N.W.2d 591 (Iowa 2023).
[14] Defendants understand that *Carver-Kimm* differs in certain ways from the case at hand, but it is demonstrative of the effect this logic could have.

the decision to execute the subject adverse employment action, the law should not operate to cannibalize those same protections with an end-run around itself.

CONCLUSION

While Mandsager attempts to evade Iowa Supreme Court precedent continue, he cannot escape reality. As detailed herein and in Appellant's initial Brief, Mandsager's remaining claims in this litigation should be summary dismissed by operation of said precedent. Mandsager's termination was based on the City's honest belief that Mandsager was insubordinate and unwilling to work with the City Council, and Mandsager cannot disturb that honest belief. Mandsager's tort claims fare no better under the principles of preemption and exclusivity. Mandsager's case is built on gossamer threads of whimsy, speculation, and conjecture, and therefore this Court should reverse the District Court's April 2024 Ruling denying summary judgment and dismiss Mandsager's case in its entirety as a matter of law.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 6,230 words (including images), excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14.

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CERTIFICATE OF FILING AND SERVICE

I certify that I filed this Brief with the Clerk of the Supreme Court using the Iowa Electronic Document Management System ("EDMS") on November 1, 2024.

I further certify that on November 1, 2024, a copy of this Brief was served using the EDMS system, upon the following persons:

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