IN THE SUPREME COURT OF IOWA

Supreme Court No. 24-0029
Linn County No. CVCV097672

Robert Teig,
Plaintiff-Appellant,

v.

Brad Hart, Tyler Olson, Ann Poe, Patrick Loeffler, Dale Todd,
Scott Olson and Ashley Vanorney,
Defendants-Appellees,

APPEAL FROM THE IOWA DISTRICT COURT FOR LINN COUNTY
HON. Andrew B. Chappell, DISTRICT COURT JUDGE

Defendants-Appellees' Application for Further Review of Court of Appeals Decision Dated January 9, 2025

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Question Presented for Review

Did the Court of Appeals err when it determined Iowa's Open Meetings law requires a governmental body have knowledge of specific damaging information about a job applicant in order to grant the applicant's request to hold their job interview in closed session pursuant to Iowa Code section 21.5(1)(i)?

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Statement Supporting Further Review

This Court should grant further review of the Court of Appeal's opinion entered January 9, 2025 (the "Opinion") because this case presents an issue of broad public importance that this Court should ultimately determine, as well as an important question of law relating to Iowa's Open Meetings law (Iowa Code Chapter 21) that has not been, but should be, settled by this Court.[1] *See* Iowa R. App. P. 6.1103(1)(b)(2) & (4). To date, the Iowa Attorney General's Office, the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Association of School Boards have all expressed interest in serving as amici curiae if this Application is granted, signaling the importance of the issue in this case to a variety of public entities across the state.

The important question of law decided by the Court of Appeals in this case that has not been, but should be, settled by this Court involves the proper interpretation of Iowa Code section 21.5(1)(i) ("Section 21.5(1)(i)"). *Cf.* Iowa R. App. P. 6.1103(1)(b)(2). Section 21.5(1)(i) contains an exception to Iowa's Open Meetings law, which allows a governmental body to hold a closed session to

[1] Plaintiff-Appellant Robert Teig ("Plaintiff") does not appear to dispute this fact, arguing in his opening brief in this appeal that the Iowa Supreme Court should retain this case because it "involves two issues of first impression that go to the heart of enforcement of Iowa's open meetings law." *See* Amended Brief of Appellant filed April 2, 2024, p. 7.

> evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

Iowa Code §21.5(1)(i)(2021). In the Opinion, the Court of Appeals decided Section 21.5(1)(i) requires a governmental body to identify specific damaging information about a job applicant prior to proceeding with a job interview in closed session as requested by the applicant.[2] This decision by the Court of Appeals is erroneous and reverses years of common practice and understanding of the Iowa Open Meetings law by governmental bodies across the State of Iowa. It also grafts a procedure onto the statute that is not supported by the language of the statute, is impractical, and is harmful to the very individual Section 21.5(1)(i) is meant to protect – the job applicant. *See Feller v. Scott Cnty. Civ. Serv. Comm'n*, 435 N.W.2d 387, 390 (Iowa Ct. App. 1988) (noting that Section 21.5(1)(i) is for the protection of the employee). Under the procedure mandated by the Opinion, job applicants will feel compelled to disclose personal information about themselves that has no relevance to a job interview, such as familial problems, mental health concerns, or disability issues, just to avoid the possibility that these issues will

[2] The Court of Appeals determined a limited closed session can be held to make inquiry into what damaging information exists, but the session must be reopened if no specific damaging information is ascertained after this initial inquiry. Opinion, pp. 11 – 12.

come to light during a public interview and damage the applicant's reputation. This is wholly unfair to the applicant.

The Court of Appeal's erroneous determination has far-reaching impacts. It will harm the recruiting and retention of qualified individuals to public employment by governmental bodies across the State of Iowa, as well as chill candid job interviews and performance evaluations of those individuals, thereby harming the public interest in qualified individuals serving in government positions. For example, the job applicant who requested the closed session interview at issue in this case, whom the District Court noted appeared on the record before it "to have been an exceptional hire," testified at trial that she would not have applied for the position if she had known her interview would be public. D0260, Trial Tr. (Day 1) at 135:19-20 and 165:11-15 (9/13/2023); D0248, Findings of Fact, Conclusions of Law, Analysis and Ruling at 13 (12/3/2023). It is reasonable to conclude that other qualified job applicants will feel the same way and, faced with either disclosing all the damaging information about themselves to their potential employer prior to the start of their job interview or proceeding with a public interview at their peril, will simply not apply for open government positions.

In addition to job interviews, Section 21.5(1)(i) also applies to performance evaluations of current employees conducted by governmental bodies, and it is also

reasonable to conclude that some current government employees, faced with either having to disclose to their employer all the concerns they have going into their performance evaluations or proceed with the evaluation in open session at their peril, will decide to just seek employment elsewhere. Likewise, governmental bodies, in fear of either harming the employee or inadvertently violating the open meetings law, will simply shift the responsibility for employee evaluations to staff who are not subject to the open meetings law or fail to perform evaluations of the employees they directly supervise at all, thereby depriving the public of accountability for those employees as well as the benefit of honest evaluations.

For all of the foregoing reasons, this case presents an issue of broad public importance that this Court should ultimately determine, as well as an important question of law that has not been, but should be, settled by this Court. *See* Iowa R. App. P. 6.1103(1)(b)(2) & (4). This Court should grant further review, vacate the Court of Appeal's decision that Defendants violated Iowa's Open Meetings Law, and affirm the District Court's dismissal of Plaintiff's case in its entirety.

Brief in Support of Request for Further Review

I. Procedural Background

On May 28, 2021, Plaintiff filed his civil petition alleging Defendants-Appellants ("Defendants") violated Iowa Code Chapter 21 ("Chapter 21") when they held a closed meeting pursuant to Section 21.5(1)(i) to interview a candidate

for the position of Cedar Rapids City Clerk on April 29, 2021. D0001, Petition (At Law) at 9 (5/28/21). Following a bench trial, the District Court entered a ruling in which it found Defendants did not violate Chapter 21 and dismissed Plaintiff's case. D0248 at 13. Plaintiff appealed that ruling and this Court transferred Plaintiff's appeal to the Court of Appeals, which then set oral argument for October 9, 2024. Unfortunately, due to no error on the part of Defendants, Counsel for Defendants was not aware of the October 9, 2024 oral arguments until minutes before the arguments were scheduled to start and was, therefore, unable to personally appear at the arguments. Counsel for Defendants spoke to Court Administration and inquired about participating telephonically instead, as permitted by Iowa Rule of Appellate Procedure 6.908(3), but the Court of Appeals proceeded with oral argument from Plaintiff only, noting the Clerk of Court had confirmed notice of the arguments was sent to Defendants' counsel of record. On December 4, 2024, the Court of Appeals entered a decision, which has now been vacated and replaced by the Opinion.

II. Factual Background

On April 29, 2021, the Cedar Rapids City Council (the "City Council") held a special session (the "Special Session") to interview Alissa Van Sloten ("Ms. Van Sloten"), a candidate for the vacant Cedar Rapids City Clerk position. At the time of the Special Session, Ms. Van Sloten was serving as Interim City Clerk for the

City of Cedar Rapids (the "City"), Defendant Brad Hart was Mayor of the City, and the remaining six Defendants were members of the nine-member City Council. Prior to the Special Session, Ms. Van Sloten requested her interview be conducted in closed session pursuant to Section 21.5(1)(i). Defendants Brad Hart, Tyler Olson, Patrick Loeffler, Dale Todd, Scott Olson, and Ashley Vanorny voted affirmatively to close the Special Session pursuant to that Code section, as requested by Ms. Van Sloten. Defendant Ann Poe arrived after the vote had been taken and the Special Session had been closed.

At the time of the vote to close the Special Session, Defendants were aware of the following facts: (1) an employment interview was about to be conducted (Plaintiff's Trial Exhibit 2 at approx. :20 (9/13/2023 trial)(no docket number); (2) there was a set of planned questions, but the follow-up questions to be asked by the Councilmembers, answers to be given by Ms. Van Sloten, and opinions or critiques of Ms. Van Sloten to be conveyed by the other Councilmembers during the interview were unknown (D0260 at 86:24 – 89:25 & 186:1 – 187:4; D0261 at 253:18 – 254:10, 283:18 – 284:1, 305:24 – 306:21, 321:12 – 321: 24, & 336:1-20); (3) based upon the prior experiences of Defendants, employment interviews can, and sometimes do, result in the unexpected and unpreventable disclosure of damaging information about the applicant (D0260 at 90:24 – 93:20, 184:13 – 185:14, 187:5 – 188:18 & 195:16 – 196:3; D0261 at 254:20 – 255:7, 284:2 – 15,

304:16 – 305:23, 322:3 – 323:22, & 336:21 – 337:13); and (4) if the Special Session were not closed, it would be broadcast publicly on Facebook and available for viewing through the City Clerk's office (D0260 at 167:12 – 168:14; D0261 at 261:12; D0226, Defendants' Trial Exhibit J at 1 (9/14/2023)).

III. Argument

A. The Opinion imposes requirements for holding a closed meeting pursuant to Section 21.5(1)(i) that are not supported by law and are unnecessary

Section 21.5(1)(i) contains no requirement that any sort of factual record be made in open or closed session as to why closure is necessary, nor does it require the governmental body possess any particular piece of information or recite any particular findings in order to exercise its discretion to close a job interview or keep it closed. The Opinion, at page 7, acknowledges that "Section 21.5(1)(i) contains no requirement that a factual record be made in open session as to why closure is necessary[,]" but nevertheless creates such a requirement once the governmental body is in closed session. The Opinion requires that, once in closed session, the governmental body inquire into the reason a closed session is necessary. Opinion at pp. 11 - 12. In other words, in the Court of Appeal's view, the governmental body must essentially conduct a fact-finding hearing before commencing the interview itself, in order to obtain from the applicant any damaging information that exists about the applicant. This requirement is absent

for the language of Section 21.5(1)(i) and is contrary to the purpose of Section 21.5(1)(i), as it harms the very person the statute is meant to protect. *See Feller*, 435 N.W.2d at 390 (noting that Section 21.5(1)(i) is for the protection of the employee). As stated previously, it also harms the public interest by deterring otherwise qualified applicants from applying for public employment, as well as deterring qualified employees from remaining in public employment. It also poisons the well for the job applicant at the start of the interview, and unfairly treats job applicants differently based on the information they possess.

The only requirement Section 21.5(1)(i) places upon a job applicant is that the applicant request a closed session, but the Opinion imposes an additional requirement that the applicant also disclose, once in closed session, the information harmful to their reputation, regardless of its relevance to the interview, without the benefit of knowing what questions will be asked during the interview. Requiring job applicants to predict questions and disclose information before it is asked for is unfair, unrealistic, and leads to an impractical and absurd result that is inharmonious with Iowa's Open Records Law (Iowa Code Chapter 22), a closely allied subject. *Cf. Albrecht v. General Motors Corp.,* 648 N.W.2d 87, 89 (Iowa 2002) ("We presume that when the legislature enacts a statute that it intends '[a] just and reasonable result.' Accordingly, the court interprets statutes so as to avoid absurd results. In addition, we 'construe statutes that relate to the same or closely

allied subject together so as to produce a harmonious and consistent body of legislation." (quoting *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 578 (Iowa 2000)); *Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529, 532 (Iowa 1980) (noting that the Court "seek[s] to avoid interpretations [of statutes] that would produce strained, impractical or absurd results."). In Iowa's Open Records Law, the Iowa Legislature has largely exempted job applications from disclosure to the public, without regard to the content of the particular job application. *See* Iowa Code §22.7(18); *Teig v. Chavez,* No. 23-0833, 2024 WL 2869282 at *8 (Iowa June 7, 2024) (noting that job applications received from external candidates are exempt from disclosure to the public under Iowa Code section 22.7(18)). There is simply no reason to think the Iowa Legislature would broadly exempt an employment application from public disclosure, without requiring that it contain any harmful information, but then narrow those situations where the applicant's employment interview can be closed from the public to only those situations where specific harmful information about the applicant can be identified at the start of the meeting.[3] If anything, a detailed employment interview is more likely to result in harmful information being disclosed than an employment application.

[3] The Iowa Legislature also cannot have intended to keep an employee's written performance evaluation and other personnel records confidential, as provided for

The Opinion's enlargement of Section 21.5(1)(i)'s requirements is not only improper – it is unnecessary. As occurred in this case, a governing body can make the determination that a closed session is necessary to prevent needless and irreparable injury to an applicant's reputation without requiring the applicant disclose, either in open session or closed session, specific damaging information that is of concern to the applicant. Multiple different factors that were apparent to Defendants at the time of the vote to close the session were testified to at trial, including but not limited to the facts that: (1) based upon the personal knowledge and experience of each Councilmember, interviews can be unpredictable and result in the disclosure of damaging information (D0260 at 90:24 – 93:20, 184:13 – 185:14, 187:5 – 188:18 & 195:16 – 196:3; D0261 at 254:20 – 255:7, 284:2 – 284:15, 304:16 – 305:23, 322:3 – 323:22, & 336:21 – 337:13); (2) the follow-up questions to be asked by the Councilmembers were unknown, as were the answers that would be provided by the applicant (D0260 at 86:24 – 88:22 & 186:1 – 186:20; D0261 at 253:18 – 254:2, 283:18 – 283:23, 305:24 – 306:3, 306:19 – 306:21; 321:16 – 321:18, & 336:1 – 336:14); (3) the applicant was a current employee and her interview had the very real potential to turn into a critique of her

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in Iowa Code section 22.7(11), but make the oral performance evaluation public unless the employee can articulate a piece of specific harmful information of concern.

past performance (D0260 at 124:12 – 125:10, 128:16 – 129:16, 146:9 – 147:7, & 188:19 – 189:20; D0261 at 284:17 – 285:16 & 306:22 – 307:13); and (4) the opinions as to the applicant's past performance to be conveyed by each Councilmember during the interview were unknown to the other Councilmembers (D0260 at 88:23 – 89:25 & 186:21 – 187:4; D0261 at 254:3 – 254:10, 283:24 – 284:1, 306:4 – 306:18, 321:19 – 321: 24, & 336:15 – 336:20). These factors, and the others testified to at trial, made closure of the interview necessary to prevent needless and irreparable injury to the applicant's reputation even if no particular harmful information about the applicant was known or ultimately revealed during the interview.

The Opinion acknowledges that "[t]he government entity must exercise discretion when considering whether to close a meeting" and that a court will "only find the governmental body abused its discretion when 'it is exercised on clearly untenable grounds or to a clearly unreasonable extent.'" Opinion, pp. 7 & 9. At a minimum, Defendants' decision to close the meeting in this case was not exercised on "clearly untenable grounds" or "to a clearly unreasonable extent" given each Councilmember's own experience with conducting employment interviews, and the Opinion's finding to the contrary constitutes error.

B. The Opinion overlooks the fact that Defendants relied on more than just the applicant's request to close the session in making their decision to close the session

It appears the Opinion proceeded under the assumption that Defendants voted to close the session at issue based solely on the fact the applicant requested a closed session, without making any determination that closing the session was necessary to prevent needless and irreparable injury. This is not the case. Each of the Defendants testified regarding their individual experiences with job interviews and the fact that damaging information can, and at times does, come out unexpectedly during job interviews. They also testified that they did not know all of the questions that would be asked, answers that would be given by the applicant, or comments that would be made by their fellow Councilmembers. The fact that the applicant requested a closed session to prevent needless and irreparable injury to her reputation played a part in Defendants' decision to close the meeting, but it was not the only basis for that decision. Defendants' decision that closing the session was necessary was also informed by each of their past experiences and concerns as to what might transpire during the interview.

The Opinion notes "[a]nd while it is difficult to ascertain what exactly would come up during an interview, such is the case in every interview. Something more than mere possibility is required – otherwise every interview could be kept closed upon request." Opinion, p. 11. This is not accurate, but even if it were, an

applicant is in the best position to determine what will be harmful to the applicant's reputation and the request to enter closed session to protect the applicant's reputation should be sufficient given that Iowa Code § 21.5(1)(i) was enacted to protect the applicant. Neither the Council nor the public are the ones who suffer the irreparable harm, and the applicant should not have to waive their right to protect their reputation as they see fit simply because they applied for government employment. Applicants with health issues, familial problems, or any other personal or professional concerns should not be dissuaded from applying or punished for doing so.

C. The Opinion misinterprets this Court's opinion in *Feller II*

The District Court expressed concern that Plaintiff's interpretation of Section 21.5(1)(i), which was adopted in the Opinion, "could lead to some strained, impractical or absurd results[,]" including "a meeting being closed and reopened multiple times based on what questions were asked." D0248 at 10. The Opinion fails to give any serious consideration to this concern, asserting that "our case law already recognizes that such fluidity in coming in and out of open and closed session is not impractical or absurd." Opinion, p. 12. The Opinion relies on *Feller v. Scott County Civil Service Commission*, 482 N.W.2d 154, 155-56 (Iowa 1992) ("*Feller II*"), in support of this assertion, citing its "fact pattern in which a

county commission entered and exited multiple closed sessions." Opinion, p. 12. Such reliance by the Court of Appeals is misplaced.

The process of entering, leaving, and re-entering closed session was not central to the holding in *Feller II*, and in fact was mentioned only in the "Factual Background" portion of the decision.[4] *Feller II*, 482 N.W.2d at 155-56. The Civil Service Commission in that case entered closed session twice, each time to address a *different* issue: it first went into closed session to address Mr. Feller's request for a closed hearing, returned to open session to deny that request, and then re-entered closed session following Mr. Feller's separate request for a continuance, which the Commission also ultimately denied after returning again to open session. Thus, *Feller II* does not serve as an example of a situation in which a public body entered closed session and returned to open session multiple times within its consideration of a singular employment-related issue. In other words, Mr. Feller's situation was simply not the type of situation alluded to in the Opinion, where a public body "fluid[ly]come[s] in and out of open and closed session" based on individual questions and answers while conducting an interview under Iowa Code § 21.5(1)(i). *Feller II* also did not involve a situation where, as in this case, the open portion of the meeting was being livestreamed on social media. The world and the

[4] Notably, the process of entering, leaving, and re-entering closed session was not even mentioned in *Feller I*, the predecessor to *Feller II*.

way public meetings are conducted has changed significantly since 1986 when the Commission in *Feller II* held its meeting, and it is no longer as simple as just walking to a different room every time the meeting is closed or reopened.

In addition to *Feller II* being distinguishable from the situation in this case, it is crucial to note the *Feller II* court did not examine the propriety, practicality, or relative ease of entering and leaving open and closed session multiple times under Iowa Code § 21.5(1)(i). The words "impractical" and "absurd" do not appear in the *Feller II* opinion, nor does any analysis of the propriety of the Commission having entered closed session multiple times under the facts of that case. 482 N.W.2d 154. In fact, the case largely centers on the "law of the case" doctrine and the implications of *Feller I* on remand, and contains hardly any original examination of Iowa Code § 21.5(1)(i) at all. *Id.* Thus, to the extent the Opinion relies on *Feller II* as precedent for refuting the District Court's conclusion that having to come in and out of open and closed session based on individual questions and answers in an interview could yield an impractical or absurd result, such reliance is unwarranted.

Moving in and out of closed session multiple times during a single meeting is not a realistic or feasible expectation to have of governmental bodies, particularly considering the varying degrees of public meeting experience and sophistication among the multitude of governmental bodies across the state. Even

if it were feasible to come in and out of open and closed session based upon the questions asked, doing so would not protect the applicant. Once the question is asked and the session is closed as a result of the question, it is too late. The public will deduce the information being disclosed in closed session is reputationally-injurious, and may even assume the information being disclosed is worse than it actually is. In this new digital age, such deductions can cause just as far-reaching harm as the actual information itself. If a session can be closed only if there is specific harmful information about the applicant, every time a decision is made to close the session, it will be an implicit acknowledgement of the existence of that harmful information, with its own irreparable injury. Such a procedure would also result in a very difficult interview environment for the applicant. This cannot be what the Iowa Legislature intended. The applicant should be the only person deciding what will and will not harm the applicant's reputation, which the applicant does by requesting a closed session, and that should be enough.

Conclusion

For the foregoing reasons, further review should be granted, the decision of the Court of Appeals that Defendants violated Iowa's Open Meetings Law should be vacated, and the District Court affirmed with entry of dismissal of Plaintiff's claims in their entirety.

Request for Oral Argument

Defendants request to be heard orally in this matter.

Respectfully submitted,

/s/ Patricia G. Kropf

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ATTORNEY FOR DEFENDANTS-APPELLEES

Certificate of Filing

The undersigned hereby certifies that this Application for Further Review was electronically filed via the Iowa Supreme Court's Electronic Document Management System (EDMS) on the 9th day of January, 2025.

/s/ Candace Erickson
Candace Erickson

Certificate of Service

It is hereby certified that on the 9th day of January, 2025, the undersigned did file via EDMS the foregoing document, which gives notice thereof to Plaintiff.

/s/ Candace Erickson
Candace Erickson

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation for an Application for Further Review

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

The application has been prepared in a proportionately spaced typeface using Times New Roman in 14-point font and contains 3,859 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(5)(a).

/s/ Patricia G. Kropf January 9, 2025
Patricia G. Kropf Date