

IN THE SUPREME COURT OF IOWA

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NO. 23-1220

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AMIE VILLARINI,  
Plaintiff-Appellant/Cross-Appellee,

vs.

IOWA CITY COMMUNITY SCHOOL DISTRICT,  
Defendant-Appellee/Cross-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR JOHNSON COUNTY  
THE HONORABLE ANDREW CHAPPEL, DISTRICT JUDGE

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APPELLEE IOWA CITY COMMUNITY  
SCHOOL DISTRICT'S RESISTANCE TO  
APPLICATION FOR FURTHER REVIEW FROM  
COURT OF APPEALS OPINION FILED OCTOBER 30, 2024

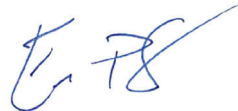
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Erek P. Sittig AT0007271  
Crystal K. Raiber AT0009768  
PHELAN TUCKER LAW LLP  
321 E Market St  
PO Box 2150  
Iowa City, Iowa 52244  
(319) 354-1104 telephone  
(319) 354-6962 facsimile  
sittig@phelantuckerlaw.com  
ATTORNEY FOR  
APPELLEE/CROSS-  
APPELLANT  
IOWA CITY COMMUNITY  
SCHOOL DISTRICT

## CERTIFICATE OF FILING AND SERVICE

I, EreK P. Sittig, hereby certify that I filed this Resistance to Application for Further Review through the 2<sup>nd</sup> day of December, 2024.

I further certify that I served this Resistance to Application for Further Review on all parties by filing it through the Iowa Judicial Branch Electronic Document Management System on the 2<sup>nd</sup> day of December, 2024.



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Erek P. Sittig  
Attorney for Appellee/Cross-  
Appellant Iowa City  
Community School District

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**ISSUE PRESENTED FOR REVIEW**

- I. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DISTRICT COURT'S GRANT OF DEFENDANT/APPELLEE'S MOTION FOR SUMMARY JUDGMENT

## ARGUMENT

### I. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DISTRICT COURT'S GRANT OF DEFENDANT/APPELLEE'S MOTION FOR SUMMARY JUDGMENT

As has been well-documented in this case, students attended the April 12, 2022, meeting of the ICCSD Board of Directors and made comments about their tennis coach,<sup>1</sup> never mentioning Aimee Villarini by name.<sup>2</sup> As it has done with virtually every meeting for many years, ICCSD posted unedited video of the meeting to YouTube.<sup>3</sup> Ms. Villarini eventually sued ICCSD for defamation.

ICCSD moved for summary judgment arguing, among other things, that a government entity posting unedited video of its public meetings on YouTube does not give rise to an actionable defamation claim because the government entity is not making a “statement” as that term is understood with regard to defamation.<sup>4</sup> ICCSD noted *Johnson v. Nickerson*, which lays out Iowa’s rules related to media liability for defamation under current First Amendment

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<sup>1</sup> Brief of Appellee/Cross-Appellant at 12.

<sup>2</sup> Ct. Appeals Opinion at 4, fn 2.

<sup>3</sup> Brief of Appellee/Cross-Appellant at 12.

<sup>4</sup> Brief of Appellee/Cross-Appellant at 16.

standards set by the U.S. Supreme Court, positing that surely something similar would apply in this situation.<sup>5</sup>

The District Court agreed that ICCSD did not make the statements, in a literal sense, but appears to have decided that posting the meeting video on YouTube was a “republication” of the statements for defamation purposes.<sup>6</sup> Ultimately, though, the District Court found a number of reasons supporting the idea that ICCSD should not be held responsible for any damages to Ms. Villarini.<sup>7</sup> The Court of Appeals affirmed, relying solely on the Fair Reporting Privilege, which was one of the handful of theories the District Court found persuasive.<sup>8</sup>

While ICCSD did not specifically raise the Fair Reporting Privilege as a defense in its original answer, the Iowa Supreme Court has held that an affirmative defense may be first raised on summary judgment.<sup>9</sup> And the

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<sup>5</sup> *Johnson v. Nickerson*, 542 N.W.2d 506, 511 (Iowa 1996).

<sup>6</sup> “Given that the District did not make the statements, Villarini must rely on the idea that its republishing of those statements in its minutes and on its YouTube channel created an independent claim of defamation against it.” Ruling on Motion for Summary Judgment and Motion to Amend at 10.”

<sup>7</sup> Ruling on Motion for Summary Judgment and Motion to Amend at 7-13.

<sup>8</sup> Ct. Appeals Opinion at 9-14.

<sup>9</sup> “[A] defendant may first raise an affirmative defense in a motion for summary judgment as long as the plaintiff is not prejudiced.” *McElroy v. State*, 637 N.W.2d 488, 497 (Iowa 2001).

Vermont Supreme Court recognized that the court may raise affirmative defenses *sua sponte*.<sup>10</sup> Ms. Villarini should have preserved her claim that the Fair Reporting Privilege was not sufficiently pled by filing a motion to reconsider after the District Court entered its Ruling,<sup>11</sup> but did not.

ICCSD pled in its answer and raised in its motion its status as a government entity subject to Iowa's open meetings requirements, and discretionary function immunity under Section 670.4(1)(c) of the Code of Iowa, as supporting its summary judgment claim.<sup>12</sup> In addition, ICCSD claims immunity under Section 670.4A of the Code of Iowa.<sup>13</sup> The grant of summary judgment may be affirmed on any grounds raised in the District Court.<sup>14</sup>

Finally, if we assume posting video to YouTube makes ICCSD a media defendant, the modifications to liability under *Johnson v. Nickerson* would

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<sup>10</sup> “[A] trial court may in certain instances identify affirmative defenses *sua sponte*, particularly where its validity is not dependent on issues of fact.” *Pease v. Windsor Dev. Rev. Bd.*, 35 A.3d 1019, 1028 (Vermont 2011)..

<sup>11</sup> “[I]f the movant has failed to establish its claim and the court nevertheless enters judgment, the nonmovant must at least preserve error by filing a motion following entry of judgment, allowing the district court to consider the claim of deficiency.” *Bill Grunder's Sons Const., Inc. v. Ganzer*, 686 N.W.2d 193, 197 (Iowa 2004).

<sup>12</sup> Answer of Defendant Iowa City Community School District at 3-4; Brief in Support of Defendant's Motion for Summary Judgment at 3-6.

<sup>13</sup> See Brief of Appellee/Cross-Appellant, Section II.E.

<sup>14</sup> *Olson v. Sumpter*, 728 N.W.2d 844, 850 (Iowa 2007).



squarely apply.<sup>15</sup> All of this weighs against the Supreme Court intervening in this case.

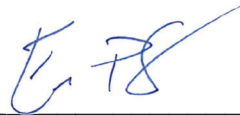
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<sup>15</sup> *Johnson v. Nickerson*, 542 N.W.2d 506, 511 (Iowa 1996).

## CONCLUSION

Regardless of what grounds the District Court and Court of Appeals relied upon to grant and affirm the Motion for Summary Judgment, all the grounds raised by ICCSD support the ultimate outcome. Even if the Court of Appeals relied on grounds that were not properly considered, the outcome was correct and this case does not require the Supreme Court's intervention.

As the Court of Appeals noted in its opinion, “[i]gnoring a legally correct ground for summary judgment that was relied on by the district court would serve no purpose and only delay the inevitable dismissal of the suit and waste both the parties’ and judicial resources.”<sup>16</sup> The Court should deny Ms. Villarini’s Application for Further Review.



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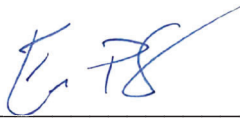
Erek P. Sittig AT0007271  
Crystal K. Raiber AT0009768  
PHELAN TUCKER LAW LLP  
321 E Market St  
PO Box 2150  
Iowa City, Iowa 52244  
(319) 354-1104 telephone  
(319) 354-6962 facsimile  
sittig@phelantuckerlaw.com  
ATTORNEY FOR APPELLEE/CROSS-  
APPELLANT  
IOWA CITY COMMUNITY  
SCHOOL DISTRICT

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<sup>16</sup> Ct. Appeals Opinion at 9, fn 3.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

1. This Resistance to Application for Further Review complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 825 words, excluding the parts exempted by Iowa R. App. P. 6.903(1)(i)(1).
2. This Resistance to Application for Further Review complies with the typeface requirements Of Iowa R. App. P.(1)(g)(1) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 and Times New Roman 14-point font.



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Signature

December 2, 2024

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Date