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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 26-0048

CERRO GORDO COUNTY CASE NO. LACV073922

KATHLEEN MCENELLY,

Plaintiff-Appellant,

v.

MERCY HEALTH SERVICES-IOWA CORP. d/b/a MERCYONE NORTH IOWA MEDICAL CENTER, TRINITY HEALTH CORPORATION, and BRITTANY ERICKSON,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
THE HONORABLE BLAKE H. NORMAN

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ISSUES PRESENTED

I. Whether The District Court Correctly Granted Summary Judgment in Applying Longstanding Iowa Law and Holding That the Iowa Civil Rights Act Requires McEnelly to Prove She Engaged in Protected Activity.

II. Whether the District Court Correctly Granted Summary Judgment on McEnelly's ICRA Retaliation Claim Where the Undisputed Facts Establish That McEnelly Never Opposed Unlawful Discrimination or Participated in Any Proceeding Under Chapter 216.

III. Whether the District Court Correctly Granted Summary Judgment Where No Genuine Issue of Material Fact Existed Over the Question of Whether McEnelly Engaged in Protected Conduct and Thereby She Failed to Produce Evidence Establishing the First Element of Her Prima Facie Retaliation Case.

ROUTING STATEMENT

This case should be routed to the Iowa Court of Appeals as the issues presented require a straightforward application of law within the meaning of Iowa R. App. P. 6.1101(3)(*a*).

NATURE OF THE CASE

Plaintiff, Kathleen McEnelly, appeals from a district court order granting Defendants MercyOne's[1] motion for summary judgment on McEnelly's claim of retaliation under the Iowa Civil Rights Act (ICRA), Iowa Code § 216.11(2). (D0061, S.J. Ruling (10/29/2025); D0066, Not. of Appeal (1/8/2026)).

MercyOne moved for summary judgment on September 18, 2025, because McEnelly could not establish her prima facie case. (D0041, M.S.J. (9/18/2025)). The district court concluded "the undisputed material facts show that Plaintiff cannot prove she engaged in statutorily protected conduct," and therefore granted MercyOne's motion. (D0061 at 1).

McEnelly moved to reconsider, enlarge, or amend arguing there was evidence MercyOne "believed" they were firing McEnelly for engaging in protected activity. (D0062, Mot. to Reconsider (11/13/2025)). MercyOne resisted that motion, and the district court denied it finding

[1] Defendants Mercy Health Services-Iowa Corp. d/b/a MercyOne North Iowa Medical Center, Trinity Health Corporation, and Brittany Erickson will be collectively referred to as "MercyOne" except where Erickson is referenced individually.

summary judgment was proper. (D0063, Rest. to Mot. to Reconsider (11/21/2025); D0065, Order on Mot. to Reconsider (12/10/2025)). This appeal followed. (D0066).

STATEMENT OF THE FACTS

McEnelly was a clinic manager for MercyOne overseeing three medical clinics in north Iowa. McEnelly Dep. at 11-12 (D0040, M.S.J. App. at 4-5 (9/18/2025)). As a clinic manager, her job description required her to maintain confidential information, and she was responsible for enforcing MercyOne's confidentiality policies. (D0040 at 27); McEnelly Dep. at 59 (D0040 at 10). McEnelly repeatedly signed confidentiality agreements and policies promising to keep MercyOne's confidential information confidential. (D0040 at 33, 34, 40). McEnelly knew keeping confidential information confidential was part of her job. McEnelly Dep. at 56 ("Q: During your employment with Mercy, did you understand you had certain confidentiality obligations? A: Yes.") (D0040 at 8).

A. McEnelly's Previous Discipline for Confidentiality Breach

In 2013, MercyOne disciplined McEnelly for breaching her confidentiality obligations. McEnelly Dep. at 60 (D0040 at 11). As McEnelly explained it, following a "bad breakup," she used MercyOne's patient database to look up a phone number of someone she suspected was making hang-up calls to her work number. McEnelly Dep. at 61 (D0040 at 12). After looking up the phone number, she sent a text to her former boyfriend asking if she "needed to be tested." *Id.* The individual

complained that McEnelly looked at her medical records. (D0040 at 43). McEnelly admitted she looked up the phone number and knew she should not have done so. McEnelly Dep. at 61 (D0040 at 12). Following investigation, MercyOne concluded McEnelly accessed demographic information, not medical information. McEnelly Dep. at 66 (D0040 at 14); (D0040 at 45). Accordingly, MercyOne gave McEnelly a suspension and told her: "This is a first and final warning. This will remain in Kathy's employment record for the rest of her employment. Any other incidents may be related to privacy or confidentiality breach will result in immediate termination." (D0040 at 45). McEnelly understood "if this happens again, then that would be immediate termination." McEnelly Dep. at 62 (D0040 at 13).

B. McEnelly's Second Confidentiality Breach Leads to Termination.

On August 29, 2022, MercyOne terminated an employee named Kristin Flatness. McEnelly Dep. at 159-60 (D0040 at 15-16). McEnelly learned the same day or the next morning from Flatness that she had been terminated. McEnelly Dep. at 160 (D0040 at 16). McEnelly did not discuss the situation with anyone other than a co-worker she supervised. McEnelly Dep. at 160-61 (D0040 at 16-17).

On September 14, 2022, McEnelly and Flatness had lunch. McEnelly Dep. 161-62 (D0040 at 17-18). During lunch, they discussed Flatness's termination, Flatness's belief that her FMLA had not expired, and McEnelly's surprise that Flatness was not paid severance. McEnelly Dep. at 162-63 (D0040 at 18-19). McEnelly described the relevant conversation:

> I do not honestly remember if I asked her if she got severance or if she said she didn't get severance. Maybe I asked her did they give you severance and she said no and I said what. She said no, nothing. And I said well, that seems weird to me. I said honestly, I thought almost everybody got severance for any reason, not just -- that seems like what has happened. I said I'm surprised at that. So we talked about that a little bit. That's all I recall.

McEnelly Dep. at 162-63 (D0040 at 18-19). McEnelly did not talk to her Director, Brittany Erickson, or anyone in Human Resources about Flatness when Flatness was terminated or after the lunch. McEnelly Dep. 164-65 (D0040 at 20; D0043, Sealed M.S.J. Appendix at 35 (9/18/2025)).

Around the same time as the lunch, MercyOne was corresponding with Flatness, who was seeking severance.[2] (D0040 at 46-47). In one of

[2] MercyOne agrees with McEnelly's description of how the term "severance" is used in this context.

her emails, Flatness referenced information about a recent termination where the employee received a severance payment. (D0040 at 46). The employee referenced in Flatness's email reported to McEnelly. Herron Dep. at 41-42 (D0043 at 37-38). MercyOne agreed to pay Flatness severance before it ever discussed the issue with McEnelly.[3]

On the afternoon of September 30, 2022, Erickson and Human Resources Representative Emily Herron met with McEnelly to probe how Flatness knew the information. Herron Dep. at 35-36 (D0040 at 50-51); McEnelly Dep. at 166 (D0040 at 21). MercyOne, not McEnelly, brought up questions about Flatness. McEnelly Dep. at 166-67 (D0040 at 21-22). They asked McEnelly whether she provided information about the recent termination and severance payment to Flatness. Herron Dep. at 35-36 (D0040 at 50-51); McEnelly Dep. at 166 (D0040 at 21). MercyOne's notes, which McEnelly confirms are accurate, summarize the conversation:

[3] McEnelly Dep. at 166 (D0040 at 21) (describing conversation regarding Flatness taking place September 30, 2022); (D0040 at 46-47) (agreement to pay Flatness severance on September 26, 2022).

Hi Kathy- I was just made aware of a different HR issue (re: a different colleague). I'm going to have Emily hop on with us at 1:00 quick - we'd like your input on the topic.

Info from a prior colleague on interal business issue – see if we can learn how this info made it outside of the info. In the email "PSR who was fired with severance pay"

Kathy – has heard nothing community. Message to other PSRs is that '[redacted] is no longer with us".

[redacted] herself told other co-workers that she left.

Have you had conversation with peers? Kathy mentioned that she's talked to other managers in generalities about having to fire a PSR.

Denies having discussed this with a prior colleague. Emily directly asked if she has had conversation with KF.

"would we have had lunch that day and talked about stuff" "did we have lunch before or after that?" 'may have mentioned having to let a PSR go?'

She's a friend outside of work and I guess I trusted her.

"im going to guess its related to her severance" I told her I can think of 3-4 instance over last 5 years where we paid severance .

KF talked to Kathy about her severance, Kathy gave experience that her employees have gotten it, denies giving the specific example to her of the LM PSR.

(App. 89); *see* McEnelly Dep. at 169-70 (D0040 at 56). McEnelly told MercyOne: "I just had lunch with Kristin to get her items. And I thought it was odd that she didn't get severance, but its none of my business." McEnelly Dep. at 167 (D0040 at 22). McEnelly "admitted that she had met with her and that …[Flatness] had commented she did not get severance. And then [McEnelly] said that was strange because that hadn't been [her] experience." McEnelly Dep. at 168 (D0040 at 23). McEnelly did not mention that she believed Flatness was discriminated or retaliated against for taking medical leave or requesting accommodations. *See* (D0040 at 56-57); McEnelly Dep. at 161-63, 166-

68, 170 (D0040 at 17-19, 21-23, 25). McEnelly did not raise any complaints about conduct she believed to be unlawful or illegal related to Flatness to Erickson, Herron, or Carrie Sorenson, Chief Human Resource Officer, the relevant decisionmakers in this case. McEnelly Dep. at 45-46 (D0043 at 8, D0040 at 6); McEnelly Dep. at 49-50 (D0043 at 10-11); McEnelly Dep. at 55 (D0043 at 12).

After the conversation, MercyOne placed McEnelly on suspension pending investigation of a potential confidentiality breach. McEnelly Dep. at 167 (D0040 at 22); (D0040 at 56-57). MercyOne considered the information McEnelly shared with Flatness regarding severance practices confidential business information. Herron Dep. at 52-54 (D0040 at 53-55). As part of its review, MercyOne reviewed McEnelly's file, which included her 2013 discipline for a confidentiality violation. Herron Dep. at 51-52 (D0040 at 52-53). Given that McEnelly's prior discipline provided, "[a]ny other incidents may be related to privacy or confidentiality breach will result in immediate termination," McEnelly's employment was terminated on October 5, 2022, for breach of MercyOne's confidentiality policy. (D0040 at 45, 59). Flatness filed a civil rights complaint nine months later on May 31, 2023. (D0040 at 64).

ARGUMENT

The district court correctly concluded that McEnelly did not engage in protected conduct and thus, did not have a claim for retaliation under the Iowa Civil Rights Act (ICRA). This issue is dispositive. McEnelly's arguments regarding disputes of fact are immaterial as none changes this fundamental failing. The district court's rulings should be affirmed.

II. THE IOWA CIVIL RIGHTS ACT REQUIRES A PLAINTIFF PROVE THEY ENGAGED IN PROTECTED ACTIVITY; MCENELLY DID NOT.

MercyOne agrees Plaintiff preserved error on the question of whether she engaged in protected activity and whether an employer's perception of protected activity is sufficient under the ICRA.

MercyOne agrees the appropriate standard of review of a district court's grant of summary judgment is for correction of errors of law. *Jahnke v. Deere & Co.*, 912 N.W.2d 136, 141 (Iowa 2018). Under Iowa law, on appeal from summary judgment, questions of statutory interpretation are reviewed for correction of errors of law. *Id.*; *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018). MercyOne disagrees that "[w]hether McEnelly's conduct constitutes statutorily protected activity under Iowa Code § 216.11(2) presents a legal question amenable to summary judgment only if no reasonable jury could find the conduct was

protected." Appellant Br. at 25. This is a question of statutory interpretation and thus, not for the jury. *Clay Cnty. v. Pub. Emp't Relations Bd.*, 784 N.W.2d 1, 4 (Iowa 2010) (recognizing that courts are charged with interpreting statutes as a matter of law).

A. The Iowa Civil Rights Act Requires Proof of Protected Activity, Which McEnelly Does Not Have.

Iowa's statutory framework and case law are clear. It is the plaintiff's burden in an ICRA retaliation case to show she engaged in protected conduct. Iowa Code § 216.11(2); *Selden v. Des Moines Area Cmty. Coll.*, 2 N.W.3d 437, 447 (Iowa 2024); *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 28 (Iowa 2021); *Godfrey v. State*, 962 N.W.2d 84, 106-07 (Iowa 2021). McEnelly did not meet her burden.

In *Rumsey* and *Godfrey*, the Court expressly defined and confirmed the plaintiff's burden in an ICRA retaliation case:

> A prima facie case of retaliation under the ICRA requires the plaintiff to establish (1) *he was engaged in statutorily protected activity*, (2) he was subjected to an adverse employment action, and (3) a causal connection between *his participation in the protected activity* and the adverse employment action.

Rumsey, 962 N.W.2d at 28 (citing *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 750 (Iowa 2006)) (italics added); *Godfrey*, 962 N.W.2d at 106-07. Thus, to establish retaliation, McEnelly must show she engaged in

statutorily protected conduct. She cannot meet that burden and none of her arguments change that outcome.

The ICRA mirrors Title VII[4], which has what are commonly referred to as the "opposition clause," requiring proof an employee opposed an unlawful employment practice, and the "participation clause," requiring proof the employee participated in an investigation, proceeding, or hearing under the applicable statute. Iowa Code § 216.11(2); *Brannum v. Missouri Dep't of Corr.*, 518 F.3d 542, 547 (8th Cir. 2008) ("The two clauses of this section typically are described, respectively, as the opposition clause and the participation clause." (internal citations omitted)); *Godfrey*, 962 N.W.2d at 107 (looking to statute and federal law to determine scope of protected activity); *Rumsey*, 962 N.W.2d at 28 (same). *See also Schoonover v. Schneider Nat. Carriers, Inc.*, 492 F. Supp. 2d 1103, 1151 (S.D. Iowa 2007) (analyzing Title VII and recognizing ICRA follows federal law). McEnelly seeks to invoke

[4] 42 U.S.C. § 2000e-3(a) ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees … because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.").

both the opposition and participation clauses but fails to demonstrate evidence supporting either.

1. McEnelly Did Not Oppose An Unlawful Employment Practice.

"Under the opposition clause, an employee engages in statutorily protected activity where the employee opposes conduct [she] reasonably believes constitutes unlawful discrimination." *Godfrey*, 962 N.W.2d at 107. McEnelly did not "oppose" anything. She had lunch with Flatness, and when Flatness said she did not receive severance, McEnelly expressed that it "seem[ed] weird" or "was strange." McEnelly Dep. at 163, 168 (D0040 at 19, 23); (D0055, Supp. M.S.J. Appendix at 7 (10/13/2025)). McEnelly then relayed parts of this conversation to MercyOne and told MercyOne it was "none of her business." McEnelly Dep. at 167-68, 170 (D0040 at 22-23, 25); (D0040 at 56). This is not protected conduct under clear Iowa law.

As the Court explained in *Godfrey*, although the plaintiff does not need to use "magic words," "protected opposition must at least alert an employer to the employee's reasonable belief that unlawful discrimination is at issue." 962 N.W.2d at 107 (internal citations omitted). Thus, Godfrey did not engage in protected activity when he

refused to sign a resignation letter and participated in meetings explaining his refusal to resign. *Id.* at 107-08. Finding no protected conduct, the Court explained, "Godfrey's sexual orientation was not raised in either meeting. Godfrey did not say or do anything that would have alerted the defendants Godfrey was making a complaint about or opposing unlawful discrimination." *Id.* at 108. Having failed to alert the defendants that he was "making a complaint about or opposing unlawful discrimination," the Court concluded "Godfrey's mere refusal to resign, without more, does not constitute protected activity." *Id.*

The same is true here. Nothing about McEnelly's conversation with MercyOne "alerted the defendants [McEnelly] was making a complaint about or opposing unlawful discrimination." *Id.* This is a unique case where the parties agree about what was said during their conversation. (D0040 at 56); *see* McEnelly Dep. at 169-70 (D0040 at 24-25). McEnelly did not mention that she believed Flatness was unlawfully discriminated against for taking medical leave or requesting accommodations. *See* (D0040 at 56-57); McEnelly dep 161-63, 166-68, 170 (D0040 at 17-19, 21-23, 25). She told them she "may have mentioned having to let a PSR go," she told Flatness she could "think of 3-4 instances over the last 5 years

where we paid severance," she thought it was "odd" or "strange" Flatness did not get severance, and it was "none of her business." (D0040 at 56); McEnelly Dep. at 167-70 (D0040 at 22-25). McEnelly does not allege that she reported conduct she believed to be unlawful. She says precisely the opposite. *See* McEnelly Dep. at 45-46 (D0043 at 8, D0040 at 6); McEnelly Dep. at 49-50 (D0043 at 10-11); McEnelly Dep. at 55 (D0043 at 12).

To the extent McEnelly and Flatness discussed Flatness's belief that she was terminated because of her FMLA or request for accommodation, it occurred during a private lunch between McEnelly and Flatness. *See* McEnelly Dep. 161-62 (D0040 at 17-18). Thus, such conversations could not "alert defendants" to anything. *Godfrey*, 962 N.W.2d at 108. Further, as the district court found, a causal reference to Flatness's FMLA[5] status is not sufficient to constitute opposition to unlawful conduct. (D0061 at 8); *see Brannum*, 518 F.3d at 548-59 (rejecting claim under opposition clause because opposition to offensive comment was not sufficient to be a reasonable belief of unlawful harassment). McEnelly never complained to MercyOne that Flatness

[5] Notably, if McEnelly had objected related to Flatness's FMLA status, any retaliation protections would arise under the Family Medical Leave Act, not the ICRA.

was unlawfully discriminated against or even advocated that Flatness should receive severance. *See* McEnelly Dep. at 45-46, 49-50, 55, 164-65 (D0043 at 8, 10-11, 1235; D0040 at 6, 20). She simply said it was "odd," "weird," or "strange" that Flatness did not receive severance and that it was "none of her business." McEnelly Dep. at 163, 167-168, 170 (D0040 at 19, 22-23, 25).

The ICRA's retaliation provision is designed "to let employees feel free to express condemnation of discrimination." *Godfrey*, 962 N.W.2d at 108 (quoting *Zokari v. Gates*, 561 F.3d 1076, 1082 (10th Cir. 2009)). "That purpose is hardly served by imposing sanctions upon employers who take action against employees who never communicate their concern about unlawful discrimination." *Id.* (quoting *Zokari*, 561 F.3d at 1082). McEnelly never "communicate[d] [her] concern about unlawful discrimination" (assuming she had one). Quite the opposite, she told MercyOne it was "none of her business." Thus, her conduct is not protected under the opposition clause. *Id.* at 107-08.

2. McEnelly Did Not Participate in Flatness's ICRA Claim.

Alternatively, McEnelly argues she engaged in protected activity under the participation clause by providing Flatness with information

Flatness subsequently used in her discrimination case. McEnelly's attempt to shoehorn a conversation with a friend over lunch into the participation clause fails. She did not engage in protected conduct.

In determining whether McEnelly's conduct is protected, the Court must "start with the language of the ICRA." *See Rumsey*, 962 N.W.2d at 34. The ICRA protects employees who have "filed a complaint, testified, or assisted *in any proceeding* under this chapter." Iowa Code § 216.11(2) (italics added). This language is often referred to as the "participation clause" of similar anti-retaliation provisions. *Brannum*, 518 F.3d at 547. As with its federal counterpart, the critical language is "any proceeding under this chapter." Iowa Code § 216.11(2). McEnelly wishes to ignore this language entirely claiming she "assisted" Flatness who *nearly a year later* filed an ICRA complaint.[6] McEnelly cannot simply ignore words in the statute that do not suit her case.

The ICRA does not protect merely sharing information that may one day "assist" a complaining party. The text is explicit. It prohibits discrimination or retaliation against someone who "assisted *in any proceeding* under this chapter." Iowa Code § 216.11(2) (italics added).

[6] Flatness filed her ICRC complaint on May 31, 2023. (D0040 at 64).

Similar language is present under Title VII: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees … because he has …assisted, or participated in any manner *in an investigation, proceeding, or hearing under this subchapter*." 42 U.S.C. § 2000e-3(a) (italics added). If anything, Title VII's participation clause may be slightly more expansive.[7]

Recognizing the critical language restricting the participation clause to proceedings (or investigations and hearings under Title VII) "under this chapter," courts recognize that the participation clause does not apply to conduct that happened *before* the formal complaint process begins. *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 49 (2d Cir. 2012) ("Every Court of Appeals to have considered this issue squarely has held that participation in an internal employer investigation not connected with a formal EEOC proceeding does not qualify as protected

[7] *Compare* 42 U.S.C. § 2000e-3(a) ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees … because he has … made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter") *with* Iowa Code § 216.11(2) ("It shall be an unfair or discriminatory practice for: … 2. Any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person … filed a complaint, testified, or assisted in any proceeding under this chapter.").

activity under the participation clause.").[8] *Brower v. Runyon*, is instructive. 178 F.3d 1002, 1006 (8th Cir. 1999). In *Brower*, the Eighth Circuit Court of Appeals found the "record in [sic] insufficient to show that [the plaintiff] participated in a proceeding or investigation under Title VII." *Id.* Unlike McEnelly, the plaintiff in *Brower* took far more steps to participate in formal proceedings. *Id.* Brower consulted with an EEO counselor, threatened to bring civil suit, and told her employer "something about going to the EEO or an attorney," but did not complain of illegal discrimination or imply that she had been treated unfairly because of any protected characteristic. *Id.* The court explained,

> [n]ot all discussions with individuals who are part of the Title VII grievance process or all informal complaints will amount to participation in a Title VII proceeding…. *At a minimum* there would have to be factual allegations of discrimination against a member of a protected group *and the beginning of a proceeding or investigation under Title VII.*

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[8] *See also Stoddard v. BE & K, Inc.*, 993 F. Supp. 2d 991, 1003 (S.D. Iowa 2014) ("Stoddard did not file a complaint with the ICRC until after her termination; therefore, whether or not she engaged in a protected activity must be analyzed under the opposition clause."); *Weiland v. El Kram, Inc.*, 233 F. Supp. 2d 1142, 1150 (N.D. Iowa 2002) (analyzing plaintiff's activity under the "'opposition' clause of Title VII, if at all, because she had not actually filed a complaint with the EEOC before she was fired").

Id. (italics added). Thus, the court concluded that Brower did not engage in the type of activity protected under the participation clause. *Id.* The same is true here. Even assuming McEnelly shared information with Flatness that proved helpful *nearly a year later*, there was no proceeding at the time McEnelly talked to Flatness, when she answered MercyOne's questions, or when she was terminated. Thus, the participation clause does not apply and McEnelly's conduct is not protected.

McEnelly argues her conduct should be protected under the participation clause because it *ultimately* was used in Flatness's complaint. McEnelly's reading of the participation clause must be rejected. Not only is such a reading directly contrary to the plain language of the statute, it makes "assistance" a Pandora's box of protected conduct. An employer has no way of knowing when co-workers are talking, potentially sharing information that may one day show up in a civil rights complaint. Even the employee at issue may not know they are "assisting" at the time. Indeed, given that Flatness did not file her claim for nearly a year after her lunch with McEnelly, McEnelly could not know at the time of her conduct that she was "assist[ing] *in any proceeding* under this chapter." Iowa Code § 216.11(2) (italics added).

While *opposing* discrimination is protected, merely sharing information that one day gets used in a proceeding is not. The textual constraint is necessary to ensure that the conduct is truly protected conduct and not merely what happened here—a lunch between friends. McEnelly did not engage in protected activity.

B. McEnelly's Attempt to Expand the Law Beyond the Statute by Looking at an Employer's Perception Must Be Rejected.

Recognizing she did not engage in protected conduct, McEnelly argues Iowa law should be expanded to include employees who did not engage in protected conduct if an employer believes they engaged in protected conduct. The Court should decline McEnelly's invitation to expand Iowa law beyond its statutory parameters.

As with any other statute, the Court must "start with the language of the ICRA." *See Rumsey*, 962 N.W.2d at 34. The ICRA does not look at what the employer *perceives*, but rather what the *employee did*:

> It shall be an unfair or discriminatory practice for: … 2. Any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter *because such person* has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

Iowa Code § 216.11(2) (emphasis added). The relevant actor under the statute is clear. The unlawful employment practice must be "because such person"—the employee—engaged in certain identified acts. This clear language is recognized in the elements of a prima facie case, which requires the employee prove they "engaged in statutorily protected activity" and a causal connection between "participation in the protected activity" and the adverse employment action. *Rumsey*, 962 N.W.2d at 28; *Godfrey*, 962 N.W.2d at 106-07. McEnelly's attempt to expand Iowa law beyond its statutory bounds rests on misguided comparisons to other statutes and claims, and thus, should be rejected.

First, McEnelly relies on cases under the First Amendment to argue that the employer's perceptions are controlling. Appellant Br. at 29. First Amendment case law is inapplicable here for numerous reasons. As explained above, McEnelly's case is rooted in statute, which defines the protected conduct. Iowa Code § 216.11(2); *see Godfrey*, 962 N.W.2d at 106-07; *Rumsey*, 962 N.W.2d at 28. Unlike the ICRA, First Amendment cases examine whether a constitutional "right" has been infringed by the employer's behavior, not whether a plaintiff has engaged in statutorily defined activity. *Heffernan v. City of Paterson, N.J.*, 578 U.S. 266, 271

(2016) (discussing whether a person is "depriv[ed]" of a "right ... secured by the Constitution" when they engage in an actual activity or when their supervisor believes they have engaged in an activity (internal citations omitted)). Thus, the question is not whether the employee engaged in an act giving rise to protections under the statute, but whether, by the employer's action, the employee's *right* to engage in an activity—exercising their First Amendment protections—has been infringed.

Critically, looking at the text of the First Amendment, the Supreme Court noted that it focuses on the *government's* activity, not the employee's activity. *Id*. at 273 (concluding it was the government's reason for action that mattered because the First Amendment "begins by focusing upon the activity of the Government" with "Congress shall make no law … abridging the freedom of speech."). Thus, unlike the statutory text of the ICRA, which looks at the employee's conduct, the text of the First Amendment looks to the government employer's conduct.

Finally, with the First Amendment, the Supreme Court considered the Constitution better served by focusing on the government's motives. *See id.* at 273-74. Here, Iowa's legislature in drafting Chapter 216.11(2), and the Court in interpreting it, focused on protection for the employee

who "express[es] condemnation of discrimination," recognizing the purpose of the law is "hardly served by imposing sanctions upon employers who take action against employees who never communicate their concern about unlawful discrimination." *Godfrey*, 962 N.W.2d at 108 (quoting *Zokari*, 561 F.3d at 1082). Thus, the fundamental purpose served is different. McEnelly's reading of the ICRA would be contrary to the Court's reasoning in *Godfrey* and provide protection to employees "who never communicate their concern about unlawful discrimination." Ultimately, First Amendment case law is inapplicable.

The same is true of McEnelly's attempts to draw analogies to other statutory and common law claims. First, McEnelly conflates the issue of protected conduct with the employer's motive and intent. For example, McEnelly cites *Scroggins v. University of Minnesota*, 221 F.3d 1042, 1044 (8th Cir. 2000) as support for her argument that the Eighth Circuit has adopted her employer perception theory. Appellant Br. at 30. In *Scroggins*, the plaintiff filed an EEOC complaint. *Id.* Thus, protected conduct was established. *Id.* The question before the court was one of causation – when the employer learned of the complaint and whether it was the cause of the employer's decision to terminate Scroggins. *Id.* at

1045. Ultimately, the court affirmed the district court's summary judgment order finding the plaintiff lacked sufficient evidence of causation. *Id.* *Scroggins* does not aid McEnelly's argument because (1) the employee engaged in protected conduct, and (2) here, MercyOne's motive is not relevant. The issue is not causation, as discussed more below, but whether McEnelly has established the first element of her prima facie case. She has not and thus her case fails.

Second, McEnelly's examples from other contexts are not helpful in interpreting the ICRA's retaliation provision. For example, McEnelly points to cases in the disability discrimination context arguing it "strongly supports" the employer perception standard. Appellant Br. at 31. As explained in the cases McEnelly cites, disability law is fundamentally different as it protects individuals "regarded as having" an impairment. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998) (explaining administrative rules define disability to include a person who is "regarded as" having an impairment); *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 62 (Iowa 1999) (analyzing "regarded as" disability claim under Iowa law). Iowa's legislature defined when the ICRA's retaliation provision applied requiring a showing that "such person" – the employee

– engaged in protected activity. Iowa Code § 216.11(2). Thus, unlike the disability context, there is no support for a "regarded as" retaliation claim.

Finally, McEnelly's examples where employer perception is considered do not represent the prevailing rule, are inconsistent with the plain language of the statute and Iowa law, and should be rejected. Like Iowa, the Eighth Circuit has held that to establish a prima facie case of retaliation, an employee must show the employer knew they personally engaged in protected activity. *Smith v. Riceland Foods, Inc.*, 151 F.3d 813, 819 (8th Cir. 1998); *Rumsey*, 962 N.W.2d at 28; *Godfrey*, 962 N.W.2d at 106-07. For example, in *Smith*, the plaintiff argued the employer likely believed plaintiff Thomas assisted plaintiff Smith in protected activity because they were significant others or, alternatively, that he should be protected from termination based on his significant other's protected activity. 151 F.3d at 818-19. The court rejected Thomas's claim reasoning (1) there was no evidence the employer knew he had engaged in protected activity, and (2) "the rule advocated by Thomas—that a plaintiff bringing a retaliation claim need not have personally engaged in statutorily protected activity if his or her spouse or significant other, who

works for the same employer, has done so—is neither supported by the plain language of Title VII nor necessary to protect third parties, such as spouses or significant others, from retaliation." *Id.* at 819. Thus, the court held, "a plaintiff bringing a retaliation claim under Title VII must establish that she personally engaged in the protected conduct." *Id.* This rule is consistent with Title VII's and the ICRA's plain language, which provide broad protection to employees who engage in protected activity and should be followed here. *Id.*

Iowa's controlling case law makes clear that McEnelly's conduct matters, not MercyOne's perception of that conduct. McEnelly did not engage in protected conduct, and the Court should decline her invitation to change Iowa law. Accordingly, summary judgment was proper, and the district court's rulings should be affirmed.

III. THE DISTRICT COURT CORRECTLY APPLIED THE LAW IN REQUIRING MCENELLY TO ESTABLISH PROTECTED CONDUCT IN RESPONSE TO SUMMARY JUDGMENT.

MercyOne's statements on standard of review and error preservation in Section I also apply to this section.

The district court correctly applied Iowa law in requiring McEnelly to show evidence that she engaged in protected conduct. As described

above, Iowa law requires McEnelly to show she either opposed discrimination or assisted "in any proceeding" under Chapter 216. McEnelly did not meet her burden and thus, the district court granted summary judgment. McEnelly argues a jury should decide whether her conduct was protected. It was not a question for the jury.

MercyOne's summary judgment motion presented a simple question: did McEnelly engage in protected conduct under the ICRA? (D0039, M.S.J. Br. at 1 (9/18/2025)). As is well established under Iowa law, summary judgment is the "put up or shut up moment in a lawsuit." *Slaughter v. Des Moines Univ. Coll. of Osteopathic Med.*, 925 N.W.2d 793, 809 (Iowa 2019) (internal quotations omitted). Thus, upon MercyOne's motion, McEnelly was required to provide evidence that she could meet her burden at trial and establish she engaged in protected conduct. As described above, the critical facts about what McEnelly did – and did *not* – say to MercyOne are undisputed.[9] Even now, McEnelly argues about what she believes MercyOne "knew" (Appellant Br. at 43), but she does not identify evidence that McEnelly "express[ed] condemnation of discrimination" as required by the opposition clause. *Godfrey*, 962

[9] (D0046, Resp. to Stmt. of Facts at 13, 16-19 (10/3/2025)).

N.W.2d at 108 (quoting *Zokari*, 561 F.3d at 1082). The district court looked at the evidence presented and concluded it did not meet the standard for protected conduct under Iowa law. This conclusion was correct and should be affirmed.

The district court did not apply a "magic word" requirement to establish protected conduct under the ICRA. McEnelly argues a jury could look at the circumstances and conclude "McEnelly questioned disparate treatment related to Flatness' protected leave and disability, thereby engaging in protected activity under the ICRA" (Appellant Br. at 43), or "McEnelly's language to MercyOne during the investigation indicated that she had concerns about Defendants' actions toward Flatness," (Appellant Br. at 44). The problem with McEnelly's argument is she did not question disparate treatment toward Flatness or raise concerns, and she certainly did not link any questions or concerns to Flatness's disability. While magic words are unnecessary, to meet her burden, McEnelly needed to show her "protected opposition" "at least alert[ed] [MercyOne] to [her] reasonable belief that unlawful discrimination is at issue." *Godfrey*, 962 N.W.2d at 107 (quoting *Brown v. United Parcel Serv., Inc.*, 406 F. App'x 837, 840 (5th Cir. 2010) (per

curiam)). McEnelly did not "express condemnation" of discrimination. *Id.* She commented about a situation related to payment of severance, how it compared to her prior experiences, and said it was "none of her business." (D0040 at 56); McEnelly Dep. at 167-70 (D0040 at 22-25). A jury could only find protected conduct by speculating that something happened beyond what the undisputed facts reflect. Of course, a case cannot be submitted to a jury on speculation. *Godfrey*, 962 N.W.2d at 103 ("[I]t is just as pernicious to submit a case to a jury and permit the jury to speculate with the rights of citizens when no question for the jury is involved, as it is to deny to a citizen his trial by jury when he has the right" (quoting *Easton v. Howard*, 751 N.W.2d 1, 6 (Iowa 2008))).

Even considering McEnelly's perception argument, the evidence does not support that MercyOne thought McEnelly was opposing discrimination or participating in a proceeding under Chapter 216. This is not a case where MercyOne may have thought McEnelly filed a claim or did something in secret—they knew exactly what McEnelly did because she told them. There was no confusion. The record reflects McEnelly said it was "strange" and "weird" that Flatness was not paid severance, that she was "surprised" MercyOne had not offered severance,

and that everyone she terminated received severance. Appellant Br. at 34. McEnelly simply did not oppose discrimination or participate in a claim. Even if MercyOne thought McEnelly might someday help Flatness with a claim (which they did not), that does not turn what McEnelly did into protected conduct.

Further, in trying to create a claim, McEnelly makes speculative leaps that are well beyond reasonable inferences, which is exactly the type of speculation the Court rejected in *Godfrey*. For example, she asserts MercyOne knew she was "implying there's something going on with [Flatness's] severance." *Id.* From this, McEnelly leaps to the conclusion that MercyOne must have concluded Flatness was claiming MercyOne was punishing her for taking FMLA leave and requesting disability accommodations. *Id.* Such a leap is not supported. McEnelly never mentioned accommodations. McEnelly Dep. at 166-170 (D0040 at 21-25). Nor is there evidence in the record to support that MercyOne expected Flatness to use McEnelly's information to file a civil rights claim. MercyOne witnesses testified they did not expect a civil rights claim from Flatness. Erickson Dep. at 111-12 (D0057, Sealed Supp. M.S.J. Appendix at 14-15 (10/13/2025)); Sorenson Dep. at 61 (D0057 at

17). While McEnelly is entitled to reasonable inferences, she is not entitled to pure speculation. *Godfrey*, 962 N.W.2d at 102 ("An inference is not legitimate if it is based upon suspicion, speculation, conjecture, surmise, or fallacious reasoning."); *see also Roberts v. Unidynamics Corp.*, 126 F.3d 1088, 1093 (8th Cir. 1997) ("[U]nsupported speculation that . . . officials heard such rumors is simply insufficient to permit a reasonable jury to find for [the plaintiff] on the issue of . . . knowledge of those rumors."); *Genosky v. Minnesota*, 244 F.3d 989, 993 (8th Cir. 2001) (finding a complaint about merely unfair treatment does not constitute a protected activity). The district court applied the correct standard, but even if McEnelly's perception standard is considered, there is no evidence to support it, and summary judgment is warranted.

Even if one infers McEnelly was opposing MercyOne's decision not to pay Flatness severance, such opposition is not sufficient. McEnelly said *nothing* to MercyOne about a Flatness being discriminated against, nothing about a potential claim from Flatness, and certainly nothing about an ICRA claim. McEnelly Dep. at 162-63 (D0040 at 18-19); *see also* (D0040 at 56). Indeed, Flatness said *nothing* about a potential ICRA claim. (D0040 at 46-47); (D0055 at 18-19). MercyOne's only discussion

with Flatness was about a "severance" payment, which McEnelly correctly describes as payment for a "notice period," and MercyOne paid before it ever talked to McEnelly. (D0040, M.S.J. Rest. Br. at 30 (10/3/2025)); (D0040 at 46-47); (D0055 at 18-19). To be protected, McEnelly must have been opposing *unlawful* conduct *under the ICRA*. It is not enough for McEnelly to oppose MercyOne's decision not to grant Flatness severance. Nothing required MercyOne to pay Flatness severance. Thus, even if MercyOne thought McEnelly helped Flatness "build a case" for severance, without more, that does not amount to protected conduct under the ICRA.[10] The Eighth Circuit's decision in *Hunt v. Nebraska Public Power District* provides a helpful example. 282 F.3d 1021, 1028–29 (8th Cir. 2002). Hunt complained she was entitled to a pay increase and change in job title but did not attribute her employer's failure to provide a raise or promotion to discrimination. *Id.* Thus, the court concluded she did not engage in protected activity,

[10] The only "case" MercyOne witnesses thought Flatness was building at the time was for severance. (D0040 at 46-47); (D0055 at 18-19); Erickson Dep. at 111-12 (D0055 at 14-15); Sorenson Dep. at 61 (D0055 at 17). McEnelly's arguments to the contrary are speculative and cannot be the basis of submitting claims to the jury. *Godfrey*, 962 N.W.2d at 103 (quoting *Easton*, 751 N.W.2d at 6).

reasoning she "failed to present sufficient evidence that she opposed an *unlawful* employment practice prior to her termination." *Id.* (italics in original); *see also Lopez v. Whirlpool Corp.*, 989 F.3d 656, 665 (8th Cir. 2021) (finding no protected activity where plaintiff "did not tie that complaint to any discrimination"); *Genosky*, 244 F.3d at 993 (finding a complaint about unfair treatment does not constitute a protected activity where plaintiff did not complain about "unlawful discriminatory treatment"). McEnelly did not even tell MercyOne that she disagreed with or opposed its decision not to pay Flatness severance, never mind that she did so because she thought it was discriminatory. (D0040 at 56); *see* McEnelly Dep. at 169-70 (D0040 at 24-25).

As detailed in Section I, the requirements for protected conduct are clear. They require McEnelly to show she opposed unlawful conduct or participated in a proceeding under Chapter 216. There are no disputed facts about *what* McEnelly told MercyOne. Any argument that a jury could interpret the undisputed facts as constituting protected activity must be rejected. That is not the jury's role. It is for the court, not the jury, to determine what practices are forbidden by Chapter 216.11(2). *Rumsey*, 962 N.W.2d at 29 (interpreting what constitutes statutorily

protected activity under the ICRA); *see also Hornby v. State*, 559 N.W.2d 23, 25 (Iowa 1997) ("Statutory interpretation is a question of law for the court to determine."). A jury cannot find that the statute protects conduct beyond what is defined by statute.

The issue presented here is not *what* McEnelly did – that's not in dispute – but whether it is protected by the ICRA. The district court appropriately and correctly determined McEnelly's conduct did not fall within the ICRA's anti-retaliation provision. *See Rumsey*, 962 N.W.2d at 28; *Godfrey*, 962 N.W.2d at 107. The district court's rulings should be affirmed.

IV. NO GENUINE ISSUE OF MATERIAL FACT EXISTED TO PREVENT SUMMARY JUDGMENT.

MercyOne's statement on standard of review in Section I applies equally to this section. With respect to McEnelly's arguments that disputes of fact regarding causation and pretext prevent summary judgment, MercyOne does not agree those issues were presented to the district court or that the district court ruled on them. Indeed, when McEnelly moved to reconsider, enlarge, or amend the district court's summary judgment ruling, she argued the district court "misinterpret[ed] [McEnelly's] arguments regarding MercyOne's

perception that she engaged in protected activity as misplaced causation arguments." (D0062 at 3). Thus, McEnelly argued she was *not* arguing causation, but that "MercyOne's intentions and perceptions are independently relevant to assessing whether [McEnelly's] conduct was protected." *Id.* This is the argument presented in Section I. Accordingly, McEnelly's causation and pretext arguments were not appropriately preserved for review. *Clark v. Est. of Rice*, 653 N.W.2d 166, 172 (Iowa 2002) (holding appellant was foreclosed from changing theory of liability on appeal); *Meier v. Senecaut*, 641 N.W.2d 532, 537-38 (Iowa 2002).

McEnelly dedicates Section III of her brief to arguing that disputed facts prevented summary judgment. None of these purported disputes of fact is relevant to the question of whether McEnelly engaged in protected conduct. Thus, they were irrelevant to the district court proceedings and this appeal. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted."); *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 300

(Iowa 1996) (same); *Hufsmith v. Weaver*, 817 F.2d 455, 460 n.7 (8th Cir. 1987) (same).

First, there are no factual disputes about whether what McEnelly shared with Flatness about other employees constituted protected conduct. The conversations between McEnelly and MercyOne as it pertains to Flatness are not disputed. (D0046, Resp. to Stmt. of Facts at 13, 16-19 (10/3/2025)). Nonetheless, McEnelly argues there is a dispute about whether she provided specific information *to Flatness* about other employees who were terminated versus generic, vague examples. Appellant Br. at 50. As McEnelly admits, this dispute is relevant (if at all) to causation, not whether McEnelly's conduct was protected. Appellant Br. at 51 ("This factual dispute … goes to the heart of whether McEnelly violated any confidentiality policy and whether MercyOne's stated reason for termination was pretextual."). Thus, the dispute does not prevent summary judgment on whether McEnelly engaged in protected conduct. Further, as explained below, causation was not at issue in MercyOne's motion or the basis of the district court's ruling. Thus, the factual dispute is irrelevant.

Second, McEnelly argues that substantial evidence of causation and pretext preclude summary judgment. Appellant Br. at 51-59. As explained above, this issue was not preserved in the district court. Even if McEnelly did preserve these arguments, however, they miss the point. As explained in Section I, McEnelly did not engage in protected activity. This failure is dispositive. *Rumsey*, 962 N.W.2d at 28-29; *Godfrey*, 962 N.W.2d at 106-07. MercyOne did not ask the district court to rule on causation because McEnelly cannot get past the first element of her prima facie case. Thus, although MercyOne disagrees with McEnelly's description of events and inferences regarding causation and pretext, these issues need not be addressed further because they are not relevant to MercyOne's summary judgment motion or this appeal.

Finally, McEnelly argues the district court committed error when it "evaluated the evidence as if McEnelly needed to prove her retaliation claim at the summary judgment stage." Appellant Br. at 59. McEnelly is correct that MercyOne had to identify specific portions of the record and demonstrate there are no genuine issues of material fact. *A & W Elec. Contractors, Inc. v. Petry*, 576 N.W.2d 112, 113 (Iowa 1998). MercyOne did so. McEnelly fails to acknowledge that *her* burden at that

point is to come forward with admissible evidence beyond speculation. *Slaughter*, 925 N.W.2d at 808; *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005); *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012). McEnelly's arguments about the employer's state of mind and intent are unavailing because those factors simply are not at issue in this case. The undisputed facts show McEnelly did not engage in protected conduct under clear Iowa law. McEnelly provided no evidence to the contrary. The district court correctly granted summary judgment and should be affirmed.

CONCLUSION

For all the reasons stated above, the district court's Ruling on Motion for Summary Judgment and Order on Motion to Reconsider, Amend, or Enlarge should be affirmed.

REQUEST FOR ORAL SUBMISSION

Appellee does not believe oral argument is required, but if Appellant's request is granted, respectfully requests to be heard.

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CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that:

1. This Brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because the Brief contains 7067 words, excluding the parts of the Brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and the type-style requirements

of Iowa Rule of Appellate Procedure 6.903(1)(f) because this Brief has been prepared in a proportionally-spaced typeface using Word 2007 in Century Schoolbook 14 pt.

/s/ E. Strom

CERTIFICATE OF FILING AND SERVICE

I hereby certify on the 8th day of April 2026, I electronically filed the foregoing with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following parties of record. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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