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IOWA DEFENSE COUNSEL ASSOCIATION

DEFENSE UPDATE

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Qualified Immunity for Iowa Constitutional Claims

By Jenny L. Juehring, Lane & Waterman LLP

Jenny L. Juehring

In 2017, in *Godfrey v. State* (*Godfrey II*),[1] the Iowa Supreme Court ruled that direct tort claims can be brought under the Iowa Constitution when legislative remedies are inadequate.[2] However, *Godfrey* "express[ed] no view on other potential defenses which may be available to the defendants.[3] Since *Godfrey*, the Iowa Supreme Court and Iowa legislature have both weighed in on whether state and municipal officials can assert a qualified immunity defense to Iowa constitutional tort claims. In 2018, in *Baldwin v. Estherville* (*Baldwin I*),[4] the Iowa Supreme Court held that qualified immunity is available "to those defendants who plead and prove as an affirmative defense that they exercised all due care to conform to the requirements of the law."[5] In 2021, the Iowa legislature enacted a new qualified immunity standard modeled off of the federal qualified immunity standard set forth in the U.S. Supreme Court's 1982 *Harlow v. Fitzgerald*[6] decision.[7] The Iowa Supreme Court has yet to address the "precise contours"[8] of its all due care qualified immunity standard or the newly enacted federal-style qualified immunity standard. However, the two standards appear to be on a collision course that may soon be before the Iowa Supreme Court. This article discusses the two seemingly dueling qualified immunity standards and questions they present for the Iowa Supreme Court to address in the future.

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WHAT'S INSIDE

IDCA President's Letter

Sam Anderson
IDCA President

Greetings and Happy New Year. As we come off the relaxing (or not so relaxing) holiday season, our thoughts turn to the new year and to make it a better year than the last. We have all assessed our bottom line from the previous year, and we now make grand plans to work more and work harder for the next year to improve that bottom line to compensate for the ever-increasing cost of doing business. It is the dilemma of all business owners. For the defense lawyer, this amounts to a chase to add that extra tenth of an hour increment. If we can just work that extra hour, that extra day, that extra week into our work plans, maybe we will not feel so stressed at year's end. We feel like we are losing money when we are not working. We begin to live our lives in those tenths-of-an-hour increments. Our time becomes sacred to our continued success.

As we plan for the next year, where do we fit in a goal to take better care of ourselves than we did the year before? Where are we formulating plans to care for our physical and mental health? When I was a young lawyer, I remember a more experienced lawyer telling me that the struggle in law practice was not trying to figure out how much to work. He told me the struggle is to determine how much not to work. That made absolutely no sense to me as a young lawyer. You don't make money by not working. I was always off to the races, never knowing when to make the pit stop. My thought was that you don't win races by sitting in a pit stop. I overlooked the value of taking the time to get refurbished and ready to continue the race. I was very aware of all the work I was not getting done if I took a day off or, worse yet, took a vacation. Time off could feel stressful because there was always something that needed to get done immediately. I am guessing I am not alone in feeling this way. How many of us have sat in a firm meeting and heard a partner mention how many billable hours were wasted by the firm members sitting around discussing firm business or, God forbid, taking time to joke around in a time of levity?

I don't know if it is the nature of lawyers or the business, but we take pride in being busy. We inevitably ask each other how busy we are. We all have our ebbs and flows in our caseloads. In the times when my caseload was not big enough to cause me to run around with my hair on fire, I would feel too embarrassed to say I was not as busy. Even the non-lawyers in our lives seem to think our lives as lawyers must be busy. They seem to be surprised to see us in any state of relaxation. This came to my attention in 2021 when I took my first two-week vacation. Having taken up the hobby of photography during Covid, I took hundreds of photos of the mountain settings I visited during the vacation. I would slowly share them on social media over the coming winter months. I cannot tell you how many people asked me how I was enjoying retirement or who asked me if I had retired. Now, it might partially be a reflection that I am 60-something, but I was surprised by these comments. I wondered why taking a vacation or picking up a hobby made people think I had retired. Is it because lawyers are not expected to go on vacations or take up hobbies? Had my previous habits over the years set up the appearance that my work time was so precious that I would not have time for leisure or hobby? Had I now acted so contrary to past behavior that my retirement was the only logical conclusion for others to make about this new behavior? Well, it got me thinking and led me to write this letter.

As we plan for the new year, shouldn't we plan for the most important things first? We hear the plaintiff's lawyers ask jurors repeatedly, "What is more important than your health?" As little as we like to agree with the plaintiff's lawyers, they have a point. Isn't our mental and physical health the most important thing we must care for? Why do we not make new year's plans for the time we will set aside to take care of ourselves? We have all seen the trick of getting the egg in a bottle full of sand. The only way to get the egg in is to put the egg in first. Then all the sand will fit in around it. This year I suggest you make your physical and mental health the egg. Make your time for leisure or hobbies, or whatever is needed for your self-care, the egg. Put plans for self-care in the bottle first. If we do that, I think the sand of work will fit nicely all around the egg, and your bottle will be full.

Another phrase we have all heard is, "All work and no play make Jack a dull boy." I submit that all work and no play also make Jack lose perspective. How effective is a lawyer without perspective? How can we evaluate cases without perspective? How well can we interact with juries if we don't take time to live in the world? I

have been a practicing lawyer for 39 years and am embarrassed to say that I am just figuring this out.

I think we all became somewhat more reflective during the pandemic. The time of slowing down let me venture into the hobby of photography. As lawyers, we live a lot of time in our heads, thinking about facts and strategies. Photography has let me out of my head and allowed me to take time to observe and experience the world around me. My time behind a camera is when I am not counting time. I lose all track of time and experience joy and relaxation. Taking real-time for leisure and hobby has given me a more relaxed, less frenetic approach to work. It has taken nothing away from my work. I believe it has made my work better. It has made my work life better. It has made my life outside of work better. Of all the bad that Covid caused in our world, it forced us to slow down and gave us all time for reflection. That may have been the silver lining to what felt like a black cloud over our heads at the time. Hopefully, we learned many things from that experience.

My challenge to you this year is to prioritize your physical and, most importantly, your mental health. Plan for the care intentionally. Take the time to enjoy your hobbies or leisure time. If you don't have a hobby, try to find one. If you don't do leisure time, do it. Read that novel. Plant that garden. Try doing that art project you have been thinking about doing. Run, ride a bike, take a hike, take that nap, take that interesting class - do whatever that thing is that makes you lose track of time! Learning not to live your life in tenth-of-an-hour increments is liberating. It will help you enjoy your life and the world around you and increase your joy in doing the important work you do as a lawyer defending your clients' interests. You will have the perspective to enjoy the multifaceted world you live in during both work and play. I wish you a very happy and liberating new year of joy and good mental health!

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THE IOWA SUPREME COURT'S ALL DUE CARE QUALIFIED IMMUNITY STANDARD

In *Baldwin I*, the U.S. District Court for the Northern District of Iowa asked the Iowa Supreme Court to answer a certified question: "Can a defendant raise a defense of qualified immunity to an individual's claim for damages for violation of article I, § 1 and § 8 of the Iowa Constitution?"[9] The Iowa Supreme Court answered: "A defendant who pleads and proves as an affirmative defense that he or she exercised all due care to conform with the requirements of the law is entitled to qualified immunity on an individual's claim for damages for violation of article I, sections 1 and 8 of the Iowa Constitution."[10] This raises a new question: What does all due care to conform to the requirements of the law mean? *Baldwin I* gives some guidance on this question but did not apply the new immunity to the facts of the case.

The Supreme Court explained in *Baldwin I* that all due care qualified immunity protects state and municipal officers from liability for conduct that may constitute a constitutional violation:

> the right to recover damages for a constitutional violation does not need to be congruent with the constitutional violation itself. Such an approach is not consistent with Iowa precedent or Restatement section 874A, and would result in too little play in the joints. Logically, the threshold of proof to *stop* an unconstitutional course of conduct ought to be less than the proof required to *recover damages* for it.[11]

In reaching this conclusion, the Supreme Court seems to suggest that an official's good faith or bad faith is considered in determining whether he or she is entitled to all due care qualified immunity. *Baldwin I* examined three Iowa precedents that recognized constitutional torts and noted that "[e]ach involved bad faith conduct, and one of those causes made it clear that malice and lack of probable cause were elements of the claim."[12]

B*aldwin I* also gives some guidance on how all due care qualified immunity differs from the familiar federal qualified immunity standard. Federal qualified immunity examines "objective reasonableness," and the Iowa Supreme Court found in that fact it resembles all due care qualified immunity.[13] However, the Supreme Court went on to find that federal qualified immunity gives undue weight to how clear the underlying constitutional law is.[14] The Supreme Court explained that it thinks of "due care or objective good faith as more nuanced and reflecting several considerations. . . . Factual good faith may compensate for a legal error, and factual bad faith may override some lack of clarity in the law."[15]

Since *Baldwin I* only answered a certified question from the federal district court, the Iowa Supreme Court did not have the opportunity to apply its new all due care qualified immunity to the facts of the case. After *Baldwin I*, when the case returned to federal district court, now-retired U.S. District Court Judge Mark W. Bennett had the opportunity to apply all due care qualified immunity to the facts of the case.[16] In the *Baldwin* cases, the plaintiff was arrested by city police officers for riding his ATV on and in a ditch beside a city street, allegedly in violation of a state statute that the officers believed had been, but was not, incorporated into the city's code of ordinances.[17] Officers prepared a citation based on the nonexistent city ordinance and, after they were unable to serve the plaintiff with it, obtained a warrant and took Baldwin to jail.[18] In *Baldwin II*, Judge Bennett considered Plaintiff's argument that his rights under article I, §§ 1 and 8 of the Iowa Constitution were violated and that the defendant City of Baldwin was not entitled to all due care qualified immunity.[19]

Judge Bennett found that the plaintiff was arrested without probable cause in violation of the Iowa Constitution.[20] Judge Bennett then turned to whether the City was entitled to all due care qualified immunity.[21] In examining the new immunity, Judge Bennett found that equating "all due care" with a "negligence" standard "appears to be appropriate."[22] But, Judge Bennett explained that the immunity is not simply based on "all due care" standing alone:

> Rather, the Iowa Supreme Court stated the defense in terms of proof that the defendant "exercised all due care *to confirm to [or with] the requirements of the law*." *Id.* at 260–61 (with), 279 (to), 281 (to) (emphasis added). For example, it appears that, although "objective reasonableness" of the defendant's conduct is relevant to qualified immunity for a violation of the Iowa Constitution, just as it is relevant to qualified immunity for a violation of the United States Constitution, "exercising all due care to conform with the requirements of the law" imposes a greater burden on defendants than not violating "clearly established . . . constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818, 102 S. Ct. 2727. . . .
>
> The distinction appears to me to be between *taking reasonable action* to "conform" to the requirements of the law, under the Iowa "all due care" qualified immunity standard, and *avoiding action* one should reasonably know would violate the law, under the *Harlow* federal qualified immunity standard.[23]
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> Ultimately, however, Judge Bennett did not find whether the City of Baldwin was entitled to all due care qualified

immunity. Instead, Judge Bennett certified the question, along with four others to the Iowa Supreme Court.[24]

In 2019, the Supreme Court, in *Baldwin III*, declined to answer the certified question concerning whether the City of Baldwin was entitled to all due care qualified immunity under the circumstances presented because it was not a question of law that could be decided on a certified question.[25] Instead, the Supreme Court held that the Iowa Municipal Tort Claims Act (IMTCA) generally governs constitutional tort claims against municipalities and municipal employees acting in their official capacities.[26] Specifically, the Supreme Court found that punitive damages and attorneys' fees could not be awarded against a municipality because the IMTCA did not allow those awards.[27]

The Iowa Supreme Court has not yet had the opportunity to elaborate on and apply the all due care qualified immunity standard. With the enactment of a federal-style qualified immunity standard by the Iowa legislature in 2021, it is questionable whether we will see the Supreme Court address all due care qualified immunity again. The federal-style qualified immunity standard enacted in 2021 appears to be an easier standard for defendants to meet than the all due care qualified immunity standard. If the federal-style qualified immunity standard withstands any constitutional challenges, defendants will be more eager to seek its protection than the all due care qualified immunity standard.

THE IOWA LEGISLATURE'S FEDERAL-STYLE QUALIFIED IMMUNITY STANDARD

In 2021, the Iowa legislature enacted a federal-style qualified immunity standard for municipal officials. The new statute, Iowa Code § 670.4A in the IMTCA, provides:

1. Notwithstanding any other provision of law, an employee or officer subject to a claim brought under this chapter shall not be liable for monetary damages if any of the following apply:

    a. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation or at the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law.

    b. A court of competent jurisdiction has issued a final decision on the merits holding, without reversal, vacatur, or preemption, that the specific conduct alleged to be unlawful was consistent with the law.

2. A municipality shall not be liable for any claim brought under this chapter where the employee or officer was determined to be protected by qualified immunity under subsection 1.

3. A plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice.

4. Any decision by the district court denying qualified immunity shall be immediately appealable.

5. This section shall apply in addition to any other statutory or common law immunity.

The Iowa legislature also enacted a nearly identical qualified immunity standard for state officials in Iowa Code § 669.14A of the Iowa Tort Claims Act (ITCA). Sections 670.4A and 669.14A were effective June 17, 2021. The language of Iowa Code §§ 669.14A and 670.4A closely tracks the standard for qualified immunity set forth in the U.S. Supreme Court's *Harlow v. Fitzgerald* decision. In *Harlow*, the U.S. Supreme Court held that qualified immunity shields a government official from liability against excessive force claims when his or her conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known."[28]

On January 6, 2023, the Iowa Supreme Court issued its first opinion addressing § 669.14A or § 670.4A. In *Victoriano v. City of Waterloo*, the Supreme Court held that the plaintiff was entitled to voluntarily dismiss his petition without prejudice and Iowa Code § 670.4A(3) did not allow the trial court to set aside dismissal and enter an order dismissing the case with prejudice.[29] However, *Victoriano* did not address § 670.4A(1), the portion of the statute enacting federal-style qualified immunity.

There are two cases involving § 669.14A and § 670.4A that have been submitted to the Supreme Court but have not yet been decided: *Carver-Kimm v. Reynolds et al.* (No. 22-0005) and *Nahas v. Polk County et al.* (No. 22-0239). In *Carver-Kimm*, the defendants assert they are entitled to qualified immunity under § 669.14A from the plaintiff's wrongful discharge in violation of public policy claim.[30] In *Nahas*, the defendants assert they are entitled to qualified immunity under § 670.4A from the plaintiff's claims stemming from the termination of his employment.[31] An issue in both appeals is whether § 669.14A and § 670.4A apply because the terminations occurred before the statutes' effective date and the statutes do not state expressly that they are retroactive. In *Nahas*, the defendants-appellants argue that the plaintiff did not meet the pleading requirement in § 670.4A(3)

and the application of the pleading requirement is not retroactive because the plaintiff's petition was filed after the statute's effective date.[32] In *Carver-Kimm*, the defendants-appellants argue that applying § 669.14A to their case is not retroactive because the statute was effective before the filing of the plaintiff's second amended petition.[33] The defendants-appellants in *Carver-Kimm* further argue that, even if § 669.14A does apply to their case retroactively, the statute may still be applied retroactively because it is procedural.[34] The Iowa Supreme Court has previously held that a statute may be applied retroactively, even if it does not expressly state whether it applies retroactively, if the statute is remedial or procedural, not substantive, or if the legislative intent for the statute to act retroactively "clearly appears . . . by necessary and unavoidable implication."[35]

The Iowa Supreme Court's anticipated opinions in *Carver-Kimm* and *Nahas* may address whether the statute applies retroactively to conduct that predates the statute. We may also expect future constitutional challenges to § 669.14A and § 670.4A. The Iowa legislature's federal-style qualified immunity standard and the Supreme Court's all due care qualified immunity standard appear to conflict in that they are different qualified immunity standards. It is presently undecided whether the Iowa legislature has the power to enact a qualified immunity standard for Iowa constitutional torts, or, in other words, if § 669.14A and § 670.4A can apply to Iowa constitutional torts. This question is closely tied to the question of whether the ITCA's and IMTCA's immunities apply to Iowa constitutional torts. The ITCA and IMTCA contain various immunities for claims brought against state and municipal officials.[36] Historically, since Iowa constitutional claims are relatively new, these ITCA and IMTCA immunities have been applied to non-constitutional torts.[37] The Iowa Supreme Court has not yet addressed whether the ITCA and IMTCA immunities apply to Iowa constitutional claims but has given somewhat conflicting hints in recent dicta how it might consider this issue. In *Baldwin I*, the Supreme Court stated that "Iowa's tort claims acts already protect government officials in some instances when they exercise due care. . . . The problem with these acts, though is that they contain a grab bag of immunities reflecting certain *legislative* priorities. Some of those are unsuitable for *constitutional* torts."[38] However, in *Venckus* in 2019, the Supreme Court explained that "[c]laims arising under the state constitutional are subject to the IMTCA."[39] Later in *Wagner* in 2020, the Supreme Court held that procedures in the ITCA apply to constitutional tort claims.[40]

CONCLUSION

We have yet to see the Iowa Supreme Court elaborate on or apply all due care qualified immunity. However, issues surrounding all due care qualified immunity may be trumped by Iowa Code §§ 669.14A and 670.4A. The Supreme Court has yet to decide whether these statutes apply retroactively to alleged wrongful conduct that predate their enactment. And if the statutes do apply retroactively, or if they are applied prospectively, we can expect constitutional challenges to their application to Iowa constitutional tort claims. The Iowa Supreme Court may also see similar challenges to the application of other immunities in the ITCA and IMTCA to constitutional tort claims. If §§ 669.14A and 670.4A survive challenges, they may make all due care qualified immunity redundant. Sections 669.14A and 670.4A seem to protect a larger range of official conduct than all due care qualified immunity and therefore, defendants are more likely to seek their protection rather than that of all due care qualified immunity. With the newly minted ability for plaintiffs to bring Iowa constitutional tort claims and the dueling nature of the Iowa Supreme Court's all due care qualified immunity standard and the Iowa legislature's federal-style qualified immunity standard, qualified immunity in Iowa is not a settled area of law and is sure to be a hot topic before the Iowa Supreme Court in the coming years.

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1 *Godfrey v. State* (*Godfrey II*), 898 N.W.2d 844 (Iowa 2017).

2 *Id.* at 880 (Cady, C.J., concurring in part and dissenting in part). *Godfrey* did not have a majority opinion. Chief Justice Cady cast the deciding vote in his concurrence. *See Wagner v. State*, 952 N.W.2d 843, 851 (Iowa 2020).

3 *Godfrey*, 898 N.W.2d at 880 (plurality opinion).

4 *Baldwin v. City of Estherville* (*Baldwin I*), 915 N.W.2d 259 (Iowa 2018).

5 *Id.* at 279.

6 *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

7 Iowa Code §§ 669.14A, 670.4A.

8 *Baldwin v. Estherville, Iowa* (*Baldwin II*), 333 F. Supp. 3d 817 (N.D. Iowa 2018).

9 *Baldwin I*, 915 N.W.2d at 260.

10 *Id.* at 260–61.

11 *Id.* at 278–79 (emphasis in original).

12 *Id.* at 275–76 (citing *McClurg v. Brenton*, 98 N.W. 881, 881–82 (Iowa 1904); *Krehbiel v. Henkle*, 121 N.W. 378, 379 (Iowa 1909); *Girard v. Anderson*, 257 N.W. 400, 400–01 (Iowa 1934)).

13 *Id.* at 279 (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

14 *Id.*

15 *Id.* (citation omitted).

16 *Baldwin II*, 333 F. Supp.3d at 852.

17 *Id.*

18 *Id.* at 824.

19 *Id.* at 834.

20 *Id.* at 840.

21 *Id.*

22 *Id.* at 842–43.

23 *Id.*at 843 (emphasis in original).

24 *Id.* at 848; *Baldwin v. City of Estherville* (*Baldwin III*), 929 N.W.2d 691 (Iowa 2019).

25 *Baldwin III*, 929 N.W.2d at 698. Unfortunately, the question of whether the City was entitled to all due care immunity in the *Baldwin* line of cases was never decided. After the case returned to federal court after *Baldwin III*, the case was settled and dismissed with prejudice. *Baldwin v. Estherville, Iowa*, Case No. 3:15-cv-03168-LTS-MAR, Docket Entry No. 84 (N.D. Iowa Oct. 28,

2020).

26 *Baldwin III*, 929 N.W.2d at 697–99.

27 *Id.* at 699–700.

28 457 U.S. at 818.

29 *Victoriano v. City of Waterloo*,—- N.W.2d—-, No. 22-0293, 2023 WL 115162, at *4 (Iowa 2023).

30 Appellants' Final Brief, *Carver-Kimm v. Reynolds et al.*, No. 22-0005 (Iowa Supreme Court Aug. 10, 2022).

31 Appellants' Final Brief, *Nahas v. Polk County et al.*, No. 22-0239, (Iowa Supreme Court Aug. 18, 2022).

32 *Id.*

33 Appellants' Final Brief, *Carver-Kimm v. Reynolds et al.*, No. 22-0005 (Iowa Supreme Court Aug. 10, 2022).

34 *Id.*

35 *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985).

36 Iowa Code §§ 669.14, 670.4.

37 The IMTCA does explicitly state that its immunities apply to constitutional tort claims. *See* Iowa Code § 670.1(4) ("Tort" includes the "denial or impairment of any right under any constitutional provision, statute or rule of law.").

38 *Baldwin II*, 915 N.W.2d at 280 (emphasis in original).

39 *Venckus v. City of Iow*a City, 930 N.W.2d 792, 808 (Iowa 2019).

40 *Wagner v. State*, 952 N.W.2d 843, 856 (Iowa 2020).

New Member Profile

Zack Martin

Zack Martin is a civil litigation attorney at Heidman Law Firm, P.L.L.C., in its Sioux City office. Zack practices general civil litigation. Zack's practice areas include but are not limited to professional malpractice defense, insurance defense, commercial and business litigation, and product liability. Zack is originally from Glenwood, Iowa. He received his bachelor's degree in Philosophy from the University of Northern Iowa. Zack received his J.D. from the University of Iowa College of Law in 2020. Zack is licensed in Iowa and is a member of the Iowa State Bar Association, Woodbury County Bar Association, and the Iowa Defense Counsel Association. Zack has been a presenter for CLE-approved programs related to medical malpractice defense and has written briefs before the Iowa Supreme Court. In his time away from the office, Zack is kept busy by his and his wife's 4-year-old son, Noah.

Legislative Update

By Brad C. Epperly, Lobbyist
Casey Nickel, Legislative Coordinator
Nyemaster Goode, P.C.

Brad C. Epperly

Casey Nickel

The first session of the 90th General Assembly convened at 10:00 am on January 9th. Legislation from 2022 that failed to pass both chambers is no longer eligible for consideration unless it is reintroduced and assigned a new bill number.

On November 7th, Republicans in Iowa nearly swept the midterm election by expanding majorities in the State House and Senate, winning all congressional seats, and winning all but one statewide office. Iowa saw its second-highest midterm election turnout, with more than 1.2 million Iowans voting, according to Iowa Secretary of State Paul Pate.

Governor Reynolds won her race for re-election, defeating Democrat candidate Deidre DeJear with nearly 60% of the vote. Incumbent Auditor of State Rob Sand was the only Democrat incumbent to hold off a Republican challenger for statewide office. Auditor Sand defeated Todd Halbur with the closest margin of victory in a statewide race that could not be called for nearly a week after election day. Republicans flipped the State Treasurer and Attorney General offices by defeating Democrat incumbents who had been in office for over 40 years.

- Governor: Deidre DeJear (39.5%) v. **Incumbent Kim Reynolds** (58.1%)
- Agriculture Secretary: John Norwood (38.8%) v. **Incumbent Mike Naig** (61.2%)
- Attorney General: Incumbent Tom Miller (49.1%) v. **Brenna Bird** (50.9%)
- Auditor of State: **Incumbent Rob Sand** (50.1%) v. Todd Halbur (49.9%)
- Secretary of State: Joel Miller (39.9%) v. **Incumbent Paul Pate** (60.1%)
- Treasurer: Incumbent Mike Fitzgerald (48.7%) v. **State Senator Roby Smith** (51.3%)

Republican incumbent U.S. Representatives Randy Feenstra, Mariannette Miller-Meeks, and Ashley Hinson all defeated their challengers by the following margins.

- Congressional District 1: v. State Representative Christina Bohannan (46.5%) v. **Incumbent Mariannette Miller-Meeks** (53.5%)
- Congressional District 2: State Senator Liz Mathis (45.9%) v. **Incumbent Ashley Hinson** (54.1%)
- Congressional District 3: Incumbent Cindy Axne (49.6%) v. **State Senator Zach Nunn** (50.4%)
- Congressional District 4: Ryan Melton (30.4%) v. **Incumbent Randy Feenstra** (67.4%)

Iowa's third congressional district was the closest contested U.S. House race in Iowa, with a 0.7% margin. State Senator Zach Nunn defeated Democrat incumbent Congresswoman Cindy Axne.

Incumbent Senator Chuck Grassley defeated his challenger, Mike Franken, with 56.1% of the vote. The 2022 midterm election was Senator Grassley's closest margin of victory since his initial Senate campaign in 1980, where he won with 53.49% of the vote; since then, he has won every re-election campaign with at least 60% of the vote. Iowa's Senate race was closely watched after Senator Joni Ernst had a tough re-election campaign in 2020; Senator Ernst defeated her opponent with 51.8% of the vote.

In the Iowa Senate, Republicans picked up two new seats to reach a 34-member majority. With a supermajority in the Senate, Republicans can now approve gubernatorial nominees without

requiring Democrat votes. Senate President Jake Chapman and Senator Sarah Trone Garriott were redistricted together during the 2021 redistricting process; the two incumbents faced off in the most expensive state legislature race, spending $1.5 million. Senator Trone Garriott ultimately came out ahead with 51.5% of the vote. Senate Republicans elected Senator Amy Sinclair to serve as the next Senate President. Senator Jack Whitver will continue to serve as Senate Majority Leader.

Iowa House Republicans returned with a 64-36 majority. Republicans in the Iowa House of Representatives also expanded their majority by flipping six previously Democrat-held seats and defeating 3 Democrat incumbents. Representative Pat Grassley was re-elected to serve as Speaker of the House, and Representative Matt Windschitl will continue to serve as House Majority Leader.

During the 2022 session, lawmakers passed a historic tax reform bill that will gradually phase down both individual and corporate income taxes. In the interim, legislators have been working towards drafting a proposal to lower property taxes this upcoming year. The House and the Senate indicated this is a top priority for the majority caucuses during opening remarks.

Governor Reynolds introduced and pushed for the passage of a school choice bill that ultimately died in the House after passing the Senate in 2022. Governor Reynolds reintroduced the bill this year during her Condition of the State address, expanding the proposal to include a taxpayer-funded scholarship be made available for every Iowa student that families can use to pay for private school. Speaker Pat Grassley announced the creation of a new standing committee in December, the Education Reform Committee, chaired by himself, with House Majority Leader Matt Windschitl serving as the Vice Chair. The Iowa legislature passed the private school funding bill on January 23, 2023. It was signed into law by Governor Reynolds on January 24, 2023.

Iowa continues to face a workforce shortage made worse by the COVID-19 pandemic. The legislature and the Governor have introduced and discussed solutions to attract new workers and ease the burdens on employers. In 2023, the Senate renamed the Labor Committee as the Workforce Committee to reflect the state's challenges better. During the Condition of the State, Governor Reynolds announced $15 million in new funding for growing Registered Apprenticeship programs.

In recent years, legislators and interested parties have explored solutions to addressing concerns with the Iowa Tort Claims Act, specifically related to medical malpractice and commercial trucker liability. In 2022, a bill passed both committees in the House and Senate that would create a $1 million cap on noneconomic damages for certain injuries or death. Governor Reynolds encouraged the legislature to reconsider this proposal this year.

Governor Reynolds also proposed consolidating state government by decreasing the number of state agencies from 37 to 16. In addition to reorganizing state government, on January 11, Governor Reynolds signed an executive order placing a moratorium on all new administrative rulemaking and directing state agencies to review all existing rules. Iowa's current Administrative Code is more than 20,000 pages. Agencies are required to re-promulgate the rules they want to keep, and rules not formally adopted by December 31, 2026, are repealed.

Finally, Iowa ended Fiscal Year 2022 with a budget surplus of $1.9 billion. The Revenue Estimating Conference met in December and reported that Iowa would likely see a 1.9% decrease in state revenues in FY23. This decrease is a result of the impacts of the 2022 tax reform bill that will impact individual and corporate tax revenues. The REC predicted state revenues would gradually increase again in FY24.

Iowa's legislative session began on January 9, 2023, with the Governor giving her Condition of the State Address on January 10. The session is scheduled to last 110 days, with per diem expenses expiring on April 28th.

Case Law Update

By Ben Patterson

Ben Patterson

VICTORIANO V. CITY OF WATERLOO, NO. 22-0923, JANUARY 6, 2023

WHY IT MATTERS

The Iowa Supreme Court reaffirmed a plaintiff's long-established right as a matter of law to voluntarily dismiss their petition without prejudice to future action, Iowa R. Civ. P. 1.943.

FACTUAL & PROCEDURAL BACKGROUND

Plaintiff filed suit against the City of Waterloo, its police department and one of its police officers asserting claims under the Iowa Municipal Tort Claims Act (IMTCA) after he was shot. Defendants moved to dismiss with prejudice pursuant to Iowa Code section 670.4A, which sets forth heightened pleading requirements and a qualified immunity defense to IMTCA claims. The day before the hearing scheduled on the defendants' motion to dismiss, the plaintiff voluntarily dismissed his petition. The defendants moved to set aside the voluntary dismissal, claiming that Iowa Code 670.4A mandated dismissal with prejudice. The district court agreed and dismissed the case with prejudice.

HOLDING

The Iowa Supreme Court reversed the district court's dismissal with prejudice. The court held that long-standing Iowa law provides the plaintiff the right to voluntarily dismiss their petition once without prejudice to future action. The court further held that Iowa Code 670.4A did not conflict with or supersede the plaintiff's right.

ANALYSIS

The court began its analysis by recognizing that a plaintiff's right to dismiss their case without prejudice to a future action has been the law of Iowa since the state was founded, citing Iowa Code 1851. The court traced the history of this right up through the current rule, Iowa R. Civ. P. 1.943. The only noteworthy change over that period is that under current law, a plaintiff's voluntary dismissal must be made at least ten days before the start of the trial (as opposed to anytime before "final submission.") The court further recognized case law interpreting this right broadly, applying "[e]ven what a party dismisses an 'action to escape the consequences of an opposing party's motion'" (quoting *Venard v. Winter*, 524 N.W.2d 163, 168 (Iowa 1994)("The motive of the dismissing party plays no part in a voluntary dismissal under the rule.").

After firmly reaffirming a plaintiff's right under long-established Iowa law, the court considered the defendants' argument that Iowa Code 670.4A required dismissal with prejudice notwithstanding this right. Specifically, the defendants argued that Iowa 670.4A(3) requires dismissal with prejudice upon a failure to plead a plausible violation or failure to plead that the law was established at the time of the alleged violation. Applying Iowa rules of statutory construction, the court held that nothing in the text of Iowa Code 670.4A expresses an intent to abrogate Iowa R. Civ. P. 1.943 or established Iowa precedent.

RONNFELDT V. SHELBY COUNTY, NO. 22-0365, JANUARY 6, 2023

WHY IT MATTERS

The *Ronnfeldt* case addresses the interplay between a plaintiff's right to voluntarily dismiss their petition once as a matter of right without prejudice and the certificate of merit requirement applicable to medical malpractice actions. More importantly, it potentially gives plaintiffs an escape route when faced with a motion to dismiss for noncompliance with the certificate of merit requirement.

FACTUAL & PROCEDURAL BACKGROUND

Plaintiff filed a medical negligence case but failed to file a certificate of merit pursuant to Iowa Code 147.140 (requiring the plaintiff to file a certificate of merit within 60 days of the defendant's answer). After 118 days had passed following the filing of its answer, the defendant filed a motion to dismiss with prejudice. On the same day, the plaintiff voluntarily dismissed the petition pursuant to Iowa R. Civ. P. 1.943. Initially, the district court entered an order noting the voluntary dismissal and stating that the defendant's motion to dismiss was moot. The defendant filed a motion to reconsider and convinced the district court that dismissal with prejudice was mandated under Iowa Code 147.140, and the plaintiff could not avoid the outcome by voluntarily dismissing the petition.

HOLDING

The Iowa Supreme Court retained the appeal and reversed the district court. The court held that because Iowa 147.140 and Iowa R. Civ. P. 1.943 do not conflict, a plaintiff's voluntary dismissal pursuant to Iowa R. Civ. P. 1.943 ends the case without prejudice to future action.

ANALYSIS

As the court did in *Victoriano*, supra, it started with a historical examination of a plaintiff's "absolute" right to voluntarily dismiss their petition once as a matter of right without prejudice to future action. Again, the court recognized this long-established rule. Turning to the certificate of merit requirement, the court noted the two prior occasions it addressed actions where medical malpractice cases were dismissed for failure to comply with the certificate of merit requirements. In short, the court specifically recognized that the requirement is "strict."

Applying rules of statutory construction, the court noted that it must construe two statutes in such a way that effect is given to both and will not apply one statute over another unless there is an irreconcilable conflict between the two. Despite recognizing the "strict" nature of the certificate of merit requirement and the absolute right to voluntarily dismiss an action without prejudice, the court held that the two did not intersect. Rather, so long as a case is active, Iowa Code 147.140 will govern. Under that statute, a defendant may move for dismissal with prejudice for failure to comply. When faced with a motion, the court is tasked with determining whether the claims at issue are subject to the certificate of merit requirement and whether dismissal is warranted.

On the other hand, a voluntary dismissal pursuant to Iowa R. Civ. P. 1.943 is self-executing. Upon filing, the matter is dismissed without further action of the court, and it divests the court of jurisdiction to adjudicate the merits of the case, including a motion to dismiss for failure to comply with the certificate of merit requirement. The court found nothing in the language of Iowa Code 147.140 to suggest that it survives a voluntary dismissal. The court specifically noted that had the legislature intended Iowa Code 147.140 to supersede a plaintiff's right to a voluntary dismissal without prejudice, it would have expressly stated it.

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