IN THE SUPREME COURT OF IOWA

Supreme Court No. 20–1027

XENIA RURAL WATER DISTRICT,
Plaintiff-Appellant,

v.

CITY OF JOHNSTON, IOWA
Defendant-Appellee.

CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA,
THE HONORABLE JAMES E. GRITZNER

FINAL BRIEF OF APPELLEE AND REQUEST FOR ORAL ARGUMENT

William J. Miller (AT0005414)
Manuel A. Cornell (AT0013743)
Dorsey & Whitney LLP
801 Grand Avenue, Suite 4100
Des Moines, IA 50309-2790
Tel: (515) 283-1000
Fax: (515) 283-1060
E-mail: miller.william@dorsey.com
cornell.manuel@dorsey.com
ATTORNEYS FOR DEFENDANT-APPELLEE CITY OF JOHNSTON, IOWA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. QUESTION 1: WHETHER AN IOWA CODE § 357A.2 RURAL WATER DISTRICT, BEFORE AMENDMENTS TO § 357A.2(4) IN 2014, HAD A LEGAL RIGHT TO PROVIDE WATER SERVICE TO PORTIONS OF AN AREA DESCRIBED IN ITS COUNTRY (SIC) BOARD OF SUPERVISORS RESOLUTION, SEE IOWA CODE § 357A.2(1), WHEN THOSE PORTIONS WERE ALSO WITHIN TWO MILES OF THE LIMITS OF A MUNICIPALITY, SEE § 357A.2(3), AND WHEN THE MUNICIPALITY HAD NOT WAIVED ITS RIGHTS TO PROVIDE WATER SERVICE TO THE AREA, SEE § 357A.2(4).

Cases

Iowa Farm Bureau Fed'n v. Envtl. Prot. Comm'n,
850 N.W.2d 403 (Iowa 2014)

Klinge v. Bentien,
725 N.W.2d 13 (Iowa 2006)

Millwright v. Romer,
322 N.W.2d 30 (Iowa 1982)

Pub. Water Supply Dist. No. 3 v. City of Leb., Mo.,
605 F.3d 511 (8th Cir. 2010)

Rural Water Sys. # 1 v. City of Sioux Ctr.,
202 F.3d 1035 (8th Cir. 2000)

Rural Water Sys. # 1 v. City of Sioux Ctr.,
967 F. Supp. 1483 (N.D. Iowa 1997)

Wright v. Brooke Group Ltd.,
652 N.W.2d 159 (Iowa 2002)

Statutes

7 U.S.C. § 1926(b)

Iowa Code Chapter 357A

Iowa Code § 357A.2

Iowa Code § 357A.2(2)(a)

Iowa Code § 357A.2(4)

Iowa Code § 357A.14(2)

Iowa Code § 684A.1

Other Authorities

H.F. 2192, 85th Gen. Assemb., 2d Sess. (Iowa 2014)

H.F. 398, 72d Gen. Assemb., Reg. Sess. (Iowa 1987)

Iowa R. App. P. 903(2)(g)(3)

S.F. 2101, 74th Gen. Assemb., Reg. Sess. (Iowa 1992)

II. QUESTION 2: WHETHER IOWA CODE § 357A.2(4), AS AMENDED BY THE IOWA LEGISLATURE IN 2014: (A) EXEMPTS A RURAL WATER DISTRICT FROM FOLLOWING NOTICE-OF-INTENT PROCEDURES WHEN THE AREA THE DISTRICT SEEKS TO SERVE IS WITHIN THE DISTRICT'S BOUNDARIES AS DESIGNATED IN THE COUNTY BOARD OF SUPERVISORS' RESOLUTION CREATING THE WATER DISTRICT, AND/OR (B) OTHERWISE PROVIDES THE RURAL WATER DISTRICT A LEGAL RIGHT TO SERVE SUCH AREAS WHEN THE MUNICIPALITY HAS NOT WAIVED ITS RIGHTS. IF SO, WHETHER THE 2014 AMENDMENT TO § 357A(4) HAD RETROACTIVE EFFECT.

Cases

Anderson Fin. Servs., LLC v. Miller,
769 N.W.2d 575 (Iowa 2009)

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

Doe v. Iowa Dep't of Human Servs.,
786 N.W.2d 853 (Iowa 2010)

Ferezy v. Wells Fargo Bank, N.A.,
755 F. Supp. 2d 1010 (S.D. Iowa 2010)

Forbes v. Hadenfeldt,
648 N.W.2d 124 (Iowa 2002)

Harrington v. State,
659 N.W.2d 509 (Iowa 2003)

Larson Mfg. Co., Inc. v. Thorson,
763 N.W.2d 842 (Iowa 2009)

Rural Water Sys. # 1 v. City of Sioux Ctr.,
967 F. Supp. 1483 (N.D. Iowa 1997)

State v. Lutgen,
606 N.W.2d 312 (Iowa 2000)

State v. McCoy,
618 N.W.2d 324 (Iowa 2000)

State v. Petithory,
702 N.W.2d 854 (Iowa 2005)

Teamsters Local Union No. 421 v. City of Dubuque,
706 N.W.2d 709 (Iowa 2005)

Thomas v. Iowa Pub. Emps.' Ret. Sys.,
715 N.W.2d 7 (Iowa 2006)

Voss v. Iowa Dep't of Transp.,
621 N.W.2d 208 (Iowa 2001)

Statutes

7 U.S.C. § 1926(b)

Iowa Code § 357A.2

Iowa Code § 357A.2(4)

Iowa Code § 357A.13

Iowa Code § 357A.24(1)

Iowa Code § 357A.24(3)

Other Authorities

Iowa R. App. P. 903(2)(g)(3)

III. QUESTION 3: WHETHER AN IOWA CODE § 504A NONPROFIT CORPORATION CREATED IN 1977 HAD A LEGAL RIGHT TO PROVIDE WATER SERVICE ANYWHERE WITHIN THE STATE OF IOWA. IF SO, WHETHER A § 504A NONPROFIT CORPORATION THAT REINCORPORATED (INCLUDING THROUGH ARTICLES OF DISSOLUTION FOR THE § 504A ENTITY) AS A § 357A.2 RURAL WATER DISTRICT IN 1990 RETAINED THE LEGAL RIGHT TO PROVIDE WATER SERVICE ANYWHERE WITHIN THE STATE OF IOWA (INCLUDING OUTSIDE ITS BOUNDARIES AS SPECIFIED IN ITS COUNTY BOARD OF SUPERVISORS RESOLUTION AND WITHIN TWO MILES OF A MUNICIPALITY), PRIOR TO AND FOLLOWING THE 1991 AMENDMENT TO § 357A.2.

Cases

Iowa Dep't of Revenue v. Iowa Merit Emp't Comm'n,
243 N.W.2d 610 (Iowa 1976)

Rural Water Sys. # 1 v. City of Sioux Ctr.,
202 F.3d 1035 (8th Cir. 2000)

Rural Water Sys. # 1 v. City of Sioux Ctr.,
967 F. Supp. 1483 (N.D. Iowa 1997)

Statutes

7 U.S.C. § 1926(b)

Iowa Code Chapter 357

Iowa Code Chapter 357A

Iowa Code Chapter 364

Iowa Code Chapter 499

Iowa Code § 357A.2

Iowa Code § 357A.20(2)(b)

Iowa Code § 364.1

Iowa Code § 504A.51 (1991)

ROUTING STATEMENT

This case involves "questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the appellate courts of this state." Iowa Code § 684A.1 (2019). Accordingly, this case warrants retention by the Iowa Supreme Court.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

Appellant Xenia Rural Water District ("Xenia") seeks to wield federal law as a sword, rather than a shield, by usurping the right of Appellee City of Johnston, Iowa ("Johnston") to provide water service within two miles of its city limits under Iowa Code Chapter 357A.

II. COURSE OF PROCEEDINGS

On November 3, 2018, Xenia filed its lawsuit in the United States District Court for the Southern District of Iowa alleging five counts: 1) Violation of 42 U.S.C. § 1983; 2) Declaratory Judgment; 3) Injunction; 4) Constructive Trust—Customers in Dispute; and 5) Customers in Dispute—Damages. (App. at 23). Johnston filed its Answer on January 18, 2019, asserting nine affirmative defenses and a two-count counterclaim. (Answer and Affirmative Defenses to Plaintiff's First Amended Complaint, Amended

Counterclaim, and Jury Demand. (App. at 42). Counterclaim Count I requests a declaratory judgment as to the legal rights between Xenia and Johnston, and Counterclaim Count II requests an injunction against Xenia regarding the same.

On June 12, 2019, Xenia filed a Motion for Partial Summary Judgment ("First Motion") as to several elements of its claims and against all of Johnston's affirmative defenses and counterclaims. On July 18, 2019, Johnston filed its Combined Resistance to Xenia's First Motion and Motion for Partial Summary Judgment ("Johnston's Motion"), moving for partial summary judgment as to Xenia's request for a ruling declaring that federal law preempts Iowa Code § 357A.2. On January 8, 2020, Xenia filed a Second Motion for Partial Summary Judgment, which requested summary judgment as to an additional aspect of an element of Xenia's claims and as to past damages. Xenia's second motion is not directly at issue in the present appeal, but is noted for context.

On February 11, 2020, a hearing was conducted concerning Xenia's First Motion and Johnston's Motion. On March 19, 2020, the federal district court (Gritzner, J.) issued its Order (Dkt. 90) addressing Xenia's First Motion and Johnston's Motion. (App. at 324). The federal district court did not enter a final judgment. On March 27, 2019, Xenia filed a Notice of Appeal from the

Order to the United States Court of Appeals for the Eighth Circuit. Johnston filed a Motion to Dismiss the appeal for lack of appellate jurisdiction in light of the absence of a final judgment. Johnston's Motion to Dismiss the appeal was granted.

In response, on May 22, 2020, Xenia filed in the federal district court its Motion for the Court to Reconsider and Clarify Its Rulings on Partial Summary Judgment Pursuant to Fed.R.Civ.P. 54(b) ("Xenia's Motion for Reconsideration"). On June 5, 2020, Johnston filed a resistance and, in due course, Xenia replied. On June 18, 2020, the Association of Regional Water Organizations, Iowa Regional Utilities Association, and Iowa Lakes Regional Water, filed their Motion for Leave to File Brief of Proposed *Amici Curiae*, which was granted. On August 4, 2020, the federal district court entered its Order on Certified Questions of State Law. (App. at 539).

STATEMENT OF FACTS

Johnston does not subscribe to Xenia's Statement of Facts and provided substantive responses to the same "facts" when asserted in support of Xenia's First Motion. (*See, e.g.*, Johnston's Statement of Undisputed Material Facts in Support of Combined Resistance to Xenia's Motion for Partial Summary Judgment and Motion for Partial Summary Judgment (App. at 113)).[1]

[1] *See also* Johnston's Response to Plaintiff's Statement of

Johnston has no objection to the Statement of the Facts submitted by the federal district court in its Order on Certified Questions of State Law pursuant to Iowa Code section 684A.3, which is consistent with its Order on Xenia's First Motion and Johnston's Motion.

ARGUMENT

I. PRESERVATION OF ERROR

Johnston agrees with Xenia's Error Preservation Statement.

II. STANDARD OF REVIEW

Johnston agrees with Xenia's description of the Scope and Standard of Review.

III. COMMON ISSUES OF FACT AND LAW RELATED TO EACH CERTIFIED QUESTION PRESENTED

The genesis of the questions certified to this Court is Xenia's assertion of a limitless right to provide water service within the area described in the Polk County Board of Supervisors' resolution under which Xenia was

---

Uncontroverted Material Facts in Support of Combined Resistance to Plaintiff's Motion for Partial Summary Judgment and Motion for Partial Summary Judgment (App. at 113); Johnston's Reply to Plaintiff's Reply and Response to Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts in Support of Combined Resistance to Plaintiff's Motion for Summary Judgment and Motion for Partial Summary Judgment (App. at 263); Johnston's Reply to Plaintiff's to Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts in Support of Combined Resistance to Plaintiff's Motion for Summary Judgment and Motion for Partial Summary Judgment (App. at 284).

organized pursuant to Iowa Code section 357A.2. Xenia claims in the underlying federal court lawsuit that there is no limit to its *right* to serve within this area so long as Xenia can show an *ability* to serve the area. In so arguing, Xenia seeks to wield as a sword a federal statute, 7 U.S.C. § 1926(b), to preempt Iowa law, arguing it has been provided a government-sponsored monopoly to provide water service. Yet, the law is not nearly as broad as Xenia and its fellow rural water entities, such as *amici* herein, claim, as established in prior cases and correctly concluded by the federal district court in its underlying Order. (*See generally* App. at 324).

For instance, it is well established in the Eighth Circuit that section 1926(b) cannot be used to increase the service area of a rural water district. *Pub. Water Supply Dist. No. 3 v. City of Leb., Mo.*, 605 F.3d 511, 519 (8th Cir. 2010). In other words, section 1926(b) can only be used as a shield, not a sword. *Id.* at 519. In *Pub. Water Supply District No. 3 v. City of Lebanon, Missouri*, the Eighth Circuit stated:

> Analyzing § 1926(b)'s "curtailed" and "limited" language in a similar manner, the Sixth Circuit distinguishes between "offensive" and "defensive" uses of § 1926(b). *See Le-ax Water Dist. v. City of Athens*, 346 F.3d 701, 708 (6th Cir. 2003) ("The statute's use of phrases like 'curtailed' and 'limited' to describe the municipality's interference with the rural water association suggests that a rural water association must already be providing service to an area before the protections of § 1926(b) apply."). In *Le-ax*, the Sixth Circuit rejected a rural water district's attempt to use § 1926(b) to become the exclusive service provider for a

> new development that it had not previously served. *Id*. The Sixth Circuit adopted a categorical rule prohibiting rural districts from making "offensive" use of § 1926(b) by "seeking to use the statute to foist an incursion of its own on users . . . that it has never served or made agreements to serve." *Id*. at 707. In contrast, the *Le-ax* court read § 1926(b) to authorize "defensive" uses, allowing rural districts to "use the statute to protect [their] users or territory from municipal incursion." *Id*.

Id. at 518. The court held that it would adopt the Sixth Circuit's approach. *Id*. at 519.

Additionally, in *Rural Water Sys. # 1 v. City of Sioux Ctr.*, 967 F. Supp. 1483 (N.D. Iowa 1997), the federal district court (Bennett, J.) addressed a preemption issue relating to the interaction between 7 U.S.C. section 1926(b) and Iowa Code section 357A.2. *See generally, id.* at 1528–29. In doing so, the court noted that section 1926(b) does not preempt section 357A.2 for the following reasons.

"First, . . . no federal statute or regulation defines 'made service available' within the meaning of § 1926(b)." *Id.* (citing *Lexington-South Elkhorn Water Dist. v. City of Wilmore, Ky.*, 93 F.3d 230, 235 (6th Cir. 1996)). Therefore, no state law defining the service area of an indebted district is expressly preempted by any federal law. *Id.* Instead, "[c]ourts have routinely looked to state law as defining an association's protected service area under § 1926(b)." *Id.* at 1527 (citing *Lexington-South Elkhorn Water Dist.*, 93 F.3d at 235; *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 916 (5th

Cir. 1996) (per curiam). Furthermore, "[s]ection 1926(b) expressly prohibits only *curtailment* or *limitation* of the existing service area of the association by some *action* of a municipality (presumably under color of state law) to include the association's existing service area within the municipality's boundaries." *Id.* at 1529 (citing 7 U.S.C. § 1926(b)). In other words, curtailment in violation of section 1926(b) can only occur due to city action within an association's existing service area. *Id.*

Second, the court noted that the state statute cannot be used by a city to justify encroachment on a service area for which a district has the legal right to serve. *Id.* at 1529. In a situation where the state law is being used to encroach on a district's existing service area, section 1926(b) would preempt the state statute because it would "conflict with or stand as an obstacle to, the non-encroachment provisions of § 1926(b)." *Id.* However, this situation arises only where a district becomes indebted to the federal government, obtains the legal right to serve an area under state law, and the state subsequently enacts a statute defining the district's service area. *Id.*

In the federal district court case underlying this appeal, Xenia claims that the creation of the 2-mile rule of Iowa Code section 357A.2 curtailed its territory in violation of section 1926(b). As correctly concluded in the district court's Order, prior to 1990, Xenia had no legal right under state (or any) law

to serve the areas in dispute in this case. (App. at 338); *see Rural Water Sys. # 1*, 967 F. Supp. at 1528. Furthermore, no change to Iowa law since that time alters this conclusion.

IV. QUESTION 1: WHETHER AN IOWA CODE § 357A.2 RURAL WATER DISTRICT, BEFORE AMENDMENTS TO § 357A.2(4) IN 2014, HAD A LEGAL RIGHT TO PROVIDE WATER SERVICE TO PORTIONS OF AN AREA DESCRIBED IN ITS COUNTRY (SIC) BOARD OF SUPERVISORS RESOLUTION, SEE IOWA CODE § 357A.2(1), WHEN THOSE PORTIONS WERE ALSO WITHIN TWO MILES OF THE LIMITS OF A MUNICIPALITY, SEE § 357A.2(3), AND WHEN THE MUNICIPALITY HAD NOT WAIVED ITS RIGHTS TO PROVIDE WATER SERVICE TO THE AREA, SEE § 357A.2(4).

Prior to 2014, a rural water district in Iowa did not have a legal right to provide water service to portions of an area described in its county board of supervisors resolution when such an area is within two miles of a municipality's limits and the municipality did not waive its rights to provide water service to that area. Even after the amendments to Iowa Code section 357A.2(4) in 2014, a rural water district does not have the legal right to provide water service to portions of an area described in its county board of supervisors resolution when such an area is within two miles of a municipality's limits and the municipality did not waive its rights to provide water service to that area.

When Xenia incorporated under Iowa Code chapter 357A in 1990, it did so expressly making itself subject to the rules and procedures of section

357A.2. *See generally* Iowa Code § 357A.2; *see also* 1990 Polk County Board of Supervisors ("PCBOS") Resolution incorporating Xenia as a rural water district (App. at 98) ("BE IT FURTHER RESOLVED . . . that the district . . . is established as the Xenia Rural Water District will all of the rights powers and *duties specified in Chapter 357A of the Code of Iowa, as amended . . . .*" (emphasis added)). In other words, Xenia knew that if it wished to provide water service within two miles of a city's border it had to follow the notice procedures prescribed by section 357A.2. Indeed, this is precisely how Xenia operated in relation to Johnston prior to the events of this case. (*See* App. at 341). This is not surprising because "no federal statute or regulation defines 'made service available' within the meaning of § 1926(b)" and "[c]ourts have routinely looked to state law as defining an association's protected service area under § 1926(b)." *Rural Water Sys. # 1*, 967 F. Supp. at 1527, 1528. What is surprising is Xenia's recent about-face via the underlying lawsuit.[2]

[2] In fact, just months prior to filing its federal lawsuit, Xenia signed "an April 4, 2018 Interim Agreement, which stated, in relevant part, 'Section 357A.2 of the [Iowa] Code provides that Xenia may not provide services within two miles of the limits of Johnston unless Johnston has approved a new water system plan.'" (*See* App. at 325). While Xenia contends in this Court that "[t]he negotiations and approval of the Interim Agreement does not relate to and are not relevant to answering questions of law provided by the Certified Questions," (Xenia's Final Brief at 16), this Court obviously may decide their present relevance for itself. *See Pub. Water Supply Dist. No. 3*, 605 F.3d at 518.

Xenia and its amici attempt to convince this Court it should adopt their interpretation of the statute because it would otherwise create confusion, conflicts between the laws, and would not be ultimately fair to rural water districts. Their arguments failed in the federal district court and must fail here for the following reasons.

A. Development of the Two-Mile Rule

It is helpful to establish in the first place how the 2-mile rule came to be. At the time Xenia was incorporated in 1977, Iowa Code section 357A.2 read as follows:

> **Petition—bond.** A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in any county or any two or more adjacent counties for the purpose of providing an adequate supply of water for domestic purposes to residents of the area who are not served by the water mains of any city water system and who cannot feasibly obtain adequate supplies of water from wells on their own premises.
>
> There shall be filed with the petition a bond, certified check or cash in an amount and with sureties approved by the auditor, sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established. The petition shall be signed by the owners of at least fifty percent of all land lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:
>
> 1. The location of the area so designated, describing such area by section, or fraction thereof, and by township and range.
>
> 2. The reasons a district is needed.

Iowa Code § 357A.2 (1977).

Section 357A.2 was amended by the Iowa legislature in 1987. H.F. 398, 72d Gen. Assemb., Reg. Sess. (Iowa 1987). This amendment added a new paragraph to the section giving birth to what has been known throughout this case as the "2-mile rule," stating,

> **Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A** unless the city has approved a new water service plan submitted by the district. If the new water service plan is not approved by the city, the plan may be subject to arbitration.

Codification of amendment at Iowa Code § 357A.2 (1989) (emphasis added).

One year after the codification of this amendment, Xenia chose to reincorporate as a rural water district subject to the "duties specified in Chapter 357A," *see* PCBOS Resolution (App. at 98), and ceased operating as a non-profit Iowa Code Chapter 504 corporation, *see infra* Section VI.A.

Section 357A.2 was amended again in 1992. S.F. 2101, 74th Gen. Assemb., Reg. Sess. (Iowa 1992). Per this amendment, the language "except as provided in this section" was added, as was a new paragraph stating,

> **A rural water district incorporated under this chapter or chapter 504A may give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city.** The plan is only required to indicate the area within two miles of the city which the rural water district intends to service. If the city fails to respond to the rural water

> district's plan within ninety days of receipt of the plan, the rural water district may provide service in the area designated in the plan. The city may inform the rural water district within ninety days of receipt of the plan that the city requires additional time or information to study the question of providing water service outside the limits of the city. If additional time or information is required, the city shall respond to the rural water district's plan within one hundred eighty days of receipt of the plan. In responding to the plan, the city may waive its right to provide water service within the areas designated for service by the rural water district, or the city may reserve the right to provide water service in some or all of the areas which the rural water district intents to serve. If the city reserves the right to provide water service within some or all of the areas which the rural water district intends to serve, the city shall provide service within four years of receipt of the plan. This section does not preclude a city from providing water service in an area which is annexed by the city.

Codification of amendment at Iowa Code § 357A.2 (1993) (emphasis added).

Section 357A.2 has had subsequent amendments since 1992. Most significant to this case, as framed by Xenia, is the 2014 amendment. *See* H.F. 2192, 85th Gen. Assemb., 2d Sess. (Iowa 2014). The relevant portion of the amendment stated:

> A rural water district or rural water association may give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. This subsection shall not apply in the case of a district or association extending service to new customers or improving existing facilities within existing district or association service areas or existing district or association agreements. If water service is provided by a city utility established under chapter 388, the water plan shall be filed with the governing body of that city utility. The district or association shall provide written notice pursuant to this subsection by certified mail.

Codification of amendment at Iowa Code § 357A.2 (2014)

B. Xenia's Organizational Structure and Iowa Law Subject It to the 2-Mile Rule

The 1990 PCBOS Resolution organizing Xenia as a rural water district defined Xenia's territory "as the Xenia Rural Water District with all of the rights, powers and duties specified in Chapter 357A of the Code of Iowa, as amended." (PCBOS Resolution (App. at 98)). Chapter 357A, as amended and codified by 1989 (and subsequently), included the 2-mile rule. *See* Iowa Code § 357A.2 (1989). It follows that despite the resolution referencing Xenia's potential service territory to include the area within two miles of Johnston, Xenia remained subject to the "duties in [section] 357A[.2] of the Code of Iowa." (1990 PCBOS Resolution) (App. at 98)).

Xenia and its amici argue this is not the correct interpretation because the PCBOS Resolution is created pursuant to Iowa Code section 357A.2, which states a petition by an entity seeking to become a rural water district "shall state . . . [t]he location of the area, describing such area to be served or specifying the area by an attached map." Iowa Code § 357A.2(2)(a). According to Xenia and its amici, it only makes sense to assume this language of the statute only means the Resolution establishes Xenia's "existing service area," giving Xenia the legal right to serve all areas outlined in the Resolution.

(*See* Xenia's Final Brief at 26). However, this argument fails for several reasons.

First, the clear language of the statute—as well as the PCBOS Resolution—does not state that the territory outlined in the Resolution will become the district's "existing service area." Notably, the language of this subsection is contrary to Xenia's and its amici's argument because it states the defined boundaries are the "area to be served," and not the district's "existing service area." The territory described in the Resolution could only mean an area that the district could obtain the legal right to serve only by proceeding under chapter 357A—including the 2-mile rule.

Xenia's amici also claim "[t]he only logical conclusion is that the PCBOS intended to *in*clude the two-mile area in Xenia's service area" when "the PCBOS resolution would have expressly excepted any 'portion lying within the boundary of any incorporated city' from the service area." (Brief of Amici Curiae at 14 n.1 (emphasis in the original)). While this argument might seem compelling on first glance, it is not surprising that the Resolution would specifically carve out an area where the Polk County Board of Supervisors determined there was no possibility of service by the district (the "portion lying within the boundary of any incorporated city") from the area up to two miles outside that boundary under which the Resolution subjected

Xenia to the duties under section 357A.2, including the 2-mile rule. *See* Iowa Code § 357A.14(2); *see also Iowa Farm Bureau Fed'n v. Envtl. Prot. Comm'n*, 850 N.W.2d 403, 427 n.7 (Iowa 2014) (quoting *Millwright v. Romer*, 322 N.W.2d 30, 33 (Iowa 1982) (acknowledging a board of supervisors, like others, "is assumed to know the law and is charged with knowledge of the provisions of statutes")).[3]

Ultimately, Xenia and its amici completely ignore the fact that this subsection of 357A.2 is followed by the limitations under which a rural water district formed under Iowa law may operate—including the 2-mile rule—and interpreting it in the manner they propose would be contrary to Iowa's rules of statutory interpretation. *See infra*, Section V. Therefore, Xenia was then, and is now, subject to the 2-mile rule mandated by the Iowa legislature under Iowa Code section 357A.2. However, even if the amendment did what Xenia and its amici propose, the amendment could not be applied retroactively because it is substantive. *See infra*, Section V.A.

---

[3] Furthermore, Xenia and its amici's expansive misreading of the PCBOS Resolution and Iowa law on this point underscores the fallacy of their central tenet that 7 U.S.C. § 1926(b) must be read so that are no limits on rural water service providers. (*See, e.g.*, Brief of Amici Curiae at 12 (arguing section 357A.2 gives "rural water utilities the superior right to provide water service within two miles of city limits . . . ."). Under their approach, even the Resolution's reservation of the "portion lying within the boundary of any incorporated city" would seem to be in question, although Xenia has made not that claim—yet.

C. Xenia's 1982 Loan Only Covered the Area it Served in 1982

The federal district court did not ask this Court to answer whether the federal protections applied to the territory at issue in this case through Xenia's 1982 loan from the federal government. Further, it seems that the federal district court may have excluded this issue because it does not fall within this Court's "power" under Iowa Code section 684A.1. *Cf. Klinge v. Bentien*, 725 N.W.2d 13, 16 (Iowa 2006). Therefore, this Court should disregard this issue. *See Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 170 n.1 (Iowa 2002) (refusing to address certain issues when they were beyond the scope of the certified-question proceeding). Nevertheless, Xenia chose to raise this issue, so Johnston will briefly address it.

Simply stated, because none of the areas in dispute in this litigation were part of Xenia's *existing* service area at the time it first became indebted to the federal government in 1982—Xenia has never provided any evidence to the contrary—357A.2 cannot be preempted in this case and there is otherwise no conflicts between state and federal law. (App. at 337–38); *see Rural Water Sys. No. 1*, 967 F. Supp. at 1528–29, *aff'd*, 202 F.3d 1035 (8th Cir. 2000). To hold differently would create the conflict Xenia warns this Court about because rural water districts seemingly would have unfettered authority to serve anywhere they pleased. (App.at 339). If Congress had

desired this outcome it could have stated so. Instead, "no federal statute or regulation defines 'made service available' within the meaning of § 1926(b)" and "[c]ourts have routinely looked to state law as defining an association's protected service area under § 1926(b)." *Rural Water Sys. # 1*, 967 F. Supp. at 1527, 1528.

As Judge Gritzner correctly found,

> If Xenia already provided water services within two miles of Johnston's city limits as of the enactment (sic) two-mile rule, then the two-mile rule would not curtail or limit Xenia's continued provision of such services. When Xenia reincorporated as a rural water district pursuant to § 357A.2 in 1990, Xenia would not have given up any pre-1987 service area because § 357A.2 does not curtail or limit water services provided before 1987. That would include the service area protected by § 1926(b) when Xenia took out its first USDA loan in 1982.
>
> The record unambiguously indicates that Xenia did not assume a USDA loan at any time between May 18, 1982—the date of Xenia's first qualifying loan—and January 13, 1992—the date of Xenia's second qualifying loan. See Pl.'s App. 47, ECF No. 34-1. Although § 1926(b) prevents municipal encroachment on indebted rural water providers' protected service areas, **Xenia's "protected service area [was] defined by state law *as of the date*" it assumed qualifying debt.** *Rural Water Sys. No. 1*, 967 F. Supp. at 1530 (emphasis added). Before 1992, then, any protected service area was defined as of May 18, 1982, and is therefore exempt from the two-mile rule. Based on the current record, that protected service area does not cover the areas in dispute.

(App. at 337–38 (emphasis added)).

In other words, because section 357A.2 does not attempt to curtail any areas actually served by either districts or associations before 1987, the federal statute and section 357A.2 exist in harmony. *See* Iowa Code § 357A.2 ("Water services, *other than water services provided as of April 1, 1987*, shall not be provided within two miles of the limits of a city . . . ." (Emphasis added)). While Xenia became indebted to the federal government in 1982, such indebtedness was only for areas under that loan, none of which are at issue in this case. Johnston is not claiming any service rights to any area served by Xenia in 1982. As Judge Gritzner notes, Xenia did not get a new loan from the federal government until 1992. (App. at 338). By this date, the 2-mile rule was in existence, Xenia was no longer a 504A corporation, and Xenia had already been reorganized as a rural water district subject to the 2-mile rule.

For these reasons, Xenia's 1982 loan from the federal government is irrelevant to the issues presented because the areas that loan protects are not in dispute here and because section 357A.2 expressly excludes areas served before the creation of the 2-mile rule from the statute.

D. Johnston Has Made No Waiver

Finally, Xenia's argument regarding Certified Question 1 concludes with a discussion of Iowa Code section 357A.2(4), which is misplaced. (*See* Xenia's Final Brief at 22–23). This is another issue that was not presented by

the district court under its certified questions and must be disregarded. *See Wright*, 652 N.W.2d at 170 n.1. Indeed, Xenia does not truly argue anything on this point, meaning it should be deemed waived, see Iowa Rule of Appellate Procedure 903(2)(g)(3), and it seems no response is necessary or possible except to say Johnston has not waived any rights or arguments regarding section 357A.2(4) to the extent any issue remains pending in the federal district court.

V. QUESTION 2: WHETHER IOWA CODE § 357A.2(4), AS AMENDED BY THE IOWA LEGISLATURE IN 2014: (A) EXEMPTS A RURAL WATER DISTRICT FROM FOLLOWING NOTICE-OF-INTENT PROCEDURES WHEN THE AREA THE DISTRICT SEEKS TO SERVE IS WITHIN THE DISTRICT'S BOUNDARIES AS DESIGNATED IN THE COUNTY BOARD OF SUPERVISORS' RESOLUTION CREATING THE WATER DISTRICT, AND/OR (B) OTHERWISE PROVIDES THE RURAL WATER DISTRICT A LEGAL RIGHT TO SERVE SUCH AREAS WHEN THE MUNICIPALITY HAS NOT WAIVED ITS RIGHTS. IF SO, WHETHER THE 2014 AMENDMENT TO § 357A(4) HAD RETROACTIVE EFFECT.

The amendment to Iowa Code § 357A.2 in 2014 does not exempt a rural water district from following notice-of-intent procedures when the area the district seeks to serve is within the district's boundaries as designated in the county board of supervisor's resolution creating the rural water district, and does not provide a rural water district the legal right to serve such areas when the municipality has not waived its rights.

The parties agree that *Ferezy v. Wells Fargo Bank, N.A.* summarizes the standard when interpreting an Iowa statute, which is well known to this Court:

> In analyzing the language of a statute, **the Court "give[s] words their ordinary and common meaning by considering the context within which they are used, absent a statutory definition or an established meaning in the law."** *Doe v. Iowa Dep't of Human Servs.*, 786 N.W.2d 853, 858 (Iowa 2010); *see also State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000) ("Words are given their usual and ordinary meaning absent an express legislative definition or a particular meaning in law."). **"Plain language or plain meaning of a statutory provision is not limited to the meaning of individual terms, but rather, such inquiry requires examining the text of the statute as a whole by considering its context, object, and policy."** *Forbes v. Hadenfeldt*, 648 N.W.2d 124, 126 (Iowa 2002) (citing *Voss v. Iowa Dep't of Transp.*, 621 N.W.2d 208, 211 (Iowa 2001)).
>
> As the Iowa Supreme Court has instructed,
>
> > [w]hen called upon to interpret a statute, we first determine whether the legislative enactment is ambiguous. If it is clear and unambiguous, **we give [the] statute a plain and rational meaning**. If, on the other hand, the statute is ambiguous, we rely on well-established rules to aid our interpretation. A statute or rule is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute.
>
> *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 859 (Iowa 2009) (citations and quotation marks omitted).
>
> ***
>
> Ferezy asserts that the terms "accrue" and "benefit" indicate the legislature only intended to include deductions that had a

> "tangible, financial" upside. Pl. Br. 5, ECF No. 25. Such a restrictive reading does not track the unambiguous, ordinary meanings of "accrue" and "benefit," which in common and ordinary vernacular encompass much more than purely tangible, financial matters, in the absence of a limiting statutory definition. *See Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 717 (Iowa 2005) (holding that **courts avoid absurd results by interpreting statutes in a commonsense manner**); *see also State v. Petithory*, 702 N.W.2d 854, 859 (Iowa 2005) (interpreting statute consistent with common sense); *Harrington v. State*, 659 N.W.2d 509, 520 (Iowa 2003) (same).

755 F. Supp. 2d 1010, 1013–15 (S.D. Iowa 2010) (emphasis added). Interpreting the statute in the manner in which Xenia proposes would result in the absurd and nonsensical effect the rules of interpretation strictly forbid.

For example, Xenia believes the definition of the phrase "existing service area" should include all territory outlined in the PCBOS Resolution. It argues "existing service area" should be defined as something more: "*boundary*/service area." (*See* Xenia's Final Brief at 36; Xenia's Memorandum in Support of its Motion to Reconsider (App. at 421) (emphasis added)). Moreover, this Court must also reject Xenia's bald attempt to rearrange and add a couple of words to the statute to conclude that the territory outlined in the Resolution is equivalent to Xenia's "existing service area." Of course, adding self-serving words like Xenia and its amici attempt here—in fact modifying the statute wholly—is manifestly wrong and would lead to the absurd result they desire. *See Ferezy*, 755 F. Supp. 2d 1010 at 1015 (citing

Teamsters Local Union No. 421, 706 N.W.2d at 717) (noting that courts should avoid interpreting statutes that would result in absurd results).

This is not the first time Xenia has attempted to add words that do not exist in the statute and the Court should reject Xenia's and its amici's effort to rewrite the statute. (*See* Xenia's Reply to Johnston's Resistance to Plaintiff's Motion for Summary Judgment (App. at 239–40) (arguing that the 2014 amendment clarifies that the two-mile rule does "not apply to a rural water district's extension of service within its own existing *Territory/Service Area* . . . . (Emphasis added)). Nowhere does Iowa Code section 357A.2 include the word *Territory* or *Boundary*. *See* Iowa Code § 357A.2; *see also* (App. at 342) ("Contrary to Xenia's argument, the amended language never references *territory* as established by county supervisors . . . ." (Emphasis added)).

Additionally, Xenia's and its amici's claim that the PCBOS Resolution defined Xenia's "existing service area" is misleading. Nowhere does the Resolution state so. (*See* Xenia's Appendix in Support of First Motion for Summary Judgment (App. 98)). Even more so, the Resolution established Xenia subject to the "duties specified in Chapter 357A of the Code of Iowa, as amended," including the 2-mile rule. (*See id.*); *see also* (App. at 333). The Resolution says nothing about water service beyond invoking Iowa Code

section 357A.2, by which Xenia was permitted to seek to provide water service if its plan to do so would fall within two miles of a city such as Johnston.

Xenia also suggests that Iowa Code section 357A.13 has some applicability to the issues but cites no authority and makes no argument in support. (Xenia's Final Brief at 34). As a result, it should be found to have waived any argument regarding this section. *See* Iowa R. App. P. 903(2)(g)(3). Of course, section 357A.13 has no application in any event. Section 357A.13 states: "If the capacity of the district's facilities permits, the district may *sell* water by contract to any city, other district, or other person, public or private, not within the *boundaries* of a district." Iowa Code § 357A.13 (emphasis added).

First, this section is irrelevant to this case because it does not present a factual scenario where this section would even apply. Additionally, only by adding to the statute Xenia's and its amici's self-serving language can the Court even get to their desired interpretation. In reality, this statute does not even reference "existing service area" as Xenia claims. If it did, it seems Xenia's entire underlying lawsuit would be moot. Instead, and contrary to Xenia's and its amici's position, the section refers to "the boundaries of a

district," invalidating Xenia's argument and further showing the boundary described in the PCBOS Resolution is not Xenia's "existing service area."

Finally, applying the interpretation that Xenia and its amici propose would jettison the 2-mile rule completely and would render it superfluous, which is contrary to the rules of statutory interpretation. (*See* App. at 332–33) (citing *Thomas v. Iowa Pub. Emps.' Ret. Sys.*, 715 N.W.2d 7, 15 (Iowa 2006)). Additionally, as found by the federal district court, even if section 357A.13 was applicable, the specific procedure of section 357A.2 would control. (App. at 348) (citing *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000)).

The amici for Xenia raise a red herring in an attempt to persuade this Court this argument is meritless. They argue the statute would not be rendered superfluous because the statute "allows for notice-free extensions of service to new customers 'within existing district or association service areas **or** existing district or association agreements.'" (Brief of Amici Curiae at 18 (emphasis in the original)). Then, it claims the statute says agreements are only one of two ways by which a district can serve, and takes Johnston to task for failing to explain how the language can mean the district can serve "within existing district or association service areas." (*Id.*) Notably, the amici provide no explanation as to what this could mean or how it is relevant in the

circumstances of this case, which do not involve an extension of an existing service or any separate agreement.

On the other hand, Johnston has thoroughly addressed this issue in briefing in the underlying federal district court. (*See* Johnston's Response to *Amici Curiae*'s Brief (App. at 527–30)). In fact, a rural water district could be serving within a city's two-mile boundary without an agreement in other circumstances. For example, section 357A.2 contemplates that a district could serve without one if a city permits the district to serve. This case does not involve such other circumstances. Instead, Xenia attempts to wield its statutory sword to cut off an area that Johnston has long served and to which it has long had the preeminent right to serve.

Amici also raise the argument that a rural water district's territory as established under section 357A.2 "will not necessarily include any areas within two miles of city limits," and "[t]o the extent a district later attempts to attach new areas within the two-mile limits of its service area, *see* Iowa Code § 357A.24(3), the attempt should be rejected unless the district complies with Iowa Code § 357A.2(4)." (Brief of Amici Curiae at 23 n. 4). This argument is also flawed from the outset because it does not apply to the facts of this case.

Furthermore, the section of the Chapter cited by amici—357A.24—does not support its contention that the district can use this authority to add

land within two miles of a city to its defined boundaries. Instead, and as the title of this section describes, section 357A.24 is used when "two or more districts . . . join in a petition to detach an area which is not being served by the facilities of one district or system for purposes of being attached to the other district or system." Iowa Code § 357A.24(1). Notably, this statute confirms the critical role of state law, which amici and Xenia otherwise wish to ignore. Moreover, if the statue provided the expansive effect amici argue, it would purportedly eliminate the two-mile rule. Again, amici's interpretation would render the two-mile rule superfluous because it would make the new territory part of the district's "existing service area" and somehow immune to the rule.

Xenia's and its amici's contention that their interpretation of the statute "helps avoid a conflict between federal and state law" is mistaken. The truth is that in order to interpret the statute the way Xenia and its amici argue one would have to ignore state law completely, which would create conflict and confusion. Even more so, the amici's argument that this Court should act as the legislature and "treat[] portions of Chapter 357A[—the 2-mile rule—]as superfluous," is further proof Xenia's and its amici's proposed interpretation violate Iowa's well-established principles of statutory interpretation and must

be rejected. *See* Brief of Amici Curiae at 22; *see also Thomas*, 715 N.W.2d at 15.

A. The Amendment Does Not Apply Retroactively Because It Is Substantive

Xenia also argues the 2014 amendment to section 357A.2 should apply retroactively. However, the amendment was substantive. Therefore, it should only apply prospectively.

A statute is applied retroactively only when it relates to a remedy, a procedure, or when the legislature expressly states so. *Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 578 (Iowa 2009) (quoting *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985)):

> It is well established that a statute is presumed to be prospective only unless expressly made retrospective. Statutes which specifically affect substantive rights are construed to operate prospectively unless legislative intent to the contrary clearly appears from the express language or by necessary and unavoidable implication. Conversely, if the statute relates solely to a remedy or procedure, it is ordinarily applied both prospectively and retrospectively.
>
> . . . Substantive law creates, defines and regulates rights. Procedural law, on the other hand, "is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective." Finally, a remedial statute is one that intends to afford a private remedy to a person injured by a wrongful act. It is generally designed to correct an existing law or redress an existing grievance.

Id. (quoting *Baldwin*, 372 N.W.2d at 491).

The 2014 amendment ostensibly eliminates a city's right to reject a provision of water service by a district to new customers within its existing service area, making it a substantive amendment that must only be applied prospectively. In fact, the action Xenia is purporting to take in relation to the "Encroachment Area" in issue in this case makes the overall effect of the amendment substantive, not procedural. Furthermore, the 2014 amendment does not include any language stating that the subsection must be applied retroactively. *See Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 578 (Iowa 2009) ("It is well established that a statute is presumed to be prospective only unless expressly made retrospective."). Because the 2014 amendment does not merely change the way a rural water district must present its notice to serve and has no indicia of retroactive effect, the amendment cannot be applied retroactively.

The federal district court correctly resolved this issue when it held that the 2014 Amendment could not be applied retroactively because "the amendment does not merely relate to the 'practice, method, procedure, or legal machinery by which substantive law is enforced or made effective.'" (App. at 345) (quoting *Anderson Fin. Servs., LLC*, 769 N.W.2d at 578)). Furthermore, there is no indication the legislature intended for the statute to apply

retrospectively. (*See id.*). As a result, Xenia's argument that the amendment should be applied retroactively fails.

For these reasons, Iowa Code section 357A.2, as amended in 2014, does not exempt a rural water district or association from the 2-mile rule when such area is within a city's two-mile boundary and when the city has not waived its rights. Moreover, the substantive effect of the amendment in 2014 cannot be applied retroactively.

VI. QUESTION 3: WHETHER AN IOWA CODE § 504A NONPROFIT CORPORATION CREATED IN 1977 HAD A LEGAL RIGHT TO PROVIDE WATER SERVICE ANYWHERE WITHIN THE STATE OF IOWA. IF SO, WHETHER A § 504A NONPROFIT CORPORATION THAT REINCORPORATED (INCLUDING THROUGH ARTICLES OF DISSOLUTION FOR THE § 504A ENTITY) AS A § 357A.2 RURAL WATER DISTRICT IN 1990 RETAINED THE LEGAL RIGHT TO PROVIDE WATER SERVICE ANYWHERE WITHIN THE STATE OF IOWA (INCLUDING OUTSIDE ITS BOUNDARIES AS SPECIFIED IN ITS COUNTY BOARD OF SUPERVISORS RESOLUTION AND WITHIN TWO MILES OF A MUNICIPALITY), PRIOR TO AND FOLLOWING THE 1991 AMENDMENT TO § 357A.2.

A. Xenia Is Not a Non-Profit Corporation Under Iowa Code Chapter 504A, but Even if it Was, It Did Not, and Does Not Now, Have the Right to Serve the Areas Within Two Miles of Johnston's City Limits

Xenia argues it was at all times able to provide water services within two miles of Johnston's city limits because it was initially incorporated as a 504A corporation. It claims its 1982 federal loan granted it protections to areas

Xenia had not even considered serving at the time, including the boundaries outlined by the PCBOS Resolution eight years later when Xenia reorganized from a 504A corporation into a rural water district under Chapter 357A. This claim fails for several reasons.

First, even if Xenia was capable of providing service in the past, which is not in issue in this appeal, Xenia has never provided service to any of the areas in dispute. (App. at 338). Second, Xenia's argument of an unfettered authority to serve anywhere in the state fails because of a restriction on Xenia then (and now) that it could not act in an ultra vires fashion, or otherwise in violation of Iowa law. *See Iowa Dep't of Revenue v. Iowa Merit Emp't Comm'n*, 243 N.W.2d 610, 616 (Iowa 1976) (holding a rule created by the Iowa Merit Employment Commission was "void because it conflicted with relevant provisions of the [Iowa] Code, and [was] therefore ultra vires.").

In addition, Xenia's alleged right to provide water service would have been limited vis-à-vis Johnston and others in several circumstances. Iowa Code Chapter 357A—titled then, as now, "Rural Water Service Providers" and having application beyond the circumstances of this case—existed prior to Xenia's incorporation, as have the expansive rights and powers of cities granted under Iowa law, including Iowa Code Chapter 364. *See, e.g.*, Iowa Code § 364.1, .4(2) (1989) (providing "[a] city may . . . [b]y contract, extend

services to persons outside the city"). Moreover, additional Iowa Code chapters, such as chapters 357 ("Benefitted Water Districts") or 499 ("Cooperative Associations") would provide limits on Xenia's alleged right to provide water service as a 504A nonprofit or otherwise. Each of the cited chapters would need to be taken into account under the particular circumstances presented regarding rights or restrictions on providing water service. Thus, there is no way to conclude a nonprofit corporation created in 1977 had a legal right to provide water service anywhere within the state.

Most importantly for this case, however, is the fact Xenia the 504A corporation dissolved in 1991 shortly after Xenia's reorganization under Chapter 357A. *Cf.* Iowa Code § 357A.20(2)(b) ("any district incorporated upon the petition of a nonprofit corporation . . . [u]pon filing of the notice, the nonprofit corporation shall cease to exist as a chapter 504 entity . . . ."); *Rural Water Sys. # 1 v. City of Sioux Ctr.*, 202 F.3d 1035, 1038 & n.7 (8th Cir. 2000) ("Although the district may continue to operate under the bylaws and articles of incorporation of the 504A corporation, *it is no longer a 504A corporation once it is reincorporated*." (Emphasis added)). The new water district was created subject to the already existing 2-mile rule. *See* ((PCBOS Resolution) App. at 98) (noting Xenia Rural Water District is subject to the "duties specified in Chapter 357A of the Code of Iowa . . . .").

Therefore, Xenia ceased being a 504A corporation as a matter of law by 1991. *See Rural Water Sys. # 1*, 202 F.3d at 1038 & n.7. Any argument to the contrary is belied by the fact that Xenia Rural Water Association, Inc.—the nonprofit—filed Articles of Dissolution on April 23, 1991, with the Iowa Secretary of State. ((Johnston's Resistance to Xenia's Motion for Reconsideration (quoting Xenia's Articles of Dissolution)) App. at 454, 479) ("At a special meeting of the members of [Xenia] held on April 18, 1991, at which a quorum was present, more than two-thirds of the members present or represented by proxy *adopted a resolution to dissolve the corporation* pursuant to Iowa Code § 504A." (Emphasis added)); *see* Iowa Code § 504A.51 (1991) ("The articles of dissolution shall set forth . . . (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast . . . .").[4]

[4] Former Iowa Code chapter 504A (the Iowa Nonprofit Corporation Act) was replaced in 2004 by the current Iowa Code chapter 504 (the Revised Iowa Nonprofit Corporation Act). Xenia's Articles of Dissolution track the applicable section of the statute in effect at the time. *See* Iowa Code § 504A.51 (1991). This Court should not take judicial notice or adopt Xenia's present description of its status, Xenia's Final Brief at 42 n.5, because Xenia has made no showing that judicial notice is appropriate and its description is inaccurate and relies on inapplicable authority.

Moreover, pursuant to the Articles of Dissolution, "[a]ll assets and liabilities of the corporation [were] transferred, conveyed or distributed to Xenia Rural Water District in accordance with the provisions of Iowa Code § 504A." ((Johnston's Resistance to Xenia's Motion for Reconsideration (quoting Xenia's Articles of Dissolution)) App. at 454, 479).

Clearly, it cannot be said a nonprofit corporation created in 1977 had a legal right to provide water service anywhere within the state. Even if that was the case, Xenia has never served the areas in dispute and does not have the dual status it claims gives it power to serve anywhere in the state. Therefore, Xenia's and the amici's arguments fail.

CONCLUSION

Xenia is not entitled to the relief it seeks in the lawsuit underlying this appeal. This Court should reach conclusions consistent with the analysis set forth in the underlying Order preceding this appeal and answer the certified questions in the fashion described to confirm the federal district court's analysis and the clear meaning and intent of Iowa law. In effect, the federal district court's Order should be affirmed and this case returned to that court for further proceedings that include the dismissal of Xenia's claims.

REQUEST FOR ORAL ARGUMENT

Johnston respectfully requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because this brief contains 8,256 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

This brief complies with the typeface requirements and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and (f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point, Times New Roman font.

Date: November 10, 2020

/s/ *William J. Miller*
William J. Miller

CERTIFICATE OF FILING

The undersigned hereby certifies that Appellee's Final Brief and Request for Oral Argument was electronically filed on November 10, 2020, in accordance with Chapter 16 of the Iowa Rules of Court.

/s/ *William J. Miller*
William J. Miller

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Appellee's Final Brief and Request for Oral Argument was electronically filed on November 10, 2020, and thus served on:

Steven M. Harris
Michael D. Davis
Doyle Harris David & Haughey
2419 East Skelly Drive
Tulsa, OK 74105

Frank Murray Smith
4215 Hubbell Avenue
Des Moines, IA 50317
ATTORNEYS FOR PLAINTIFF-APPELLANT
XENIA RURAL WATER DISTRICT

Stephen H. Locher
Belin McCormick, P.C.
666 Walnut Street, Suite 2000
Des Moines, IA 50309
ATTORNEYS FOR ASSOCIATION OF
REGIONAL WATER ASSOCIATIONS,
IOWA REGIONAL UTILITIES ASSOCIATION,
AND IOWA LAKES REGIONAL WATER
AS *AMICI CURIAE*

Amy Beattie
Allison Steuterman
Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, IA 50266-7703
ATTORNEYS FOR THE IOWA LEAGUE
OF CITIES AS *AMICUS CURIAE*

/s/ *William J. Miller*
William J. Miller