IN THE SUPREME COURT OF IOWA

NO. 23-0917
WOODBURY COUNTY NO. LACV200008

LORI AND RONALD RANDOLPH,
Plaintiff-Appellants,

v.

AIDAN, LLC,
Defendant, Third-Party Plaintiff, and Appellee,

v.

CITY OF SIOUX CITY, IOWA,
Third-Party Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR WOODBURY COUNTY
THE HONORABLE ROGER L. SAILER, JUDGE

APPELLANTS' JOINT FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

Appellants submit that this case should be considered by the Iowa Supreme Court pursuant to Iowa Rule of Appellate Procedure 6.1101(2)(c), as this case presents a substantial issue of first impression.

STATEMENT OF THE CASE

On November 8, 2021, Plaintiff-Appellants Lori and Ronald Randolph (hereinafter the "Randolphs"), husband and wife, filed a Petition in Iowa District Court against Defendant-Appellee Aidan, LLC (hereinafter "Aidan"). Lori alleged that she suffered injuries in a fall down a flight of stairs at a rental property owned by Aidan, and Ronald alleged loss of spousal consortium.

Aidan, in turn, filed a Third-Party Petition against the City of Sioux City (hereinafter the "City"), alleging that the defects in the stairs should have been caught during an inspection by the City, and that the City negligently hired, retained, or supervised the housing inspector who observed their property, Doug Gough.

The City moved to dismiss Aidan's Third-Party Petition. The Randolphs joined in the City's Motion. On May 31, 2023, the District Court overruled the City's Motion. The Randolphs filed a timely Application for Interlocutory Review, in which the City joined. This Court granted the Application on July 27, 2023.

STATEMENT OF FACTS

On a motion to dismiss, the Court assumes that the facts contained in the Petition are true, and determines whether they state an actionable claim

for relief. *See, e.g., U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). Accordingly, here Aidan's Third-Party Petition sets forth the following facts.

Plaintiffs Lori and Ronald Randolph were tenants in a rental property owned by Defendant Aidan, LLC (hereinafter "Aidan"). R. at 4, ¶ 3. Lori alleges that on or about February 14, 2020, she fell on a flight of stairs at said property, sustaining injuries. R. at 5, ¶¶ 7-8.

Ms. Randolph alleges that she fell because the stairs were uneven or were otherwise unsafe, and were out of compliance with the Sioux City Municipal Code. R. at 4, ¶¶ 5-6; *id*. at 5, ¶ 8. The Randolphs filed suit against Aidan on November 8, 2021, alleging both personal injuries to Ms. Randolph and loss of consortium to Mr. Randolph. R. at 5-6.

On February 3, 2023, Aidan filed its Third-Party Petition against the City of Sioux City (hereinafter the "City"). Aidan alleges that the City is liable for the Randolphs' damages on theories of "negligent hiring/retention/supervision" and contribution. R. at 9-10. Specifically, Aidan alleges that the City's inspector, Doug Gough (hereinafter "Gough"), failed to find any issues with the stairs during the course of his inspections, and that he was unqualified for his job. *Id*. at 9, ¶¶ 5, 7-8.

ARGUMENT

The issue before the Court is a purely legal question, to wit, whether a person can bring a claim against a City for negligent hiring, retention, or supervision of a housing inspector notwithstanding (I) the immunity provision of Iowa Code section 670.4(1)(j) and (II) the public duty doctrine.

The Iowa Code immunizes municipalities from claims based on missing a defect in the course of a building inspection. The legislature, by enacting section 670.4(1)(j), intended to allow cities to maintain inspection services in the interest of public health and welfare, without turning the cities into liability insurers for every building they inspect.

Aidan, presumably knowing that the City is immune on such a claim, seeks an end run around the statute. They base their claims not on the allegation that Inspector Gough missed the defective stairs in the course of his inspection, but rather, that the City negligently hired, retained, or supervised Mr. Gough.

However, such a claim is contrary to the plain wording of section 670.4(1)(j) and finds no support in the case law. The purpose of this immunity is to allow cities to enforce building codes, not to turn them into general liability insurers.

Additionally, and in the alternative, Aidan's claim that the City should have hired a different inspector or supervised him better is essentially a claim that the City did not enforce its laws well enough. This is precisely the kind of claim that fails under the public duty doctrine.

For these reasons, the City respectfully asks this Court to reverse the decision of the District Court; to hold that Aidan's claims for negligent hiring, retention, and supervision fail under either section 670.4(1)(j) or the public duty doctrine; and to order that Aidan's Third-Party Petition be dismissed.

I. THE CITY IS IMMUNE ON AIDAN'S PETITION PURSUANT TO IOWA CODE SECTION 670.4(1)(j).

1. PRESERVATION OF ISSUE

The City raised this issue to the Court in its Pre-Answer Motion to Dismiss, filed February 24, 2023. The Randolphs joined in the City's Motion on March 6. The District Court overruled the Motion via written Ruling on May 31. On June 7, the Randolphs filed a timely Application for an Interlocutory Appeal from the District Court's Ruling, and the City joined the Application on June 9. This Court sustained the parties' Application. Accordingly, this issue is properly before this Court.

2. SCOPE OF REVIEW

This Court reviews an order overruling a motion to dismiss for correction of errors at law. *Kingsway Cathedral v. Iowa Dept. of Transp.*, 711

N.W.2d 6, 7 (Iowa 2006). Motions to dismiss are appropriate when the facts contained in the Petition do not state an actionable claim for relief. *See, e.g., U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). And where the facts pled in the petition demonstrate that the defendant is immune, it is appropriate to dispose of the petition on a motion to dismiss. *See generally Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019).

3. ARGUMENT

Section 670.4(1)(j) prevents an individual from suing a city for missing a defect during the course of an inspection. Aidan did not appear to dispute this premise at the District Court level, and this is presumably why Aidan did not assert a general negligence claim in their Third-Party Petition.

Aidan does argue, however, that an individual should nevertheless be able to sue a city for negligently *hiring, retaining, or supervising* the inspector who missed the defect. *See* R. at 9-10. The City respectfully disagrees, as such an interpretation is inconsistent with (1) the plain meaning of section 670.4(1)(j); (2) the legislative history surrounding its enactment; (3) the overarching immunity system of chapter 670 more broadly; and (4) the existing case law.

For these reasons, the City respectfully asks this Court to overrule the decision of the District Court; to hold that 670.4(1)(j) bars a claim against a

city for negligent hiring, retention, or supervision of a housing inspector; and accordingly to dismiss Aidan's Third-Party Petition.

A. Aidan's interpretation is inconsistent with the clear wording of section 670.4(1)(j).

Aidan asserts here that even though the City clearly enjoys immunity from liability for missing a defect in the course of an inspection, it should nevertheless be allowed to bring a claim against the City for negligent hiring, retention, or supervision. This argument is at odds with the plain meaning of 670.4(1)(j).

This Court has several principles of statutory interpretation which it considers "well-settled." *Du Trac v. Comm. Credit Union v. Hefel*, 893 N.W.2d 282, 294 (Iowa 2017). "The purpose of statutory interpretation is to determine the legislature's intent." *Id*. (quoting *State v. Howse*, 875 N.W.2d 684, 691 (Iowa 2016)). 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." *Id*. (quoting *Howse*, 875 N.W.2d at 691).

Here, section 670.4(1)(j) provides, in full, as follows:

> The liability imposed [on municipalities for their torts] shall have no application to any claim enumerated in this section. As to any of the following claims, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims

> and, in the absence of such express statute, the municipality shall be immune from liability:
> . . .
> *j*. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, *if the damage was caused by a third party, event, or property* not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

Iowa Code § 670.4(1)(j) (2023) (emphasis added).

Assuming that Mr. Gough did miss a defect in the course of his inspection, this statute plainly immunizes the City from any claim based on such a mistake, since:

1. The City is a municipality;
2. Mr. Gough was an employee of the City;
3. His act of missing the defect would have been an "omission" within the meaning of the statute (and Aidan has not pled that Gough committed actual malice nor a criminal offense); and
4. The Randolphs' damages were caused by property not under the City's supervision and control, to wit, the stairs of Aidan's apartment complex.[1]

[1] *See Williams v. Bayers*, 452 N.W.2d 624, 626 (Iowa App. 1990) (cities do not have "supervision or control" over privately-owned buildings within the meaning of then-section 670.4(10), precursor to the current section 670.4(1)(j)); *see also Madden v. City of Eldridge*, 661 N.W.2d 134, 135, 141

The City expects Aidan will respond by arguing that their claim is not truly based on the negligence of *Gough*, but rather, is based on the negligence of the *City* in its hiring, retention, and/or supervision of Mr. Gough. However, this argument would again be contrary to the plain language of 670.4(1)(j): the important factor for immunity under that subsection is not that the damages arose out of an inspection, but rather, again, that the damages were caused by a *third party*. Iowa Code § 670.4(1)(j). Under that section, the City is immune on "any claim," whether arising out of "issuance of permit, inspection, investigation, or otherwise," so long as "the damage was caused by a third party, event, or property not under the supervision or control of the municipality." *Id*.

Here, the law clearly establishes that the stairs of a private apartment building are under the control of the third-party owner, *not* the City. *See Williams*, 452 N.W.2d at 626; *Madden*, 661 N.W.2d at 135, 141. Thus, since the stairs were under the control of Aidan as a matter of law, the City is immune under even the plain language of section 670.4(1)(j). Accordingly,

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(Iowa 2003) (city not liable for death caused by collapsed apartment ceiling even though it had paid to construct the building at issue: city did not own the building at the time of loss, and city was not obligated to supervise contractor who built the building).

the City respectfully asks this Court to reverse the decision of the District Court, and to order that Aidan's Third-Party Petition be dismissed.[2]

B. Aidan's argument is inconsistent with the overarching language of 670.4(1), providing that only statutory claims (and not common law claims) survive the 670.4 immunity.

Another one of the "well-settled principles of statutory interpretation" is that the Court "consider[s] the legislative history of a statute, *including prior enactments*, when ascertaining legislative intent." *Du Trac*, 893 N.W.2d at 294 (quoting *Howse*, 875 N.W.2d at 691) (emphasis added).

The default rule historically under the common law was that municipalities were immune from suit, whether via sovereign immunity or otherwise. *See, e.g.,* W. E. Shipley, Comment Note, *Municipal immunity from liability for torts*, 60 A.L.R.2d 1198 § 2 (1958).

Iowa abrogated that common law rule by enacting what would ultimately become section 670.2 (providing that municipalities are generally liable for their torts absent a statutory exemption). *See Symmonds v. Chicago,*

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[2] Aidan's Third-Party Petition is in two Counts, to wit, (I) negligent hiring/retention/supervision and (II) contribution. *See* R. at 9-10. The City submits that both claims are based on the same theory of negligent hiring/retention/supervision. *See Id.* at 10, ¶¶ 12-14. Accordingly, if this Court determines that the City is immune on Aidan's Count I, then the City would be immune on Aidan's Count II as well, and the Third-Party Petition should be denied in its entirety.

M., St. P. & P.R. Co., 242 N.W.2d 262, 264 (Iowa 1976), *abrogated on other grounds by Estate of McFarlin v. State*., 881 N.W.2d 51 (Iowa 2016).

Yet the legislature preserved immunity for the kinds of claims described in section 670.4(1). A municipality is not liable for any claim which is included therein and which arises out of the common law:

> As to any of the following claims, a municipality shall be liable only to the extent liability may be imposed *by the express statute dealing with such claims* and, in the absence of such express statute, the municipality shall be immune from liability.

Iowa Code § 670.4(1) (emphasis added).

Here, Aidan's claim does not arise out of any such express statute. Rather, it arises out of the common law. This would be a different case if, e.g., Aidan were asserting a worker's compensation claim arising out of chapter 85. The fact that the legislature restricted municipal liability only to such statutory claims, and the fact that no statute creates a private right of action for negligent inspections, demonstrates the legislature's intent to immunize municipalities in these situations.

C. Aidan's argument is inconsistent with the overall immunity system the legislature created in chapter 670.

A third "well-settled principle[] of statutory interpretation" is that the Court must consider the statute as a whole:

> When we interpret a statute, we assess the statute in its entirety, not just isolated words or phrases. We may not extend, enlarge, or otherwise change the meaning of a statute under the guise of construction.

Du Trac, 893 N.W.2d at 294 (quoting *Howse*, 875 N.W.2d at 691). Indeed, the Court should even consider other, related statutes, discerning the meaning of a statute from its overall context in the Iowa Code:

> In determining the ordinary and fair meaning of the statutory phrase at issue, we take into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes.

Sand v. An Unnamed Local Government Risk Pool, 988 N.W.2d 705, 708 (Iowa 2023) (quoting *Landowners v. S. Cent. Reg'l Airport Agency*, 977 N.W.2d 486, 495 (Iowa 2022)).

Here, Aidan's argument that 670.4 would treat general negligence differently than negligent hiring, retention, or supervision, is particularly illogical in light of the remainder of chapter 670. Section 670.8, for example, provides that a city

> shall defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties.

Id. § 670.8. Moreover, section 670.12 provides that

> [a]ll officers and employees of municipalities are *not* personally liable for claims which are exempted under section 670.4, except claims for punitive damages, and actions permitted under section 85.20.

Id. § 670.12 (emphasis added).

Thus, regardless of whether a tort is committed by an employee or by the municipality itself, liability will typically run solely to the municipality all the same. This is the system which the legislature designed – and for good reason, since a plaintiff is much more likely to receive a recovery from a municipality than from an individual employee. But to say that the City is liable on a claim for negligent hiring, retention, or supervision where it is not liable for general negligence is completely contrary to the overall spirit and intent of chapter 670.

D. Aidan's argument finds no support in the case law.

Finally, there is no support in the case law for the argument that a tort for negligent hiring, retention, or supervision survives the immunity of section 670.4(1)(j). Aidan cited three cases to the District Court involving claims for negligent hiring/retention/supervision against municipalities, but *none* of these cases involved a situation where the municipality enjoyed any kind of statutory immunity at all. To the contrary, all three cases involved an underlying claim of sexual harassment or abuse, for which a city would obviously not be immune.

The case of *Kiesau v. Bantz* involved a claim of sexual harassment against a county official, specifically, that a sheriff's deputy circulated an

altered photo of a fellow deputy, depicting her with exposed breasts. 686 N.W.2d 164, 169 (Iowa 2004), *overruled on other grounds by Alcala v. Marriott Inter., Inc.*, 880 N.W.2d 699, 708 n.3 (Iowa 2016). The Court allowed the plaintiff to proceed on a claim against the county for negligent hiring, supervision, or retention of the offending deputy. *Id*. at 173. However, the problem with Aidan's citation to *Bantz* is that municipalities are obviously not immune for acts of sexual harassment committed by their employees. The City respectfully submits that chapter 670 mandates a different result here, where the municipality *is* immune on a claim for missing something in the course of a building inspection. And it is completely sensible why the legislature would want cities to be immune in that context but not in the context of sexual harassment.

Aidan also cited to *A. Doe v. Cedar Rapids Comm. Sch. Dist.*, which again involved claims of sexual misconduct. Specifically, three girls alleged that a school was liable for a teacher's sexual misconduct based on theories of negligent hiring, retention, and supervision. 652 N.W.2d 439, 440 (Iowa 2002). The school asserted discretionary-function immunity pursuant to now-section 670.4(1)(c). *Id*. at 442. The Court forcefully rejected the school's assertion of discretionary-function immunity:

> As a matter of public policy, surely, our legislature, in enacting [then-] Iowa Code section 670.4(3), did not intend to allow a school district to

> hire, retain, or leave unsupervised a teacher with known propensities for child abuse with total impunity.

Id. at 446. The current case stands in stark contrast to *A. Doe*. For one, the City is not here asserting discretionary-function immunity pursuant to section 670.4(1)(c), but rather, immunity for the acts of third parties and property pursuant to section 670.4(1)(j). More importantly, the legislature has expressly seen fit to grant immunity for missing something in the course of a building inspection, whereas it has not immunized (and presumably would not immunize) cities from claims of sexual abuse.

Finally, Aidan relied on *Godar v. Edwards*, which did not even involve an immunity defense. In *Godar*, the plaintiff claimed that an employee of a school district sexually abused him for several years when he was a student. 588 N.W.2d 701, 703-04 (Iowa 1999). Aidan cited *Godar* for the proposition that "a municipal employer may not be vicariously liable for certain acts or omissions of its employees but may nevertheless be directly liable for negligent hiring, retention, or supervision," R. at 31. But the *Godar* Court found that the plaintiff could *not* hold the school liable on theories of negligent hiring, retention, or supervision in that case. *Godar*, 588 N.W.2d at 709-10. Moreover, the Court did not reach this holding on immunity grounds, nor even discuss immunity; rather, the Court simply found that the facts produced at trial failed to create a case against the school as a matter of law, *id*.

Thus, none of the prevailing case law supports Aidan's interpretation of 670.4(1)(j). To the contrary, the General Assembly's intent in enacting that statute was clear: to insulate cities from liability for damages caused by third parties and property. This interpretation comes into clear focus when we look at the prevailing case law under the old chapter 613A, specifically, the 1979 case of *Wilson v. Nepstad*. There, the Wilsons sued the City of Des Moines for negligently inspecting their apartment building and granting an inspection certificate. 282 N.W.2d 664, 666 (Iowa 1979). At that time, this Court took the approach that the law *should* hold municipalities liable in negligence, finding that cities needed this kind of liability to "motivate" them:

> Municipalities are not going to be motivated toward meaningful inspections while insulated from their employees' negligence with respect to these statutory duties.

Id. at 673-74. The Court's position then was that "no inspection is better than a negligent one," *id*. at 673 (quoting *Fabricius v. Montgomery Elevator Co.*, 121 N.W.2d 361, 366 (Iowa 1963). Under that assumption, the Court's idea was that private enterprise might step in where the government feared, or did not have the wherewithal, to tread:

> In the event of withdrawal [from providing inspections], the void might be filled by private agencies whose certificates could be relied on by persons risking their lives and property in multiple dwelling apartments.

Id. at 674.

This philosophy, while defensible, rests upon the assumption that the landlords and private insurers would in fact step into that void. The General Assembly apparently disagreed (or perhaps preferred that cities be involved), and so enacted the current chapter 670. At the time this Court decided *Wilson*, then-chapter 613A only contained a due-care exemption, providing that cities were exempt from

> [a]ny claim based upon an act or omission of an officer or employee, *exercising due care*, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation of a governing body.

Iowa Code § 613A.4(3) (1979) (emphasis added).[3] And of course the current chapter 670 still contains this due-care exemption, *see* Iowa Code § 670.4(1)(c). If only a due-care exemption existed, then one can perhaps understand why the *Wilson* Court held that cities were liable in negligence for insufficient inspections:

> Only when an employee exercises due care in executing statutory duties is the municipality exempt from liability. The legislature could not have expressed better or more consistently its intention to impose in the same manner as in the private sector municipal tort liability for negligence based on breach of a statutory duty.

[3] The *Wilson* Court does not say to which year's enactment of the Iowa Code it was citing in that decision. However, the Court decided *Wilson* in 1979; the incident at issue happened in 1975, *see Wilson*, 282 N.W.2d at 666; and the 1975, 1977, and 1979 enactments of section 613A.4(3) are identical, *see* Iowa Code § 613A.4(3) (1975); Iowa Code § 613A.4(3) (1977).

Wilson, 282 N.W.2d at 669. [4]

However, following *Wilson*, the General Assembly chose to enact the current chapter 670. Perhaps in response to *Wilson* and/or similar cases, the legislature included a new provision, the current section 670.4(1)(j). There, the legislature chose to abrogate the *Wilson* philosophy that a negligent inspection is worse than no inspection at all. Instead, the legislature saw fit to immunize cities from liability for negligent inspections, by enacting section 670.4(1)(j).

Perhaps this was to incentivize cities to perform inspections, by allowing them to inspect without turning into general insurers. Perhaps it was in keeping with the general rule that the government cannot be sued for failing to enforce its laws, *see* § II, *infra*. Perhaps it was, as Justice McCormick said

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[4] It is also worth noting that *Wilson* was a split decision: Three justices signed on to the opinion of the Court, *see Wilson*, 282 N.W.2d at 674; one took no part, *id*.; and the other three signed on to a special concurrence, concluding that

> [i]t is for the legislature to decide whether municipalities can be trusted to see that their officers, employees and agents perform their statutory duties without the compulsion of municipal financial liability when they do not. We have no legislative basis for holding that municipalities will be liable for all foreseeable injuries resulting from defects in premises which are uncorrected because of breach of statutory inspection duties.

Id. at 677 (McCormick, J., concurring specially).

in *Wilson*, because city inspection laws merely "reflect an effort by government to require *owners of private property* to meet their responsibilities," 202 N.W.2d at 674 (McCormick, J., concurring specially) (emphasis added). Regardless, Aidan's argument is contrary to a reasonable reading of the prevailing case law and the history and plain language of section 670.4.

4. CONCLUSION

Aidan's argument in favor of liability is contrary to a reasonable reading of section 670.4(1)(j) in particular and chapter 670 in general, and finds no support in the case law. For these reasons, the City respectfully asks this Court to reverse the ruling of the District Court; to hold that municipalities are immune on claims for negligent hiring, retention, or firing pursuant to section 670.4(1)(j); and to order that Aidan's Petition be denied.

II. AIDAN'S PETITION FAILS UNDER THE PUBLIC DUTY DOCTRINE.

1. PRESERVATION OF ISSUE

The Randolphs raised this issue to the Court in their Written Argument filed April 3, 2023. *See* R. at 67-69. Again, the District Court overruled the Motion to Dismiss via written Ruling on May 31. And on June 7, the Randolphs filed a timely Application for an Interlocutory Appeal from the District Court's Ruling; the City joined the Application on June 9; and this

Court sustained the parties' Application. Accordingly, this issue is likewise properly before this Court.

2. SCOPE OF REVIEW

Again, this Court reviews an order overruling a motion to dismiss for correction of errors at law. *Kingsway Cathedral*, 711 N.W.2d at 7. Where the facts pled in the petition demonstrate that the defendant is immune, it is appropriate to dispose of the petition on a motion to dismiss. *See generally Venckus*, 930 N.W.2d 792.

3. ARGUMENT

It goes without saying that the public duty doctrine has been a source of contention in Iowa in the last ten to twenty years. Nevertheless, and in the event that this Court should find that chapter 670 immunity does not apply, the City respectfully submits that Aidan's claims would fail under the public duty doctrine. Aidan's argument is essentially that the City could or should have done a better job of enforcing its laws, and this is exactly the type of claim that courts have long held to be non-viable.

The classic statement of the public duty doctrine is that "a duty to all is a duty to none." *Breese v. City of Burlington*, 945 N.W.2d 12, 18 (Iowa 2020) (quoting 18 Eugene McQuillin, *McQuillin on Municipal Corporations* § 53.18 (3d ed. 2006)). Thus,

> a breach of duty *owed to the public at large* is not actionable *unless the plaintiff can establish, based on the unique or particular facts of the case, a special relationship between the State and the injured plaintiff* consistent with the rules of Restatement (Second) of Torts section 315.

Kolbe v. State, 625 N.W.2d 721, 729 (Iowa 2001) (emphasis in original).

This Court's more recent public duty doctrine cases have involved situations where the government controlled, or at least had the right to control, some item that created a hazard to the public. *See Estate of Farrell by Farrell v. State*, 974 N.W.2d 132, 135 (Iowa 2022) (diverging diamond traffic interchange); *Breese*, 945 N.W.2d at 15 (city-owned sewer box that looked like public park path); *Johnson v. Humboldt County*, 913 N.W.2d 256, 259 (Iowa 2018) (embankment in county right-of-way easement); *McFarlin*, 881 N.W.2d at 53 (dredge pipe on state-owned lake).

Here, Aidan makes an even less compelling argument for liability. Again, the City did not own or control Aidan's stairs, as a matter of law. *See Williams*, 452 N.W.2d at 626; *Madden*, 661 N.W.2d at 135, 141. At all times, the stairs were under Aidan's legal ownership and control. *Id*. Thus, Aidan literally argues only that the City should have done a better job of enforcing its laws. Courts do not recognize such a claim. *See, e.g.,* 57 Am. Jur. 2d Municipal, etc., Tort Liability § 170 ("Generally, in the absence of a statutory provision, a municipal corporation is not liable in tort for a failure to enact or enforce ordinances.").

Additionally, this is not a case involving a "special relationship" between Aidan and the City. Where a plaintiff alleges an omission by a public employee (as opposed to an affirmative act), the "special relationship" rule demands the plaintiff show that the employee "had a duty to act and failed to do so." *Breese*, 945 N.W.2d at 21. The *Breese* court specifically stated that a mere failure to enforce a law does not constitute the breach of such a duty:

> What is clear is that we have generally applied the public-duty doctrine when the allegation is a government failure to adequately enforce criminal or regulatory laws for the benefit of the general public, as in *Raas [v. State*, 729 N.W.2d 444 (Iowa 2007)], *Kolbe*, and *Sankey [v. Richenberger*, 456 N.W.2d 206 (Iowa 1990)], or a government failure to protect the general public from somebody else's instrumentality, as in *Johnson* and *Estate of McFarlin*.

Id.

Thus, the duty to ensure that a building inspector is zealously enforcing the laws is a duty which the City owes to the public at large. It is not one which the City owed to Aidan in particular, nor one that creates a right of action on the part of Aidan. It is a duty which falls squarely within the public duty doctrine.

Additionally, the cases which Aidan cited to the District Court are again inapposite. Those cases did not involve the negligent enforcement of laws; rather, they involved sexual harassment or abuse by government employees. *See Kiesau*, 686 N.W.2d at 169; *A. Doe*, 652 N.W.2d at 440; *Godar*, 588

N.W.2d at 703-04. The duty to enforce the laws is a duty owed to the general public; the duty to prevent employees from committing sexual harassment or abuse is not.

4. CONCLUSION

To be clear, the City submits that Aidan's claim is one which falls under the broad immunity the legislature saw fit to provide by enacting section 670.4(1)(j). Should this Court agree, then it need not reach the question of whether the public duty doctrine applies. However, should this Court find that section 670.4(1)(j) does not extend to claims for negligent hiring, retention, and supervision, then the City respectfully submits this Court should find that such a claim would fail under the public duty doctrine.

REQUEST FOR ORAL SUBMISSION

Appellants request to be heard in oral argument upon submission of this case.

/s/ Steven R. Postolka
_____
Steven R. Postolka

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

> [x] this brief has been prepared in a proportionally spaced typeface using Times New Roman 14 point font and contains 5,006 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1) or
> [ ] this brief has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(2).

/s/ Steven R. Postolka
_____
Steven R. Postolka

January 5, 2024
_____
Date

CERTIFICATE OF SERVICE

I, Steven R. Postolka, hereby certify that on the 5th day of January, 2024, I served Appellants' Final Brief on all other parties to this appeal by electronic filing.

/s/ Steven R. Postolka

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Steven R. Postolka

CERTIFICATE OF FILING

I, Steven R. Postolka, further certify that I filed Appellants' Final Brief via EDMS on the 5th day of January, 2024.

/s/ Steven R. Postolka

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Steven R. Postolka