No. 24-1133

IN THE

SUPREME COURT OF IOWA

VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS F/K/A BRE AHNA PAYNE, REBECCA BATES, TAWNI HANSON, DARBY JONES, HUNTER MINER, AND THE STATE OF IOWA, EX REL. VICTORIA ABRAHAMSON, HANA SCHROEDER, JODY SCHROEDER, TERRY SCHROEDER, SAMANTHA JOHNSON, BRE AHNA BOGGESS, REBECCA BATES, TAWNI HANSON, DARBY JONES, AND HUNTER MINER,

Plaintiffs-Appellees,

V.

BENJAMIN SCHEEVEL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS OFFICER FOR THE ESTHERVILLE POLICE DEPARTMENT, BRENT SHATTO, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHIEF OF THE ESTHERVILLE POLICE DEPARTMENT, CITY OF ESTHERVILLE, IOWA, ACADIA INSURANCE COMPANY, AND JOHN DOE,

Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF EMMET COUNTY
THE HONORABLE SHAYNE MAYER, JUDGE
EMMET COUNTY CASE NO. CVCV022475

APPELLEES' BRIEF

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it involves issues of first impression and needing enunciation, including whether Iowa Code § 670.5 can work to limit the time for suit in a statutory § 692.6 action despite the contrary language of § 692.6, whether the discovery rule applies to a statutory § 692.6 action, and the proper statute of limitations when the State is the Plaintiff in a suit on the official bond as contemplated by Iowa Code § 64.18. *See* Iowa R. App. P. 6.1101(2)(c) and (f).

STATEMENT OF THE CASE

NATURE OF THE CASE.

This is an interlocutory appeal from the denial of the Defendants' respective Motions to Dismiss, which had alleged untimely filing of the Plaintiffs' Petition at Law.

FACTS.

Summary. In April 2015, the City of Estherville hired Defendant Ben Scheevel as a police officer. *See* D0013, Amended Petition at ¶ 21 (7/21/23). While employed as an officer, Scheevel repeatedly accessed the private information of the Plaintiffs. Officer Scheevel paid particular attention to the private information of young, attractive females.

The Petition at Law details the facts concerning how Officer Scheevel repeatedly abused the power of his position as an Estherville Police Officer. Officer Scheevel wrongfully abused his access to the Plaintiffs' criminal history and intelligence data, in violation of Iowa Code Chapter 692. The repeated violations of Chapter 692 invaded Plaintiffs' privacy.

Making matters worse, Police Chief Shatto, the Police Department's top policy maker, embarked upon an "investigation" wherein he refused to inform the Emmet County Attorney's Office or Iowa Department of Criminal Investigation of the true scope of his officers' violations of law, and invasion of Plaintiffs' privacy.

The facts of this case are best understood on a plaintiff-by-plaintiff basis.

Victoria Abrahamson. At some point during his time as an Estherville Police Officer, Scheevel began assisting one Mike Webber with repossessing vehicles for Employees Credit Union (ECU). D0013 at ¶ 31. On April 10, 2019, Scheevel and Mike Webber sought to repossess Plaintiff Victoria Abrahamson's vehicle and transport it to ECU in Estherville, Emmet County, Iowa. *Id.* at ¶ 32. On Wednesday, April 10, 2019, Officer Scheevel and Webber were unable to locate Abrahamson or her vehicle with the information provided by ECU. *Id*. at ¶ 33.

Officer Scheevel made contact with Officer Van Roekel, of the Estherville Police Department, and asked for his assistance in locating Abrahamson. *Id*. at ¶ 34. Officer Scheevel asked Officer Van Roekel to search and receive Abrahamson's criminal history data through the NCIC database. *Id*. at ¶ 35. Officer Van Roekel searched and received Abrahamson's information through the NCIC database. *Id*. at ¶ 36. Officer Van Roekel disseminated Abrahamson's criminal history data to Officer Scheevel. *Id*. at ¶ 37. Officer Van Roekel knew Officer Scheevel was not on duty at the time, and that the request was for personal reasons. *Id*. at ¶ 38.

Officer Van Roekel conducted a search or searches of Abrahamson in the driver's license and record database. *Id*. at ¶ 39. Officer Van Roekel conducted a search or searches of Abrahamson in the sex offender registry database. *Id*. at ¶ 40. Officer Van Roekel conducted a search or searches of Abrahamson in the Traffic and Criminal Software database. *Id*. at ¶ 41. Officer Van Roekel conducted a search or searches of Abrahamson in the National Crime Information Center, or NCIC, database. *Id*. at ¶ 42. Officer Van Roekel conducted a search or searches of Abrahamson in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 43.

On April 10, 2019, Officer Scheevel and Webber were able to locate

Abrahamson and they repossessed her vehicle from her residence. *Id*. at ¶ 44. Officer Scheevel and Webber then transported the vehicle to ECU's property in Estherville, Iowa. *Id*. at ¶ 45.

Prior to repossessing her vehicle, the Plaintiff had no relationship with, nor ever recalled meeting, either Officer Scheevel or Webber. *Id*. at ¶ 46.

Officer Scheevel learned that Plaintiff was a single mother and a full-time nursing student. *Id*. at ¶ 47.

On April 11, 2019, Scheevel contacted Abrahamson via Facebook messenger. *Id*. at ¶ 49. Between April 11, 2019 and April 15 2019, Scheevel and Abrahamson exchanged roughly 300 messages. *Id*. at ¶ 50. In the messages, Scheevel offered to help Abrahamson recover her vehicle. *Id*. at ¶ 51. Scheevel informed Abrahamson that Webber "said for a bj or some booty he would have let you keep" her vehicle. *Id*. at ¶ 52. Scheevel informed Abrahamson that Webber "said he would help ya under one condition .. That he get dirty pics haha." *Id*. at ¶ 53.

Hana Schroeder. In 2017, Hana Schroeder called 911 to report a fight near her home. *Id.* at ¶ 54. Hana Schroeder told the dispatcher she did not want officers to respond to her home because she did not want the assailants to know she called 911. *Id*. at ¶ 55. Officer Scheevel nevertheless responded

to Hana Schroder's home. *Id*. at ¶ 56.

The day following Scheevel's response, Scheevel added Hana Schroeder on Snapchat, Facebook, and Instagram. *Id*. at ¶ 57. Scheevel told Hana Schroeder he got her phone number from dispatch or another law enforcement source. *Id*. at ¶ 58. Scheevel was married, with children. *Id*. at ¶ 59.

Hana Schroeder felt uncomfortable with the unsolicited contact from Scheevel. *Id*. at ¶ 60.

Scheevel made excessive social media contact with Hana Schroeder. *Id*. at ¶ 61. Scheevel's social media contact with Hana Schroeder was flirtatious. *Id*. at ¶ 62.

Scheevel told Hana Schroeder it would be beneficial for her to have a police officer for a friend because, as Scheevel explained, she had an unstable ex-husband and a boyfriend who worked out of town. *Id*. at ¶ 63.

Scheevel would monitor Hana Schroder on her way to work and travelling around town. *Id*. at ¶ 64. Scheevel would message Hana Schroeder nearly every day. *Id*. at ¶ 65. Scheevel would frequently drive past Hana Schroeder's house in his patrol car. *Id*. at ¶ 66. Scheevel would send messages about activities Hana Schroeder was actively engaged in, inside her home,

so Hana Schroeder knew Scheevel was looking in her windows. *Id*. at ¶ 67.

Scheevel suggested to Hana Schroeder that she was being investigated by the police and that he would find out the nature of the investigation for her. *Id*. at ¶ 68. Scheevel suggested to Hana Schroeder that certain officers in the Estherville Police Department could be trusted and certain other officers could not be trusted. *Id*. at ¶ 69. When Hana Schroeder's boyfriend was in town, Scheevel would message Hana Schroeder messages referring to "lover boy." *Id*. at ¶ 70.

Scheevel told Hana Schroeder that he wanted a sexual relationship with her. *Id*. at ¶ 71. Schroeder told Scheevel that she was not interested in a sexual relationship with him. *Id*. at ¶ 72. Schroeder's messages and interactions got worse after she denied his proposal of a sexual relationship. *Id*. at ¶ 73.

Schroeder eventually blocked Scheevel on social media. *Id.* at ¶ 74. Schroeder became fearful of Scheevel's course of conduct. *Id*. at ¶ 75.

Officer Scheevel wrongfully conducted a search or searches of Hana Schroeder in the driver's license and record database. *Id*. at ¶ 76. Officer Scheevel conducted a search or searches of Hana Schroeder in the sex offender registry database. *Id*. at ¶ 77. Officer Scheevel conducted a search

or searches of Hana Schroeder in the Traffic and Criminal Software database. *Id*. at ¶ 78. Officer Scheevel conducted a search or searches of Hana Schroeder in the National Crime Information Center, or NCIC, database. *Id*. at ¶ 79. Officer Scheevel conducted a search or searches of Hana Schroeder in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 80. Officer Scheevel conducted a search or searches of Hana Schroeder in the Enterprise Service Bus. *Id*. at ¶ 81. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hana Schroeder in the National Law Enforcement Telecommunications System. *Id*. at ¶ 82.

Jody and Terry Schroeder. During the approximate year Scheevel had unwelcome contact with Hana Schroeder, Scheevel repeatedly accessed confidential law enforcement databases concerning Jody and Terry Schroeder, Hana's parents. *Id*. at ¶ 83.

Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in in the driver's license and record database. *Id*. at ¶ 84. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the sex offender registry database. *Id*. at ¶ 85. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the Traffic and Criminal

Software database. *Id.* at ¶ 86. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the National Crime Information Center, or NCIC, database. *Id.* at ¶ 87. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id.* at ¶ 88. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the Enterprise Service Bus. *Id*. at ¶ 89. Officer Scheevel conducted a search or searches of Jody and Terry Schroeder in the National Law Enforcement Telecommunications System. *Id*. at ¶ 90.

Samantha Johnson. Samantha Johnson had a relative who had her car repossessed by Officer Scheevel and Webber. *Id*. at ¶ 91. Samantha Johnson had no law enforcement interactions in 2018. *Id*. at ¶ 92.

Between April of 2018 and November of 2018, Officer Scheevel accessed confidential law enforcement databases concerning Samantha Johnson. *Id*. at ¶ 93. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in in the driver's license and record database. *Id*. at ¶ 94. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in the sex offender registry database. *Id*. at ¶ 95. Defendant City of Estherville through Officer

Scheevel conducted a search or searches of Johnson in the Traffic and Criminal Software database. *Id*. at ¶ 96. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in the National Crime Information Center, or NCIC, database. *Id*. at ¶ 97. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 98. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in the Enterprise Service Bus. *Id*. at ¶ 99. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Johnson in the National Law Enforcement Telecommunications System. *Id*. at ¶ 100.

Bre Ahna Boggess (f/k/a Bre Ahna Payne). On or about 2017 to 2019, Bre Ahna Boggess worked at the Verizon Wireless store in Estherville. *Id*. at ¶ 101. Bre Ahna Boggess occasionally saw Scheevel at the Verizon store. *Id*. at ¶ 102. During the same time period, Boggess occasionally tended bar at "Fat Boys," a bar in Estherville. *Id*. at ¶ 103.

Bre Ahna Boggess occasionally saw Scheevel at the Fat Boys bar. *Id*. at ¶ 104. Bre Ahna Boggess had no law enforcement interactions between 2017 to 2019. *Id*. at ¶ 105.

Between October 2017 and April 2019, Scheevel accessed confidential law enforcement databases concerning Bre Ahna Boggess. *Id*. at ¶ 106. Officer Scheevel conducted a search or searches of Boggess in the driver's license and record database. *Id*. at ¶ 107. Officer Scheevel conducted a search or searches of Boggess in the sex offender registry database. *Id*. at ¶ 108. Officer Scheevel conducted a search or Defendant City of Estherville through searches of Boggess in the Traffic and Criminal Software database. *Id*. at ¶ 109. Officer Scheevel conducted a search or searches of Boggess in the National Crime Information Center, or NCIC, database. *Id*. at ¶ 110. Officer Scheevel conducted a search or searches of Boggess in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 111. Officer Scheevel conducted a search or searches of Boggess in the Enterprise Service Bus. *Id*. at ¶ 112. Officer Scheevel conducted a search or searches of Boggess in the National Law Enforcement Telecommunications System. *Id*. at ¶ 113.

Rebecca Bates. Rebecca Bates was at one time, but is no longer, married to Travis Bates. *Id*. at ¶ 114. Travis Bates had multiple vehicles repossessed by Webber and Employees Credit Union. *Id*. at ¶ 115.

Rebecca Bates had no law enforcement interactions in 2016. *Id*. at ¶ 116.

In August of 2016, Scheevel accessed confidential law enforcement databases concerning Rebecca Bates. *Id*. at ¶ 117. Officer Scheevel conducted a search or searches of Bates in the driver's license and record database. *Id*. at ¶ 118. Officer Scheevel conducted a search or searches of Bates in the sex offender registry database. *Id*. at ¶ 119. Officer Scheevel conducted a search or searches of Bates in the Traffic and Criminal Software database. *Id*. at ¶ 120. Officer Scheevel conducted a search or searches of Bates in the National Crime Information Center, or NCIC, database. *Id*. at ¶ 121. Officer Scheevel conducted a search or searches of Bates in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 122. Officer Scheevel conducted a search or searches of Bates in the Enterprise Service Bus. *Id*. at ¶ 123.

Scheevel did not have a legitimate law enforcement purpose for accessing confidential law enforcement databases concerning Bates in 2016. *Id*. at ¶ 124.

Tawni Hanson. Tawni Hanson previously lived in Estherville. *Id*. at ¶ 125. Tawni Hanson would occasionally frequent Fat Boys bar in Estherville. *Id*. at ¶ 126. Tawni Hanson had no law enforcement interactions in 2018. *Id*. at ¶ 127.

Between June and October 2018, Scheevel accessed confidential law enforcement databases concerning Tawni Hanson. *Id*. at ¶ 128. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the driver's license and record database. *Id*. at ¶ 129. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the sex offender registry database. *Id.* at ¶ 130. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the Traffic and Criminal Software database. *Id.* at ¶ 131. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the National Crime Information Center, or NCIC, database. *Id.* at ¶ 132. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the Iowa On-Line Warrants and Criminal Justice Information Network. *Id*. at ¶ 133. Defendant City of Estherville through Officer Scheevel conducted a search or searches of Hanson in the Enterprise Service Bus. *Id*. at ¶ 134.

Scheevel did not have a legitimate law enforcement purpose for accessing confidential law enforcement databases concerning Hanson in 2018. *Id.* at ¶ 135.

Darby Jones and Hunter Miner. On February 4, 2019, Officer Scheevel accessed confidential law enforcement databases concerning Darby Jones and Hunter Miner. *Id.* at ¶ 136.

Officer Scheevel conducted a search or searches of Jones and Miner in in the driver's license and record database. *Id.* at ¶ 137. Officer Scheevel conducted a search or searches of Jones and Miner in the sex offender registry database. *Id.* at ¶ 138. Officer Scheevel conducted a search or searches of Jones and Miner in the Traffic and Criminal Software database. *Id.* at ¶ 139.

On or about February 5, 2019, Scheevel messaged other law enforcement officers seeking information about Jones and Miner. *Id.* at ¶ 140. Scheevel explained to the officers that he had cars to repossess from them. *Id.* at ¶ 141. Scheevel did not have a legitimate law enforcement purpose for accessing confidential law enforcement databases concerning Jones and Miner in February 2019. *Id.* at ¶ 142.

The Estherville Police Department Response. On April 12, 2019, Sergeant Matthew Hellickson of the Estherville Police Department relayed complaints from Abrahamson's family about Scheevel's inappropriate messages to Chief Shatto. *Id.* at ¶ 143. On April 12, 2019, Kylie Abrahamson,

Abrahamson's stepmother, met with Chief Shatto at his home. *Id*. at ¶ 144. Kylie Abrahamson told Chief Shatto about the inappropriate social Facebook messages. *Id.* at ¶ 145. Kylie Abrahamson told Chief Shatto they feared retaliation from Scheevel. *Id*. at ¶ 146. Kylie Abrahamsons told Chief Shatto that Scheevel drove past Abrahamson's residence three times that day. *Id.* at ¶ 147.

Kylie Abrahamson told Chief Shatto the family believed Scheevel had stalked another woman, Hana Schroeder. *Id.* at ¶ 148. Chief Shatto told Kylie Abrahamson that there were more important issues in Estherville for him to attend to. *Id*. at ¶ 149. Chief Shatto responded, "What would you like to see out of this? Because I can't take his badge for this." *Id.* at ¶ 150. Chief Shatto gave his assurances that he would handle the issue and speak with Officer Scheevel that night, but asked Kylie Abrahamson and the Plaintiff "to keep this quiet" because it would "be a black eye for our law enforcement if this got out." *Id*. at ¶ 151.

Chief Shatto did not contact Officer Scheevel and instead went on vacation to Arizona. *Id*. at ¶ 152. Upon his return from vacation, Chief Shatto investigated Scheevel and Van Roekel. *Id*. at ¶ 153.

The Emmet County Attorney requested Chief Shatto to engage an

outside law enforcement agency to investigate Scheevel. *Id*. at ¶ 154. Chief Shatto was displeased with the request. *Id*. at ¶ 155. Chief Shatto felt it was not any of the County Attorney's business. *Id*. at ¶ 156.

On April 15, 2019, Chief Shatto placed Scheevel on administrative leave and directed him to avoid contacting the Abrahamson family. *Id*. at ¶ 157.

On May 1, 2019, Chief Shatto completed his investigation of Scheevel. *Id*. at ¶ 158. Chief Shatto determined Scheevel violated the Estherville Police Department's Computer Security Policy, which stated "Violations would/could include the following: Disclosures of driver's license and/or vehicle registration information to an unauthorized recipient. Accessing Driver's license and/or vehicle registration information for personal or non-law enforcement investigative purposes." *Id*. at ¶ 159. Chief Shatto also found Scheevel's actions were inconsistent with written department values and rules, as well as its mission statement. *Id*. at ¶ 160.

Shatto gave Scheevel the option to resign. *Id*. at ¶ 161. On May 3, 2019, Scheevel submitted his letter of resignation, effective immediately. *Id*. at ¶ 162.

Chief Shatto interviewed Officer Van Roekel about accessing

Abrahamson's criminal history and intelligence data for Scheevel. *Id*. at ¶ 163. Chief Shatto spoke with an Iowa Department of Criminal Investigation Agent about Scheevel's facebook messenger messages, but did not mention the criminal history and intelligence data access. *Id.* at ¶ 164. Chief Shatto spoke with officers of the Spencer Police Department, about Scheevel's facebook messenger messages, but did not mention the criminal history and intelligence data access. *Id*. at ¶ 165.

The Criminal Charges. Chapter 692 of the Iowa Code makes it a crime to request or obtain criminal history and intelligence data under false pretenses. *Id*. at ¶ 166.

On April 7, 2022, Officer Van Roekel was charged, by a 12 count Trial Information, by the Iowa Attorney General's Office, with charges including, but not limited to, Ongoing Criminal Conduct, Misconduct in Office, and eight counts of Unauthorized Access to or Dissemination of Criminal History Data in violation of Iowa Code § 692.7. *Id*. at ¶ 167.

On April 8, 2022, Officer Scheevel was charged, by an 84 count Amended Trial Information, by the Iowa Attorney General's Office, with charges including, but not limited to, Stalking, Ongoing Criminal Conduct, Misconduct in Office, Perjury, and over 40 counts of Unauthorized Access to

or Dissemination of Criminal History Data in violation of Iowa Code § 692.7. *Id*. at ¶ 168.

Officer Scheevel was charged with Stalking while in Possession of a Dangerous Weapon concerning both Abrahamson and Hana Schroeder. *Id*. at ¶ 169.

Officer Scheevel was charged with Access to or Dissemination of Criminal History Data concerning Victoria Abrahamson, Hana Schroeder, Megan Bocock, Megan Fisher, Nicole Rosfjord, Samantha Johnson, Tawni Hanson, Bre Ahna Boggess (f/k/a Bre Ahna Payne), Darby Jones, Ocean Fisher, Rebecca Bates, among others. *Id*. at ¶ 170.

The source of the data and other records evidencing the Defendants' wrongful acts is in the possession and control of the Iowa Division of Criminal Investigation, Defendant Officer Scheevel, and Defendant City of Estherville. *Id*. at ¶ 171.

The source of the information concerning Defendant City of Estherville and Chief Shatto's actual and constructive knowledge, as well as their after-the-fact ratification of the aforesaid acts includes Estherville City Administrator Penny Clayton and other officers employed by the City of Estherville during the times mentioned above. *Id*. at ¶ 172.

The Injury to each Plaintiff. Victoria Abrahamson only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the City of Estherville disclosed the same as part of a separate lawsuit, in initial disclosures, made July 9, 2021. *Id*. at ¶ 174.

Hana Schroeder only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the DCI Special Agent Lynn Olesen informed her on or about April 7, 2022. *Id*. at ¶ 175.

Jody Schroeder only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the criminal charges were filed against Officers Scheevel and Van Roekel, in late April 2022. *Id*. at ¶ 176.

Terry Schroeder only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the criminal charges were filed against Officers Scheevel and Van Roekel, in late April 2022. *Id.* at ¶ 177.

Samantha Johnson only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history

or intelligence data after the DCI Special Agent Lynn Olesen informed her on or about March 28, 2022. *Id*. at ¶ 178.

Bre Ahna Boggess only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the Emmet County Victim Witness Coordinator, Michelle Howing, informed her, on April 7, 2022. *Id*. at ¶ 179.

Rebecca Bates only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the Emmet County Victim Witness Coordinator, Michelle Howing, informed her, on April 7, 2022. *Id*. at ¶ 180.

Tawni Hanson only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the Emmet County Victim Witness Coordinator, Michelle Howing, informed her, on April 7, 2022. *Id*. at ¶ 181.

Darby Jones only became aware of Officer Scheevel and Officer Van Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the DCI Special Agent Lynn Olesen informed her on or about April 7, 2022. *Id*. at ¶ 182.

Hunter Miner only became aware of Officer Scheevel and Officer Van

Roekel's wrongful access to, and dissemination of, her criminal history or intelligence data after the DCI Special Agent Lynn Olesen informed him on or about April 8, 2022. *Id*. at ¶ 183.

PROCEEDINGS.

On July 7, 2023, Plaintiffs filed their Petition at Law, alleging in Count I, a statutory action, pursuant to Iowa Code § 692.6, for wrongful dissemination of criminal history and intelligence data, in Count II, Invasion of Privacy, in Count III, Civil Conspiracy, and in Count IV, a statutory action on the bond pursuant to Iowa Code § 64.18.

On July 12, 2023, Defendant Scheevel filed a motion to dismiss, alleging that Counts I through III were time-barred and that Count IV, the action on the bond, was a derivative claim only, rather than a stand-alone cause of action.

On July 19, 2023, Plaintiff's resisted.

On July 31. 2023, Defendant Chief Shatto and the City of Estherville filed a Motion to Dismiss, alleging that Iowa Code § 670.5 time-barred the Plaintiff's action, and that the action on the bond failed to state a claim upon which relief could be granted.

On August 24, 2023, Plaintiffs resisted.

On June 13, 2024, the District Court denied the Motions to Dismiss. The District Court found that the applicable statute of limitations concerning the dissemination of criminal intelligence information was Iowa Code 614.1(4), five years, and that Plaintiffs timely filed. The District Court found, concerning the Invasion of Privacy and Civil Conspiracy causes of action, that Iowa Code § 670.5 was the applicable statute of limitations, running from the date of the injury, and that Plaintiffs timely filed. D0031, Ruling at 7 (6/13/24). Further, the District Court found that the action on the bond was indemnifying only, and not a stand-alone cause of action. D0031 at 15.

On July 10, 2024, Defendants filed an Application for Interlocutory Appeal. On September 5, 2024, the Supreme Court granted the application.

ARGUMENT

I. PLAINTIFFS TIMELY FILED SUIT ON THEIR § 692.6 ACTION, COUNT I, BECAUSE THEY FILED WITHIN FIVE YEARS OF DISCOVERY OF THEIR INJURIES.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved.

B. SCOPE AND STANDARD OF REVIEW.

A ruling upon a motion to dismiss does not depend on the trial court's discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994). District court rulings on motions to dismiss are reviewed for correction of errors at law. *Venckus v. City of Iowa City*, 930 N.W.2d 792, 798 (Iowa 2019).

C. MERITS

Plaintiffs, responding to the Defendants' Motions to Dismiss, argued that all counts of the Petition were timely filed under Iowa Code § 670.5, because the time to file ran from their "injury," rather than Scheevel's acts. *See* Iowa Code § 670.5. However, ruling on the Motions to Dismiss, the District Court wisely pointed out something concerning Count I (the statutory § 692.6 dissemination of criminal history information action) that all of the parties had missed:

> Iowa Code § 692.6 states that "notwithstanding any provisions of chapter 609 and 670 to the contrary, any person, agency, or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable." (Emphasis added). In other words, no provision in Iowa Code Chapter 669 or 670 can defeat a claim under Iowa Code § 692.6 if the elements of 692.6 claim are proven.

> The applicable statute of limitations for claims under § 692.6, then is, Iowa Code § 614.1, the general statute of limitations for Iowa Tort Claims, which states, "Actions may be brought within the times limited as follows, respectively, after their causes accrue, and not afterwards, except when otherwise specifically declared."

D0031 at 7.

The District Court is absolutely right. So long as the elements of a § 692.6 claim are proven, no provision of Iowa Code Chapter 670 can operate to defeat the claim. That is true of the exemptions in § 670.4, the qualified immunity in § 670.4A, the limit on personal liability in § 670.12, and, of course, the two-year limitation on actions in § 670.5.

The District Court's ruling is buttressed by the nature of § 670.5. Though frequently referred to as a statute of limitations, § 670.5 is actually a statute of creation:

> Chapter [670] created a new right of action—one that was not available at common law nor available elsewhere by statutory authority, and therefore, while cases interpreting other limitation statutes are helpful, they do not control here. Truly chapter [670], and particularly the section which we are interpreting here, section [670.5], might be called a statute of creation, rather than a statute of limitation. The statute creates a new liability and provides for

> methods of enforcing the same, and by its terms fixes the time within which action for recovery may be commenced. It being a statute of creation, the commencement of the action within the time the statute fixes is an indispensable condition of the liability and of the action permitted. The time element is an inherent element of the right so created, and the limitation of the remedy is likewise a limitation of the right.

Montgomery v. Polk County, 278 N.W.2d 911, 914-15 (Iowa 1979); *See also Venkus* at 807.

The Iowa Code § 692.6 directive, that no provision of Chapter 670 will work to defeat a claim under § 692.6, so long as the elements of the claim are proven, makes Iowa Code § 670.5 inapplicable to Count I.

Defendants argue that not applying § 670.5 makes the Petition not subject to any procedural rules at all. That is not the case. It is just that, as the plain language of § 692.6 directs, any limits upon the action created by § 692.6 do not come from the IMTCA. Instead, the procedural rules and limits that apply are the same that govern nearly every other civil action in Iowa, and that every lawyer and judge in Iowa are familiar with. The Iowa Rules of Civil Procedure, and the statute of limitations laid out in Iowa Code § 614.1.

And Defendants similarly argue that, somehow, the waivers of sovereign immunity in § 692.6 and § 670.2 are a reason to read § 692.6's directives in such a way as to preserve sovereign immunity. That is quite a trick. To argue that two code sections that are examples of the waiver of sovereign immunity should be read to preserve sovereign immunity is head-spinning.

There is no need, whatsoever, to read § 692.6 in such a way to preserve the sovereign immunity of the City of Estherville. It is not a novel concept, to be avoided at all costs, that sovereign immunity can be waived. The Iowa Legislature and this Court have recognized numerous instances where sovereign immunity is waived. There is the ITCA, Chapter 669, of course. There is the IMTCA, Chapter 670. There are actions on the bond pursuant to Chapter 64. *See* Iowa Code § 64.18. And there are other examples as well. Where the State enters into a contract, or otherwise voluntarily assumes legal consequences, the State constructively waives its immunity from suit. *See Kersten Co. v. Dep't of Soc. Servs.*, 207 N.W.2d 117 (Iowa 1973); *State v. Dvorak*, 261 N.W.2d 486 (Iowa 1978). Iowa Code § 692.6 is just one more example of sovereign immunity being waived to provide a remedy to those injured by a municipality and its officers. All of this is to say, principles of statutory

interpretation do not support disregarding the waiver of sovereign immunity **in the text** of § 692.6 just because it waives the sovereign immunity defense for the City of Estherville in this case.

As the District Court ruled, the plain text of § 692.6 controls, and works to defeat any contrary provision of Chapter 670. Iowa Code § 670.5 does not control in this case, rather, the applicable statute of limitations comes from Iowa Code § 614.1, Iowa's general statute of limitations provision.

And, for that reason, as the District Court noted, Iowa's discovery rule does apply to Count I. Just as the discovery rule applies to most actions in Iowa. The discovery rule holds that "a claim does not accrue until the plaintiff knows or in the exercise of reasonable care should have known both of the fact of the injury and its cause." *Woodroffe v. Hasenclever*, 540 N.W.2d 45, 47 (Iowa 1995).

In this case, all Plaintiffs, other than Victoria Abrahamson, only became aware of Officer Scheevel's wrongful acts in the Spring of 2022. *See* Petition ¶¶ 175-182. Plaintiff Victoria Abrahamson only became aware of Officer Scheevel's wrongful acts as part of initial disclosures in a separate lawsuit, made July 9, 2021. *See* D0013 at ¶ 174. Defendants do not allege that Plaintiffs should have somehow known, in the exercise of reasonable care,

that Scheevel and the City of Estherville were wrongfully accessing their criminal history data before they actually discovered what had been happening. Plaintiffs timely filed their Petition on July 7, 2023, within two years of discovery of the wrongful acts to each Plaintiff. Plaintiffs have timely complied with the statute of limitations concerning Count I.

The only remaining question is which specific subpart of § 614.1, Iowa's general statute of limitations provision, applies. And that question is largely academic. The question is made academic because all Plaintiffs filed within two years of discovery of Scheevel's wrongful acts.

That being said, the District Court found that Iowa Code § 614.1(4), which covers "all other actions not otherwise provided for" was the applicable statute of limitation. That would make the statute of limitations five years. Concerning Count I, all Plaintiffs timely filed within five years of discovery of Scheevel's wrongful actions.

Another possibility in this case is that, because the Plaintiffs' action is, in part, brought in the name of the State for the benefit of the Plaintiffs, upon the bond of the Defendants pursuant to Iowa Code § 64.18, that Iowa Code 614.1(5), concerning written contracts, is the appropriate statute of limitations.

To the extent the action is brought in the name of the State, the State cannot suffer a personal injury. That would make the two-year statute of limitations in Iowa Code § 614.1(2) inapplicable.

To the extent the action is brought in the name of the State, the action is on the official bonds of Officer Scheevel and Chief Shatto. An official bond is a contract between the principals (Officer Scheevel and Chief Shatto) and the surety (the bonding company), for the benefit of the State, and by extension, any plaintiff harmed by the principals pursuant to Iowa Code § 64.18. An official bond "is, in effect, a contract between the officer and the government, binding the officer, to discharge the duties of his or her office. The bond is also an obligation binding the sureties to make good the officer's defaults. Official bonds are required not for the benefit of the office holder, but for the protection of the entire citizenship, and are designed to indemnify those suffering loss injury by reason of misconduct or neglect in office." 63C Am. Jur. 2d Public Officers Employees §§ 130.

In this case, because the action on the bond, in the name of the State, concerns a contract between the government, the officer, and the surety company, the statute of limitations is ten years, for actions brought to enforce written contracts. *See* Iowa Code § 614.1(5); *See also City of Waukon v. S. Sur.*

Co. of N.Y., 214 Iowa 522, 242 N.W. 632, 636 (Iowa 1932)(holding actions on bonds executed by surety companies are written contracts subject to a ten-year statute of limitations).

It would make little sense, to the extent the actions are in the name of the State, to apply the personal injury statute of limitations contained in Iowa Code § 614.1(2). The State is not capable of suffering a personal injury. Actions on the official bond were more common in Iowa's early years. In the past, actions on the bond would commonly be subject to a three-year statute of limitations for actions against sheriffs or public officials for their misfeasance. *See*, e.g., *Drake v. Keeling,* 230 Iowa 1038, 299 N.W. 919, 927 (Iowa 1941) citing to Iowa Code § 11007(4) (1935). However, Iowa's current statute of limitations concerning sheriffs and public officials has been changed, and is now limited to actions concerning nonpayment of money after execution. *See* Iowa Code § 614.1(3). Iowa Code § 11007(4), by contrast, was not so limited, and applied to actions alleging misfeasance or oppression by a public official.

It is still significant, however, that, in actions on the bond, Iowa used to apply the three-year statute of limitations for actions against public officials, rather than the two-year statute for personal injuries. It goes to

support the conclusion that, because the plaintiff is the State of Iowa, it would not make sense to apply a personal injury statute of limitations. Instead, Iowa looked to another applicable statute of limitations. In the present day, that applicable statute of limitations is Iowa Code § 614.1(5), providing a ten-year statute of limitations for disputes concerning written contracts. All Plaintiffs timely filed within ten years of discovery of Scheevel's and Shatto's wrongful acts.

Putting the academic question aside, however, the bottom line is this: whether the applicable statute of limitations is two years from discovery, five years from discovery, or ten years from discovery, Plaintiffs have timely filed their action pursuant to Iowa Code § 692.6 and § 64.18. The District Court's denial of the Defendants' Motions to Dismiss should be affirmed.

II. PLAINTIFFS TIMELY FILED SUIT, ON ALL COUNTS OF THE PETITION, "WITHIN TWO YEARS AFTER THE ALLEGED . . . INJURY," IN COMPLIANCE WITH IOWA CODE § 670.5.

A. ERROR PRESERVATION.

An issue is preserved for appeal when it is presented to and ruled upon by the district court. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Error has been preserved.

B. SCOPE AND STANDARD OF REVIEW.

A ruling upon a motion to dismiss does not depend on the trial court's discretion; it must rest on legal grounds. *See Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994). District court rulings on motions to dismiss are reviewed for correction of errors at law. *Venckus v. City of Iowa City*, 930 N.W.2d 792, 798 (Iowa 2019).

C. MERITS

Even if this Court finds the District Court was wrong concerning Count I, and that Iowa Code § 692.6 is controlled by the two-year limit of § 670.5, the Plaintiffs have still timely filed all Counts of the Petition. If Iowa Code § 692.6 does not control in this case, then it is § 670.5 and the Iowa Supreme Court's decisions interpreting the IMTCA that control instead. Ordinarily, in actions that don't involve the provisions of § 692.6, actions brought pursuant to Iowa Code Chapter 670, the Iowa Municipal Tort Claims Act, are subject to time limitations set out in § 670.5. *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019).

Iowa Code § 670.5 provides that "a person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss, or injury within the scope of section

670.2 or section 670.8 or under common law shall commence an action therefor within two years after the alleged wrongful death, loss, or injury." Iowa Code § 670.5.

So, if Iowa Code § 670.5 is controlling, the inquiry becomes "when was the date of the injury?" *See* Iowa Code § 670.5. Not the date of accrual. Not the date of discovery. The "date of the injury."

As the Iowa Supreme Court has made clear, when applying Iowa Code § 670.5, **"the time to file the action commenced upon the date of injury and not the date of accrual."** *Venckus* at 807 (*emphasis added*). The *Venckus* Court, for good reason, reaffirmed the "seminal case" of *Montgomery v. Polk County*, 278 N.W.2d 911 (Iowa 1979).

The *Montgomery* Court comprehensively explained the importance of the date the injury occurred, as opposed to the date of the defendant's act, and how an act may produce an injury at a later date and time:

> **The present case is to be distinguished from those in which negligence occurred at one time but the injury, the breach, did not occur until later.** Montgomery does not claim that the injury did not occur when the clerk paid the money to Mr. Wright; on the contrary, she founds her case on negligence and claims January 18 is when the breach occurred. Rather, she claims her cause of action did not

> "accrue" until later discovery, notwithstanding that section 613A.5 does not start time running from the time causes of action "accrue." **Thus the cases are inapplicable in which negligence occurred at one time such as failure to label a bottle but the injury occurred later, as when the contents of the bottle were consumed.** Cf. *Palsgraf v. Long Island Railroad*, 248 N.Y. 339, 341, 162 N.E. 99, 99 (1928) (Cardozo, C. J., " 'Proof of negligence in the air, so to speak, will not do.' Pollock, Torts (11th Ed.), p. 455."). **In such cases discovery of the injury does not occur later; the injury occurs later.**
>
> An illustration from the municipal tort field is *Boulder City v. Miles*, 85 Nev. 46, 49, 449 P.2d 1003, 1005 (1969). There a city bought and graded a tract of land and formed a subdivision, but negligently failed to compact the soil properly. The plaintiffs bought a lot and built a house on it. Later the soil subsided as a result of the city's earlier inadequate compacting, damaging the plaintiffs' house. **The court held that the plaintiffs could sue "when the forces wrongfully put in motion produce an injury.**" Hence time ran from the point at which the soil subsided. *See also Turner v. Staggs*, 89 Nev. 230, 510 P.2d 879, Cert. denied, 414 U.S. 1079, 94 S.Ct. 598, 38 L.Ed.2d 486 (1973).

Montgomery at 916 (emphasis added).

The *Montgomery* Court cited to *Boulder City v. Miles*, as courts around the country have as well. The *Boulder City* Court explained the nuanced

difference between the wrongful action and the injury. Faced with a tort claims act requiring a claim within six months of injury, the *Boulder City* Court distinguished between injury and wrongful act as clearly as could possibly be asked:

> **It is true that in most cases damages caused by the wrongful act of another occur contemporaneously with the wrongful act.** But it is also true that no one has a claim against another without having incurred damages. And the reason for the rule is quite clear. Though an act may endanger the person or property of another, no actionable wrong is committed if the danger is averted. **It is only the injury to a person** or the damage to property **arising from a wrongful or negligent act** which constitutes an invasion of a personal right protected by law and, therefore, an actionable wrong. A cause of action accrues only when the forces wrongfully put in motion produce an injury. **Otherwise, in certain cases, as in this case, a purported cause of action might be barred before liability arose.**

Boulder City at 1005 (emphasis added)(internal citations omitted).

The Boulder City Court's reasoning is strong. Only the actual injury to a person can produce an actionable wrong.

Relatedly, whether or not Iowa Code § 670.5 controls, Plaintiffs in this case would have had no standing, at all, to bring **any action**, until an injury resulted from Scheevel's actions:

> "[T]he irreducible constitutional minimum of standing" requires a plaintiff to allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). *See Allen v. Wright*, 468 U.S. 737 (1984); *Schmier v. U.S. Ct. of Appeals for Ninth Cir.*, 279 F.3d 817, 821 (9th Cir. 2002). First, a plaintiff must clearly demonstrate that he has suffered an injury-in-fact that "is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560-61 (internal quotes and citations omitted); *Whitmore*, 495 U.S. at 155. This requirement ensures that a court is adjudicating claims arising from actual injuries since "[t]he federal courts do not have the constitutional authority to adjudicate . . . metaphysical injuries." *Schmier*, 279 F.3d at 822.
>
> If no damages exist, no claims can exist. *See Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. 1990) ("[A] cause of action accrues when the wrong occurs and a party sustains injuries . . ."); *Boulder City v. Miles*, 449 P.2d 1003, 1005 (Nev. 1969) ("[N]o one has a claim against another without having incurred damages."). The alleged harm cannot be hypothetical, speculative, or describe other possible future injuries. *Schmier*, 279 F.3d at 821. *See Lujan*, 504 U.S. at 560.

Frias Holding Co. v. Greenberg Traurig, LLP, Case No.: 2:11-cv-00160-GMN-LRL (D. Nev. Sep. 26, 2011).

But whether the issue is standing to bring an action, or just a plain reading of § 670.5's requirement of an "injury," the result is the same. The

two-year period created by § 670.5 only begins to run upon "injury," not from the wrongful act of the tortfeasor.

In this case, Plaintiffs clearly set forth the date of the injury to each Plaintiff in the Petition. *See* D0013 at ¶¶172-183. The injuries in this case concern emotional distress. This is clearly not a physical injury case. The injuries in this case, emotional distress, could not have occurred before the Plaintiff's became aware of Officer Scheevel's wrongful acts. *See*, e.g., *Koeppel v. Speirs*, 808 N.W.2d 177, 185 (Iowa 2011) (holding in part that "harm from intrusion arises when the plaintiff reasonably believes an intrusion has occurred.")

To paraphrase the Court in *Montgomery*, the forces wrongfully put in motion by Officer Scheevel didn't produce a § 670.5 "injury" to a person until each Plaintiff became aware of Officer Scheevel's wrongful acts. As the *Montgomery* Court explained, "[d]iscovery of the injury did not occur later; the injury [to a person] occurred later."

The Plaintiffs' respective emotional distress injuries occurred **at the time** the Plaintiff's found out Scheevel had been violating their privacy and targeting them. There was no injury to a person **until** the Plaintiffs suffered

the emotional distress of realizing they had been targeted and violated by Officer Scheevel.

All Plaintiffs, other than Victoria Abrahamson, only became aware of, and thus injured by, Officer Scheevel's wrongful acts in the Spring of 2022. *See* D0013 ¶¶ 175-182. Plaintiff Victoria Abrahamson only became aware of, and thus injured by, Officer Scheevel's wrongful acts as part of initial disclosures in a separate lawsuit, made July 9, 2021. *See* D0013 at ¶ 174. Plaintiffs timely filed their Petition on July 7, 2023, within two years of the injury to each Plaintiff. Plaintiffs have timely complied with § 670.5.

Tellingly, the Defendants do not cite to, acknowledge, or address any of the language from *Montgomery* the Plaintiffs have cited to above. The Defendants cite to the general rule only, that "an injury occurs at the time of the unlawful act that gives rise to the action." Defendants' Brief at 23 citing *Klein v. Steinkamp*, 44 F.4th 1111, 1114 (8th Cir. 2022)(a physical false arrest case). The Defendants choose to put their head in the sand, however, when it comes to the exception to the general rule identified by the *Montgomery* Court, explained by the *Boulder City* Court, and adopted by the District Court in this case.

The Plaintiffs have invoked the *Montgomery* Court's clear interpretation of the IMTCA's statutory "date of injury" language. The Municipal Defendants wrongfully put into motion forces that produced a later injury. The Defendants wrongfully accessed Iowa's Criminal History Data databases, unbeknownst to the Plaintiffs. The injury to the Plaintiffs was only produced once they found out about the wrongful, and surreptitious, breach of their confidential and private information.

The Plaintiffs obviously claim no physical injury in this case. Their injury, if any, is for the emotional distress produced the Defendants' earlier wrongful actions. According to the *Montgomery* Court, and Iowa Code § 670.5, the date of the Plaintiff's injury is the date their emotional distress injury occurred, even though that mental injury was produced by acts of the Municipal Defendants, surreptitiously, at an earlier time.

The Plaintiffs have timely filed all claims pursuant to Iowa Code § 670.5. The District Court's denial of the Defendants' Motions to Dismiss should be affirmed.

CONCLUSION

Whether the time for Plaintiffs to file their action ran two years from discovery of Scheevel's wrongful actions, five years from discovery of Scheevel's wrongful actions, ten years from discovery of Scheevel's wrongful actions, or two years from the "date of injury" to the Plaintiffs, the result is the same. Plaintiffs timely filed all claims against Officer Scheevel, Chief Shatto, and the City of Estherville, for Officer Scheevel's wrongful invasion of the Plaintiffs' privacy and confidential criminal history and intelligence data, in service of Officer Scheevel's lustful and licentious aims. The District Court's ruling denying the Defendants' respective motions to dismiss should be affirmed.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully requests oral argument.

Respectfully submitted,

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