IN THE SUPREME COURT OF IOWA

CASE NO. 24-1133

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, 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.

RELATING TO THE IOWA DISTRICT COURT IN AND FOR EMMET COUNTY (CASE NO. CVCV022475)
HON. SHANE MAYER, DISTRICT COURT JUDGE

APPELLANTS' JOINT RESISTANCE TO APPLICATION FOR FURTHER REVIEW

Zachary D. Clausen, AT0013741
Douglas L. Phillips, AT0006251
KLASS LAW FIRM, L.L.P.
Mayfair Center, Upper Level
4280 Sergeant Road, Suite 290
Sioux City, IA 51106

zclausen@klasslaw.com
phillips@klasslaw.com

COUNSEL FOR
DEFENDANTS/APPELLANTS
CITY OF ESTHERVILLE AND
BRENT SHATTO

Adam D. Zenor, AT0009698
Sarah S. Hickman, AT0015319
Zenor Law Firm, P.L.C.
106 SW 7th Street, Suite 400
Des Moines, Iowa 50309
Phone: (515) 650-9005
Fax: (515) 206-2654
adam@zenorlaw.com
sarah@zenorlaw.com

L. Lars Hulsebus, AT0012989
DICKINSON, BRADSHAW,
FOWLER & HAGEN, P.C.
801 Grand Ave., Suite 3700
Des Moines, Iowa 50309
lhulsebus@dickinsonbradshaw.com

COUNSEL FOR
DEFENDANT/APPELLANT
BENJAMIN SCHEEVEL

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STATEMENT OPPOSING FURTHER REVIEW

Plaintiffs have failed to demonstrate how the case fits within the criteria for further review or even how the Court of Appeals erred in overturning the judgment of the District Court on this interlocutory appeal. "An application for further review will not be granted in normal circumstances." Iowa R. App. P. 6.1103(1)(b). When determining whether such an application presents an abnormal circumstance (this case does not), this Court considers whether:

> (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter[;]
> (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court[;]
> (3) The court of appeals has decided a case where there is an important question of changing legal principles[; or]
> (4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

Id.

None of these considerations are present here. Indeed, this case does not present (1) conflict with a decision of this Court; (2) issues of constitutional or unsettled law; (3) changing legal principles; or (4) issues of broad public importance. Rather, this case simply required the Court of Appeals to apply the well-established two-year statute of limitations under Iowa Code § 670.5 to claims against a municipality and their employees for conduct occurring no later than May of 2019, where suit was not filed until July 7, 2023. The Court of Appeals did just that. To

wit, it correctly determined that the limitation period in Section 670.5 applied to the statutory claim brought pursuant to Iowa Code § 692.6, which unambiguously states that "[a]ny person may institute a civil action for damages under chapter 669 or 670" for violation of the chapter. Further, the Court correctly found that the discovery rule does not apply to claims against municipalities and the limitation period runs from the date of the alleged wrongful act, which has been repeatedly affirmed by this Court in *Montgomery v. Polk County*, *Doe v. New London Community School Dist.*, and most recently in *Venckus v. City of Iowa City*. *See Venckus*, 930 N.W.2d 792, 809 (Iowa 2019*)* ("[W]e have repeatedly held the IMTCA bars any claim not filed within the requisite time period as measured from the date of injury rather than date of accrual."); *Doe*, 848 N.W.2d 347 (Iowa 2014) ("the IMTCA contains no term like 'accrues' to give the statute 'elasticity' for the court to consider when a cause of action 'accrues.'" (cleaned up)); *Montgomery*, 278 N.W.2d 911 (Iowa 1979).

This case does not warrant further review because the Court of Appeals correctly used well-established standards and applied well-settled Iowa law in reversing the judgment of the District Court.

STATEMENT OF FACTS

On July 7, 2023, Plaintiffs filed the Petition in this case "under Chapter 692 of the Code of Iowa" and against Benjamin Scheevel and Brent Shatto (individually and in their official capacities), the City of Estherville, Iowa, and John Doe. *See* D0002, Pet. (July 7, 2023). Therein, Plaintiffs asserted the following causes of action:

- Count I (Against All Defendants) - Dissemination, Request, and Receipt of Criminal History or Intelligence Data Pursuant to Iowa Code § 692.6;
- Count II (Against All Defendants) - Invasion of Privacy;
- Count III (Against All Defendants) - Civil Conspiracy; and
- Count IV (Against Defendants Scheevel, Shatto, and Doe) - Action on the Bond Pursuant to Iowa Code § 64.18.

See id.

Plaintiffs allege that between August of 2016 and May of 2019, Defendant Scheevel—then a Police Officer for the City of Estherville Police Department—used a law enforcement database to access Plaintiffs' personal information under false pretenses. *Id.* They further allege Defendants Shatto (the Chief of Police for the City of Estherville Police Department) and the City of Estherville were aware of these instances of improper database access, but failed to take appropriate disciplinary

action. *Id.* Plaintiffs contend they themselves became aware of the alleged improper database access between July 9, 2021 and "late April 2022." *Id.*

On July 12, 2023, Defendant Scheevel filed a Motion to Dismiss on the basis (1) Counts I-III are barred by the two-year statutory limitation period within the Iowa Municipal Tort Claims Act (Iowa Code § 670.5); and (2) Count IV depends on the viability of Counts I-III and is, therefore, futile. *See* D0008, Mot. to Dismiss (July 12, 2023). On July 31, 2023, Defendants Shatto and the City of Estherville filed a Motion to Dismiss on the same bases as Defendant Scheevel's Motion. *See* D0014-15, Mot. to Dismiss (July 31, 2023). On August 3, 2023, Defendant Scheevel filed a Renewed Motion to Dismiss, following Plaintiffs' filing of an Amended Petition. D0016, Renewed Mot. to Dismiss.[1] Virtual Hearing on the Motions was held on November 7, 2023.

On June 13, 2024, the District Court denied the Motions on the basis (1) the IMTCA's statutory limitation period does not govern claims based on violations of

[1] On July 21, 2023, Plaintiffs filed an Amended Petition, identifying Acadia Insurance Company as an additional (unserved) defendant in all counts, but otherwise asserting the same causes of action. *See* D0013, Am. Pet. (July 21, 2023). Defendants City/Shatto's motion and Defendant Scheevel's renewed motion both cited the Amended Petition, despite the Amended Petition having been filed without a motion to amend or court order granting the amendment pursuant to Iowa R. Civ. P. 1.402(4). *See* D0014 at 2. The District Court adopted the Amended Petition, deciding that "[s]ince a Motion is not a pleading, its filing cannot interrupt the time the Plaintiff has to amend their petition prior to a responsive pleading." *See* D0031 at 6, Ruling Mts. to Dismiss (June 13, 2024).

Iowa Code section 692.6 (though section 692.6 expressly provides civil actions brought for such violations are brought under the IMTCA);[2] and (2) Plaintiffs' injury occurred when they first "learned of" the alleged violations (though the Iowa Supreme Court has repeatedly held the discovery rule does not apply to claims brought under the IMTCA). *See* D0031 at 6. Ruling Mts. to Dismiss (June 13, 2024).

On July 10, 2024, Defendants timely applied to the Supreme Court of Iowa for interlocutory review. Plaintiffs did not resist the application. On September 5, 2024, the Supreme Court of Iowa granted Defendants' application and stayed proceedings below. Oral argument proceeded on May 29, 2025. On July 23, 2025, the Court of Appeals reversed and remanded the decision of the District Court. Specifically, the Court of Appeals found that the two-year limitations period under Iowa Code § 670.5 applied to bar Plaintiffs' claims.

[2] Notably, the District Court reached this issue absent Plaintiffs' assertion, briefing, or argument.

ARGUMENT

A. All of Plaintiffs' Claims Are Time-Barred for Failing to Timely File Within Two Years of Their Statutorily Defined Injury

The Court of Appeals correctly reversed the District Court's application of the discovery rule to Plaintiffs' claims on the grounds that "the discovery rule does not apply to IMTCA claims." *Abrahamson v. Scheevel*, No. 24-1133, 2025 WL 2058537, at *3 (Iowa Ct. App. July 23, 2025) (quoting *Venckus v. City of Iowa City*, 930 N.W.2d 792, 808 (Iowa 2019)). "Since *Montgomery* was decided in 1979," this Court has "repeatedly held the IMTCA bars any claim not filed within the requisite time period as measured from the date of ***injury*** rather than date of ***accrual***." *Venckus*, 930 N.W.2d at 807 (emphasis added) (collecting cases, citing *Montgomery v. Polk Cnty.*, 278 N.W.2d 911, 914–15 (Iowa 1979) (en banc)).

Although Plaintiffs also argue elsewhere "Iowa's discovery rule does apply to Count I," (Appl. at 28),[3] Plaintiffs now attempt to side-step the IMTCA's well-established bar on the discovery rule by asserting "[t]his case is not about accrual or discovery," but "is about **injury**, only." (Appl. at 22). To do so, they locate the date of their injuries not at the moment of the alleged intrusions into their data, but at

[3] This is a reversal of Plaintiffs' position before the District Court. (*See* D0036, Tr. Mt. to Dismiss Hrg. at 12:22-23 (10/16/2024) ("We are not making a tolling argument or discovery rule argument.")).

moment they "became aware of Scheevel's wrongful acts" and suffered alleged emotional distress as a result. (*Id.* at 23).

As the Court of Appeals rightly recognized, "this is exactly the discovery rule." *Abrahamson*, 2025 WL 2058537, at *3. "Under Iowa law, an injury occurs ***at the time of the unlawful act*** that gives rise to the claim." *Klein v. Steinkamp*, 44 F.4th 1111, 1114 (8th Cir. 2022) (emphasis added) (citing *Doe v. New London Cmty. Sch. Dist.*, 848 N.W.2d 347, 353 (Iowa 2014); *Venckus*, 930 N.W.2d at 809). Thus, the Court of Appeals correctly concluded "[t]he 'injury' occurred when Scheevel [allegedly] violated section 692.6 and searched the plaintiffs' private information, which occurred, at the latest, in mid-2019 when Scheevel was still employed as a law enforcement officer with access to such information." *Abrahamson*, 2025 WL 2058537, at *3.

Plaintiffs now counter that their injuries must have occurred later than the alleged intrusions into their data, because they "were completely unknowing, unaffected, and unchanged when Scheevel viewed their information in secret," and "were not injured until they in some way suffered a personal impact." (Appl. at 23). But that formulation of Plaintiffs' claims is directly at odds with Section 692.6, which creates liability for those "proven to have disseminated or to have requested and received criminal history date or intelligence data in violation of this chapter[.]" Iowa Code § 692.6. As this Court has explained:

> In chapter 692 as a whole, the legislature has set a tone of caution against the dissemination of criminal history data except as specified. The legislature restricted the distribution of such data to an exclusive group of agencies and departments, and then provided for its release only under specified conditions. Iowa Code § 692.2. A recipient of such information is prohibited from redisseminating this information except under specified and detailed conditions. Id. § 692.3. Both a civil remedy and a criminal penalty are provided ***for violations of the rules of this chapter***. Id. §§ 692.6–.7. . . .
>
> The overall tone of caution set by the legislature against the dissemination of criminal history data, except as carefully specified, indicates a legislative purpose of ***protection of the individual against unwarranted circulation of his or her rap sheet***.

State v. Bessenecker, 404 N.W.2d 134, 137 (Iowa 1987) (emphasis added).

This Court has previously refused to recognize additional claims under Section 692 based upon the secondary effects of a data breach, instead holding that "it is the number of ***acts of dissemination*** which determine the number of violations[.]" *Feeney v. Scott Cnty.*, 290 N.W.2d 885, 889 (Iowa 1980) (noting "Chapter 692 is a criminal statute . . . and such statutes must be strictly construed."). As the Court of Appeals recognized in this case, it is clear Section 692.6 locates the injury at the time of the unlawful access or dissemination, "because it provides for a minimum award of $100 damages in *any* case brought under the statute, regardless of any other injury caused by later learning of the improper access of private information." *Abrahamson*, 2025 WL 2058537, at *3.

In an effort to revive their claims, Plaintiffs would turn Section 692 on its head. Instead of offering "protection of the individual against unwarranted circulation of his or her rap sheet," *Bessenecker*, 404 N.W.2d at 137, Plaintiffs' reading would *require* future plaintiffs to prove some additional injury in order to vindicate their rights under the statute. (*E.g.*, Appl. at 24 ("Scheevel didn't produce a § 670.5 'injury' to a person until each Plaintiff became shocked and horrified by Scheevel's wrongful acts."). Such an unreasonable interpretation would not "best effect the purpose of the statute," and should therefore be rejected. *See Bessenecker*, 404 N.W.2d at 137; *see also Doe 56 v. Mayo Clinic Health Sys.--Eau Claire Clinic, Inc.*, 880 N.W.2d 681, 688-89 (Wis. 2016) (where plaintiffs asserted their injuries occurred not at the time of alleged inappropriate touching, but years later when they learned their doctor was criminally charged with assault, rejecting their proposed interpretation of the malpractice statute as "unreasonable.").

Plaintiffs' invocation of *Montgomery* does not help their claims. (*See* Appl. 20-24). They cite that case's discussion of common law actions for negligence, in which the Court distinguished the case before it from others "in which negligence occurred at one time but the injury, the breach, did not occur until later." *Montgomery*, 278 N.W.2d at 916. The Court found no such latent injury in *Montgomery*, instead ruling that the plaintiff was injured the moment the county clerk repaid her money to the wrong person, even though she did find out about it

until months later. *Id.*[4] Nor was there any such latent injury in *Venckus*, where the Court held that "[t]he date of injury for a defamation claim is the date on which the defendants performed their last allegedly defamatory act," which happened to be more than four years before the plaintiff filed his petition. *Venckus*, 930 N.W.2d at 809 (cleaned up). In both cases, the IMTCA's statute of limitations began to run before the claim accrued.

In this case, the injuries for Plaintiffs' claims under Iowa Code Section 692.6 are even more clearly fixed in time, because the statute is so explicit. The last possible injury was the date Defendants' last "disseminated or . . . requested and received criminal history data or intelligence data." Iowa Code § 692.6. The same is true for Plaintiffs' claims for civil conspiracy and invasion of privacy, which are predicated on the alleged violation of Chapter 692. *See* D0013 at ¶ 197-99 (noting that the claim for invasion of privacy arises out of Defendants alleged search and dissemination of Plaintiff's criminal history and intelligence data in violation of Chapter 692); *Wright v. Brooke Group, Ltd.*, 652 N.W.2d 159, 172 (Iowa 2002) ("Civil conspiracy is not in itself actionable; rather it is the acts causing injury

[4] Like Plaintiffs here, (*see* Appl. at 23), Montgomery could have argued she was "completely unknowing, unaffected, and unchanged" by the defendant's actions until she discovered, five months later, that the bail she posted had been returned to someone else. *See Montgomery*, 278 N.W.2d at 911. The *Montgomery* court—and later the *Doe* and *Venckus* courts—indicated such an assertion is immaterial in cases asserted under the IMTCA.

undertaken in furtherance of the conspiracy that give rise to the action." (cleaned up)); *Bendzak v. Midland Nat. Life Ins. Co.*, 440 F. Supp.2d 970, 984 (S.D. Iowa 2006) ("Under Iowa law, the statute of limitations for conspiracy to commit a tort is the same as the statute of limitations for the underlying tort that furthered the conspiracy.").

Because the conduct giving rise to these actions all occurred between August of 2016 and May of 2019, and suit was not filed until July 7, 2023, the claims are untimely as a matter of law.

B. Plaintiffs' Count I is Time-Barred Because it Does Not Fall Within the Five-Year Limitations Period Applied by the District Court

The Court of Appeals correctly reversed the District Court's application of a five-year limitations period to Count I of the Petition. Although Plaintiffs did not make any such argument in their briefing or argument on motion to dismiss, the District Court held that because Iowa Code Section 692.6 provides liability and damages arise from violations of Chapter 692 "[n]otwithstanding any provisions of chapter 669 or 670 to the contrary," "no provision in Iowa Code Chapter 669 or 670 can defeat a claim under Iowa Code § 692.6 if the elements of [a] 692.6 claim are proven." *See* D0031, Ruling, at 7 (June 13, 2024). As a consequence, the District Court determined the applicable statutory limitation period for Plaintiffs' Count I is not Iowa Code Section 670.5 (the two-year IMTCA limitation period), but Iowa Code section 614.1(4) (the five-year limitation period applicable to actions not

otherwise specified within the section). *Id.*

As the Court of Appeals unanimously held, this was error. *Abrahamson*, 2025 WL 2058537, at *2 & *4 (Tabor, C.J., dissenting) ("I agree with my colleagues that the two-year limitations period in Iowa Code section 670.5 (2019) applies to all three counts in the petition. . .").

In full, Iowa Code Section 692.6 provides:

> Any person may institute a civil action for damages ***under chapter 669 or 670*** or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter. ***Notwithstanding any provisions of chapter 669 or 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 for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Iowa Code § 692.6 (emphasis supplied). As the Court of Appeals correctly reasoned, the first sentence requires civil claims for violation of Chapter 692 to be brought under chapters 669 or 670—the chapters governing tort claims against the state and municipalities. *Abrahamson*, 2025 WL 2058537, at *2. But to interpret the "notwithstanding" language in the next sentence as the District Court did, would "essentially strike the first sentence out of the statute," in contravention of this Court's instructions. *See id.* (citing *Bridgestone Ams., Inc. v. Anderson*, 4 N.W.3d

676, 686 (Iowa 2024) ("[W]e must give meaning to every word in a statute. None should be ignored. None should needlessly be given an interpretation that causes it to have no consequence." (cleaned up))).

The best interpretation of the second sentence, as the Court of Appeals held, is that Section 692.6 overrides any provisions of chapters 669 and 670 that are contrary to the imposition of liability for actual damages, exemplary damages, costs, expenses, and attorney fees. *Id.* To take the Court's example, Section 670.4 states that unless imposed by another express statute, municipalities are immune from "[a]ny claim for punitive damages"—a type of exemplary damages, which are expressly contemplated by Section 692.6. *Id.* Another example is Section 669.15, which contemplates an award of "reasonable attorney fees and expenses" for a claimant victorious against the state, but instructs that "[t]he attorney fees and expenses shall be paid out of but ***not in addition to*** the amount of judgment or award recovered. . ." Iowa Code § 669.15 (emphasis supplied). By contrast, Section 692.6 creates state liability "for actual damages and exemplary damages . . . ***and*** . . . court costs, expenses, and reasonable attorney fees . . ." Iowa Code § 692.6 (emphasis supplied). It makes sense that such provisions in chapters 669 and 670 would be explicitly overridden by Section 692.6, because otherwise they would directly conflict.

However, Chapter 670's two-year statute of limitations does not conflict with

Section 692.6 at all. Rather, it supplies one way in which a civil action for violation of Chapter 692 may be instituted "under chapter . . . 670." Iowa Code § 692.6. Section 692.6 contains no reference to the timeliness of a claim under Chapter 692, but merely imposes potential liability for a particular cause of action. As is the case with *every* civil suit, certain procedural prerequisites must be met to proceed with a claim. *See, e.g.*, Iowa R. Civ. P. 1.301(1) ("For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy."); *see also Nahas v. Polk Cnty.*, 991 N.W.2d 770, 782 (Iowa 2023) (distinguishing between substantive limitations and procedural prerequisites). With respect to claims against municipalities and their agents, those procedural prerequisites are outlined in the IMTCA.

"One of the practical consequences" of the IMTCA's limitations "is that an action can be barred before the accrual date if the action was not filed within two years of the date of injury." *Venckus*, 930 N.W.2d at 808. That is the consequence here. As the Court of Appeals rightly decided, and consistent with well-settled Iowa law, Plaintiffs' claims are time-barred.

CONCLUSION

Because Plaintiffs cannot satisfy the criteria for further review or demonstrate how the Court of Appeals erred in reversing the judgment of the District Court, their application for further review should be denied.

CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(5) because:

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August 22, 2025
Date

/s/ Zachary D. Clausen
Zachary D. Clausen
COUNSEL FOR
DEFENDANTS/APPELLANTS CITY OF
ESTHERVILLE AND BRENT SHATTO

CERTIFICATE OF FILING AND SERVICE

I, Zachary D. Clausen, hereby certify that on August 22, 2025 I electronically filed the foregoing Appellants' Resistance to Application for Further Review with the Clerk of the Supreme Court of Iowa by using the Iowa Electronic Document Management System (EDMS), which will send notice of electronic filing to the following:

Jack Bjornstad
1700 Hill Avenue
Spirit Lake, IA 51360

Per Iowa R. App. P. 6.701 and 6.702, this constitutes service for the purpose of the Iowa Court Rules.

August 22, 2025
Date

/s/ Zachary D. Clausen
Zachary D. Clausen
COUNSEL FOR
DEFENDANTS/APPELLANTS CITY OF
ESTHERVILLE AND BRENT SHATTO