

DEVELOPMENTS IN STATE CONSTITUTIONAL TORTS AND QUALIFIED IMMUNITY

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PART I: THE DECISIONS



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PART I: THE DECISIONS

1. **Godfrey v. State (6/30/17) (3-3-1 decision)**

- Issue: Whether the Equal Protection and Due Process Clauses of Iowa Constitution provide a direct action for damages.
- C.J. Cady Authors Deciding Concurrence
 - I concur in the opinion of the court to the extent it would recognize a tort claim under the Iowa Constitution when the legislature has not provided an adequate remedy



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PART 1: THE DECISIONS

GORREY (6/30/17) CONT'D.

o **The Plurality (Appel, J.)**

- "The Iowa Supreme Court has a long and storied tradition of deciding cutting-edge cases well in advance of later decisions of the United States Supreme Court and other courts."
- Relies on several early cases for the proposition that the Iowa Supreme Court has previously found "that the search and seizure clause of the Iowa Constitution supported an action for damages without implementing legislation."
- Relies on several (non-damages) cases applying the Due Process and Equal Protection Clauses without implementing legislation.
- "We express no view on other potential defenses which may be available to the defendants and no view whatsoever on the underlying merits of the case. We hold only that the defendants are not entitled to summary judgment on Counts VI and VII based on the legal contentions raised in this appeal."

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PART 1: THE DECISIONS

GORREY (6/30/17) CONT'D.

o **Dissent (Mansfield, J.)**

- Until today, we have never recognized direct claims under the Iowa Constitution even for actual damages. Historically the Iowa Constitution has been, and continues to be, a vital check on government encroachment of individual rights. Our courts enforce that check by invalidating and enjoining actions taken in violation of the constitution.
- But we have heretofore indicated that damages claims require either (1) legislative authorization or (2) a footing in the common law of torts, contracts, or some other established common law doctrine. The appeal before us presents neither.
- "In 1965, our general assembly passed the Iowa Civil Rights Act . . . Today, we learned the general assembly need not have bothered."
- Points to: Article XII, sec. 1 (directing general assembly to pass all laws necessary to carry constitution into effect); the cases relied upon by the plurality are not constitutional in nature; and the plurality unilaterally waives state sovereign immunity.

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PART 1: THE DECISIONS

2. Baldwin v. City of Estherville ("Baldwin I") (6/29/18) (5-2 decision)

A Certified Question from Northern District of Iowa:

- "Can a defendant raise a defense of qualified immunity to an individual's claim for damages for violation of article I, § 1 and § 8 of the Iowa Constitution?"

Answer:

- "A defendant who pleads and proves as an affirmative defense that he or she exercised all due care to conform with the requirements of the law is entitled to qualified immunity on an individual's claim for damages for violation of article I, sections 1 and 8 of the Iowa Constitution."

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PART 1: THE DECISIONS

BALDWIN I (6/29/18) CONT'D.

o **Majority (Mansfield, J.)**

- "We are convinced that constitutional tort claims in Iowa should be subject to *some limit*."
- "[A]t the time our Constitution was adopted, public officials received the benefit of a form of qualified immunity."
- "We believe the government officials . . . would be reluctant to fully perform their jobs if they could be found strictly liable for actions that happened to violate someone's constitutional rights. There is a danger of overdeterrence"
- Constitutional torts are torts . . . a government official whose conduct is being challenged will not be subject to damages liability if she or he pleads and proves as an affirmative defense that she or he exercised all due care to conform to the requirements of the law"

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PART 1: THE DECISIONS

3. Baldwin v. City of Estherville ("Baldwin II") (6/14/19) (6-1 decision) (Wiggins, J.)

Six Certified Questions from Northern District of Iowa

Question 1:

- Can the City assert qualified immunity to a claim for damages for violation of the Iowa Constitution based on its officers' exercise of "all due care"?

Answer:

- The definition of "tort" in the IMTCA expressly includes constitutional deprivations
- "[T]he due care exemption under section 670.4(1)(c) could provide the City immunity."

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

Question 2:

- If the City can assert such a defense, on the facts presented in this case, does the City have "all due care" qualified immunity to liability for damages for the violation of Baldwin's right to be free from an unreasonable search and seizure under article I of the Iowa Constitution? This question necessarily includes questions about the extent to which reliance on a warrant may satisfy the "all due care" standard and whether the "all due care" analysis considers alternative bases for probable cause of a warrant on which the officers did not rely.

Answer:

- Question requires Court to apply the facts of the case, which is outside the confines of a certified question
- Court declines to answer the question

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

Question 3:

- If punitive damages are an available remedy against an individual defendant for a violation of a plaintiff's rights under the Iowa Constitution, can punitive damages be awarded against a municipality that employed the individual defendant and, if so, under what standard?

Answer:

- The IMTCA applies to constitutional torts against municipalities
- So, section 670.4(1)(e) precludes an award of punitive damages against the municipality that employed the tortfeasor

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

Question 4:

- If punitive damages are available in answer to the previous question, would a reasonable jury be able to find that the applicable standard was met on the facts presented in this case

Answer:

- No punitive damages available in this case, no need to answer this question

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

Question 5:

- If an award of attorney's fees would have been available against an individual defendant for a plaintiff who attains some degree of success on a claim of a violation of a plaintiff's rights under the Iowa Constitution, would they be available against a municipality that employed the individual defendant and, if so, under what standard?

Answer:

- No statutory authorization for attorney's fees, so none will be awarded unless the district court applies the "rare exception" for when the losing party acted in "bad faith, vexatiously, wantonly, or for oppressive reasons."

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

Question 6:

- "If the answer to either Question No. 3 or Question No. 5 (or both) is in the affirmative, will retroactive application to the pending case be appropriate?"

Answer:

- No answer for punitive damages
- It is appropriate to retroactively apply our conclusion that in a *Godfrey* action, common law attorney fees may be available against the municipal employer of the constitutional tortfeasor

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PART 1: THE DECISIONS

BALDWIN II (6/14/19) CONT'D.

○ Appel, J. dissenting

- As he did in Baldwin I, J. Appel dissents, explaining he "continue[s] to believe there is no immunity available to shield individual state officers from liability for alleged harm caused by their unconstitutional conduct in violation of article I, sections 1 and 8 of the Iowa Constitution."

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PART 1: THE DECISIONS

4. Venckus v. City of Iowa City (6/28/19) (6-1)

Background.

- Man acquitted of sexual abuse charge filed *Godfrey*-type claims against police investigator and city for defamation, abuse of process, and malicious prosecution, claims against prosecutors and county for abuse of process, and claims against all defendants for state constitutional torts, including violations of equal protection, due process, and the right
- The District Court, Johnson County, Chad Kepros, J., denied defendants' motions to dismiss. Defendants filed application for interlocutory appeal, which the Supreme Court granted.
- Finally, a non-certified question case.

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PART 1: THE DECISIONS

VENCKUS (6/28/19) CONT'D.

Majority Opinion (McDonald, J.)

- The judicial process immunity applies to state constitutional torts under the Iowa Constitution
- The *Baldwin* immunity is in addition to any other common law immunities or defenses available and not a comprehensive substitute immunity.

The Footnote

- The parties have not asked us to reconsider *Godfrey*, to consider whether a *Godfrey*-type claim can be asserted for alleged violations of the Iowa Constitution other than those recognized in *Godfrey*, or to determine whether *Godfrey*-type claims can be asserted against municipalities. In the absence of any argument on these issues, we assume without deciding *Venckus* has asserted cognizable constitutional claims for damages.

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PART 1: THE DECISIONS

5. *Wagner v. State* (12/31/20) (6-1 decision)

Background

- Administrator of decedent's estate filed suit against the State and a Department of Natural Resources (DNR) officer arising out of officer's fatal shooting of decedent during an attempted arrest, asserting claims under § 1983 and Iowa Constitution.
- State moved to dismiss, Northern District of Iowa certifies 3 questions to Iowa Supreme Court

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PART 1: THE DECISIONS

WAGNER (12/31/20) CONT'D.

Question 1:

- Does the Iowa Tort Claims Act, Iowa Code Chapter 669, apply to plaintiffs' [state] constitutional tort causes of action?

Answer:

- Yes, as to the procedural requirements of that Act
- "The legislature intended the ITCA to be the only path for suing the State and state officials acting in their scope of employment on a tort claim. Consistent with *Godfrey II*, ITCA procedures should apply to constitutional torts"

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PART 1: THE DECISIONS

WAGNER (12/31/20) CONT'D.

Question 2:

- Is the available remedy under the Iowa Tort Claims Act for excessive force by a law enforcement officer inadequate based on the unavailability of punitive damages? And if not, what considerations should courts address in determining whether legislative remedies for excessive force are adequate?

Answer:

- No
- Punitive damages are not compensatory, they punish, so "[i]t is difficult to see, therefore, that the unavailability of punitive damages would render a remedy inadequate in most cases."
- Leaves open the possibility that punitive damages could be awarded in non-excessive force cases

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PART 1: THE DECISIONS

WAGNER (12/31/20) CONT'D.

Question 3:

- Are plaintiffs' claims under the Iowa Constitution subject to the administrative exhaustion requirement in Iowa Code section 669.5(1)?

Answer:

- Yes
- Because the procedural components of the ITCA apply, plaintiffs must exhaust their remedies through the state tort claim process

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PART 1: THE DECISIONS

WAGNER (12/31/20) CONT'D.

Question 4:

- Are plaintiffs required to bring their Iowa constitutional claims in the appropriate Iowa district court under Iowa Code section 669.4?

Answer:

- Yes
- Eleventh Amendment immunity applies to claims under a state constitution
- We find no indication that the State of Iowa has generally waived its Eleventh Amendment immunity from suit in federal court as to direct constitutional claims
- Plaintiffs must file claims in Iowa district court.

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PART I: THE DECISIONS

WAGNER (12/31/20) CONFD.

- o Appel, J., dissents
- o "While the gateway into chapter 669 is established by the definition of "claim" in Iowa Code section 669.2(3), an exit ramp appears in section 669.14"
- o Because excessive force is one for assault or battery, the claim "is simply not within the scope of the chapter" and should proceed *outside* of the tort claims act

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PART II: THE LEGISLATION

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PART II: THE LEGISLATION

New Section 669.14A (codified for municipalities at 670.4A)

Qualified Immunity.

1. Notwithstanding any other provision of law, an employee of the state, subject to a claim brought under this chapter, shall not be liable for monetary damages if any of the following apply:
 - a. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation, or at the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constitute a violation of law.
 - b. A court of competent jurisdiction has issued a final decision on the merits holding, without reversal, vacatur, or preemption, that the specific conduct alleged to be unlawful was consistent with the law.
2. The state or state agency shall not be liable for any claim brought under this chapter where the employee was determined to be protected y qualified immunity under subsection 1.

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PART II: THE LEGISLATION

Pleading Standard

- 669.14A(3) A plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice.

Immediate Appeal

- 669.14A(4) Any decision by the district court denying qualified immunity shall be immediately appealable.

Other Immunities Still Apply

- 669.14A(5) This section shall apply in addition to any other statutory or common law immunity.



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PART II: THE LEGISLATION

New Section: 669.26 Money Damages – nonwaiver of rights

669.26. This chapter shall not be construed to be a waiver of sovereign immunity for a claim for money damages under the Constitution of the State of Iowa.

Same codified at section 670.14 in the Municipal Tort Claims Act.



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PART III: WHAT WE THINK WE KNOW



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PART III: WHAT WE THINK WE KNOW

1. Who are the Proper Defendants?

- The State, or
- State employees acting within the scope of their employment.

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PART III: WHAT WE THINK WE KNOW

2. What is the Claim?

- Direct claim for damages under a self-executing constitutional provision
 - article I, section 6 (equal protection), or
 - article I, section 9 (due process)
- AND no adequate statutory remedy exists that would preclude plaintiff's claim

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PART III: WHAT WE THINK WE KNOW

3. What is the Remedy?

- In excessive force cases, compensatory damages only, no punitive damages (*Wagner*)

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PART III: WHAT WE THINK WE KNOW

4. What are the Defenses?

- Failure to state a constitutional violation
- All-due-care qualified immunity
- Iowa Tort Claims Act procedural defenses (statute of limitations, failure to exhaust remedies, etc.)
- 669.14A Qualified Immunity and Plausibility

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**PART IV: WHAT WE
DON'T KNOW**

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PART IV: WHAT WE DON'T KNOW

1. What other provisions of the Iowa Constitution are self-executing, such that the Court would recognize a direct claim for damages under them?

- Article I, section 7 (free speech)?
- Article I, section 8 (search and seizure)?
- Article I, section 1 (inalienable rights)?
 - see *Meyer v. Herndon*, 419 F. Supp. 3d 1109 (S.D. Iowa 2019)

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PART IV: WHAT WE DON'T KNOW

2. When does section 669.14A come into play?

- All claims that accrue after the statute's effective date?
- All claims filed after the statute's effective date?
- All motions to dismiss filed after the statute's effective date?
- All adjudications after the statute's effective date for currently pending suits?

See *Hrbek v. State*, 958 N.W.2d 799, 783 (Iowa 2021) (explaining the relevant retroactivity inquiry is (1) what is the specific conduct regulated by the statute, and (2) determining whether the event of legal consequence occurred before or after the statute's effective date).

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PART IV: WHAT WE DON'T KNOW

3. Can all-due-care immunity be resolved at the motion-to-dismiss stage?

- "Qualified immunity is immunity from *suit*, rather than a mere defense to liability . . . it is effectively lost if the case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985).
- See Ruling on Defendants' Motion to Dismiss, *Carter v. Carter*, LACL148061 (Polk Cty. June 3, 2021) (applying all-due-care immunity at motion-to-dismiss stage)

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PART IV: WHAT WE DON'T KNOW

4. What substantive portions of the ITCA apply?

- We know the bar on punitive damages is a substantive provision but nevertheless applies to excessive force claims brought under the Iowa Constitution (*Wagner*)
- If court is going case-by-case (or issue-by-issue), open questions of whether other substantive provisions, like the 669.14 immunities, apply
- *Carter* district court applied 669.14(4) to bar false-arrest claim against State.

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PART IV: WHAT WE DON'T KNOW

5. What is the remedy for other constitutional torts?

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PART IV: WHAT WE DON'T KNOW

5. The continued viability of the 50 years of precedent stating the Court can't waive sovereign immunity.

- The *Godfrey* decision is silent on the issue of sovereign immunity
- From 1964 until *Godfrey*, the court was firm that it could not waive sovereign immunity, and such waiver had to come from the legislature
- In *Wagner, J. Mansfield* characterized the *Godfrey* decision as "overrul[ing] *sub silentio* cases . . . which proclaimed the State is immune from suit except where immunity is waived by statute."
- Substantial deviation from fifty years of precedent without any analysis on the issue from the parties in *Godfrey*

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