All for Naught: *McNaughton v. Chartier*'s Dismantling of Iowa's Dedication Doctrine

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ABSTRACT: Public dedication is one method by which cities, towns, and municipalities acquire new roads and highways. The common law doctrine of dedication has developed to balance the property rights of landowners and the public. When property is dedicated to the public, the landowner generally retains title to the land while the public acquires an easement. Dedications can be made expressly through official grants or by inclusion in a plat. They can also be implied through a landowner's overt words or actions, use by the public, or maintenance at the public's expense. The key factor in determining whether a dedication has occurred is the intention of the landowner—the animus dedicandi. *However, for implied dedications, "intent" may be determined not only by the subjective intent of the landowner, but by whether it was reasonable for the public to believe that the landowner had intended to dedicate the road to public use. In the 2022 case* McNaughton v. Chartier, *the Supreme Court of Iowa examined a publicly constructed access road built partially atop a landowner's driveway at the behest of the landowner. Despite the expenditure of public funds on and public use of the road, the* McNaughton *majority held that no dedication had occurred. This Note argues that* McNaughton *reinterpreted Iowa's dedication caselaw in such a way that it no longer aligns with the purpose and logic of the doctrine. This Note also suggests that the Iowa state legislature follow the lead of other states and enact statutory dedication rules. Two statutory provisions could mitigate the effects of* McNaughton *and provide increased predictability when courts consider cases involving dedication: setting a standard for whether public maintenance results in dedication and establishing guidelines on how landowners can avoid inadvertently dedicating their property.*

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INTRODUCTION

In 2022, the Supreme Court of Iowa revisited the state's common law dedication doctrine in *McNaughton v. Chartier*.[1] The *McNaughton* majority departed from Iowa precedent, misconstruing the underlying rationale of

1. McNaughton v. Chartier, 977 N.W.2d 1, 11–12 (Iowa 2022).

common law dedication.[2] In his dissent, Justice McDermott lamented the majority's decision, stating that, in its wake, "[i]t's hard to see what remains of the doctrine of implied dedication—a doctrine appearing in cases throughout our state's history."[3]

At issue in the case was whether Willard McNaughton had dedicated a strip of his property to the public.[4] In 1999, McNaughton's sister and her husband, Jeanine and Stanley Chartier, purchased property adjacent to his with plans to open an assisted living facility.[5] McNaughton agreed to grant an easement over his property for the construction of an access road connecting the Chartier property to the nearby highway, under the condition that the City of Lawton ("the City") maintain the road.[6] The parties further agreed that the easement was "private" and was only for the "benefit of Chartier, and the residents, guests, and other invitees of the assisted living facility located on the Chartiers' property."[7] The easement agreement was memorialized in writing but never recorded.[8]

In 2018, the Chartiers sought to sell the property, but McNaughton requested compensation for their successors' continued use of the easement.[9] The dispute went to trial where the court found, in favor of the Chartiers, that the portion of the access road on McNaughton's land had been dedicated to the public.[10] The Iowa Court of Appeals reversed the decision,[11] and its opinion was upheld by the state supreme court,[12] based primarily on the language of the unrecorded easement agreement.[13]

To reach its conclusion, the Supreme Court of Iowa overlooked key doctrinal principles of dedication.[14] First, dedication should be understood in terms of estoppel when the intent of the donor is either unknown or ambiguous.[15] The majority focused its analysis on McNaughton's written and

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2. *See* discussion *infra* Part III.

3. *McNaughton*, 977 N.W.2d at 16 (McDermott, J., dissenting).

4. *Id.* at 5–9 (majority opinion).

5. *Id.* at 5.

6. *Id.* at 6.

7. *Id.*

8. *Id.* at 6–7.

9. *Id.* at 6–8.

10. *Id.* at 7–8.

11. McNaughton v. Chartier, No. 19-1681, 2021 WL 2452057, at *5 (Iowa Ct. App. June 16, 2021).

12. *McNaughton*, 977 N.W.2d at 5, 8.

13. *Id.* at 8–10.

14. *See* discussion *infra* Part II.

15. *See, e.g.*, BYRON K. ELLIOTT & WILLIAM F. ELLIOTT, A TREATISE ON THE LAW OF ROADS AND STREETS § 125, at 141 (3d ed. 1911) ("A distinguishing difference between a statutory and common law dedication is said to be that the former operates by way of a grant, and the latter by way of an estoppel in pais rather than by grant."). Under this theory, the landowner is estopped from denying that a dedication has occurred. *Id.* § 145, at 166.

verbal communications to the Chartiers and the City, rooting the issue in doctrine surrounding grants.[16] However, under an implied dedication analysis, understood correctly in terms of estoppel, the court should have balanced McNaughton's expressed opposition to dedication with the improvements conferred upon his property at the public's expense, his failure to record the written easement agreement, and the public's use of the road in question.[17] Second, dedication vests property rights in the public rather than any individual or entity.[18] The majority mistakenly relied on precedent related to private easements granted to private parties.[19]

This Note argues that, because of these misunderstandings, *McNaughton* has skewed the balance between public and private rights at play under common law dedication heavily toward landowners, and this new balance could fundamentally alter how dedication claims are resolved in the state.[20] In Part I, this Note explores the foundations of common law dedication and provides a framework for understanding why the *McNaughton* analysis is incongruous with established doctrine. Part II provides the factual background of *McNaughton* and addresses the majority's analysis. Part III examines statutory dedication legislation adopted in other states and proposes two similar provisions that Iowa should enact to mitigate the effects of *McNaughton* and improve Iowa's dedication law. Finally, this Note concludes by explaining how the proposed legislation would alleviate the challenges posed by difficult cases like *McNaughton* and suggesting an approach that courts can follow even in the absence of legislative action.

I. THE DOCTRINE OF DEDICATION

This Part explores the doctrine and history of common law dedication both generally and in Iowa to provide a basis for understanding the shortcomings of the *McNaughton* majority's analysis. The first Section lays out the basic framework of common law dedication, both express and implied. The second examines important connections between dedication

16. *McNaughton*, 977 N.W.2d at 10 ("Here, the language of the instrument plainly and unambiguously establishes the easement was a private easement for the Chartiers' benefit and not a dedication of property rights to the City or the public at large. . . . The unambiguous expression of a parties' intent to create a private easement and not a public dedication must be given effect.").

17. *See* discussion *infra* Section I.C.2.

18. ELLIOTT & ELLIOTT, *supra* note 15, § 144, at 165.

19. *See, e.g.*, *McNaughton*, 977 N.W.2d at 9 (providing support for interpreting "express agreement[s] of the parties").

20. *See, e.g.*, Onstott v. Murray, 22 Iowa 457, 464–65 (1867) (describing a landowner's intent to dedicate a road to the public as a question of fact that should be determined by a jury). *McNaughton* did not present evidence which would typically be relied on to make a factual determination that land had been dedicated to the public. *See, e.g.*, State v. Green, 41 Iowa 693, 696 (1875) (overturning a jury decision because the owner had restricted public access to the road and no public funds had been spent improving or maintaining the road).

and prescription to clarify confusion that can result from language the two doctrines share. The final Section explores the two bases for establishing an intent to dedicate—the subjective intent of the landowner and estoppel—as well as ways landowners can disprove intent and preclude a finding of dedication.

A. *Dedication Defined*

Dedication is a method by which private property is made available for public use.[21] Property can be dedicated to the public for a variety of purposes,[22] but the doctrine is commonly applied to highway creation.[23] Landowners who dedicate property to public use do not forfeit their underlying fee interest.[24] Instead, the public typically acquires an easement[25]—a "right of passage" in the case of a highway.[26] Landowners only give up the right to interrupt the intended public use of the property.[27]

There are two common ways that dedication laws are bifurcated: (1) common law and statutory,[28] and (2) express and implied.[29] The first distinction is easily discernible from the terminology: whether a dedication has been created can be defined by statutory language or common law

21. Joseph K. Angell & Thomas Durfee, A Treatise on the Law of Highways § 132, at 145 (3d ed. 1886).

22. Emory Washburn, A Treatise on the American Law of Easements and Servitudes 192–93 (3d ed. 1873) ("So there may be a dedication of a spring of water to public use, or land for a public square in a city, or for a street or public highway, or a public quay or landing-place upon the bank of a river, or for public commons, or for sites for court-houses or other public buildings; and it would seem that 'all sorts of easements and rights to enjoyment of land, whether for use or of pleasure, which may be acquired by an individual by grant or prescription, may also be acquired by the public by actual dedication.'" (endnotes omitted)); *see also* City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 437–38 (1832) ("If this is the doctrine of the law applicable to highways, it must apply with equal force . . . to all dedications of land to public uses . . . .").

23. Angell & Durfee, *supra* note 21, § 132, at 145.

24. Elliott & Elliott, *supra* note 15, § 164, at 184; *see also White's Lessee*, 31 U.S. at 437 ("[I]t is not necessary that the fee of the land should pass, in order to secure the easement to the public."). Dedications can "be limited both as to the time and mode of enjoyment." Angell & Durfee, *supra* note 21, § 139, at 154. For example, landowners may choose to exclude certain types of vehicles or restrict public usage to certain times of day or parts of the year. *Id.* However, dedications cannot limit use to a "portion of the public" because, under such conditions, the property rights would vest in the persons allowed to make use of the property rather than the public. *Id.* § 141, at 155–56; Elliott & Elliott, *supra* note 15, § 144, at 165.

25. Angell & Durfee, *supra* note 21, § 132, at 145; Elliott & Elliott, *supra* note 15, § 164, at 184.

26. Angell & Durfee, *supra* note 21, § 137, at 152; *see also* Jochimsen v. Johnson, 156 N.W. 21, 24 (Iowa 1916) ("A dedication does not convey the title when in the act of dedication the use only is given to the public, and that, for a specific purpose, and by such dedication, the corporation representing the public takes only an easement in the street, and the right to work them as a public way.").

27. Washburn, *supra* note 22, at 204.

28. Elliott & Elliott, *supra* note 15, § 122, at 138–39.

29. *Id.* § 133, at 156.

precedent.[30] Dedications in Iowa are primarily defined by the common law,[31] which is further divided into express and implied dedication.[32] Express dedications are those where "the history of the formation of the road or of the commencement of the public user is known."[33] Implied dedications are those where the intent of the owner must be inferred.[34]

In practice, the distinction between express and implied dedication can be vague. Both express and implied dedications require the same basic elements of offer and acceptance.[35] Further, proving those elements may require factual determinations based on the actions of the donor—even for "express" dedications.[36] This Section provides a basic framework for understanding the terms "express" and "implied" in the context of dedication; it does not attempt to completely disentangle the two. First, it explores express and implied dedication respectively. Next, it discusses the acceptance requirement in depth.

1. Express Dedication

Express dedications are generally considered to be those in which the origins of the road or the first public use are ascertainable.[37] Often, this information can be gleaned from deeds or plats.[38] When a written instrument is used to complete a dedication, the writing helps define the scope of the dedication.[39] Dedications based on landowner actions can also be considered "express" if they are sufficiently clear, though. If the landowner's intention "is [not] expressly set out in documentary form," then the dedication "will inevitably be judged from [the landowner's] subsequent behaviour in the face of continued public use."[40] For example, Elliott and Elliott give the following illustration in their treatise: if a landowner were to "add a strip of ground to the width of a street or road, there would be a valid dedication," even if the purpose of the road or intent of the landowner were never memorialized in

30. *See id.* § 123, at 139. Elliott and Elliot also distinguished statutory and common law dedications based on their manner of operation: statutory dedication "operates by way of a grant, and [common law dedication] by way of an estoppel in pais rather than by grant." *Id.* § 125, at 141. Estoppel in the context of dedication is discussed further in Section I.C.2.

31. Statutory provisions are discussed in Part III.

32. ELLIOTT & ELLIOTT, *supra* note 15, § 133, at 156.

33. HAROLD PARRISH & LORD DE MAULEY, PRATT AND MACKENZIE'S LAW OF HIGHWAYS 30 (21st ed. 1967).

34. STEPHEN J. SAUVAIN, HIGHWAY LAW § 2-42, at 44 (3d ed. 2004).

35. *See* WASHBURN, *supra* note 22, at 185.

36. PARRISH & DE MAULEY, *supra* note 33, at 35.

37. *Id.* at 30.

38. ELLIOTT & ELLIOTT, *supra* note 15, § 133, at 156.

39. *Id.* § 134, at 156–57.

40. SAUVAIN, *supra* note 34, § 2-30, at 38.

writing.[41] Subsequent use of a road may determine or expand the scope of the public's right, even superseding terms of a contrary written instrument.[42]

Iowa precedent does not deviate from this conception of express dedication. The Supreme Court of Iowa specifically embraced Elliott and Elliott's analysis in *Wensel v. Chicago, Milwaukee & St. Paul Railway Co.*[43] Then, in *Marksbury v. State*, the court further held that even express dedications can be completed by either acts or words of the landowner:

> The elements necessary to establish an express dedication are (1) an appropriation of the land by the owner for a public use, *evidenced by a positive act or declaration* manifesting an intent to surrender the land to the public; (2) an actual parting with the use of the property to the public; and (3) an actual acceptance of the property by the public.[44]

The validity of both "positive act[s]" and "declaration[s] . . . manifest[ing] an intent to" dedicate were explicitly upheld in *Schmidt v. Town of Battle Creek*.[45] There, the landowner, Wagoner, filed two documents with the Ida County Board of Supervisors, stating that he "consent[ed] to the location of a public highway along" certain borders of his property.[46] He surveyed the land himself to identify the official property lines and marked the intended path of the highway with trees and fencing.[47] The court upheld Wagoner's dedication, explaining that he had "expressed his purpose in the consent filed with the board of supervisors," and his conduct also "indicated his purpose to dedicate."[48]

2. Implied Dedication

The distinguishing characteristic of implied dedication is that the intent of the landowner must be inferred by the factfinder.[49] When the subjective intent of the landowner is known, as they often are in "express dedications," dedication resembles the more familiar concept of a grant. That similarity between grants and dedication in clear cases disguises a fundamental distinction between the two, though. While grants vest property interests in an identifiable grantee intended by a landowner,[50] the doctrine of implied dedication must be capable of resolving cases in which the landowner's subjective intent is

41. ELLIOTT & ELLIOTT, *supra* note 15, § 133, at 156.

42. *Id.* § 134, at 157.

43. Wensel v. Chi., Milwaukee & St. Paul Ry. Co., 170 N.W. 409, 413 (Iowa 1919).

44. Marksbury v. State, 322 N.W.2d 281, 284 (Iowa 1982) (citing Schmidt v. Town of Battle Creek, 175 N.W. 517, 519–20 (Iowa 1919)) (emphasis added).

45. *Schmidt*, 175 N.W. at 519–20.

46. *Id.* at 518.

47. *Id.* at 518–19.

48. *Id.* at 519.

49. *See* ANGELL & DURFEE, *supra* note 21, § 142, at 158 ("Dedication . . . is a conclusion of fact to be drawn by the jury."). The evidence for intent and acceptance will necessarily overlap. SAUVAIN, *supra* note 34, § 2-25, at 35.

50. *See* WASHBURN, *supra* note 22, at 179.

unknown and the "grantee" is the public at large.[51] The only evidence of dedication may be public use—often referred to as "public user" in the context of dedication—of the road. Against this backdrop, dedication developed as a doctrine premised on estoppel rather than the subjective intent of a grantor.[52] One ramification of this distinction is that a landowner's subjective intent may be irrelevant if their actions lead the public to believe that the road is open to public use.[53] Elliott and Elliott adopted this conception in their definition of implied dedication:

> An implied dedication is one arising, by operation of law, from the acts of the owner. It may exist without any express grant, and need not be evidenced by any writing, nor, indeed, by any form of words, oral or written. It is not founded on a grant, nor does it necessarily presuppose one, but it is founded on the doctrine of equitable estoppel.[54]

Historically, a similar legal framework was applied to private easements through the legal "fiction of a lost grant,"[55] and the purpose and function of this fiction—and how it differs from dedication—help illustrate the *McNaughton* majority's mistake of analyzing dedication in terms of grant. The lost grant doctrine is usually associated with prescription, which required private easements to "arise in grant."[56] It developed as a solution when there had been usage of a path or road since "time immemorial" but no actual grant conveying title.[57] Under the lost grant doctrine, "if [an] easement ha[d] been used for the period required by the statute of limitations to gain a title to lands by adverse possession, then the use [was] presumed to have commenced under a valid grant which ha[d] since been lost."[58] The lost grant doctrine demonstrates a historical legal understanding that overreliance on express intent can result in unfairness when there has been continuous use of an easement by a private party. Implied dedication eschews the legal fiction, but similarly presumes

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51. *See* PARRISH & DE MAULEY, *supra* note 33, at 33.

52. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 137, at 159–60.

53. *See* WASHBURN, *supra* note 22, at 187.

54. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 137, at 159.

55. PARRISH & DE MAULEY, *supra* note 33, at 33; SAUVAIN, *supra* note 34, § 2-42, at 44.

56. Note, *Doctrine of Lost Grant*, 16 HARV. L. REV. 438, 438 (1903); *see also* ANGELL & DURFEE, *supra* note 21, § 131, at 142 ("Prescription, in its more general acceptation, is defined to be 'a title, acquired by possession, had during the time and in the manner fixed by law.' It is also said that 'a prescription by immemorial usage can, in general, only be for things which may be created by grant.'").

57. Alan Dowling, *The Doctrine of Lost Modern Grant*, 38 IRISH JURIST 225, 226 (2003).

58. *Id.* at 438. The connection often made between dedication and adverse possession by courts or jurisdictions through considering the same statutory period for both doctrines should not create the impression that adverse use is relevant to questions of dedication. WASHBURN, *supra* note 22, at 223; *see also* Dugan v. Zurmuehlen, 211 N.W. 986, 988 (Iowa 1927) (clarifying that "title acquired [by dedication] is not viewed as one by adverse possession predicated on the assertion of title in hostility to that of the record owner").

that there is "a lawful origin for the user" without explicit proof of landowner intent.[59] However, dedication *implies* intent based "on a probable inference from facts,"[60] including "the natural consequences of [a landowner's] acts or omissions."[61] If a factfinder makes such an inference, the landowner is estopped from denying that there has been a dedication.[62]

Dedications can be implied even when there is a living, identifiable landowner-grantor.[63] There are two non-subjective indications of "intent"[64] that establish an implied dedication: (1) public maintenance and (2) public user.[65] When public funds are used for maintenance of a road, it "raises a presumption that the public have a right over it."[66] Public user, on the other hand, may require additional evidence to establish a presumption of intent,[67] such as the period of use[68] and, if available, the owner's knowledge of and acquiescence to the use.[69] Whether the public has used the highway for a sufficient amount of time is generally a factual determination.[70] One formulation is that the usage must be "for such a length of time that [the public's] accommodation and the enjoyment of private rights would be materially affected by an interruption of such a user."[71] However, no amount of time will be sufficient for intent to be inferred if the owner did not know of and consent to the use.[72] The knowledge requirement provides protection from unintended dedications being implied when use takes place on property inhabited by tenants rather than the true owners.[73]

59. SAUVAIN, *supra* note 34, § 2-42, at 44.

60. *Id.* § 2-42, at 44 (quoting Folkestone Corp. v. Brockman [1914] AC 338, 354 (HL)) (internal quotation marks omitted).

61. Wensel v. Chi., Milwaukee & St. Paul Ry. Co., 170 N.W. 409, 414 (Iowa 1919).

62. WASHBURN, *supra* note 22, at 187–88.

63. *See, e.g.*, ELLIOTT & ELLIOTT, *supra* note 15, § 136, at 158 (explaining that "express, as well as implied, common law dedications may be made orally or by words and acts without any writing").

64. *See* ANGELL & DURFEE, *supra* note 21, § 144, at 161 (explaining that "the jury may presume . . . an intent to dedicate" when the subjective intent of the landowner is unknown).

65. PARRISH & DE MAULEY, *supra* note 33, at 33–34; ELLIOTT & ELLIOTT, *supra* note 15, § 171, at 194.

66. PARRISH & DE MAULEY, *supra* note 33, at 40.

67. Dugan v. Zurmuehlen, 211 N.W 986, 990 (Iowa 1927).

68. WASHBURN, *supra* note 22, at 223.

69. PARRISH & DE MAULEY, *supra* note 33, at 34.

70. *See* WASHBURN, *supra* note 22, at 226.

71. *Id.*

72. *See, e.g.*, Kinsinger v. Hunter, 192 N.W. 264, 265 (Iowa 1923) (holding that "permissive use . . . no matter how long continued, will not amount to a dedication" unless the road "has been so used with the knowledge and consent of the proprietor").

73. ANGELL & DURFEE, *supra* note 21, § 134, at 147–48.

3. Acceptance

A landowner's actions or words alone cannot create a valid dedication.[74] The public or a relevant authority must also accept the dedication.[75] Acceptance is required for two important reasons. First, it protects the public from incurring an unwanted burden.[76] Without this requirement, citizens could declare a dedication and gain the benefit of public maintenance when the city has no need for the road.[77] Second, even though acceptance can occur immediately after an offer is made,[78] the landowner retains the right to revoke an offer until there has been acceptance.[79]

Like dedication in general, acceptance can be express or implied.[80] Acceptances are express when they are made by an official statement by the city, town, or municipality.[81] In the case of implied dedications, what constitutes acceptance can vary.[82] Generally, the same evidence proving dedication tends to show acceptance as well[83]: use[84] and maintenance by the public.[85] The amount of "use need be only such as the public wants and necessities demand."[86] Elliot and Elliot observed that if a "highway is beneficial to the public, an acceptance will, in general, be implied."[87] As for maintenance,

74. *See, e.g.*, WASHBURN, *supra* note 22, at 197 ("[A]ll that is requisite to constitute a good dedication is[] that there should be an intention and an act of dedication on the part of the owner, and an acceptance on the part of the public, as soon as these concur, the dedication is complete.").

75. ELLIOTT & ELLIOTT, *supra* note 15, § 165, at 185.

76. 2 SIMON GREENLEAF, ON THE LAW OF EVIDENCE § 662 (14th ed. 1897).

77. *Id.*

78. *See, e.g.*, SAUVAIN, *supra* note 34, § 2-46, at 47 ("Dedication may be inferred almost immediately in an appropriate case where the acts of the landowner are sufficiently clear and where the public acceptance has occurred contemporaneously."); *see also* ANGELL & DURFEE, *supra* note 21, § 142, at 157 ("The vital principle of dedication is the intention to dedicate,—the *animus dedicandi*; and whenever this is unequivocally manifested, the dedication, so far as the owner of the soil is concerned, has been made. Time, therefore, though often a very material ingredient in the evidence, is not an indispensable ingredient in the act of dedication.").

79. *See, e.g.*, PARRISH & DE MAULEY, *supra* note 33, at 31 ("If the act of dedication be unequivocal, it may take place immediately: for instance, if a man builds a row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is instantly a highway." (quoting Woodyer v. Hadden (1813) 128 Eng. Rep. 634, 639 (Ct. Com. Pl.)) (internal quotation marks omitted)).

80. ELLIOTT & ELLIOTT, *supra* note 15, § 166, at 187.

81. *Id.*

82. *See* WASHBURN, *supra* note 22, at 196.

83. SAUVAIN, *supra* note 34, § 2-25, at 35.

84. PARRISH & DE MAULEY, *supra* note 33, at 33.

85. ELLIOTT & ELLIOTT, *supra* note 15, § 168, at 189–90.

86. Kelroy v. City of Clear Lake, 5 N.W.2d 12, 20 (Iowa 1942); *see also* PARRISH & DE MAULEY, *supra* note 33, at 33 ("There is no fixed minimum period of public user which must be proved to show acceptance by the public and, where the facts show an intention to dedicate, a highway may be created almost at once by public user." (endnotes omitted)).

87. ELLIOTT & ELLIOTT, *supra* note 15, § 167, at 188.

evidence that the public has taken "control of a way" can be sufficient.[88] Any form of improvement or repair "should be regarded as evidence of acceptance."[89] Even small improvements such as installing streetlights, assigning police to patrol the area, or including the street on an official map could satisfy the acceptance requirement.[90] In cases where the evidence is less conclusive, acceptance is a question that should be left to the factfinder.[91]

Before *McNaughton*, Iowa courts had not placed a high threshold on showing public acceptance. In *De Castello v. City of Cedar Rapids*, the Supreme Court of Iowa embraced Elliott and Elliott's description of the burden, holding that acceptance can be inferred when the property being "dedicated is of such a character that the use to which it is dedicated is so clearly beneficial to" the public.[92] The threshold for acceptance through public maintenance is also low—"[e]ven small expenditure[s] for improvement or repairs may show acceptance."[93] When acceptance is shown by public user, "the duration of the use is wholly immaterial."[94]

B. Distinguishing Dedication from Prescription

A defining feature of dedication is that the acquired property rights vest in the public rather than an individual or private entity. However, the acceptance of a dedication by public user of private property resembles the process by which parties acquire private easements through prescription. This broad, shared archetype of rights creation through use does not demonstrate that the doctrine of prescription is a valuable heuristic for understanding dedication, though. While prescription does have some history as a source of highway formation,[95] the legal mechanism of prescription is not technically appropriate for property rights that vest in the public.[96] Precedent nominally linking public easements in highways with prescriptive easements can lead to

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88. *Id.* § 167, at 187–88 ("An implied acceptance arises in cases where the public authorities have done acts recognizing the existence of the highway, and treating it as one of the public ways of the locality. Where control of a way as a public way is assumed by the authorities . . . acceptance will be implied." (endnote omitted)).

89. *Id.* § 168, at 189.

90. *Id.* § 169, at 190–91; *see also* PARRISH & DE MAULEY, *supra* note 33, at 40 (including lighting as an indicia of dedication).

91. ANGELL & DURFEE, *supra* note 21, § 142, at 158.

92. De Castello v. City of Cedar Rapids, 153 N.W. 353, 355 (Iowa 1915).

93. Kinsinger v. Hunter, 192 N.W. 264, 265 (Iowa 1923).

94. Iowa Loan & Tr. Co. v. Bd. of Supervisors, 174 N.W. 97, 99 (Iowa 1919).

95. *See* ANGELL & DURFEE, *supra* note 21, § 131, at 143.

96. *See id.* § 131, at 143–44 n.2; *see also* WASHBURN, *supra* note 22, at 194 ("The doctrine of prescription is not applicable to the case of dedication, so as to require evidence of a long user in order to establish the right. A valid dedication may be made by a single act, if positive and unequivocal in its nature, and especially where purchases have been made upon the faith which the act was meant to induce.").

a lack of clarity in the caselaw,[97] and such elision of the concepts should be viewed skeptically. Two key differences between dedication and prescription warrant this skepticism[98]: (1) who the property rights vest in and whose use triggers that investiture as well as (2) the requisite period of use to establish those rights.[99]

The first difference is the most helpful for conceptualizing the distinction between the two doctrines. Consider a family who regularly walks across a strip of a neighbor's land to reach a nearby beach. After a certain number of years, that family may gain a prescriptive easement granting a legal right to continue using their established path across the neighbor's property.[100] While the neighbor can still exclude all other parties from her property, she will lose the right to interrupt the family's continued use.[101] A dedication, on the other hand, would require a sufficient level of public use, and, if such use is found, the neighbor would be estopped from barring any member of the public from using the path.[102] In other words, a dedication results in a right of access even for people who never used the easement prior to dedication. Prescription relates to claims of individualized rights to private easements such as a walking trail[103] or a shared driveway.[104] This narrower scope of privately vested rights is incongruent with dedication.[105]

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97. *See generally* State v. Kan. City, St. Joseph & Council Bluffs R.R. Co., 45 Iowa 139, 142 (1876) ("There can be no grant to the public, therefore the public can hold no right by prescription. . . . Highways, or public ways, therefore, can never derive existence from prescription; a private way may. . . . That the term [prescription] is now generally so used must be admitted[.] . . . We shall use it in the discussion of this case as applicable to a highway, the existence of which is based upon long and continuous use.").

98. While prescriptive easements are not at issue in *McNaughton v. Chartier*, the divergent doctrinal foundations these differences demonstrate are crucial for understanding fundamental flaws in the majority's discussion of dedication.

99. ANGELL & DURFEE, *supra* note 21, § 131, at 143–44 n.2; *see also* City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 436 (1832) (explaining that "dedication does not depend on [a grantee capable of taking]" as is the case with grants; a valid dedication "will preclude the party making the appropriation from reasserting any right over the land . . . so long as it remains in public use").

100. *See* Ditzian v. Unger, 243 Cal. Rptr. 3d 322, 326–27 (Cal. Ct. App. 2019); *see also* Brede v. Koop, 706 N.W.2d 824, 828–30 (Iowa 2005) (adjudicating a claim between neighbors regarding a gravel driveway).

101. *Ditzian*, 243 Cal. Rptr. 3d at 327–28.

102. *See supra* Section I.A. Discussion of intent and acceptance are omitted from this illustration to simplify this initial contrast of the two doctrines.

103. *See Ditzian*, 243 Cal. Rptr. 3d at 327–28.

104. *See, e.g.*, *Brede*, 706 N.W.2d at 827–30.

105. WASHBURN, *supra* note 22, at 181 ("A dedication is properly only to the public use; there can be no dedication, properly speaking, to private uses. A private pass-way cannot be created by dedication."); *see also* ANGELL & DURFEE, *supra* note 21, § 131, at 143 n.2 ("[A]pplying the doctrine of prescription to public ways, cannot, in view of the distinction between a prescription and a dedication, be strictly correct, since it is essential to a prescription that there should be a grantee as well as a grantor, . . . which cannot be the case in instances of public rights, which, in their nature, exclude the idea of any paramount or peculiar right of one person beyond what is shared alike by every other.").

As to the second difference, a requisite period of use by a private party is a requirement of prescription, but not dedication.[106] The period of public use is only dispositive in a dedication analysis when public user is the only explicit proof of dedication.[107] In *City of Cincinnati v. White's Lessee*, the U.S. Supreme Court explained that the appropriate period of use to prove dedication "ought to be for such a length of time that the public accommodation and private rights might be materially affected by an interruption of the enjoyment."[108] When proof of dedication exists other than public use, the length of use merely provides additional evidence of dedication[109] as part of a larger factual determination.[110]

These differences between dedication and prescription are mirrored in Iowa. In *Dugan v. Zurmuehlen*, for example, the Supreme Court of Iowa provided the following distinction: "Prescription is an adverse holding under color of title or claim of right. Long user is an essential element of prescription. Dedication . . . is estoppel by proof of an act of dedication, and . . . dedication . . . rests upon the consent of the owner."[111]

C. The Intent of the Landowner

The most important factor in determining whether a dedication has been made is the intent of the landowner—"the *animus dedicandi*."[112] This Section will first provide definitions of common terminology used by courts and treatises for what constitutes the intent to dedicate. Second, it will explore the theory of estoppel and its relationship to the intent requirement in implied dedication cases. Finally, it will examine ways that landowners can avoid inadvertently dedicating property to public use.

106. WASHBURN, *supra* note 22, at 194 ("The doctrine of prescription is not applicable to the case of dedication, so as to require evidence of long user in order to establish the right. A valid dedication may be made by a single act.").

107. PARRISH & DE MAULEY, *supra* note 33, at 33.

108. City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 439 (1832).

109. ANGELL & DURFEE, *supra* note 21, § 131, at 144–45 ("[A]n uninterrupted use of a way, on the part of the public, for a period of twenty years or more, is spoken of as constituting a title by prescription. But, more properly speaking, such use, unless by virtue of some statute, is but a fact from which a dedication to the public may be presumed." (endnote omitted)).

110. WASHBURN, *supra* note 22, at 226 ("[O]ne test, as to time, has been whether the [property] dedicated has been used by the public for such a length of time that their accommodation and the enjoyment of private rights would be materially affected by an interruption of such a user; and this is to be judged of by the jury.").

111. Dugan v. Zurmuehlen, 211 N.W. 986, 990 (Iowa 1927).

112. ANGELL & DURFEE, *supra* note 21, § 142, at 157; *see also* PARRISH & DE MAULEY, *supra* note 33, at 34 ("In order to constitute a valid dedication to the public of a highway by the owner of the soil there must be an intention to dedicate—there must be an *animus dedicandi*.").

1. The *Animus Dedicandi* Defined

The *animus dedicandi* must be established regardless of whether an alleged dedication is express or implied.[113] Pratt and MacKenzie's treatise, *Highway Laws*, defines the *animus dedicandi* as an "intention to dedicate the way to the public at large."[114] Stephen Sauvain's treatise provides that the term refers to a landowner's "inten[t] to divest himself forever of the right to exclude members of the public from using the dedicated land for the purposes for which highways may lawfully be used."[115] In all cases, according to Angell and Durfee's *A Treatise on the Law of Highways*, the *animus dedicandi* must be "unequivocally manifested."[116]

This unequivocal-manifestation formulation is so prevalently mirrored in Iowa's doctrine,[117] including in *McNaughton*,[118] that it is important to discuss Angell and Durfee's elaboration on the meaning of what qualifies as "unequivocal." In their treatise, they gave the following example to demonstrate "circumstances so unequivocal as to afford almost decisive proof [that a] dedication" has occurred: "[W]here the owner of land *built a street upon* [the property], which had been for several years used as a highway, the court did not hesitate to pronounce this a dedication."[119] Angell and Durfee provided no indication that the court's lack of hesitation should be based upon whether the landowner subjectively intended to dedicate the street. Indeed, while express, positive indications of an intent to dedicate may be dispositive,[120] they are not required.[121] Elliott and Elliott's description of intent supports and clarifies the rationale of this approach:

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113. Wensel v. Chi., Milwaukee & St. Paul Ry. Co., 170 N.W. 409, 413 (Iowa 1919); *see also Dugan*, 211 N.W. at 988 ("Whatever the nature of the declarations or acts relied upon to create a dedication, it is the universal holding that intention to dedicate (animus dedicandi) must exist.").

114. PARRISH & DE MAULEY, *supra* note 33, at 30.

115. SAUVAIN, *supra* note 34, § 2-24, at 34.

116. ANGELL & DURFEE, *supra* note 21, § 142, at 157.

117. Culver v. Converse, 224 N.W. 834, 835 (Iowa 1929); *see also* De Castello v. City of Cedar Rapids, 153 N.W. 353, 355 (Iowa 1915) ("There must be a present actual parting with the use of the property to the public, manifested by some unequivocal act indicating clearly an intent to so devote it."); State v. Hutchison, 721 N.W.2d 776, 782 ("The evidence needed to establish dedication 'may not be predicated on anything short of deliberate, unequivocal, and decisive acts and declarations of the owner . . . .'") (internal quotation marks omitted); *Dugan*, 211 N.W. at 988 ("The intention must be clearly and unequivocally manifested.").

118. McNaughton v. Chartier, 977 N.W.2d 1, 9 (Iowa 2022) (arguing that "[t]here is not cogent, clear, convincing, unequivocal, or unmistakable proof that McNaughton intended a public dedication").

119. ANGELL & DURFEE, *supra* note 21, § 143, at 159.

120. However, this does not mean that an expressed refusal to dedicate is also determinative; in such cases, the landowner's actions may supersede such statements. *See supra* note 40 and accompanying text.

121. *See, e.g.*, PARRISH & DE MAULEY, *supra* note 33, at 30 (explaining that an owner's actions' impact on public use can demonstrate an intent to dedicate, and that such determinations are questions of fact).

> A misconception of the true meaning of the rule that the intent to dedicate must be clearly shown has . . . carried some courts to erroneous conclusions. While it is true that this intent must always appear to exist, *it is not true that it must always in fact exist in the mind of the owner. To hold thus strictly would be to adopt a more rigorous rule than is elsewhere recognized in civil or criminal jurisprudence.* Intent is the very essence of crime, and yet nothing is better settled than that negligence will often supply the place of intent.[122]

Therefore, there are two types of intent that should be considered in determinations of whether the *animus dedicandi* is present. The first, the subjective intent of the landowner, is considered in express dedications.[123] The second type, described above by Elliott and Elliott, which could be considered an "objective" approach,[124] can be sufficient for implied dedications.[125]

2. Estoppel

The objective version of intent can be understood as a form of "equitable estoppel" or "estoppel in pais."[126] Under the "doctrine of equitable estoppel or estoppel in pais . . . a person may be precluded by his act or conduct, or silence when it was his duty to speak, from asserting a right which he otherwise would have had."[127] In dedication cases, landowners may be estopped from denying that they intended to dedicate property when their acts are deemed to have communicated such an intention to the public.[128] In line with Angell

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122. ELLIOTT & ELLIOTT, *supra* note 15, § 140, at 162 (emphasis added) (endnote omitted).

123. PARRISH & DE MAULEY, *supra* note 33, at 30.

124. This is because the finder of fact may consider what would be reasonable for the public to conclude about the landowner's acts rather than any subjective intent. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 139, at 161–62 (describing findings of intent based on actions of the landowner which "induce a well-founded and reasonable belief" in the public that a dedication has been made).

125. *Id.* § 137, at 159.

126. *Id.*; *see also* Note, *Public Ownership of Land Through Dedication*, 75 HARV. L. REV. 1406, 1406–07 (1962) ("In the early history of the doctrine, courts had some difficulty reconciling the transfer of interests to the 'public' with the conceptual necessity that there be a grantee in being to receive the conveyance. This question was resolved by the Supreme Court in *City of Cincinnati v. White's Lessee.* Treating dedication as in the nature of an estoppel in pais, the Court held that the act of dedication raises an expectation in the public that the lands will be used for public purposes, an expectation that cannot be destroyed subsequently by a unilateral act of revocation by the dedicator." (endnote omitted)).

127. Marshall v. Wilson, 154 P.2d 547, 551–52 (Or. 1944); *see also Estoppel in Pais*, LEGAL INFO. INST. (June 2021), https://www.law.cornell.edu/wex/estoppel_in_pais [https://perma.cc/6Y4Z-WWRA] ("Estoppel in pais (also called equitable estoppel) is a defense doctrine that prevents a party from using a right against another party when the right arises out of misleading actions from the person claiming the right.").

128. *See* WASHBURN, *supra* note 22, at 195; *see also* PARRISH & DE MAULEY, *supra* note 33, at 37 ("[W]here an owner allows a particular class of persons to use a way, user by them may be operative as user by the public unless he takes care to communicate to such persons the fact that the user is only by his permission . . . ."); City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 438 (1832) ("And after being thus set apart for public use, and enjoyed as such, and private

and Durfee's example of a landowner demonstrating intent by constructing a road on the property, courts and state legislatures have placed tremendous weight on whether public funds have been used to improve or maintain the property in determining what constitutes a dedication.[129] This emphasis on public maintenance makes sense as both the landowner and the public have received a benefit—the landowner receives improvements or maintenance of the property and the public acquires an easement. The estoppel rationale can also be applied when members of the public purchase real property under an assumption that nearby roads are public.[130] Finally, public user can be considered.[131] When viewed through the lens of estoppel and compared to the public maintenance or fee purchaser scenarios, length of public user can be conceptualized as a measure of reliance for the factfinder to consider when there are no other measurable investments by the public in the property.

This estoppel-based conception of the doctrine serves to protect the public, cities, and landowners. It protects the public from unknowingly trespassing on a road that, by all appearances, is open to the public.[132] It also protects the city from incurring an obligation to maintain a road that the public does not need.[133] Landowners, after turning maintenance of the dedicated property over to the public, are protected from liability as the city or municipality assumes responsibility for "injur[ies] arising from want of repair" of a road it has improved or maintained.[134]

Iowa has not deviated from this estoppel theory of intent. The Supreme Court of Iowa has stated that dedication can be based on "estoppel by proof of an act of dedication" and "consent of the owner."[135] Under Iowa precedent, if an owner allows his land to be "used as a highway by the public" and to be "improved . . . at the public expense," then "the natural and reasonable inference . . . is that he intended to devote said strip of land to such purpose."[136]

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and individual rights acquired with reference to it, the law considers it in the nature of an estoppel in pais, which precludes the original owner from revoking such dedication.").

129. PARRISH & DE MAULEY, *supra* note 33, at 40 ("The fact that a way is maintained and repaired at the public expense raises a presumption that the public have a right over it . . . ."); *see* discussion *supra* Section I.C.1.

130. WASHBURN, *supra* note 22, at 194 ("A valid dedication may be made by a single act, if positive and unequivocal in its nature, and especially where purchases have been made upon the faith which the act was meant to induce.").

131. *See* discussion *supra* Section I.A.2.

132. ANGELL & DURFEE, *supra* note 21, §§ 136–137, at 151–53; *see also* Cleveland v. Cleveland, 12 Wend. 172, 173 (N.Y. Sup. Ct. 1834) (holding that finding the road in question was not public "would convert [the road] into a claptrap to catch trespassers").

133. ELLIOTT & ELLIOTT, *supra* note 15, § 124, at 140–41.

134. WASHBURN, *supra* note 22, at 187–88.

135. Dugan v. Zurmuehlen, 211 N.W. 986, 990 (Iowa 1927).

136. Wensel v. Chi., Milwaukee & St. Paul Ry. Co., 170 N.W. 409, 413–14 (Iowa 1919); *see also* Joseph v. Sharp, 154 N.W. 469, 470 (Iowa 1915) ("When a road . . . is used and worked by the proper authorities under . . . belief that it is on the line as established . . . it becomes, either by prescription or estoppel, the true road . . . .").

"Very little" may be required in terms of maintenance so long as it is kept "in suitable condition for travel."[137] In *Kelroy v. City of Clear Lake*, the court found a dedication where the city had installed street lights, built a sidewalk, and undertook occasional snow removal.[138] In *State v. Birmingham*, the court held that the owner's knowledge "that the public were using and treating the road as a highway, and expending funds in its improvement, and that [the owner] acquiesced in what they were doing . . . might . . . prove actual dedication."[139] Conversely, the court has been more hesitant to find a dedication when a road has not been maintained or improved at the public expense.[140] If public maintenance is not determinative in Iowa dedication cases, it is certainly a factor on which the court has historically placed tremendous weight.

3. Disproving Intent

A presumed intent to dedicate from public user or maintenance can be defeated by a landowner if the use was permissive or under a revocable license.[141] This is because dedication is not presumed when there is a "reasonable explanation" for the public's access other than dedication.[142] Landowners commonly show permissive use or a revocable license in one of three ways: (1) only opening the road to a portion of the public,[143] (2) physically restricting access to the road,[144] and (3) visually informing the public of the private nature of the road or their limited license to use it.[145]

As to the first category, a landowner does not create a dedication if they open the road to their own customers or another "particular class of persons,"[146] or if there is an agreement indicating a non-dedicatory purpose.[147] These restrictions are, at least initially, not affirmed or rejected based on actual usage, but by whether the owner intended to permit only some "portion of the inhabitants" to use the property.[148] Decisions over whether a license was

137. Hull v. City of Cedar Rapids, 83 N.W. 28, 29 (Iowa 1900).

138. Kelroy v. City of Clear Lake, 5 N.W.2d 12, 19 (Iowa 1942).

139. State v. Birmingham, 38 N.W. 121, 123 (Iowa 1888).

140. *See, e.g.*, State v. Green, 41 Iowa 693, 696 (1875) (holding that a jury could not have properly found a dedication existed when, in addition to other factors, "the public ha[d] never expended anything in work or repairs"); Culver v. Converse, 224 N.W. 834, 837 (Iowa 1929) (refusing to find a dedication upon consideration of several factors, including no work being done on the road "at public expense").

141. SAUVAIN, *supra* note 34, § 2-30, at 38.

142. *Id.* § 2-43, at 46.

143. *See* WASHBURN, *supra* note 22, at 190–91.

144. ANGELL & DURFEE, *supra* note 21, § 152, at 177–78.

145. SAUVAIN, *supra* note 34, § 2-30, at 38.

146. PARRISH & DE MAULEY, *supra* note 33, at 37.

147. *See* WASHBURN, *supra* note 22, at 190–92 (describing an agreement between an iron company and the surrounding community in which the owner was paid annually to keep a road open; no dedication was found despite the general public's ability to use the road).

148. *Id.* at 190, 194 ("There may, moreover, be a dedication of land for special uses. But it must be for the benefit of the public, and not for a particular portion of it.").

granted to the full public or a smaller subset are questions of fact, though.[149] If "so many people are entitled to use the way that it would hardly be worth the owner's while to discriminate," the license may be presumed to be to the public as a whole.[150] Indeed, dedications to the public as a whole are not incompatible with prior, express grants of private rights to only a portion of the public.[151] Even if the intention to grant a revocable license is clearly expressed, "there may be a supervening dedication" when actual use exceeds that envisioned under the license.[152] A landowner, regardless of how "clearly expressed" their intention is, may need to inform the public that its use of the road is permissive.[153] Therefore, this first method of dedication prevention may not be sufficient by itself.

The second way that landowners can disprove an intent to dedicate, physically restricting access to the road, is "[t]he most common method adopted."[154] Often "a gate or bar [placed] across the road" is sufficient.[155] It is not necessary for access to be constantly regulated; closing gates a single day out of the year can circumvent dedication.[156] On the other hand, failure to regulate public user at all has been held to indicate intent: "When there is no direct evidence as to the intention of the owner, an animus dedicandi may be presumed . . . from the fact of public user without interruption."[157] In *White's Lessee,* the U.S. Supreme Court upheld the common law rule that "if the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public."[158]

Iowa courts have frequently refused to find a dedication when landowners have maintained gates on the road in question. In *Gray v. Haas,* the state supreme court found the presence of gates on a road precluded dedication despite "evidence establish[ing] the fact that [the] claimed highway was traveled by the public considerably, and that defendant in fact had personal knowledge touching such use by the public."[159] The court noted that "[i]t may

149. PARRISH & DE MAULEY, *supra* note 33, at 37.

150. *Id.* at 36.

151. De Castello v. City of Cedar Rapids, 153 N.W. 353, 355 (Iowa 1915) ("[W]hether it be devoted exclusively to the public use by the dedication, the fact that private rights are involved in the use does not destroy the dedication, nor entitle the dedicator to disturb the use by those to whom it was dedicated for the purposes intended.").

152. PARRISH & DE MAULEY, *supra* note 33, at 32.

153. SAUVAIN, *supra* note 34, § 2-30, at 38–39.

154. ANGELL & DURFEE, *supra* note 21, § 152, at 176–77.

155. *Id.* (endnote omitted).

156. SAUVAIN, *supra* note 34, § 2-47, at 48.

157. Wensel v. Chi., Milwaukee & St. Paul Ry. Co., 170 N.W. 409, 414 (Iowa 1919) (citations omitted).

158. City of Cincinnati v. White's Lessee, 31 U.S. (6 Pet.) 431, 440 (1832).

159. Gray v. Haas, 67 N.W. 394, 395 (Iowa 1896).

reasonably be presumed, if this tract of ground was a public highway, that these gates would have been removed."[160]

Finally, landowners can disprove intent through posting notice that the road is private.[161] Washburn, in his treatise, explained that notice was a valid alternative to actually restricting the public's access: "If the owner of land open a way across it . . . he may, by posts, gates, or *public notice* at its entrance, negative the dedication of it as a public way."[162] In *Sioux City v. Tott*, the Supreme Court of Iowa acknowledged this method of dedication prevention, basing its finding that there had been no dedication, in part, on a "Private Road" sign that the landowner had allegedly posted for twenty-six years.[163]

II. THE FLAWED ANALYSIS OF *MCNAUGHTON V. CHARTIER*

In 2022, the Supreme Court of Iowa revisited the state's dedication doctrine in *McNaughton v. Chartier*.[164] The court's analysis departs from well-established doctrine in the state due to a flawed understanding of the doctrine's underlying rationale and an incomplete analysis of its own precedent. This Part begins, in Section II.A, by examining the factual background that gave rise to *McNaughton*. Section II.B presents the primary arguments put forward by the majority, offering additional context and counterarguments to each.

A. FACTUAL BACKGROUND

Willard McNaughton bought property along the southern edge of U.S. Highway 20 ("Highway 20"), in Lawton, Iowa in 1998.[165] A year later, his sister, Jeanine Chartier, and her husband, Stanley, purchased property adjacent to the eastern side of McNaughton's property with plans to operate an assisted living facility there.[166] However, the Chartiers' property did not have access to Highway 20.[167] The Iowa Department of Transportation approved construction of a special access connection from Highway 20 to the Chartiers' property, but stipulated that it must be located in line with Cedar Street—a road that ran north and south and intersected Highway 20, perpendicular to its northern edge.[168] This stipulation required the special access connection to

160. *Id.*
161. WASHBURN, *supra* note 22, at 186–88.
162. *Id.* at 187 (emphasis added).
163. Sioux City v. Tott, 60 N.W.2d 510, 517 (Iowa 1953).
164. McNaughton v. Chartier, 977 N.W.2d 1, 14, 21 (Iowa 2022).
165. *Id.* at 5.
166. *Id.*
167. *Id.* at 5–6.
168. *Id.* at 5.

be placed partially on McNaughton's property, which sat directly across Highway 20 from Cedar Street.[169]

McNaughton agreed to grant an easement over his property, and the parties drafted a written agreement in 1999.[170] In the agreement, McNaughton "granted [easement rights] for the exclusive use and benefit of Chartier, and the residents, guests, and other invitees of the assisted living facility located on Chartiers' property."[171] The Chartiers were not allowed to transfer easement rights "without the express written consent of McNaughton or his successors or assigns."[172] The written agreement expressly stated that the easement "[was] not to be construed as an easement for the use and benefit of the general public."[173] However, the Chartiers were required "to take all action necessary to [e]nsure that the town of Lawton, Iowa, bec[ame] contractually obligated to maintain the easement area."[174] The Chartiers were successful in obtaining public maintenance, and the City of Lawton paved the access road and provided occasional repairs and snow removal.[175] The paved access road connected to East Char-Mac Drive—a frontage road running east to west, parallel to Highway 20, and leading directly to the Chartiers' care facility.[176] The City had constructed East Char-Mac Drive as well,[177] and the Chartiers officially dedicated it to the City in 2012.[178] McNaughton, however, never filed the original easement agreement for the access road until after the Chartiers began looking to sell their property several years later.[179]

In 2018, Jeanine Chartier began planning to retire due to health concerns, and negotiated selling the care facility to AbiliT Holdings, LLC ("AbiliT").[180] When she learned her brother had never filed the easement, she offered him $15,000 to sign a "Clarification of Easement" document that would allow the

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169. *Id.* The court of appeals found that the road that was constructed provided access to the Chartier property without use of the portion of road on McNaughton's property; therefore, there was no actual necessity to use McNaughton's property. McNaughton v. Chartier, No. 19-1681, 2021 WL 2452057, at *5 (Iowa Ct. App. June 16, 2021).

170. *McNaughton*, 977 N.W.2d at 5–6.

171. *Id.* at 6.

172. *McNaughton*, 2021 WL 2452057, at *1 (internal quotation marks omitted).

173. *McNaughton*, 977 N.W.2d at 4.

174. *Id.* at 6. The dual intent McNaughton expressed in this document—refusing to grant an easement to the public but also demanding public improvements and maintenance to the easement—complicates an express dedication intent analysis. *See supra* Section I.C.1. However, these complications should not necessarily come to bear on an implied dedication analysis which must consider whether the road was presented to the public as private or public. ELLIOTT & ELLIOTT, *supra* note 15, § 138, at 160–61.

175. *See McNaughton*, 977 N.W.2d at 6.

176. *See McNaughton*, 2021 WL 2452057, at *1–2.

177. *Id.*

178. *McNaughton*, 977 N.W.2d at 6–7.

179. *Id.* at 7.

180. *Id.*

easement rights to pass to AbiliT.[181] McNaughton refused but told "Jeanine he had no issue with the potential sale and would not stand in the way."[182] Nevertheless, he proceeded to demand payments of over $100,000 for the easement rights, $410,000 for his entire property, or for the Chartiers to transfer portions of their own property to him.[183] The Chartiers claimed the offers were "unreasonable" and refused.[184]

McNaughton sued for "injunctive relief and damages" before the Chartiers' sale to AbiliT was complete.[185] The Chartiers attempted to add the City as a third-party defendant, but the City successfully resisted, claiming "not [to be] a party to the easement agreement" and "not [to] own any portion of the property covered by the agreement."[186] At trial, the district court found in favor of the Chartiers, holding that the easement had been dedicated "to the City" based on public use.[187] The district court noted that "the easement ha[d] been subject to the free and generally unrestricted use by the public," and that "McNaughton did not take any steps to convey to the public the private nature of the easement or the separate identification of his property within the easement area to properly inform the public."[188]

The Court of Appeals of Iowa reversed, holding that "the evidence [was] insufficient to support the district court's conclusion McNaughton publicly dedicated the easement area."[189] The Supreme Court of Iowa affirmed the appellate court, holding both that there was neither an intent to dedicate nor acceptance by the City.[190] Justice McDermott, joined by Chief Justice Christensen, dissented, relying on the City's improvements to the road and the public's unfettered access to it as indicators of an intent to dedicate.[191] The dissent also pointed to McNaughton's failure to record the easement agreement and contracts listing "City of Lawton" as the owner of the property as further evidence undercutting his stated intent not to dedicate.[192] The dissent's analysis applied Iowa's established dedication doctrine more faithfully, while the majority reached its conclusion based on a misunderstanding of precedent.

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181. *McNaughton*, 2021 WL 2452057, at *2.

182. *Id.*

183. *Id.* At trial, "[t]he court found McNaughton's motives . . . constituted bad faith as 'vexatious and wanton,' as evidenced by his excessive demands and desire to cash in on the transaction between the Chartiers and AbiliT." *Id.* at *3.

184. *Id.* at *2.

185. *Id.*

186. McNaughton v. Chartier, 977 N.W.2d 1, 7 (Iowa 2022) (internal quotation marks omitted).

187. *Id.* The court found, alternatively, that the road was an appurtenant easement that would have run with the property regardless of dedication. *Id.* at 7–8.

188. *McNaughton*, 2021 WL 2452057, at *1 (quoting McNaughton v. Chartier, No. EQCV180496, 2018 WL 9991211, at *3 (Iowa Dist. Ct. Apr. 19, 2018)) (internal quotation marks omitted).

189. *Id.* at *4.

190. *McNaughton*, 977 N.W.2d at 8–11.

191. *Id.* at 15–22 (McDermott, J., dissenting).

192. *Id.*

B. The Majority's Flawed Analysis

The *McNaughton* majority failed to properly appreciate the importance of the estoppel principles underlying common law dedication, leading them to misstate and reinterpret key dedication precedents. This Section walks through the primary arguments advanced by the majority to reach its faulty conclusion. First, it considers the majority's analysis of the issue in terms of express dedication and argues that the majority was mistaken to conclude that the original easement agreement was a determinative factor. Second, it examines the majority's implied dedication analysis and provides a more doctrinally sound interpretation of Iowa's implied dedication caselaw to argue that the majority misapplied state precedent to reach its conclusion that there had been no implied dedication. Third, it addresses the majority's erroneous finding that the City had not accepted the dedication. Finally, it offers a rebuttal to the public policy concerns raised by the majority.

1. Express Dedication and the Easement Agreement

The majority first addressed whether the original easement agreement sufficiently foreclosed a dedication of the easement.[193] They provided two arguments that the written agreement was determinative that the road had not been dedicated: (1) a landowner's expressed subjective intent should be controlling; and (2) McNaughton never changed his mind after initially refusing to dedicate the easement.[194] However, under the analysis laid out in Part I, neither the express intent of a landowner nor their subsequent change of mind is determinative of whether property has been dedicated.

i. Expressed Intent and Private Easements

The majority relied heavily on McNaughton's expressed intent not to dedicate his property to the public,[195] resulting in an analysis more relevant to private grants than public dedications. Under the majority's analysis, express dedications require explicit or positive showings of intent while intent can be inferred for implied dedications.[196] The majority also noted that an *animus dedicandi* is required for all dedications.[197] Unfortunately, the opinion failed to discuss the fuzzy border between these two types of dedication, settling for a bare recital of black-letter definitions.[198] This over-simplification led the majority to conflate principles of private easements and public dedication: "Here, the language of the instrument plainly and unambiguously establishes

193. *Id.* at 12–13 (majority opinion).

194. *Id.* at 13.

195. *Id.* at 14–15.

196. *Id.* at 9, 12–13 (citing Sons of the Union Veterans of the Civ. War, Dep't of Iowa v. Griswold Am. Legion Post 508, 641 N.W.2d 729, 734 (2002)).

197. *See id.* at 9 (citing Sioux City v. Tott, 60 N.W.2d 510, 516 (Iowa 1953)).

198. *Id.* at 9–10.

the easement was a private easement for the Chartiers' benefit and not a dedication of property rights to the City or the public at large."[199]

However, the mere existence of a contrary written instrument is not fatal to public dedication[200] as the majority claimed.[201] Unable to find doctrinal support for its argument in Iowa's dedication caselaw, the majority turned explicitly to the law surrounding private easement grants.[202] The first case the majority cited, *Stew-Mc Development, Inc. v. Fischer*,[203] addressed "the scope of [a] private easement" between two farm properties.[204] Unlike the road in *McNaughton*, which had been built for public access to the Chartier business, the road in *Fischer* led to a dominant estate that the county had refused to rezone for single-family residential housing due to "insufficient public access."[205] The other two cases pointed to by the majority, *Gray v. Osborn* and *Flynn v. Michigan–Wisconsin Pipeline Co.*,[206] also addressed private easements and discussed dedication even less than *Fischer*.[207]

By relying on private easement precedents, the majority misapplied a strict grant theory of intent to public dedication law and provided no justification for this doctrinal misstep. Express and implied dedication cannot be so cleanly separated, and common law dedication is based on a theory of estoppel.[208] As discussed in Section I.A.1, actions and behavior can establish intent for both express and implied dedications. Because of this mistake, the majority failed to acknowledge that the donor's intent must be considered from the perspective of the public,[209] and even clear statements of intent are not determinative.[210]

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199. *Id.* at 10.

200. *See* PARRISH & DE MAULEY, *supra* note 33, at 32 ("Evidence that . . . public user originated under a revocable license, is not necessarily conclusive after a lapse of time . . . .").

201. *McNaughton*, 977 N.W.2d at 9–10.

202. *Id.*

203. *See id.* at 9.

204. Stew-Mc Dev., Inc. v. Fischer, 770 N.W.2d 839, 846–47 (Iowa 2009). The *Fischer* court noted that no dedication had occurred in the case, but the issue settled before trial, and the state supreme court did not contribute its own analysis on the issue. *See id.* at 843. The county had done some minor work on the road in question, but one of the parties to the case had also done "extensive work . . . to improve it." *Id.*

205. *Id.* at 842–43.

206. *McNaughton*, 977 N.W.2d at 9–10 (discussing Gray v. Osborn, 739 N.W.2d 855 (Iowa 2007) and Flynn v. Mich.-Wisc. Pipeline, Co., 161 N.W.2d 56 (Iowa 1968)).

207. The majority pointed to *Gray v. Osborn* for the proposition that "the intention of the parties is of paramount importance." *Id.* at 9 (quoting *Gray*, 739 N.W.2d at 861). However, *Gray*, like *Fischer*, concerned a private easement connected to residential properties, and no discussion of public dedication was provided. *Gray*, 739 N.W.2d at 857–59. In *Flynn v. Mich.-Wis. Pipeline Co.*, the court considered the width of an easement granted for the purposes of a right-of-way for pipeline. *Flynn*, 161 N.W.2d at 57.

208. *See supra* Sections I.A, I.C.2.

209. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 139, at 161–62.

210. *Id.* § 134, at 156–57 ("Where the common law dedication is an express one, and there is a writing evidencing it, the extent of the dedication will be measured by the writing, except where

McNaughton's subjective intent could not preclude a finding of dedication based on the public's reliance and knowledge. According to Elliott and Elliott, the doctrine is clear that the standard is what is reasonable for the public to infer based on the owner's actions:

> The intent which the law means, however, is not a secret one, but is that which is expressed in the visible conduct and open acts of the owner. The public, as well as individuals, have a right to rely on the conduct of the owner as indicative of his intent. If the acts are such as would fairly and reasonably lead an ordinarily prudent man to infer an intent to dedicate, and they are so received and acted upon by the public, the owner cannot, after acceptance by the public, recall the appropriation. . . . If the owner throws open a way to the public, and so conducts himself as to induce a well-founded and reasonable belief that he has a correct knowledge of all the facts, and that, having this knowledge, he intends to dedicate the way to public use, he will be held to have made a dedication in case it appears that others, influenced by his conduct, and acting in good faith and without negligence, have acquired rights in the belief that a dedication had been made, even though it should afterward turn out that the owner acted under a mistake.[211]

Iowa had long recognized this objective approach to intent for dedications. In *Wensel*, the Supreme Court of Iowa cited Elliott and Elliott's description of intent, holding that "[p]ersons are presumed to intend the natural consequences of their own acts or omissions, and if the owner allows the use of a defined strip of his land by the public as a highway, and it is improved as such by the public . . . without objection," then an intent to dedicate the land to public use can be inferred.[212]

Further, even a clear written expression of the donor's intent does not preclude this estoppel-based intent analysis.[213] Indeed, what begins as express permission can evolve into a public dedication if the landowner does not reassert the nature of the road to the public.[214] Elliott and Elliott noted specifically that when "there is a writing evidencing [an express dedication], the extent of the dedication will be measured by the writing, *except where the use controls*, and has been of such a character and so long continued as to change the extent of the easement."[215] Even when written instruments are

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the use controls . . . ." (endnote omitted)); *see also* SAUVAIN, *supra* note 34, § 2-30, at 38–39 (explaining that licenses can evolve into a dedication).

211. ELLIOTT & ELLIOTT, *supra* note 15, §§ 138–139, at 160–62 (endnotes omitted).

212. Wensel v. Chi., Milwaukee, & St. Paul Ry. Co., 170 N.W. 409, 414 (Iowa 1919).

213. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 134, at 156–57.

214. SAUVAIN, *supra* note 34, § 2-30, at 38–39.

215. *See* ELLIOTT & ELLIOTT, *supra* note 15, § 134, at 156–57 (emphasis added) (endnote omitted).

clear that "public user originated under a revocable license, [such writings are] not necessarily conclusive after a lapse of time."[216] In *McNaughton*, the public had used the road for more than a decade without ever having notice of the easement agreement.[217] Therefore, the original easement, having never been recorded or communicated to the public, cannot be a dispositive defense to a showing of sufficient public use under a doctrinally-sound dedication analysis.

Justice McDermott, writing for the *McNaughton* dissent, also pointed out this flaw in the majority's reasoning, noting that even a valid private grant of an easement "doesn't preclude a finding that [McNaughton] dedicated the same land for the public's use."[218] McDermott cited a South Dakota case, *Herrick v. Gregory*, to illustrate the point.[219] There, four adjacent lots were conveyed by the original owner, Johnson, to various successors while a public alley behind the properties was reserved for public use.[220] However, in line with the facts of *McNaughton*, the initial conveyances of the third and fourth lots were conveyed along with a license to cross the rear portion of the first and second lots, which were, at the time, retained by Johnson.[221] For several years, this same passage was left open for general public use.[222] The South Dakota Supreme Court held that a public dedication had been completed and disallowed construction of a garage on the rear part of the second lot by a subsequent owner because the way had been intentionally left open to the public as well as any licensees.[223] Unlike the authorities cited by the majority, *Herrick* is about dedication, rather than private easements and directly addresses the issue of whether private grants can preclude public dedication.

It is worth making explicit what Justice McDermott, by citing *Herrick*, left implicit. By embracing an approach antithetical to *Herrick*, the *McNaughton* majority has set a precedent in Iowa that the public's right to use a road, regardless of any funds expended by the public on construction thereon, can be eliminated by an unofficial statement made by the landowner. The public's lack of awareness of any intention expressed by a landowner is immaterial under the *McNaughton* majority's reinterpretation of Iowa's dedication doctrine. The court's cabining of its intent analysis to the existence of the original written agreement is not supported either by the leading treatises on the doctrine or Iowa precedent.

216. PARRISH & DE MAULEY, *supra* note 33, at 32.

217. *See* McNaughton v. Chartier, 977 N.W.2d 1, 5–7 (Iowa 2022).

218. *Id.* at 18 (McDermott, J., dissenting).

219. *Id.* (discussing Herrick v. Gregory, 190 N.W. 881, 882 (S.D. 1922)).

220. *Herrick*, 190 N.W. at 881–82.

221. *Id.*

222. *Id.*

223. *Id.* at 882.

ii. Change of Mind

The majority further relied on McNaughton's alleged refusal to change his mind about dedicating his property after drafting the original easement agreement.[224] The court explained that "[t]he City asked McNaughton on at least three occasions to dedicate the easement, and McNaughton refused the City each time."[225] These refusals were corroborated by a letter McNaughton wrote in 2004 in which he told the City "there is not a chance in hell that I will cooperate with any concession to the town."[226]

To the majority, these refusals were material because they demonstrated that there could be no "[t]acit dedication."[227] However, the only precedent the majority cited to directly support this tacit-dedication theory was a case decided by the Louisiana Court of Appeals.[228] This choice of authority is puzzling; Louisiana's dedication doctrine is governed by a statute under which roads become public after three years of public maintenance.[229] In the Louisiana case, "tacit dedication" referred to a landowner's failure to object to public work on the road.[230] If a similar statute had been enacted in Iowa, McNaughton's easement likely would have been deemed a statutory dedication.[231] The *McNaughton* majority provided no rationale for applying

224. *McNaughton*, 977 N.W.2d at 6. The majority reasserts the primacy of the original easement agreement, stating that it "is cogent, clear, convincing, unequivocal, and unmistakable proof" that McNaughton did not intend to dedicate the property. *Id.* at 9. The "unequivocal" language mirrors what was used by Angell and Durfee. ANGELL & DURFEE, *supra* note 21, § 142, at 157. However, Angell and Durfee's example of an "unequivocal" manifestation—building a road on the land—matches McNaughton's public actions. *Compare id.* § 143, at 159 ("Thus, where the owner of land *built a street upon* [the property], . . . the court did not hesitate to pronounce [it] a dedication."), *with McNaughton*, 977 N.W.2d at 21 (McDermott, J., dissenting) (describing the easement as "a street constructed, financed, named, and to be maintained by the City of Lawton").

225. *McNaughton*, 977 N.W.2d at 11 (majority opinion). In his dissent, Justice McDermott challenged the veracity of McNaughton's alleged refusals. *Id.* at 18–20 (McDermott, J., dissenting). McNaughton "claim[ed] that the City asked him to dedicate the [road] 'at least three [times].'" *Id.* at 18. The first instance occurred before the road was paved, which means it cannot be determinative. *See* discussion *supra* Section II.B.2 (explaining the importance of public maintenance to findings of implied dedications). On another instance, the City's mayor asked McNaughton to dedicate the road shortly after the road was paved. *McNaughton*, 977 N.W.2d at 18. However, the mayor was not asked about this at trial, but did "testif[y] that he believe[d] the entire street [was] a public street." *Id.*

226. *McNaughton*, 977 N.W.2d at 11 (majority opinion) (internal quotation marks omitted).

227. *Id.* (quoting Vaughn v. Williams, 345 So. 2d 1195, 1198 (La. Ct. App. 1977)).

228. *Id.* (citing *Vaughn*, 345 So. 2d at 1198).

229. *Vaughn*, 345 So. 2d at 1198. Under Louisiana's dedication statute, roads that "are kept up, maintained, or worked for a period of three years by the authority of a parish governing authority . . . shall be public roads or streets, as the case may be, if there is actual or constructive knowledge of such work." LA. STAT. ANN. § 48:491 (2023).

230. *See Vaughn*, 345 So. 2d at 1198 ("However, protests not made directly to the governing body or made after the road has been maintained by the governing body for three years do not prevent a tacit dedication under the statute.").

231. *See infra* Section III.B.1 (giving examples of statutes in which the statutory period is shorter than the amount of time that lapsed between when the City paved the easement and the lawsuit).

another state's statutory dedication precedent to common law dedication in Iowa. Nor did the majority acknowledge that it was reaching a result likely barred in the state it was turning to for guidance.

Under a proper common law dedication analysis, whether McNaughton changed his mind is irrelevant. Dedication relies on the intention of the donor, and no passage of time is required.[232] Length of time only matters when the sole evidence of an intent to dedicate is public user.[233] Public maintenance of a road is additional evidence of intent[234] that "raises a presumption that the public have a right over it, and supports the presumption arising from public user."[235] In *McNaughton*, the City's construction of the access road in 2000 raised a presumption of dedication,[236] and the dedication would have been completed at that time. McNaughton's subjective intent after that moment could not alter the result.

2. Implied Dedication Caselaw in Iowa

Next, the majority held that no implied dedication had been established based on McNaughton's actions.[237] The court marshalled several cases on Iowa's dedication doctrine to support its conclusion "that McNaughton's acquiescence to the public's use of the private easement" was not sufficient to prove the presence of an *animus dedicandi*.[238] However, the majority failed to recognize crucial distinguishing factors that were present in each case. Instead of engaging with the fact-intensive analysis urged by its chosen caselaw, the majority reasserted the primacy of McNaughton's unrecorded easement.[239] This Section will examine the most prominent implied dedication cases cited by the majority: (1) *Culver v. Converse*, (2) *State v. Hutchison*, (3) *Sioux City v. Tott*, (4) *Young v. Ducil*, and (5) *Bradford v. Fultz*. These cases demonstrate that Iowa's pre-*McNaughton* dedication doctrine was firmly rooted in the common

232. ANGELL & DURFEE, *supra* note 21, § 142, at 157–58; PARRISH & DE MAULEY, *supra* note 33, at 33.

233. *See* WASHBURN, *supra* note 22, at 178; PARRISH & DE MAULEY, *supra* note 33, at 33.

234. PARRISH & DE MAULEY, *supra* note 33, at 34. In his dissent, Justice McDermott provides additional evidence of intent beyond public user. McNaughton v. Chartier, 977 N.W.2d 1, 18–20 (Iowa 2022) (McDermott, J., dissenting). City council meetings described the street as "in the public interest." *Id.* at 18–20. The plans for the road were prepared "at public expense." *Id.* at 19. The contract for construction named "City of Lawton" as "Owner." *Id.* at 16. "[T]he City [also] removed four big trees" from McNaughton's land. *Id.* at 19. This evidence of intent was in addition to public use, which means that duration of use was unnecessary to show dedication.

235. PARRISH & DE MAULEY, *supra* note 33, at 40.

236. *McNaughton*, 977 N.W.2d at 17 (McDermott, J., dissenting).

237. *Id.* at 10–11 (majority opinion). The majority does not actually refer to "implied dedication" in this portion of its argument. *Id.* at 11–15. Instead, it is framed as a rebuttal of the district court's reasoning. *Id.* The argument is structured around caselaw that addresses implied dedication, though. *See, e.g.*, *id.* at 11–13 (discussing the precedent related to establishing dedication through public use).

238. *Id.* at 11–12.

239. *Id.* at 17–18 (McDermott, J., dissenting).

law principles laid out in Part I and McNaughton's actions were sufficient to establish a dedication.

i. Culver v. Converse

First, the court cited *Culver v. Converse*.[240] The majority pointed to *Culver* for the proposition that "[m]ere permissive use of a way, no matter how long continued, will not amount to a dedication."[241] However, the majority's use of this holding is misleading. In *Culver*, the state supreme court refused to find a dedication had occurred, despite the plaintiff's claims that the road had been used by the public for thirty years, for three reasons: (1) the path of the road had varied over time, (2) gates had been regularly maintained on the road by the owner, and (3) the public had not expended any funds maintaining the road.[242] As to the first point, the court noted that "the tracks traveled ha[d] varied at times as much as 100 or 150 feet."[243] As to the second, the plaintiff's predecessor in ownership "testified that, as long as he ha[d] known anything about this claimed roadway, there were gates used all of the time," and those gates were kept closed "during the pasturing season."[244] As to the use of public funds, evidence showed that no work done to the road "was under the direction of the road authorities."[245] Such maintenance was not completed using public funds and was done on a path "100 to 150 feet south of where [the road was] claimed to be at the" time of trial.[246]

The facts in *McNaughton* fail all three of the factors on which the majority relied: (1) the public access road had never changed location, (2) no gates were in place to restrict public access, and (3) road paving and maintenance was not only done at public cost, but those costs were expended at the explicit request of McNaughton. If *Culver* sets the standard for permissive use, the facts of *McNaughton* failed to reach it.

ii. State v. Hutchison

The majority next turned to *State v. Hutchison*.[247] In *Hutchison*, five anti-war protestors were convicted of trespass for entering land leased and operated

240. *Id.* at 9 (majority opinion) (discussing Culver v. Converse, 224 N.W. 834, 836 (Iowa 1929)).

241. *Id.* (quoting *Culver*, 224 N.W. at 836).

242. *Culver*, 224 N.W. at 836–37.

243. *Id.* at 836.

244. *Id.* at 837 ("It appears that there has always been a gate at the entrance to the appellee's farm . . . . These gates across the roadway are significant as to the claim of the appellee to a highway by reason of dedication and prescription."); *see also* WASHBURN, *supra* note 22, at 186 ("[A]nd if, for instance, in opening a passage-way of a character which might otherwise be deemed a public way, the owner of the land should place a gate at its entrance, by which such passage may be closed, it would be regarded as evidence negativing the intention to make it a public way.").

245. *Culver*, 224 N.W. at 837.

246. *Id.*

247. McNaughton v. Chartier, 977 N.W.2d 1, 11 (Iowa 2022) (discussing State v. Hutchinson, 721 N.W.2d 776 (Iowa 2006)).

by the State of Iowa National Guard.[248] The defendants argued that they could not be guilty of trespass because, under Iowa law, it was not possible to trespass on a public road.[249] The court, rejecting their argument, found that the road was not public because it was owned by the U.S. Army Corps of Engineers and leased to the National Guard who undertook all maintenance of the way.[250] Further, "the Guard ha[d] the authority to close the road," and had a history of doing so.[251] In *McNaughton,* on the other hand, the road was paved and maintained at public expense, and McNaughton stated at trial that he "belie[ved] that if he blocked any portion of the access road, law enforcement would ticket him for interfering with traffic."[252]

iii. Sioux City v. Tott

The majority next claimed that, in *Sioux City v. Tott,* the Supreme Court of Iowa had "concluded [that] the city's maintenance of the roadway and the limited use by the public was insufficient to establish a public dedication as a matter of law."[253] However, *Tott* does not support a holding that the public maintenance and user at issue in *McNaughton* was similarly insufficient. In *Tott,* the city brought a suit claiming a road the defendant had blocked with a cable had been dedicated to the public.[254] The court held that there was no dedication.[255] Testimony indicated that the road, as in *Culver,* may have moved in its exact placement over the years, and, while the city had plowed and scraped the road at times, workers had not been instructed to do so.[256] Most important to the court's determination was the testimony of Eddie Stoltze who had maintained a farm near the road and used it regularly for nearly thirty years.[257] Stoltze claimed he had put a gate up for a year, kept a sign reading "private road" posted, and believed the road was private because it only led to the house he had lived in at the time.[258] Contrary to the *McNaughton* majority's description of the case, *Tott* established a low bar for showing dedication

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248. *Hutchison,* 721 N.W.2d at 778–79.

249. *Id.* at 779.

250. *Id.* at 781.

251. *Id.* The *McNaughton* majority framed the *Hutchison* decision as being decided on "insufficient evidence" that a dedication occurred but omitted any discussion of this evidence—maintenance and the presence of gates—that the *Hutchison* court based its decision on. *McNaughton,* 977 N.W.2d at 11.

252. *McNaughton,* 977 N.W.2d at 17–19 (McDermott, J., dissenting).

253. *Id.* at 11 (majority opinion) (discussing Sioux City v. Tott, 60 N.W.2d 510, 517 (Iowa 1953)).

254. *Tott,* 60 N.W.2d at 512.

255. *Id.* at 517.

256. *Id.* at 513–14. A city employee testified that he had only scraped the road "once every three or four years," and he did not recall "any instructions to" include the road on his routes. *Id.* at 514.

257. *Id.* at 514.

258. *Id.* Stoltze testified that "there [was] nobody that could be served by the road except the person that had this little house [he] was living in." *Id.*

through maintenance and public use. Public use in *Tott* was insufficient because the road only led to one house.[259] As for public maintenance, the *Tott* court emphasized the importance of the landowner seeking out maintenance by the city:

> It can hardly be argued the city's own acts in smoothing a strip of private property will constitute evidence of the owner's dedication of that property to the public. It might be supporting evidence if there were other evidence of acts of the owner indicating an intention to dedicate or if the owner requested the city to smooth the strip for travel, or if the strip were long used by the general public as a road.[260]

McNaughton's actions meet this standard set out by the *Tott* court. Not only did McNaughton allow the City to improve his property, but he also sought out improvements at the public expense.

iv. Young v. Ducil

Next, the *McNaughton* majority turned to *Young v. Ducil.*[261] The easement at issue in *Young* had originally used by the public to access a brick kiln and gristmill located on the defendants' property.[262] The plaintiffs owned an adjacent lot to the north of the defendants' and used the road in question, which passed over the defendants' land, to access a bridge that crossed a creek bordering both parties' properties to the east.[263] The *McNaughton* court cited the following language: "The best that can be said for plaintiffs' use is that it was permissive, and this is not sufficient under the statute to sustain a claim of right to a permanent easement."[264] However, this quote omits crucial rationale for *Young*'s conclusion that no dedication had occurred: "The road was there, and used *for their own purposes.* It was used in connection with the business carried on by them."[265] This personal-benefit factor was not present in *McNaughton*—the public's use of the easement was for access to the Chartier property and provided no direct benefit to McNaughton himself.[266]

259. *See id.* at 514, 517.

260. *Id.* at 516. McNaughton did in fact make such a request of the city; the original easement agreement required Chartier "to take all action necessary to [e]nsure that the town of Lawton, Iowa, becomes contractually obligated to maintain the easement area." McNaughton v. Chartier, 977 N.W.2d 1, 6 (Iowa 2022).

261. *McNaughton*, 977 N.W.2d at 12 (discussing Young v. Ducil, 176 N.W. 272 (Iowa 1920)).

262. *Young*, 176 N.W. at 273.

263. *Id.* at 272–73.

264. *McNaughton*, 977 N.W.2d at 12 (quoting *Young*, 176 N.W. at 275) (internal quotation marks omitted).

265. *Young*, 176 N.W. at 275 (emphasis added).

266. The original easement agreement stated that the road was "for the exclusive use and benefit of Chartier, and the residents, guests, and other invitees of the assisted living facility located on Chartiers' property." *McNaughton*, 977 N.W.2d at 6.

v. Bradford v. Fultz

Finally, the majority obscured the same personal-benefit factor in its discussion of *Bradford v. Fultz*.[267] In *Bradford*, the defendant successfully argued that there had been no dedication of a road that traversed a portion of his property that had originally been owned by a man named Fisher.[268] When Fisher had owned the land, he had operated "a pleasure resort" during the summer on the north end of the property, and this resort was only reachable by the road at issue.[269] Because the edge of the property opposite from where the road approached stopped at a lakeshore, there was no reason for public use of the road except to reach Fisher's business.[270] The key holding of *Bradford* solidifies the importance of the personal-benefit factor to its decision:

> One may invite the public to deal with him, or to visit him and provide a distinct way for the use of the public in so doing, and yet not give it to the public for public use. Where one, in dealing with the public, provides a way by which he may be reached, and invites the public to use the way, no length of use by the public will create a public right of use, or right in the public to use it after the invitation is withdrawn. It is then but a private way, provided for the use of the public in dealing with the individual. The right simply becomes permissive so long as the business is maintained to visit which the invitation is extended. The intent to dedicate cannot be inferred from the act of the owner in *adapting his land to his own purposes, for his own accommodation and convenience, or for his own profit*, even though, in conjunction therewith, he permits the public to use and pass over it for any length of time.[271]

The *Bradford* court's understanding of the permissive use defense to dedication was clear: public use of a road that benefits the *landowner*.[272] Even a doctrinally sound application of this defense was not absolute, though. When such personal benefit was found, it did not always circumvent public dedication—it merely indicated that more proof was required than long use by the public.[273]

The *Bradford* court also reiterated the importance of both public maintenance and the owner's assertion of control of the road to its decision, explaining that the "road was [n]ever worked [on] by any one, maintained, or kept up, after it was opened" and "that gates were maintained" along the road and "kept closed during all the time of [the owner's] occupancy, except

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267. *Id.* at 12 (discussing Bradford v. Fultz, 149 N.W. 925 (Iowa 1914)).

268. *Bradford*, 149 N.W. at 927, 929.

269. *Id.* at 927–28.

270. *Id.* at 926–27.

271. *Id.* at 928 (emphasis added).

272. *Id.* (explaining that, when the road benefits the owner's "own purposes," that "[n]o length of time, no use by the public, will make that a public way").

273. *Id.* at 928–29.

during the summer, when they were thrown open to the public for the purpose of reaching [the] resort."[274] These factors, which pointed against dedication in *Bradford*, all point in favor of dedication in *McNaughton*: the road was not established so the public could visit McNaughton's property, the road was improved at the public's expense, and the public's use of the road was unrestricted.

* * *

Despite these crucial discrepancies in each of the aforementioned cases, the majority stated that the facts of *McNaughton* were "materially indistinguishable."[275] In his dissent, Justice McDermott highlighted the majority's failure to observe the importance that the court's precedent placed on public maintenance and the landowner's efforts to regulate public access.[276] The majority's incomplete analysis of the court's precedents has left Iowa with two distinct versions of Iowa's dedication doctrine: a pre-*McNaughton* version that easily aligns with the historical doctrine, and a post-*McNaughton* version that rejects it without explanation. In his dissent, Justice McDermott soberly observed that "[i]t's hard to see what remains of the doctrine of implied dedication."[277] Future litigants attempting to reconcile *McNaughton* with what came before may be left with the same impression.

3. The City of Lawton's Acceptance

The dedication in *McNaughton* did not only fail because McNaughton never intended to offer the road for dedication, though.[278] The *McNaughton* court claimed, as an alternative grounds for rejecting a finding of dedication, that "[t]here [was] no evidence the City expressly accepted the purported dedication of any easement."[279] The majority provided two arguments to support this conclusion: (1) the City's refusal to be named as a necessary party to the litigation indicated a lack of acceptance, and (2) the public could not accept the dedication because no offer was made.[280] However, neither argument finds support in Iowa's dedication doctrine.

As to the first argument, according to the majority, "the City's [refusal to participate] in th[e] case demonstrate[d] that it ha[d] not accepted any dedication of the easement."[281] The majority did not suggest that the City's actions at trial could counteract its actions in 1999 and 2000 when acceptance

274. *Id.* at 927.
275. McNaughton v. Chartier, 977 N.W.2d 1, 12 (Iowa 2022).
276. *Id.* at 20–21 (McDermott, J., dissenting).
277. *Id.* at 16.
278. *See id.* at 14–15 (majority opinion).
279. *Id.* at 14.
280. *Id.* at 14–15.
281. *Id.* at 14.

would have been determined.[282] Nor did the majority hold that the City had abandoned the road. Rather, it held that the City never accepted the dedication in the first place.[283] Acceptance by the public is not a demanding threshold in Iowa, though.[284] Precedent shows that public maintenance is given significant weight.[285] The City's work paving the road and clearing trees off the land were sufficient grounds for a factfinder to conclude that a valid acceptance had occurred.[286] The City's refusal to participate in the trial is not dispositive to the analysis of acceptance because acceptance would have occurred at the time the City made improvements to the property.[287] Once accepted, a dedication cannot be withdrawn.[288]

As to the second argument, the majority wrote that "[u]se by the general public is not sufficient to prove acceptance of a dedication if a landowner's intent to make a dedication is not first established."[289] This assertion indicates both a misunderstanding of common law acceptance and the facts of the case. As discussed in Part I, implied dedication does not require the landowner's subjective intent to dedicate.[290] Landowners can be estopped from denying such an intent if it would be reasonable for the public to believe a road was public.[291] This doctrine has been adopted in Iowa as well.[292] The only

282. The majority does not point to a single authority that supports this prong of its argument. *Id.* at 14–15.

283. *See id.* ("There is no evidence the City expressly accepted the purported dedication of any easement.").

284. *See supra* Section I.A.3; *see also* SAUVAIN, *supra* note 34, § at 47 ("Where there is other evidence of dedication, [the use] by a few persons without interruption will be enough for acceptance by the public, and may be evidence of implied dedication."); ELLIOTT & ELLIOTT, *supra* note 15, § 167, at 188 ("[A]cceptance of a deed may be presumed from the beneficial character of the grant, as well as by those which hold that acceptance of bridges may be presumed when they are for the benefit of the public, and it is, in truth, founded on the broad fundamental principle that persons are presumed to accept that which is of benefit to them.").

285. Hanger v. City of Des Moines, 80 N.W. 549, 550 (Iowa 1899); Hull v. City of Cedar Rapids, 83 N.W. 28, 29 (Iowa 1900). While there is no clear test, providing necessary improvements and upkeep has been held to be sufficient. *See, e.g.*, *id.* (explaining that the work for acceptance "must depend very largely on the necessity for its improvement" and that the "[v]ery little [that] was required . . . to keep [the road in question] in suitable condition for travel" was sufficient); *see also* Kinsinger v. Hunter, 192 N.W. 264, 265 (Iowa 1923) (finding that when "little, if anything, in the way of repairs or improvements" is required to enable the public to use the road, then "[e]ven small expenditure for improvement or repairs may show acceptance").

286. *McNaughton*, 977 N.W.2d at 18–19 (McDermott, J., dissenting).

287. *See* SAUVAIN, *supra* note 34, § 2-46, at 47.

288. *See* Kelroy v. City of Clear Lake, 5 N.W.2d 12, 17 (Iowa 1942) ("A dedication of streets has been likened to a tender, which may not be withdrawn after acceptance on behalf of the public . . . .").

289. *McNaughton*, 977 N.W.2d at 15.

290. *See supra* Section I.C.2.

291. *See supra* notes 127–33 and accompanying text.

292. *See, e.g.*, De Castello v. City of Cedar Rapids, 153 N.W. 353, 355 (Iowa 1915) (explaining that intent is shown in "an implied dedication by some act or course of conduct on the part of the owner from which a reasonable inference of intent may be drawn"). An express indication to

authority the majority cited to support its argument came from the Wisconsin Court of Appeals.[293]

McNaughton's opening of the road to the public constituted an offer that could be accepted by the public.[294] Once an offer is established, Iowa's precedent does not set a strenuous test to establish acceptance by the public.[295] Evidence of "public acceptance will often be indistinguishable from the evidence relied upon to show an implied or presumed intention to dedicate."[296] In Iowa, even general use by the public can be sufficient, though the amount may vary based on the street and the density of the population.[297]

4. Public Policy

Finally, according to the majority, finding that the land had been dedicated would "place[] McNaughton in an impossible legal situation."[298] At trial, McNaughton stated that he would have been ticketed had he tried to prevent public use of the easement.[299] The majority understood this risk to demonstrate that finding a valid dedication would set a precedent in which "every private easement of this type would automatically ripen into a public dedication unless the grantor breache[d] the terms of the agreement."[300] The only support provided to substantiate this perceived risk was two Iowa cases relating to private easements, each merely illustrating the fundamental rule that "neither party to an easement may interfere with the rights of the other" to the easement.[301] While this general principle is true of both easements dedicated to the public and those granted to private parties,[302] it fails to support the majority's public policy concerns. Well-established doctrine explains what defenses are available to landowners against dedication.[303]

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the contrary by the landowner can be superseded by such an inference if the landowner's intent is not communicated to the public. *See supra* note 26.

293. *McNaughton*, 977 N.W.2d at 15. The cited case, *Cohn v. Town of Randall*, actually supports finding a dedication in *McNaughton*. In *Cohn*, the court rejected an argument by landowners that the city should be estopped from accepting a dedication, holding that "[e]stoppel is not applied as freely against the public as against private persons." Cohn v. Town of Randall, 633 N.W.2d 674, 680–81 (Wis. Ct. App. 2001).

294. *See supra* Section II.B.3.

295. Iowa Loan & Tr. Co. v. Bd. of Supervisors, 174 N.W. 97, 99 (Iowa 1919); *De Castello*, 153 N.W. at 355.

296. SAUVAIN, *supra* note 34, § 2-25, at 35.

297. Kinsinger v. Hunter, 192 N.W. 264, 265 (Iowa 1923).

298. *McNaughton*, 977 N.W.2d at 13.

299. *Id.* at 17 (McDermott, J., dissenting).

300. *Id.* at 13 (majority opinion).

301. *Id.* at 13; Krogh v. Clark, 213 N.W.2d 503, 506 (Iowa 1973); Schwartz v. Grossman, 173 N.W.2d 57, 59–60 (Iowa 1969).

302. PARRISH & DE MAULEY, *supra* note 33, at 192–93; De Castello v. City of Cedar Rapids, 153 N.W. 353, 355 (Iowa 1915).

303. *See* discussion *supra* Section I.C.3.

Landowners can easily avoid unintentional dedication of their lands to the public in ways that fall short of interfering with the public or private rights. The most common method of protection is placing gates on the road.[304] This act communicates the private nature of the road to the public even if the gates are only closed once a year.[305] However, a gate is not required to avoid the majority's policy concerns; landowners can also post signs indicating the private nature of the road to the public.[306] This is not an onerous burden to impose on landowners whose property was improved with public funds.

III. STATUTORY DEDICATION AS A REMEDY TO THE *MCNAUGHTON* PRECEDENT

McNaughton demonstrates the clash between landowner and public rights at the heart of common law dedication. Reconciling McNaughton's stated opposition to the dedication and the benefits he received at the public's expense is a task that was best left to the factfinder. The majority's rigid reliance on the original easement agreement rather than the nuanced fact pattern of the case presented unsettles the longstanding doctrinal balance of landowner and public interests. Rebalancing these competing interests is not a problem unique to Iowa, though. Several states have reshaped common law dedication by enacting statutes to provide clear statutory guidance to litigants and simplify the analytical frameworks courts must apply. This Part begins by discussing how California overcame pressing common law dedication challenges through legislative action.[307] Next, it explores commonly adopted statutory solutions. Finally, it proposes statutory provisions that Iowa should adopt to remedy its new common law doctrine problems stemming from *McNaughton.*

A. CALIFORNIA'S DEDICATION CRISIS

Starting in the middle of the nineteenth century, California's population began expanding rapidly.[308] Between 1850 and 1960, the population grew

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304. ANGELL & DURFEE, *supra* note 21, § 152, at 176–77; WASHBURN, *supra* note 22, at 187; PARRISH & DE MAULEY, *supra* note 33, at 32–33; Culver v. Converse, 224 N.W. 834, 837 (Iowa 1929); State v. Green, 41 Iowa 693, 696 (1875).

305. PARRISH & DE MAULEY, *supra* note 33, at 32–33; *see also* SAUVAIN, *supra* note 34, § 2-47, at 48 ("Closure of the way for one or more days a year has been regarded as a clear indication of lack of any intention to dedicate.").

306. WASHBURN, *supra* note 22, at 187–88; SAUVAIN, *supra* note 34, § 2-47, at 47–48 ("Other matters which have been regarded as sufficient to prevent the development of a public right of way include the erection of notices . . . ."); *see also* Sioux City v. Tott, 60 N.W.2d 510, 514, 517 (Iowa 1953) (declining to find a dedication, in part, due to the owner's maintenance of a gate).

307. California is examined in depth to demonstrate the circumstances that led to a stringent curtailing of common law dedication resulted in a statutory regime that would have still found that McNaughton had dedicated an easement to the public.

308. U.S. CENSUS BUREAU, RESIDENT POPULATION AND APPORTIONMENT OF THE U.S. HOUSE OF REPRESENTATIVES, https://census.gov/history/pdf/californiapops.pdf [https://perma.cc/5DRY-LAWP].

from just under one hundred thousand to over fifteen million.[309] By the middle of the twentieth century, outdoor recreation, driven in large part by the state's proximity to the ocean and beaches, was predicted to rise even faster than the state's population.[310] This growth led to competing demands on the state's limited amount of shoreline by purchasers seeking private beaches and the public's demand for less crowded public beaches.[311] Rising prices in the real estate market resulted in fewer gifts of beach property to the public, further exacerbating overcrowding on public beaches.[312] This dynamic ultimately led to California's own confrontation with common law dedication.

In *Gion v. City of Santa Cruz*, the Supreme Court of California found completed public dedications of beach property in two combined cases under a doctrine the state styled as "dedication by adverse use."[313] This doctrine required "evidence that persons have used the land as they would have used public land,"[314] and that such use persisted "for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by any one."[315] The court considered this rule along with statutes which "create[d] a presumption in favor of public ownership of land between high and low tide" and state constitutional language "favor[ing] . . . public access to shoreline areas."[316] The *Gion* Court—following the lead of a Texas appellate court's decision in *Seaway Co. v. Attorney General*—expanded dedication to encompass public recreational property.[317] Critics of this doctrinal evolution argued this expansion punished landowners for opening their property to the public when they should be encouraged to allow public use.[318]

California, heeding the call of the critics, enacted legislation to curb *Gion*'s expansion of dedication.[319] In the statute itself, the legislature explained that it was addressing landowner concerns about "the threat of loss of rights in their property" that were "compelling [them] to exclude the public from

309. *Id.*

310. Robert T. Burke, Comment, *Public or Private Ownership of Beaches: An Alternative to Implied Dedication*, 18 UCLA L. REV. 795, 795 (1971).

311. *Id.* at 795–96.

312. *Id.* at 797.

313. Gion v. City of Santa Cruz, 465 P.2d 50, 55–56 (Cal. 1970), *superseded by statute*, CAL. CIV. CODE § 1009(a) (West 2023), *as recognized in* Scher v. Burke, 395 P.3d 680 (Cal. 2017).

314. *Id.* at 56.

315. *Id.* (internal quotation marks omitted) (quoting Union Transp. Co. v. Sacramento County, 267 P.2d 10, 13 (Cal. 1954)).

316. *Id.* at 58.

317. Neal A. Roberts, *Beaches: The Efficiency of the Common Law and Other Fairy Tales*, 28 UCLA L. REV. 169, 172–73 (1980).

318. *Scher*, 395 P.3d at 684.

319. Clay Alger, Note, *Use Interrupted: The Complicated Evolution of Utah's Highway Dedication Doctrine*, 2008 UTAH L. REV. 1613, 1629–30; *Scher*, 395 P.3d at 682.

[their] property."[320] The legislation placed extreme limits on dedication: "[N]o use of such property by the public . . . shall ever ripen to confer upon the public . . . a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use."[321] Despite this strict language, California courts were inconsistent at reining in dedication findings.[322] Ultimately, California's implied dedication doctrine was brought to heel by the state supreme court's decision in *Scher v. Burke*, nearly fifty years after *Gion*.[323] The *Scher* court held that the dedication statute applied to both non-coastal and coastal lands and to roads, embracing the strong anti-dedication language of the legislature.[324]

However, even this extreme statutory limitation on dedication in California allowed for an exception that further illustrates the absurdity of *McNaughton*:

> Where a governmental entity is using private lands by an expenditure of public funds on visible improvements on or across such lands or on the cleaning or maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvement, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use.[325]

Overall, California's statutory response was a heavy-handed limitation on common law dedication, but it still found that property could be dedicated to the public when it was improved at public expense.[326]

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320. CAL. CIV. CODE § 1009(a) (West 2023). Section 1009 was passed the year after *Gion* was decided. *Scher*, 395 P.3d at 684.

321. CAL. CIV. CODE § 1009(b) (West 2023).

322. *See Scher*, 395 P.3d at 683 (explaining that the court sought to resolve "confusion in the lower courts"); *see also* Michael M. Berger, *California Supreme Court Restricts Implied Dedication Rule*, MANATT (June 29, 2017), https://manatt.com/insights/newsletters/real-estate-and-land-use/California-supreme-court-restricts-implied-dedicat [https://perma.cc/4UDR-HG95] (describing lower courts "inconsistently appl[ying] statutes designed to allow property owners to protect themselves" from dedication after *Gion v. City of Santa Cruz*).

323. Berger, *supra* note 322.

324. *Scher*, 395 P.3d at 682–84; CAL. CIV. CODE § 1009(d) (West 2023).

325. CAL. CIV. CODE § 1009(d) (West 2023).

326. *Id.* If the above provision were applied to *McNaughton*, the language "express permission by the owner" would not necessarily be resolved in McNaughton's favor. If the language of the original easement agreement were to be considered, the document grants express permission to use the easement to "Chartier, and the residents, guests, and other invitees of the assisted living facility." McNaughton v. Chartier, 977 N.W.2d 1, 6 (Iowa 2022). Therefore, McNaughton would not satisfy the "express permission" or the "reasonable steps to enjoin" requirements to avoid a finding that a dedication had been completed due to the public's maintenance of the road. *See* CAL. CIV. CODE § 1009(d) (West 2023) (setting a statutory period of five years); *see also Scher*, 395 P.3d at 687 ("Subdivision (b) contains an exception for situations in which a governmental entity

B. Statutory Alternatives to Common Law Dedications

The decision in *McNaughton* is deleterious to the public interests that the doctrine of implied dedication is intended to balance with the rights of landowners. This harm can be mitigated and Iowa's dedication doctrine made more predictable by following the lead of states like California that have embraced statutory dedication laws. This Note suggests two categories of statutory provisions that Iowa should adopt to recalibrate its public dedication doctrine: (1) public maintenance provisions to ensure the rights of the public and (2) provisions defining what acts are sufficient to prevent dedication to protect the rights of landowners.

1. Public Maintenance Provisions

Public maintenance provisions are ubiquitous among statutory dedication regimes. The pervasive weight that states have given to public maintenance in dedication statutes is consistent with the estoppel theory of common law dedication.[327] Unlike the regularity and extent of public user, which can be contested,[328] the expenditure of public funds on maintenance or improvement can be verified and measured. A statutory provision that establishes when public maintenance results in a dedication provides notice to landowners and the public about the effect certain actions will have on their rights and obligations regarding the property at issue. Therefore, an emphasis on whether public funds have been used is an important factor not just for ensuring the public's rights to a roadway are recognized, but also in avoiding the public inadvertently taking on the obligation of maintaining a road that it has no legal right to use.[329]

Public maintenance provisions differ between states primarily in the requisite time for public maintenance to establish a dedication. California imposes a term of five years.[330] Louisiana's statute provides that "[a]ll roads and streets in this state which have been or hereafter are kept up, maintained, or worked for a period of three years . . . shall be public roads or streets."[331] Minnesota sets its term at six years: "When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the

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engages in improvements or maintenance related to the public use of subject property . . . ."). At best, McNaughton would be left to argue that the general public never made use of the road and submit the question to the finder of fact.

327. *See supra* Section I.C.2.

328. *See, e.g.*, Sioux City v. Tott, 60 N.W.2d 510, 512–13 (Iowa 1953).

329. *See, e.g.*, ELLIOTT & ELLIOTT, *supra* note 15, § 165, at 185–86 ("Until there has been an acceptance, the public cannot be charged with the duty of repairing . . . the way.").

330. CAL. CIV. CODE § 1009(d) (West 2023).

331. LA. STAT. ANN. § 48:491(B)(1)(a) (2023); *see also* Town of Sorrento v. Templet, 255 So.2d 246, 248 (La. Ct. App. 1971).

public."[332] South Dakota sets a much more landowner-friendly requirement of twenty years.[333] Based on the policy concerns backing dedication through public maintenance—granting the public easement rights when public funds are expended—a lower term of years is more appropriate. A shorter period does not alter a landowner's ability to refuse the maintenance or improvements when they are offered.

There is an additional concern arising from the facts of *McNaughton* that legislative action can address. Under *McNaughton*, landowners can unjustly seek out publicly funded improvements to their property without dedicating it. In addition to a statutory period for *maintenance*, Iowa should also provide that when improvements are made to roadways at public expense—especially at the request of the landowner—the road shall be deemed dedicated to the public unless otherwise stipulated by express agreement. This provision would rightly place more weight on improvements than maintenance by only circumventing the statutory period for the former. Further, this structure would maintain the ability of parties to arrange for public improvements to private property without implicating the statute if desired.

Due to the *McNaughton* court's holding that the City of Lawton never accepted McNaughton's dedication, Iowa should adopt one additional public-maintenance provision: Any maintenance by the city should constitute acceptance of the purported dedication, regardless of whether the prescribed statutory period has been met. This provision would prevent future landowners from relying on *McNaughton* to argue that the acceptance requirement is not met despite a clear offer and a subsequent expenditure of public funds.

2. Public Notice Provisions

Iowa should also adopt a provision establishing what actions landowners may take to avoid inadvertently dedicating their property. Utah, for example, has enacted a statute that provides both broad and narrow protections.[334] Under the Utah Code, the period of public user "is interrupted" if "property owner[s] undertake[] an overt act which is intended to interrupt the use of the highway, street, or road as a public thoroughfare" so long as the act "is reasonably calculated to interrupt the regularly established pattern and frequency of public use."[335] The statute further allows landowners to avoid dedication by "install[ing] . . . gates and posting . . . no trespassing signs," though such acts may not always be "determinative of whether an interruption [of public use] has occurred."[336] California enacted a more aggressive statute,

332. MINN. STAT. § 160.05(1)(a) (2023); *see also* Leeper v. Hampton Hills, Inc., 187 N.W.2d 765, 767 (Minn. 1971).

333. S.D. CODIFIED LAWS § 31-3-1 (2023).

334. *See* UTAH CODE ANN. § 72-5-104 (West 2020).

335. *Id.* § 72-5-104(4).

336. *Id.* § 72-5-104(5).

which states that public use "shall [n]ever ripen into an easement by prescription, if the owner of such property posts [signs] at each entrance to the property or at intervals of not more than [two hundred] feet along the boundary," and further provides suggested text for such signage: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code."[337]

Any future dedication legislation in Iowa should borrow from and add to these examples based on common law doctrine. First, the statute should protect landowners who have posted signs indicating that the road is private so long as the signs are reasonably noticeable by any member of the public travelling along the road. Second, the statute should protect landowners who have installed gates at any public entrance to a roadway from a finding of dedication, regardless of whether they ever bar public access to the road if the gates are reasonably visible when open. Finally, like Utah, Iowa should provide a broad catch-all provision that allows the court to consider whether landowners have taken other substantial acts "reasonably calculated to interrupt" public use.[338] These provisions would make communicating the private nature of roadways to the public easy for landowners while simultaneously protecting the rights of the public when the landowner has "thrown open [the road] to the public" with no indication that use is by license only.[339]

CONCLUSION

McNaughton is particularly damaging to Iowa's dedication doctrine both because it is a close case and because its details present a clear clash of the private and public interests common law dedication seeks to balance. The case is close because the details fall into the cracks of the black letter law. McNaughton's articulated objections to dedication in the original easement agreement are clear, but his failure to file the easement after the City agreed to expend funds to improve his property leave a reasonable observer with questions over whether he maintained those objections after seeing the benefit he received. Had the access road and the frontage road it connected to, East Char-Mac Drive, led to a housing subdivision or a retail business, the case would fit more cleanly into established doctrine: The former weighing in favor of dedication and the latter weighing against. Instead, *McNaughton* dealt with a business owned by the landowner's sibling that served residents and their guests without restricting public access.

Deciding a difficult case like *McNaughton* through a rigid legalistic approach framed around the mechanics of private easements, as the *McNaughton* majority did, benefits landowners at the expense of the public. Such difficult cases can be simplified by statutes that clarify and strengthen the common law principles discussed in this Note. However, a statutory supplement to Iowa's common

337. CAL. CIV. CODE § 1008 (West 2023) (internal quotation marks omitted).

338. UTAH CODE ANN. § 72-5-104(4) (West 2020).

339. *See* PARRISH & DE MAULEY, *supra* note 33, at 30.

law dedication doctrine cannot provide a clear solution to every possible case. Whether courts are considering a dedication case that is not clearly covered by a future statutory scheme or they are still applying the common law due to inaction by the legislature, they should remember two crucial facets of common law dedication.

First, the doctrine is designed to balance the interests of landowners and the public. Any attempt to define the legal issue in terms of private grants rather than estoppel to protect public rights will risk misinterpreting the doctrine as the *McNaughton* majority did. Second, difficult cases should be left to factfinders to decide. The problems raised by *McNaughton* do not entirely stem from the result. Rather, the problem is the majority's reinterpretation of precedent. Ideally, future Iowa dedication cases would be simplified by statutory intervention. However, until and unless such legislation is passed, trial courts should place significant weight on public improvements when determining whether a road has been dedicated, and appellate courts should let trial court decisions stand in close cases. If the precedent in *McNaughton* is interpreted as narrowing the set of cases that should be decided as questions of fact, then Justice McDermott's concern is well warranted: "It's hard to see what remains of the doctrine of implied dedication" in Iowa.[340]

340. McNaughton v. Chartier, 977 N.W.2d 1, 16 (Iowa 2022) (McDermott, J., dissenting).