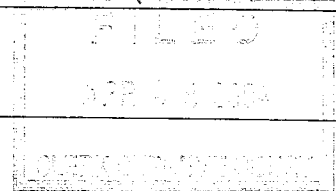


IN THE SUPREME COURT OF IOWA

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NO. 03-1982



DWAYNE ALONS, et al.,

Plaintiffs-Appellants,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,

Defendants-Appellees.

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PETITION FOR WRIT OF CERTIORARI

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PLAINTIFFS-APPELLANTS' PROOF BRIEF

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1 U.S.C. § 7

15 V.S.A. 1202(2)

28 U.S.C. § 1738C

Iowa Code 595.2(1)

STATEMENT OF THE CASE

Nature of the Case

This is a writ of certiorari filed requesting review of the trial Court's granting dissolution of a Civil Union. Two issues are presented to this Court today. One, whether Plaintiff's have standing to invoke this Court's assistance, and two, whether the lower court properly exercised jurisdiction when it granted dissolution of a Civil Union.

This Court is not being called upon to decide the issue of whether or not same sex marriage or civil unions between homosexual couples are socially appropriate. This decision has already been made by the people of the State of Iowa through their elected Representatives.

All Plaintiffs in this case have standing to petition for a writ of certiorari as representatives of the public because the recognition of a Vermont Civil Union by an Iowa district court is a matter of great public concern. The people of Iowa have enacted a law specifically preserving marriage for couples comprised of one man and one woman. Recognizing relationships that do not comport with this definition of marriage, even for purposes of termination, has a detrimental effect on the importance of marriage to the people of Iowa.

In addition, Plaintiffs have standing because they each have a substantial interest in the matter challenged. The

Plaintiffs that are state legislators and Congressman King have standing in their individual capacities because they have an interest in seeing that laws passed by their respective legislative bodies are implemented properly. The individual Plaintiffs also have standing as married persons because state court recognition of same-sex relationships undermines the importance of marriage by equating marriage with all other intimate relationships. Likewise, Plaintiff Matthew Wentz has standing as a pastor, and Plaintiff Church of Christ Le Mars has organizational standing to seek the writ because they are involved in solemnizing marriages and have an interest in seeing that marriage as a foundational institution in society is not eroded. Finally, the individual Plaintiffs each have standing as taxpayers who have an interest in seeing that state judges do not use public resources to undermine state law and policy.

#### Course of Proceedings

Plaintiff-appellants filed their writ of certiorari on December 15, 2003. (Petition; App. \_\_\_\_). In response, Judge Neary filed an Amended Decree on December 24, 2003. (Amended Decree; App. \_\_\_\_). On December 24, 2003 this Court requested further pleadings addressing the issue of whether or not the Amended Decree made the writ of certiorari moot or otherwise changed the issues. (Order; App. \_\_\_\_). On January 9, 2004, plaintiff-appellants filed a response to this Court's order

requesting further briefing. (Response; App. \_\_\_\_). This Court then granted plaintiff-appellants Petition for Writ of Certiorari on February 3, 2004. (Order; App. \_\_\_\_)

**Factual Statement**

By writ of certiorari, Plaintiffs challenge a dissolution/termination decree of Judge Neary of the Woodbury County District Court. On November 14, 2003, Judge Neary granted a Decree of Dissolution of Marriage in an action (Equity No. CDCD119660) brought by Petitioner Kimberly Jean Brown against Respondent Jennifer Sue Perez, both females. Brown and Perez misrepresented to the court that they were married. (Petition; App. \_\_\_\_). They had actually entered into a Civil Union in Vermont.

Later Judge Neary issued an Amended Decree on December 24, 2003 recognizing the district court did not have subject matter jurisdiction to grant dissolution of marriage of a Vermont Civil Union under chapter 598 of the Iowa Code. The district court proceeded, nonetheless, under general equity jurisdiction. In his Amended Decree, Judge Neary recognized, gave effect to, and terminated, the Civil Union between Brown and Perez.

Under Iowa law, "only a marriage between a male and a female is valid." Iowa Code 595.2(1) (2003). The same is true in Vermont where "[m]arriage is the legally recognized union of one man and one woman." Vt. Stat. Ann. tit. 15, § 8 (1999).

Therefore, Brown and Perez did not have a valid marriage under Iowa or Vermont law. As discussed above, Brown and Perez had entered into a "Civil Union," which is a legal relationship recognized in Vermont but not in Iowa. Vt. Stat. Ann. tit. 15, § 1202 (1999).

District courts in Iowa have jurisdiction to dissolve marriages that are legally recognized under state law. Iowa Code 598.2 (2003). Because Brown and Perez were not legally married under any state law, the district court exceeded its jurisdiction by granting dissolution of marriage to Brown and Perez in his November 14, 2003 Decree.

Nor did the district court have jurisdiction to terminate the Civil Union in its Amended Decree. Under § 598.2, district courts have jurisdiction over "the subject matter of [the] chapter." The subject matter of Chapter 598 governs dissolution of marriage and domestic relations, but does not touch on Civil Unions or termination of Civil Unions recognized in other states.

The Amended Decree validated under the court's so called "general equitable jurisdiction" also did not remedy the court's lack of jurisdiction over the Civil Union of Brown and Perez for the reasons stated below.

Neither Brown nor Perez appealed. Therefore, Plaintiffs filed writ of certiorari with this Court pursuant to Iowa R. Civ. P. 1.1401 (2002).

Plaintiffs represent a cross section of Iowa citizens who have a substantial interest in the outcome of this case. They include an Iowa church as well as Iowa citizens who are members of the Iowa State Legislature, taxpayers, married individuals, a pastor, and a federal legislator. (Petition for Writ of Certiorari; App. \_\_\_\_)

#### **Routing Statement**

The Supreme Court, pursuant to Iowa R. App. P. 6.401(2)(c), (d) and 6.401(3)(a), should retain this appeal as it involves issues of first impression, fundamental issues of broad public importance requiring ultimate determination by the Supreme Court and is a case which requires legal principles to be enunciated. This court has the opportunity to settle the jurisdictional questions facing district courts concerning use of judicial resources in dealing with the myriad legal issues revolving around Civil Union relationships.

#### **ARGUMENT**

##### **I. All Plaintiffs Have Individual and Representative Standing**

###### **A. Legal Standard Applied To Standing**

The writ of certiorari is a remedy that is available when a court has exceeded its jurisdiction or acted illegally. Hohl v.

Bd. of Educ., 94 N.W.2d 787, 789 (Iowa 1959); Madsen v. Town of Oakland, 257 N.W. 549 (Iowa 1934).

A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally.

Iowa R. Civ. P. 1.1401 (2002).

#### **1. Public Interest**

Generally, the writ of certiorari is available only to the parties of an action. State v. West, 320 N.W.2d 570, 573 (Iowa 1982). An exception was created, however, so that any interested person may petition for a writ of certiorari "[w]here the public is concerned in the subject matter." Hohl, 94 N.W.2d at 791. The person "whose interests are identical with the mass of the community" may petition for the writ of certiorari. Keely v. Bd. of Supervisors, 139 N.W. 473, 474 (Iowa 1913). In West, this Court stated that the "tendency is to broaden the scope of the writ when no appeal is permitted and injustice will result unless such relief is granted." West, 320 N.W.2d at 573. Therefore, an individual may petition for a writ of certiorari in a representative capacity "for the protection of public interests." Hemmer v. Bonson, 117 N.W. 257, 259 (Iowa 1908).

#### **2. Peculiar Injury or Substantial Interest**

Non-party individuals may also petition for a writ of certiorari if they have suffered a peculiar injury. Vrban v.

Levin, 392 N.W.2d 850, 852 (Ia. Ct. App. 1986). As this Court explained in Hemmer, a person who has "suffer[ed] a peculiar injury by reason of a judgment or order entered in excess of jurisdiction" may seek the remedy of certiorari. 117 N.W. at 259.

The Court may also make certiorari "available to all persons who may show a substantial interest in the matter challenged." Hohl, 94 N.W.2d at 791; Vrban, 392 N.W.2d at 852; Cedar Rapids Steel Transp., Inc. v. Ia. State Commerce Comm'n, 160 N.W.2d 825, 830 (Iowa 1968). In Vrban, for example, the Court held that an adult college student, who "was not a party to [a] declaratory judgment action," had standing to petition for a writ of certiorari because she had a "substantial interest in its outcome," which terminated the child support she received from her father. 392 N.W.2d at 852. Therefore, a person may petition for a writ of certiorari where the individual suffers a "peculiar injury" or has a "substantial interest in the matter challenged."

**B. The Plaintiffs Have Standing Because They Each Have An Interest As Members Of The Public**

An individual may petition for a writ of certiorari in a representative capacity "[w]here the public is concerned in the subject matter," Hohl, 94 N.W.2d at 791, in order to protect the public interests. Hemmer, 117 N.W. at 259.

**1. The Public Has an Interest in Promoting Traditional Marriage**

The public, as represented by the Plaintiffs, has an interest in judges following Iowa's laws regarding marriage when issuing decrees. Public consensus is formally embodied by laws, enacted by the elected legislature, so the public has an interest in seeing that laws are followed. This Court has recognized the state's interest in preserving the marriage relationship. Rogers v. Webb, 558 N.W.2d 155, 157 (Iowa 1997); Vande Kop v. McGill, 528 N.W.2d 609, 612 (Iowa 1995); Norris v. Norris, 174 N.W.2d 368, 370 (Iowa 1970) (disapproving contract provisions that tend to induce separation or dissolution of marriage). This Court has also recognized the public's interest in marriage and dissolution:

The integrity and permanence of the marital relation is of such vital importance to the welfare of society and to the public generally that the sovereignty or State has always deeply interested itself in all matters pertaining to the dissolution of that relation.

Hopping v. Hopping, 10 N.W.2d 87, 89 (Iowa 1943).

The District Court's recognition of a Civil Union is detrimental to the furtherance and promotion of marriage as defined in Iowa.

This Court's recognition of the social interest in marriage and family originates in the belief that the foundation for political society is in family organization. A.E. Hoebel, The

Law of Primitive Man, 3-45 (1945). See also Paul J. Bohannon, The Differing Realms of the Law, 67 Am. Anthropol. 33-42 (1965). That is, the state evolves out of and depends for its stability upon stable families. Both historically and structurally, marriage is the foundation of families, and consequently of society itself. This truth has been recognized by the United States Supreme Court, which has observed that marriage is a relationship that is "older than the Bill of Rights - older than our political parties, older than our school system," Griswold v. Connecticut, 381 U.S. 479, 486 (1965), and "fundamental to our very existence and survival." Loving v. Virginia, 388 U.S. 1, 12 (1967). Indeed, the Supreme Court regards "[m]arriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution. . . ." Maynard v. Hill, 125 U.S. 190, 205 (1888).

Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests.

Reynolds v. U.S., 98 U.S. 145, 165-66 (1878).

Traditional, opposite-sex marriage is particularly important to democratic society because it is the "seedground

for democracy." Lynn D. Wardle, "Multiply and Replenish":  
Considering Same-Sex Marriage in Light of State Interests in  
Marital Procreation, 24 Harv. J.L. & Pub. Pol'y 771, 780 (2001).  
See also Bruce C. Hafen, The Constitutional Status of Marriage,  
Kinship, and Sexual Privacy; Balancing the Individual and Social  
Interests, 81 Mich. L. Rev. 463, 472-484 (1983) ("it is  
primarily through family bonds that both children and parents  
learn the attitudes and skills that sustain an open society").

Traditional marriage has proven to be the safest repository  
of democratic values including tolerance, respect for others,  
and the balanced values of responsible individualism and  
commitment to the community. George W. Dent, Jr., The Defense  
of Traditional Marriage, 15 J.L. & Pol. 581, 596 (1999).  
Opposite-sex marriage is a mediating institution that nurtures  
the values of unselfishness and liberty.

[R]eflection on the heterosexual norm directs our  
attention to certain social necessities: the  
continuation of human life, the place of  
difference within community, the redirection of  
our tendency to place our own desires first.  
These necessities cannot be supported by rational  
calculations of self interest alone; they require  
commitments that go well beyond calculations of  
personal satisfaction. Having and rearing  
children is among the most difficult of human  
projects. Men and women need all the support  
they can get to maintain stable marriages in  
which the next generation can flourish. Even  
marriages that do not give rise to children exist  
in accord with, rather than in opposition to,  
this heterosexual norm.

The Ramsey Colloquium, The Homosexual Movement, 41 First Things 15, 17-18 (1994).

Opposite-sex marriage is a uniquely beneficial arrangement, providing equity and security for individuals, family, and society. The security and stability of marriage as compared to same-sex relationships is well founded in reliable literature. Opposite-sex marriage also fosters the value of equality. This is due in large part to the way in which the different sexes compliment one another.

Human society requires that we learn to value difference within community. In the complementarity of male and female we find the paradigmatic instance of this truth. . . . [It] invites us to learn to accept and affirm the natural world from which we are too often alienated. Moreover, in the creative complementarity of male and female we are directed toward community with those unlike us. In the community between male and female, we do not and cannot see in each other mere reflections of ourselves. In learning to appreciate this most basic difference, and in forming a marital bond, we take both difference and community seriously.

The Ramsey Colloquium, 41 First Things at 17-18.

These unique, invaluable contributions made to society by opposite-sex marriage necessitate and even compel the state to take steps to preserve it.

Spouses receive special consideration from the state, for marriage is a civil contract "of so solemn and binding a nature ... that the consent of the parties alone will not constitute marriage...; but one to which the consent of the state is also required." (Mott v. Mott (1889) 82 Cal. 413, 416.) Marriage is accorded this degree

of dignity in recognition that "[t]he joining of the man and woman in marriage is at once the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime." (Marvin v. Marvin, supra., 18 Cal.3d 660, 684).

Nieto v. City of Los Angeles, 138 Cal. App.3d 464, 470-71 (Cal. Ct. App. 1982).

In view of the unique contributions that opposite-sex marriage makes to society, the state has a compelling interest in endorsing and preserving it to the exclusion of same-sex relationships.

## **2. The Public Has an Interest in Avoiding the Erosion of Marriage**

Treating same-sex relationships the same as marriage denigrates and undermines traditional, opposite-sex marriage. This attack on traditional marriage is precisely the type of "injury to a person or abuse of an institution the law protects" that the Supreme Court held government is authorized to avoid in Lawrence v. Texas, 539 U.S. \_\_\_, 123 S. Ct. 2472, 2478 (2003). The acceptance of a philosophy that all "intimate" relationships are fungible, not only distorts the perception of reality, but threatens to warp the reality of marriage and family life for millions of adults and children. "To depict marriage as simply one of several alternative 'lifestyles' is seriously to undermine the normative vision required for social well-being." The Ramsey Colloquium, 41 First Things at 18.

In every society some people do not or cannot marry and bear and raise children. If they are viewed as unfortunate exceptions, the norm is not impaired. Recognition of gay marriages would mutilate the norm by granting, for the first time in history, equal honor to partnerships that inherently exclude the creation of life. The impact would be greater if, as seems likely, few gays elected to marry, stay married, and adopted children. Like legalizing bestiality, cloning, and baby-selling, validation of gay marriage would not cause direct, proximate harm, but it would damage society by degrading the way we see and relate to others. Traditional marriage is a public good. That is, it benefits not only married couples and their children but also generates positive externalities, or benefits to others. Men and women who marry and stay married encourage others to do likewise, to the profit of society.

Dent, 15 J.L. & Pol. at 598-99, 615-639 (cataloguing numerous ways recognition of same-sex relationships would damage traditional marriage).

The Iowa public has an interest in preserving the integrity of the marital union by making opposite-sex marriage the exclusive form of family relationship endorsed by the government. Loss of this exclusive endorsement will de-emphasize the importance of traditional opposite-sex marriage to society, weakening this vital institution, and placing our entire democratic system in jeopardy by eroding its foundation. "[T]he main consequence of recognizing same-sex . . . [relationships] would not be a shift of some people to homosexual conduct, but the change in heterosexuals' no longer

seeing traditional marriage as something special." Dent, 15 J.L. & Pol. at 614.

Even more troubling is the prospect that recognizing same-sex relationships would actually reduce some of the benefits, like an optimal parenting environment, provided by traditional marriage.

The further separation of procreation from marriage implicit in legalization of same-sex marriage would send a cultural message of parental disconnection from family duties that could further diminish the level of responsibility of absent parents. . . . The potential for increased social disorder if same-sex marriage is legalized is profound.

Wardle, 24 Harv. J.L. & Pub. Pol'y at 798. See also Dent, 15 J.L. & Pol. at 601 ("As social esteem for marriage and parenting declines, so does citizens' willingness to assume these roles. Validation of same-sex marriages would accelerate this decline").

Proponents of recognizing same-sex relationships also make the more subtle argument that they simply want the same governmental benefits that heterosexual couples have access to through marriage. However, the deleterious effect on marriage is the same. Recognizing same-sex relationships as similar to marriage so that the participants can receive marital benefits reduces marriage to an entity formed by persons wishing to exploit its advantages. The concept of marriage being the building block of society and the seed-ground of democracy is

exchanged for an entity that is no more than a corporation, limited partnership, or other business organization formed for purely economic or liability reasons. This is completely contrary to the Supreme Court's description of marriage as "more than a contract. It is not a mere matter of pecuniary consideration. It is a great public institution, giving character to our whole civil polity." Maynard, 125 U.S. at 213.

The people of Iowa have a strong public interest in protecting traditional marriage. They further this interest by refusing to recognize relationships like Civil Unions that undermine it.

### **3. The Public Has an Interest in Safeguarding the Rule of Law**

The public is concerned that Iowa district court judges act within the jurisdictional boundaries established by Iowa law. Specifically, the Iowa Legislature has defined marriage and determined which relationships may be dissolved or terminated. To safeguard the rule of law, the public has an interest in judges following the law when issuing decrees. This includes the termination/dissolution decree granted to Brown and Perez, whose legal relationship recognized in Vermont was outside the jurisdiction of the Iowa district court. The public has an interest in preserving marriage as defined by the Iowa legislature, which it elected, rather than as defined by the district court which acted beyond his jurisdictional authority.

#### 4. The Public Has an Interest in Preserving the Judicial Process

The public has a concrete interest in preserving the adversarial nature of our judicial process because this is the best way to produce justice. State v. Ia. Dist. Court for Polk County, 464 N.W.2d 244, 249 (Iowa 1990) (Our system relies on the adversarial process to produce just results); State v. Atley, 564 N.W.2d 817, 834 (Iowa 1997) ("The . . . adversary system [is] based upon the presupposition that the most effective means of determining truth is to present to a judge and jury a clash between proponents of conflicting views."). In *West*, this Court stated that the writ of certiorari is available "when no appeal is permitted and injustice will result unless such relief is granted." West, 320 N.W.2d at 573. Therefore, individuals have standing as representatives of the public to petition for a writ of certiorari when the adversarial system of justice has been circumvented because the public has an interest in maintaining the adversarial system.

This is such a case. This case circumvents the adversarial system, at least on the issue of the jurisdiction of the court to hear the case, because Brown and Perez are not adverse on whether the trial court can grant a dissolution or termination of their Civil Union. Where two parties have the same goal for bringing an action, such as to obtain a dissolution, neither party has an interest in challenging the court's jurisdiction to

hear the case. In fact, this case was presented to the District Court on stipulation of facts. The judge was neither required nor needed to perform any function requested of these parties. Therefore, where there is a willing judge the court is able to hear the case even though it is outside its jurisdiction because neither party will appeal the lack of jurisdiction. The only way to limit the district court's jurisdiction is to recognize that individuals have standing as representatives of the public to petition for a writ of certiorari.

Here, Brown and Perez have no interest in challenging the Court's jurisdiction to dissolve or terminate their Civil Union. This is evident because they brought the action, and neither party has appealed the Decree in this case. Therefore, injustice will result unless the public can petition for a writ of certiorari to challenge the district court's actions. The public is unable to appeal the decree, and the parties have no incentive to do so because they were the ones who brought the action and they received exactly what they desired.

In sum, Plaintiffs' interests are "identical with the mass of the community." Keely, 139 N.W. at 474. The Plaintiffs are Iowans who are legislators, a pastor, married individuals, taxpayers, and a church. Like the general public, Plaintiffs are interested in preserving the judicial process, and insuring that the judicial branch stays within the boundaries established

by the Iowa Legislature. Also, Plaintiffs share society's interest in preserving marriage and family. For these reasons, Plaintiffs properly brought an action in certiorari to protect the public's interest.

**C. Plaintiffs Have Standing Because They Each Have Suffered Peculiar Injuries and Have a Substantial Interest in The Matter Challenged**

Individuals may also petition for a writ of certiorari where they suffer a "peculiar injury" or have a "substantial interest in the matter challenged." Vrban, 392 N.W.2d at 852. Plaintiffs have standing in an individual capacity as legislators, married persons, and taxpayers.

**1. The State Legislator Plaintiffs Have Standing in Their Individual Capacities as Legislators**

Plaintiffs Dwayne Alons, Carmine Boal, Nancy Boettger, Danny Carroll, Betty DeBoef, and Neil Shuerer ("State Legislator Plaintiffs") have standing to petition for a writ of certiorari in their individual capacities as Legislators because they have a substantial interest in the matter challenged. Three of the State Legislator Plaintiffs (Boettger, Carroll and Schuerer) are and have been active in the Iowa legislature since or prior to April 1998 when Iowa Code § 595.2(1) was amended to define marriage as valid "only . . . between a male and a female." (Affidavits; App. \_\_\_\_\_) Plaintiffs Alons, Boal and DeBoef, not having been active in the State legislature in April 1998, but as representatives of the people of Iowa, they also have a

substantial interest in the termination decree granted by Judge Neary because of their concern for the enforcement of a law passed to preserve traditional marriage. (Affidavits; App. \_\_\_\_\_)

Because the district court's Decree and Amended Decree usurped the power of the state legislature, of which the plaintiff legislators were members at the time both decrees were entered, they have standing to pursue this action before this Court by way of a writ of certiorari. The Plaintiffs have standing if their "specific constitutional and statutory rights" have been invaded. Iowa Civil Liberties Union v. Critelli, 244 N.W.2d 564, 566-67 (Iowa 1976). The Plaintiff legislators have been harmed in precisely that manner.

"[N]o person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others," unless expressly directed or permitted. Iowa Const. Art III. One branch of government may not purport to use powers granted by the constitution to another branch. Kouda v. Sixth Judicial Dist. Dept. of Correctional Servs., 642 N.W.2d 255 (Iowa 2002); State v. Phillips, 610 N.W.2d 840, 842-43 (Iowa 2000). The Iowa Constitution clearly establishes that the "legislative authority of [the] state [is] vested in a general assembly." Iowa Const. Art. III. As a result, in Iowa, lawmaking power is vested only

in the legislature. Loftus v. Dep't of Agriculture of Iowa, 232 N.W. 412, 414 (Iowa 1930).

It is the duty of the legislature to declare the law, and the Court's responsibility to interpret the law. Lynch v. Saddler, 656 N.W.2d 104, 108 (Iowa 2003); see also Cowman v. Hansen, 92 N.W.2d 682, 689 (Iowa 1958), overruled on other grounds by Lewis v. State, 256 N.W.2d 181 (Iowa 1977) ("courts may in proper instances apply old rules to newly-created conditions," but "cannot create new rules for conditions already under regulation"). In Lynch v. Saddler, the Court interpreted legislative silence on the Court's interpretation of a law as tacit approval of that interpretation. Lynch, 656 N.W.2d at 108. That is not the case here. Iowa Code § 595.2(1). Concerning marriage, the Iowa legislature has not been silent. The legislature has declared what marriage is, and what marriage is not. Id.

Any holding to the contrary interferes with the legislature's ability to declare the law. Loving v. United States, 517 U.S. 748, 757 (1996) (separation of powers "requires that a branch [of government] not impair another in the performance of its constitutional duties" (emphasis added)). The district court's decree imposes new judge-created rules designed to deal with dissolution of marriage-type relationships, which is an area already under regulation. Iowa

Code §§ 595.1-595.20; 597.1-598.42 (state statutes governing how marriages are formed and dissolved). The creation of such judge-made laws is improper. Cowman, 92 N.W.2d at 689 (criticizing such an action).

The district court initially recognized that a marriage had actually occurred between Kimberly Brown and Jennifer Perez. In fact, both the Decree and the Amended Decree were captioned to that effect, referencing "the marriage" of the two parties. (Decree; Amended Decree; App. \_\_\_\_, \_\_\_\_). Even the Amended Decree references a "dissolution." (Amended Decree, at 2, ¶ 3 (incorporating paragraphs 4 through 13 of the original Decree); App. \_\_\_\_; Decree, at 2, ¶ 4 (identifying the proceeding as a "dissolution"); App. \_\_\_\_). Even if the district court did not recognize a "marriage" between two persons of the same gender, it did recognize the Vermont civil union as a legal entity. (Amended Decree, at 2, ¶ 1 (terminating the "Vermont Civil Union"); App. \_\_\_\_). In the court's mind, there was something there to dissolve. Id. The legal creature that the court recognized simply does not exist in Iowa. Iowa Code § 595.2(1) (recognizing that "[o]nly a marriage between a male and a female is valid" (emphasis added)). If the district court's recognition of this union were applied to other marriage-type unions unharmonious with Iowa law, nothing would prevent another court from recognizing, even in a reinforcing way, a bigamous or

polygamous marriage or Civil Union. That is where the harm to the Plaintiffs occurs. The district court invaded the province of the legislature because the mere recognition of this legal entity usurped the Plaintiffs' constitutionally guaranteed right, as legislators, to declare what entities are recognized and what entities are not. Iowa Const. Art. III. The creation of an extra-legal entity, even if for the sole purpose of dissolving it, is still the recognition of an entity that Iowa law does not recognize. Iowa Code § 595.2(1).

Some of the Plaintiff legislators were members of the Iowa general assembly at the time the district court's Decree and Amended Decree were issued. Because the district court usurped the power of the legislature, by recognizing a legal entity excluded by Iowa law, it exercised a function appertaining to the legislature. Thus, the Plaintiffs' specific constitutionally guaranteed rights as members of a body granted the power to create state law were violated as well. Loftus, 232 N.W. at 414. The legislator Plaintiffs have standing.

The state legislature also has an interest in seeing that jurisdictional statutes are properly implemented. State statutes concerning the jurisdiction of district courts are enacted pursuant to authority under Article 5, § 6 of the Iowa Constitution, which states that the district court's jurisdiction "shall be prescribed by law." As members of the

legislature, State Legislator Plaintiffs took an oath to "support . . . the Constitution of the State of Iowa." Iowa Const. art. III, § 32. As a result of the district court's disregard of state law by exceeding its jurisdiction, State Legislator Plaintiffs have suffered a peculiar injury in that the court usurped the power "properly belonging" to the legislature. Their power was usurped by undertaking a notion of jurisdiction where none was granted and by recognizing a legal entity not recognized under Iowa law. Iowa Const. art. III, § 1. Under Article III, § 1, "no person charged with the exercise of powers properly belonging to one of these departments (i.e., the legislative, the executive, and the judicial) shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted." This Court has held that "[t]he legislature is supreme in the field of legislation in the absence of clear constitutional prohibition." Faber v. Loveless, 88 N.W.2d 112, 114 (Iowa 1958). The district court improperly exercised a function of the legislative branch by expanding its jurisdiction and, thus caused a peculiar injury to State Legislator Plaintiffs.<sup>1</sup>

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<sup>1</sup> Similarly, in an unpublished decision from the District Court for Polk County, the court invalidated an Executive Order, challenged by state legislators, that violated the separation of powers clause of the Iowa Constitution by usurping legislative power. King v. Vilsack, Law No. CE 40318 (Dec. 7, 2000).

**2. Congressman King Has Standing in His Individual Capacity as a Federal Legislator**

Plaintiff Steve King ("Congressman King"), who represents Iowa's Fifth Congressional District, has standing to petition for a writ of certiorari in his individual capacity as a federal legislator. Congressman King has a substantial interest in the dissolution/termination Decrees granted to the extent that the Full Faith and Credit Clause of the United States Constitution may be implicated by this action.

In 1996 Congress adopted the federal Defense of Marriage Act ("DOMA"). 28 U.S.C. § 1738C (2004); 1 U.S.C. § 7 (2004). DOMA has two sections, one affirming federalism principles under the authority granted by Article IV, Section 1 of the Constitution (Full Faith and Credit Clause),<sup>2</sup> and the other defining "marriage" for purposes of federal law. Section 1738C, enacted pursuant to Congress' power to determine the "effect" of a state's "Acts, Records and Proceedings," reaffirmed the power of the states to make their own decisions about marriage:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that

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<sup>2</sup> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. CONST. art. IV, § 1.

is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Pub. L. 104-199, sec. 2(a), 100 Stat. 2419 (Sept. 21, 1996) codified at 28 U.S.C. § 1738C (2004). Section 7 states that for purposes of federal law, marriage means a legal union between a man and a woman:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

Pub. L. 104-199, sec. 1, 100 Stat. 2419 (Sept. 21, 1996) codified at 1 U.S.C. § 7 (2004).

Section 1738C reaffirms the power of states, under the Full Faith and Credit Clause, to refuse to recognize a relationship treated as marriage in another jurisdiction that is contrary to the public policy of the forum state. In Vermont, a Civil Union is treated as marriage. Vt. Stat. Ann. tit. 15, § 1204. In Iowa they are not. Equating Civil Unions with marriage is contrary to the public policy of Iowa as demonstrated above. Iowa is therefore not required to recognize Vermont Civil Unions under the DOMA.

The termination of the Vermont Civil Union was not required under federal law and not permitted by state law. Consequently, the district court' unilateral change of the law is germane and

of interest to Congressman King who represents the interests of the state of Iowa in Congress, including his involvement with the United States House of Representatives Committee on the Judiciary. He has a particular interest as a State representative to National government in seeing that Federal and State law are applied in harmony when possible and appropriate.

**3. Plaintiffs Have Standing in Their Individual Capacity as Married Persons**

All of the individual Plaintiffs have standing in their capacity as married persons. (Affidavits; App. \_\_\_\_). These Plaintiffs have a substantial interest in the promotion of traditional marriage in the state of Iowa. Under Iowa law, married individuals receive certain rights and privileges not granted to others. Iowa Code § 598.28 (2003) (Husband and wife may petition for separate maintenance upon dissolution.). These Plaintiffs would be particularly injured by the district court's recognition of Vermont Civil Unions in the same way it recognizes marriages because this would dilute the value of traditional marriage long recognized by the state. § I, *infra*.

**4. Plaintiffs Have Standing in Their Individual Capacities as Taxpayers**

The individual Plaintiffs have standing to petition for writ of certiorari in their capacity as taxpayers in the State of Iowa. (Affidavits; App. \_\_\_\_). This Court has recognized taxpayer standing in similar cases. Ia. Mut. Tornado Ins. Ass'n

v. Timmons, 105 N.W.2d 209, 216 (Iowa 1960) (writ of mandamus);  
Pierce v. Green, 294 N.W. 237, 248 (Iowa 1940) (same).

By granting a dissolution/termination decree to Brown and Perez, the district court opened up the judicial system to a new class of petitioners and respondents outside those individuals provided for under state law, which will require the provision and expenditure of additional state judicial resources beyond those approved by the state legislature. Dissolution/termination of a Civil Union will likely result in additional litigation, requiring state judicial resources, concerning property distribution, child custody and support, and spousal benefits. Therefore, the individual Plaintiffs properly petitioned for a writ of certiorari as Iowa taxpayers.

**5. Plaintiff Wentz Has Standing in His Individual Capacity as a Pastor**

Plaintiff Wentz, pastor of the Church of Christ Le Mars, has standing to petition for a writ of certiorari in his individual capacity as a pastor. As a pastor, Plaintiff Wentz has a substantial interest in the dissolution/termination Decree granted by the court in that he serves in a leadership role within the community in upholding and preserving the important concept of traditional marriage. (Affidavits; App. \_\_\_\_). Under Iowa law, Plaintiff Wentz may solemnize marriages, since he is “[a] person ordained or designated as a leader of the person’s religious faith.” Iowa Code § 595.10 (2003). In addition,

Plaintiff Wentz provides counseling to individuals contemplating marriage or divorce.

As a result of the district court's dissolution/termination decree, Plaintiff Wentz faces legal uncertainty and possible criminal charges. Plaintiff Wentz understands that under Iowa law, "only a marriage between a male and a female is valid." Iowa Code § 595.2(1) (2003). In his capacity as pastor, Plaintiff Wentz may be approached by a heterosexual couple seeking to marry, one of whom had previously entered into a Civil Union in Vermont that had not been terminated or dissolved. In the past, Plaintiff Wentz could solemnize the new marriage because Civil Unions are not recognized under Iowa law. Because of the Decree, Plaintiff Wentz is unsure whether he could solemnize a marriage where one party had not dissolved/terminated a previously entered Civil Union. (Affidavits; App. \_\_\_\_). Therefore, Plaintiff Wentz faces legal uncertainty as to whether he can solemnize a marriage where there is an existing Vermont Civil Union.

Plaintiff Wentz faces possible criminal penalty as a result of the Decree. As stated above, Iowa law provides that "only a marriage between a male and a female is valid." Iowa Code § 595.2(1) (2003). When Plaintiff Wentz solemnizes a marriage, he is required to sign the marriage license, which states that "[t]he laws of this state affirm your right to enter into this

marriage.” Iowa Code § 595.3A (2003). If a heterosexual couple sought to marry, but one party had entered into a Vermont Civil Union that had not been terminated by decree, Plaintiff Wentz would be uncertain as to whether he could sign the marriage license in good faith or not. “If a marriage is solemnized without procuring a license, the parties married, and all persons aiding them, are guilty of a simple misdemeanor.” Iowa Code § 595.9 (2003). As a result, Plaintiff Wentz could face misdemeanor charges if he solemnizes a marriage in violation of law given the new status of Civil Unions under this court’s recognition of same. Therefore, Plaintiff Wentz has a substantial interest in the Brown and Perez matter because his role as pastor is affected.

**6. Plaintiff Church of Christ of Le Mars Has Standing as an Organization.**

Plaintiff Church of Christ of Le Mars, by and through its named representative, David H. Carlson, has standing to petition for a writ of certiorari because it has a substantial interest in the divorce/termination decree granted by the district court. Under Iowa law, churches and non-profit organizations may petition for a writ of certiorari. Sorci v. Ia. Dist. Court for Polk County, 671 N.W.2d 482 (Iowa 2003); Grandview Baptist Church v. Zoning Bd. of Adjustment of City of Davenport, 301 N.W.2d 704 (Iowa 1981).

Here, Plaintiff Church of Christ Le Mars has a substantial interest in upholding and preserving traditional marriage, as defined by Iowa law, within the community that it serves. Many Iowa citizens look to Plaintiff Church of Christ Le Mars for guidance as to marriage, family, and divorce, so it has a substantial interest in the district court' dissolution decree which impacts these relationships. In addition, as cited above, the church has an interest in preserving the traditional marital relationship in its community. (Affidavits; App. \_\_\_\_ ) Their teachings concerning marriage would be undermined by judicial fiat contrary to well established law, public policy and ecclesiastical principles in their denomination.

**II. This Court May Invoke Its Supervisory and Administrative Jurisdiction Over This Dispute**

This Court has jurisdiction over this controversy and over the inferior tribunal herein. The Iowa Supreme Court "shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state." Iowa Constitution Art. V § 4. The Court may exercise its supervisory or administrative jurisdiction either as a check on jurisdiction or as "a guaranty of a means of review. Hohl 94 N.W.2d at 791.

In Iowa Civil Liberties Union v. Critelli, a corporation and a group of citizens challenged the authority of a group of district judges to adopt an amendment to a procedural rule used

in criminal cases.<sup>3</sup> Critelli, 244 N.W.2d at 566. The Court accepted jurisdiction despite the fact that the petitioners could have obtained a remedy in district court, because the "action include[d] a challenge to the authority of district judges to adopt rules of court . . . [on] an issue of considerable public importance . . . ." Critelli, 244 N.W.2d at 567. Although the instant action is not a criminal action, the petitioners here, like those in Critelli, challenge the district judge's authority to adopt rules touching on issues of considerable public concern. Critelli, 244 N.W.2d at 567; see also Warren County v. Fifth Judicial District, 243 N.W.2d 894, 896-97 (invoking original jurisdiction where "[p]rompt resolution of the question is in the public interest"); Welty v. McMahon, 316 N.W.2d 836, 838 (Iowa 1982) (same).

As evidenced by the recent national cascade toward municipal governments recognizing same-sex marriages and unions, even in violation of applicable state law, it is imperative that this court swiftly resolve the question of whether a district court judge may implicitly recognize a legal entity that does not and has never existed in Iowa. The resolution of the question is in the interest of the public because of the high

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<sup>3</sup> Although the Iowa Supreme Court concluded that the corporation did not have standing under the principle of *jus tertii*, the Court there applied "federal principles to determine whether they have standing." Critelli, 244 N.W.2d at 567. Principles of the State of Iowa should govern this action.

place in the public eye the social and legal institution of marriage occupies. Loving, 388 U.S. at 12; Rogers, 558 N.W.2d at 157 ("[p]reservation of the marital relationship is a fundamental public policy"); Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978) ("[m]arriage is one of the basic rights of humankind"). As a result, because of the necessity of resolving this intensely public issue swiftly, this Court should invoke its Article V supervisory jurisdiction. Critelli, 244 N.W.2d at 566-67.

"Certiorari is the method of bringing the record of an inferior tribunal before the court for the purpose of ascertaining whether the inferior tribunal . . . had jurisdiction and whether its proceedings were authorized. Hohl, 94 N.W.2d at 508; see also McKeever v. Gerard, 368 N.W.2d 116, 118 (Iowa 1985) (holding that a writ of certiorari is proper to avoid unnecessary litigation or as a method of review when no other means are available). It is within this Court's supervisory role to "keep all such bodies within their proper functions and to prevent them from acting in an illegal manner." Hohl, 94 N.W.2d at 508-09.

Neither party involved in the district court action challenged the Decree on appeal because the parties to the decrees received precisely the remedy they sought. Allowing the plaintiffs in the present action to proceed by way of writ of

certiorari is proper since no other means of review is available. Even if other avenues of review are available, that availability alone does not preclude this Court's jurisdiction over the plaintiffs' challenges. Bousman v. Dist. Ct. for Clinton County, 630 N.W.2d 789, 792 (Iowa 2001). For example, in Bousman, a criminal defendant appealed the denial of a motion to quash a previous order ordering him to submit to a mouth swabbing. Bousman, 630 N.W.2d at 792. On appeal, the Court identified alternate ways short of a writ of certiorari the defendant could challenge evidence collected from the mouth swab. Bousman, 630 N.W.2d at 794-95. The Court concluded that because "[t]he legality of the district court's order is attacked exclusively on legal and constitutional grounds," the defendant should be permitted to proceed. Bousman, 630 N.W.2d at 795. Like the defendant's claims in Bousman, the nature of the plaintiffs' claims are exclusively legal and constitutional. Moreover, because there is no other way to challenge the district court's modified decree, the argument supporting this Court's invocation of its supervisory jurisdiction is stronger than in Bousman, where alternative means of appeal were available. Bousman, 630 N.W.2d at 794-95.

The risks of sacrificing this Court's supervisory jurisdiction, designed to curb the illegal actions of a lower court, in the name of standing are further heightened where all

parties to an action are in accord with the result, however illegal it is. That is, even if the plaintiffs lack standing, the only way this Court could oversee the potentially illegal judgment of a lower court where no party to the action is likely to complain is via its administrative jurisdiction over inferior courts. There is simply no other means available to trigger review by this Court. This is especially true when the private nature of the litigation is a direct affront to an exceptionally public sector of the law.

In fact, this Court recently recognized its supervisory and administrative jurisdiction over inferior courts in the analogous context of accepting improper guilty pleas to non-existent crimes in exchange for reduced fines. (News Release Statement of the Iowa Supreme Court (Feb. 24, 2004)) Just as a judge may not "accept a guilty plea to any criminal charge . . . without first determining that there is a factual basis for the plea," a judge may not dissolve a relationship and declare the rights of the parties to an action without ensuring that there is a legal basis for doing so. Id. That is, before a judge modifies the marital or relational rights of a party, the judge should ensure those rights exist. A judge cannot dissolve a Civil Union that does not exist, just as he cannot enter a judgment for a crime that does not exist.

Because this Court may exercise its supervisory and administrative jurisdiction in matters where the district court has exceeded the scope of its authority and where there are no other means available for appeal, this may properly invoke jurisdiction and resolve the issue presented on the merits. McKeever, 368 N.W.2d at 118. The issue addressed in the writ of certiorari is properly within this Court's supervisory and administrative jurisdiction.

### **III. The District Court Lacked Subject Matter Jurisdiction To Hear This Matter**

This court was without subject matter jurisdiction under Chapter 598 Code of Iowa by its own admission. Further, general equitable jurisdiction principles do not extend to the case at bar leaving the court no jurisdiction or authority to decide any matter before it.

#### **A. No Jurisdiction Under Chapter 598**

The original parties asked for a dissolution based upon their misrepresentation to the court that they were "married". Further, they invoked the jurisdiction of the court under Ch. 598 Code of Iowa.

As stated above, the court, in its Amended Decree, recognized his error in conferring jurisdiction under Chapter 598 Code of Iowa. Instead, the court retained jurisdiction under its general equity powers to hear and decide the matter before it. There is, therefore, no dispute that the lower court

had no jurisdiction under Chapter 598. The Court lacking jurisdiction to hear the matter since it did not involve a marriage and there being no other issues in dispute was left with only one thing to do, dismiss the case.

**B. The Scope Of This Court's General Equity Jurisdiction Was Exceeded**

Based upon the record in this case, the district court was asked to do two things: dissolve a marriage and approve a pre-agreed upon property distribution. The lower Court was without jurisdiction to do the former and was not needed to do the later. It was neither necessary nor proper for the court to decide any legal issue before it. Other legal means of establishing property rights were available to the parties.

The current record is devoid of any testimony, evidence or allegation in the verified petition tending to prove the existence of a legally recognized Vermont Civil Union at the time of the original or amended decree. Upon what legal bases, then was the Civil Union terminated? The contrary is true, however, in that these parties alleged and verified that they were "married" which is clearly false both under Vermont and Iowa law. 15 V.S.A. § 1202 (2); Iowa Code §595.2 (1).

The court in its Amended Decree alleged subject matter jurisdiction under general equity powers. The Amended Decree does not repair the original jurisdictional infirmity in as much as equity jurisdiction did not grant this district court the

authority to recognize a marital Civil Union, a legal entity specifically rejected by this and most other States in this Country and under Federal law. Defense of Marriage Act ("DOMA"). 28 U.S.C. § 1738C (2003); 1 U.S.C. § 7 (2003).

The Iowa Decree as amended recognizes and gives effect to a same sex legal union made official under the laws of the State of Vermont. Iowa law does not recognize Civil Unions. The Woodbury County Court's recognition of this legal union is implicit in its order granting its termination, or in essence, dissolution.

A variety of legal unions are legislatively recognized in the State of Iowa but only one matrimonial union is recognized and that is "marriage". A valid marriage is defined in Iowa as between a male and a female. Iowa Code § 595.2(1). The Court is not entitled, by judicial declaration, to usurp authority rightfully belonging to the Legislature in defining such legal relationships. "Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the Legislature." Maynard, 125 U.S. at 205; see also Walker v. Walker 205 Iowa 395, 398, 217 N.W. 883, 885 (Iowa 1928)

In addition, the district court neither developed, nor applied any statutory or other evident criterion recognized by

the States of Iowa or Vermont when it acted to dissolve this union. No such criteria exist in Iowa. A more problematic issue for the court has arisen, however. These parties' never amended their petition to allege a Civil Union in the first place, nor was any evidence offered to support even that finding by the court.

The court's equitable powers are not unlimited in scope and nature and no precedent could be found suggesting that a district court is endowed with the authority to recognize a marital legal union not authorized by State law and contrary to well established public policy. This Court has long stated and held to the premise that "the integrity of the marital relation is of such vital importance to the welfare of society and to the public generally that the sovereignty or State has always deeply interested itself in all matters pertaining to the dissolution of that relation." Walker, 217 N.W. at 885. Further, while these kinds of relationships are often spoken of as civil contracts they are also "a social institution, which is the foundation of the family in society." Hopping 10 N.W.2d at 89.

The Appellate Court of Connecticut, faced with a similar issue in the case of Rosengarten v. Downes, 71 Conn. App. 372, 802 A.2d 170 (2002) found the Superior court's sua sponte dismissal of the petition for dissolution of a same sex civil union was appropriate for lack of subject matter jurisdiction .

The case at bar is even clearer inasmuch as no Civil Union was alleged but, instead, a marriage. The case is also instructive in its analysis of the Full Faith and Credit Clause as applied to state's rights concerning matters of marriage. More particularly, the court's analysis encompasses several instructive concepts. The Court indicated that matters such as these [the social institution of marriage included] which implicate significant issues of public policy "are more properly within the domain of the legislature...[and] [a]s such, the legislature of a sister state cannot, in effect, make such a determination for the people of Connecticut." Id at 173

As to the Full Faith and Credit clause, the Federal Defense of Marriage Act (DOMA) reaffirms the power of the states to make their own decisions about marriage:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or right or claim arising from such relationship. 28 U.S.C § 1738C (1997)

Further, laws of other States do not necessarily have extraterritorial effect, particularly when addressing matters of important social institutions such as marriage. The U.S. Supreme Court has specifically noted the validity of state laws refusing to recognize marriages contrary to public policy: "Marriages not

polygamous or incestuous, or otherwise declared void by statute will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction." Loughran v. Loughran, 292 U.S. 216,223 (1934); see also Baker v. General Motors Corp., 522 U.S. 222,232-33 (1988), where the court acknowledged a state's right to refuse to follow legislative measures and common laws that contravene a strong public policy of the forum state. Burns v. Burns 253 Ga. App. 600, 560 S.E. 2d 47 (Ct. of App. 2002) where the Court found that a Civil Union entered in Vermont does not automatically bestow status of civil marriage in other states.

The district court's intervention was unnecessary in light of the fact that the parties had agreed to divide their property on their own. The matter was not plead as a contract dispute necessitating judicial assistance, in fact, there was no dispute at all. The court was not asked to resolve any controversy before it. The parties had resolved any differences before arriving at the court's doorstep. (Stipulation and Agreement; App. \_\_\_\_)

By approving the Stipulation and Agreement concerning property rights, the court was not obliged to dissolve the Civil Union. A union which was not alleged by the parties and in support of which no evidence was presented.

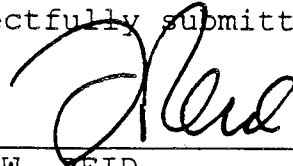
Unlike the court in Metten v. Bengel, 366 N.W.2d 577 (Iowa 1985), this Court went further than its jurisdiction permitted. The court dissolved a legal relationship that never existed under Iowa law. The court in Metten did not dissolve a nonexistent marriage. It was not asked to do so because Peggy Metten amended her petition to remove the allegation of marriage since no marriage existed. She did not insist that the court grant dissolution of a marriage that never was. The court decided only those matters that were cognizable in courts of equity; matters such as dividing real and personal property, determining questions of child support and custody and visitation issues, all being disputed. An actual justifiable controversy existed in Metten that did not exist in the District court here.

#### **CONCLUSION**

Each of the Plaintiffs in this matter has standing to represent the public's interest in preserving traditional marriage in this matter. Plaintiffs also have standing based upon their individual substantial interests that have been negatively affected by the trial court's official recognition of a Vermont Civil Union. Therefore, the requirements for standing to bring a writ of certiorari have been satisfied by all of the Plaintiffs in this matter. In addition, the lower court exceeded its grant of jurisdiction to dissolve the Civil Union before it.

As such the court's Decree should be set aside and the entire matter dismissed.

Respectfully submitted,



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REQUEST FOR ORAL ARGUMENT

Pursuant to Iowa Rule of Appellate Procedure 6.21(1),  
plaintiffs-appellants hereby state they desire to be heard in  
oral argument upon submission of the case.

ATTORNEY'S COST CERTIFICATE

I, Timm W. Reid, hereby certify that the actual cost of  
reproducing the necessary copies of the preceding Brief of  
plaintiffs-appellants was \$ 186.03, and the amount has  
been actually paid in full by plaintiffs-appellants.



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