IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 12-0243

Heather Martin Gartner and Melissa Gartner, individually, and as next friends of Mackenzie Jean Gartner, a minor child, Plaintiffs-Appellees, vs. Iowa Department of Public Health, Defendant-Appellant.	On appeal from the Iowa District Court for Polk County District Court Case No. CE067807 Hon. Eliza J. Ovrom, District Judge

FINAL BRIEF OF THE IOWA FAMILY POLICY CENTER AS AMICUS CURIAE IN SUPPORT OF APPELLANT

Timm W. Reid (PK1000016)
Galligan & Reid, P.C.
300 Walnut Street, Suite 5
Des Moines, IA 50309-2239
(515) 282-3333
(515) 282-0318 Fax
TReid@galliganlaw.com
Local Counsel

Byron J. Babione*
AZ Bar No. 024320
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 Fax
bbabione@telladf.org

**Pro Hac Vice Application Pending*

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

***Cases*:**

Statutes:

Other Authorities:

INTRODUCTION

While addressing an uncomplicated question of statutory construction, the district court lost its way in this case, thus requiring that this Court correct its misstep. In this brief, Amicus highlights four reasons why the district court erred in its attempt to construe the presumption of paternity codified in Iowa Code Section 144.13(2).

First, the plain terms of that statute demonstrate that its provisions do not require—or permit—Appellant Iowa Department of Public Health (the "Department") to list a mother's female spouse[1] as a parent on the child's birth certificate.

Second, the preeminent purpose of Section 144.13(2) is to provide an efficient method for identifying and recording the child's biological parents on her birth certificate. That purpose, quite plainly, does not support the district court's order that the Department must list a mother's female spouse as a parent on the child's birth certificate.

Third, this Court's opinion in *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009), did not purport to change the clear and unambiguous

[1] Amicus uses the phrase "mother's female spouse" throughout this brief, but the organization firmly holds that marriage by nature is between one man and one woman, that changing marriage's definition is unwise public policy, and that redefining marriage, as this case demonstrates, results in fictitious and unprecedented uses of family-law terms in a way that undermines sound public policy.

construction of Section 144.13(2); nor did the Court in that case have the authority to dictate a radically new interpretation of that statute.

Fourth, extending the presumption of paternity to a mother's female spouse raises weighty public-policy questions—discussed below—that should be considered by Iowans' elected legislative representatives rather than peremptorily decided by the judiciary through a novel and untenable interpretation of Section 144.13(2).

INTEREST OF THE AMICUS

The Iowa Family Policy Center (the "Center") is a 501(c)(3) organization that addresses the important public-policy issues facing families, children, and parents in this State. The Center endeavors to protect and defend family values by influencing public policy in Iowa. The Center believes strongly in the separation of government powers and thus advocates that critical social-policy issues should be addressed by the Iowa Legislature rather than through the courts, and that enacted statutes should be interpreted as the Legislature intended rather than recast by the judiciary.

In this case, the Center has a keen interest in the Court's interpreting Iowa Code Section 144.13(2) according to the plain and unambiguous language prescribed by the Legislature. The Center also has an interest in alerting the Court to some of the significant public-policy concerns lurking

within the questions raised in this case. Finally, the Center is interested in ensuring that these policy questions are reserved to the Legislature so that the Center can educate citizens and legislators about the important social issues involved in this policy debate.

ARGUMENT

I. The Plain Language of Section 144.13(2) Precludes its Application to a Mother's Female Spouse.

The district court held that the proper construction of Section 144.13(2) requires the Department to include a mother's female spouse as a parent on the child's birth certificate. Dist. Ct. Ruling at 11-12. But that reading of that statute, quite simply, is untenable.

When engaging in statutory construction, this Court has acknowledged that its role is to "apply the law as it was written by the legislature." *In re Name Change of Reindl*, 671 N.W.2d 466, 469 (Iowa 2003); *see also Consol. Freightways Corp. v. Nicholas,* 258 Iowa 115, 124, 137 N.W.2d 900, 906 (1965). This Court has thus instructed: "We do not search for meaning beyond the express terms of a statute when the statute is plain and its meaning is clear. We resort to rules of statutory construction only when the explicit terms of a statute are ambiguous." *Reindl*, 671 N.W.2d at 469 (citation omitted).

The terms of Section 144.13(2) could not be clearer. The Legislature provided that when a child's "mother" is married at conception or birth, "the name of the *husband* shall be entered on the [birth] certificate as the *father* of the child unless *paternity* has been determined otherwise." Iowa Code § 144.13(2) (emphasis added). The terms "husband," "father," and "paternity" unquestionably apply only to males. *See* Black's Law Dictionary 758 (8th ed. 2004) (defining "husband" as "[a] married man"); *id.* at 640 (defining "father" as "[a] male parent"); *id.* at 1163 (defining paternity as "[t]he state or condition of being a father"); *see also* Iowa Code § 144.12A(1)(c) (defining "[f]ather" as "the male, biological parent of a child"). These unambiguously sex-specific terms thus preclude this Court from looking beyond the clear language of Section 144.13(2) to divine a sex-neutral meaning or application.

II. The Prevailing Purpose of Section 144.13(2)—Efficiently Identifying Biological Paternity—Does Not Support its Application to a Mother's Female Spouse.

Even if this Court were to search beyond the plain language of Section 144.13(2) and scrutinize the law's "object," "purpose," and "underlying policies," *see Reindl*, 671 N.W.2d at 469, it should nevertheless conclude that the statute does not bestow "paternity" on a mother's female spouse.

The primary purpose of the presumption of paternity in Section 144.13(2) is to efficiently "determin[e] factual biological paternity." Marjorie Maguire Shultz, *Reproductive Technology and Intent-Based Parenthood: An Opportunity for Gender Neutrality*, 1990 Wis. L. Rev. 297, 317 (1990); *see also* Mary Patricia Byrn & Jenni Vainik Ives, *Which Came First the Parent or the Child?*, 62 Rutgers L. Rev. 305, 333 (2010) ("This presumption is founded on the belief that the birth mother's husband is the genetic father."). If there were any doubt on this point, it is telling that the foremost methods for rebutting the presumption—genetic testing, infertility, impotence, or absence during conception—all conclusively disqualify the husband as the child's biological father. *See In re Marriage of Schneckloth*, 320 N.W.2d 535, 536-38 (Iowa 1982); *Craven v. Selway*, 216 Iowa 505, 246 N.W. 821, 823 (1933), *overruled on other grounds by Schneckloth*, 320 N.W.2d at 537.[2]

The district court disagreed with the position that identifying biological parentage is the overriding purpose of Section 144.13(2), claiming

---

[2] That the State is preeminently concerned with identifying a child's biological parents on her original birth certificate is illustrated throughout Iowa law. A child's original birth certificate records "the facts of birth," *see* Iowa Code § 144.13(1)(b), (1)(c)(4), including the child's biological mother and (actual or presumptive) biological father, *see* Iowa Code § 144.13(2)-(3). Also, it should be noted that if an original birth certificate is not timely issued, the documentation for obtaining a delayed birth certificate must demonstrate the "[f]acts of parentage." Iowa Admin. Code 641-99.7(144).

that this Court instead "endorses" the view that the presumption of paternity is "meant to protect the integrity of families, regardless of . . . biological connections." Dist. Ct. Ruling at 11. But that unfounded conclusion misreads this Court's decision in *Callender v. Skiles*, 591 N.W.2d 182 (Iowa 1999). Unlike the United States Supreme Court in *Michael H. v. Gerald D.*, 491 U.S. 110, 125-26 (1989), which proclaimed as inviolate the policy of family integrity, this Court in *Callender* held that the "policy of promoting the sanctity and stability of the family" "is far from absolute," *see Callendar*, 591 N.W.2d at 191; that "the ability of family members to challenge paternity, and disrupt the family unit, reveals [that] the interests of the state" in promoting the sanctity of the family are "diminished" compared to the overriding policy of identifying biological parentage, *see id.*; and that a biological father's interest in establishing ties to his biological child *trumps* "the state's interest in . . . preserving the marital family," *see id.* at 190-91. In the light of this, the district court's reliance on *Callendar* in its attempt to elevate family integrity above biological truth is astounding

The district court also erred in subverting the prevailing policy—identifying a child's biological lineage—beneath the policy of "safeguard[ing]" children from the "humiliation and shame" of illegitimacy. Dist. Ct. Ruling at 11. That archaic illegitimacy-based policy is rooted in

ever-decreasing concerns of days gone by, which should not be used to obscure—let alone override—the Legislature's primary purpose of identifying a child's biological parentage. Indeed, this Court has acknowledged that "the decline of the stigma of illegitimacy" weighs in favor of discovering and recording biological "truth" rather than "perpetuat[ing] a falsehood." *See Callendar*, 591 N.W.2d at 191; *see also Richard W. v. Roberta Y.*, 212 A.D.2d 89, 92, 629 N.Y.S.2d 512, 514 (1995) ("[T]he presumption [of paternity] should not be utilized to perpetuate a falsehood"). The Court should similarly adhere to that guidance in this case and decline to apply the presumption of paternity in the unreasonable manner proposed by Petitioners. *See Bowers v. Bailey*, 237 Iowa 295, 297-98, 21 N.W.2d 773, 775 (1946) (only "reasonable presumption[s] will be admitted in favor of legitimacy").

The district court similarly went astray in relying on a pair of 1945 Attorney General opinions recommending that the registrar place the mother's husband's name on the birth certificate "even though he was away at war and could not possibly have fathered the wife's child." Dist. Ct. Ruling at 9. First, the primary rationale for those opinions was the social stigma associated with illegitimacy over 65 years ago, which, as mentioned above, has substantially abated over the years. *See Callendar*, 591 N.W.2d

at 191. Second, "Attorney General opinions are not binding on [this Court] nor entitled to the weight of precedent." *Bernklau v. Bennett*, 162 N.W.2d 432, 436 (Iowa 1968). These 1945 opinions are particularly unpersuasive due to, among other things, the declining stigma of illegitimacy and the materially different circumstances presented here (a mother's female spouse instead of a mother's male spouse). Third, applying the presumption when the mother claims that the husband was absent at the time of conception does not offend the policy of identifying biological origins to the same degree as applying the presumption here. There, the mother could misrepresent her husband's absence to the registrar, and in that circumstance, he could in fact be the child's biological father. Here, however, the mother's female spouse could never be the child's biological parent. Hence, applying the presumption there might accomplish the state's purpose, but applying the presumption here would necessarily thwart it.

Another relevant legislative policy emerges from a careful review of Iowa's birth-certificate laws, which is that the Department, in addition to creating a record of each child's biological progenitors, also preserves those records of lineage. Therefore, even though the state registrar may issue new or amended birth certificates, the Department cannot erase the record of the child's biological parents. The state registrar, for instance, generally must

include the word "amended" on subsequently issued birth certificates, *see* Iowa Code § 144.38;[3] the State typically cannot issue an amended birth certificate before issuing the original, *see* Iowa Code § 144.25; and the State retains all original birth certificates under seal, *see* Iowa Code § 144.25; Iowa Admin. Code 641-100.7(144). The Legislature thus demands that the Department maintain records (even if under seal) of a child's biological lineage, but Petitioners' suggested construction of this statute thwarts this goal by listing an indisputably non-biological female parent instead of the biological father on the child's original birth certificate.

III. *Varnum* Did Not Change the Proper Construction or Application of Section 144.13(2).

The factual and legal claims asserted in *Varnum*, the plain language of the *Varnum* Court's opinion, and well-established restrictions on judicial authority all demonstrate that this Court's opinion in *Varnum* did not change the appropriate construction of Section 144.13(2).

---

[3] The State will issue a new birth certificate without expressly noting that the new version amends the original only when the registrar receives a determination of paternity and "paternity is not shown on the [original] birth certificate." Iowa Code § 144.40. In those circumstances, the State is not replacing a child's biological parent, but simply adding a father where one was not previously designated. Thus, preserving the record of a child's biological parents does not require the Department to denote that a prior certificate exists.

Of course, the question presented here—whether the presumption of paternity in Section 144.13(2) should be extended to a mother's female spouse—was not presented to the *Varnum* Court. The legal injury claim by the plaintiffs in *Varnum* was not an inability to automatically place the name of a mother's female spouse on a birth certificate; after all, none of the *Varnum* plaintiffs were married in Iowa at the time they filed suit. Their asserted injury was an inability to marry a person of the same sex. *See Varnum*, 763 N.W.2d at 906 ("The sole remedy requested by plaintiffs is admission into the institution of civil marriage."). The *Varnum* Court thus did not have occasion to address the question presented here.[4]

Moreover, *Varnum* did not purport to address the question raised here. *Varnum* stated that "the remaining statutory language must be interpreted and applied in a manner allowing gay and lesbian people full access to the institution of civil marriage." *Varnum*, 763 N.W.2d at 907. This statement, however, is significantly limited in its scope and effect.

First, *Varnum* spoke only of allowing "access to the institution of civil marriage." *Id.* "Access" means the "opportunity or ability to *enter*." Black's Law Dictionary 14 (8th ed. 2004) (emphasis added). But of course,

---

[4] Ironically, the district court here insisted that its "holding is limited to the facts of this case," *see* Dist. Ct. Ruling at 11; but it ignored that this same limitation applies to this Court's opinion in *Varnum*.

the presumption of paternity in Section 144.13(2) has no bearing on a person's right to *enter* the institution of marriage; thus this passage from *Varnum* has no application here.

Second, even if *Varnum*'s reference to "the remaining statutory language" included every statute conferring a "right" of marriage, that language would not apply here because the presumption of paternity in Section 144.13(2) is not a mere right of marriage; instead, as explained above, it is an efficient device to determine biological paternity. In other words, this birth-certificate statute is a means to connect children to their biological parents rather than a means to bestow benefits on marital spouses.

Third, even if *Varnum*'s reference to "the remaining statutory language" included every statute containing the words "marriage," "married," "husband," "wife," or "spouse," *Varnum* surely cannot require that non-marital terms like "mother," "father," and "paternity" also be judicially rewritten.[5]

Furthermore, even if *Varnum* purported to opine on the question raised here, the Court's guidance would have amounted to an advisory opinion. Yet "[t]his court has repeatedly held that it neither has a duty nor

[5] In identifying "Iowa statutes affected by civil-marriage status," *Varnum* did not explicitly require that every identified statute—a list that excluded Section 144.13(2) in any event—be reread in light of the Court's opinion. *See Varnum*, 763 N.W.2d at 902 n.28.

the authority to render advisory opinions." *Hartford-Carlisle Sav. Bank v. Shivers*, 566 N.W.2d 877, 884 (Iowa 1997); *see also State ex rel. Turner v. Midwest Dev. Corp.*, 210 N.W.2d 525, 526 (Iowa 1973). Iowa courts (like all others throughout our nation) address legal issues incrementally—resolving only the questions raised in cases presented to them. *Varnum* thus cannot reasonably be said to speak to every implication of redefining marriage to include same-sex couples. No court has such broad power.

IV. Reconstructing Section 144.13(2) to Extend the Presumption of Paternity to a Mother's Female Spouse Raises Significant Public-Policy Questions Best Decided by the Legislature.

The district court's proposed reading of Section 144.13(2) would bring about a sea-change in legal parentage in this State, and most troublingly, it would do so without legislative approval. Determining parentage in Iowa for a child's original birth certificate has always been based on identifying the child's biological progenitors. *See, e.g.*, Iowa Code § 144.1(11) (indicating that a "mother" is the person from whom the child is expelled or extracted); *supra* Section II. But extending Section 144.13(2)'s presumption of paternity to a mother's female spouse creates a legal regime where "biology" becomes "quite beside the point." Susan Frelich Appleton, *Presuming Women: Revisiting the Presumption of Legitimacy in the Same-Sex Couples Era*, 86 B.U. L. Rev. 227, 259 (2006). Extreme judicial caution

is warranted here, for, as this Court has aptly recognized, "courts should [not] engage in 'uncontrolled social engineering.'" *See Callendar*, 591 N.W.2d at 191.

The legal revolution advocated by Petitioners raises many significant policy questions that should be addressed by the Legislature. One such question is whether the Legislature should prescribe that all birth certificates for children born to a mother with a female spouse presumptively do not record the child's biological origins. Social-science experts increasingly acknowledge that individuals raised by persons other than their biological mother and father "have great and nearly universal interest in their origins." Annette R. Appell, *The Endurance of Biological Connection: Heteronormativity, Same-Sex Parenting and the Lessons of Adoption*, 22 BYU J. Pub. L. 289, 303 (2008). These individuals want to "learn more about themselves and complete their sense of identity." *Id.* at 311. The State surely has an interest in shepherding these individuals along this nearly universal quest to determine their genetic ancestry.

In Iowa, upon reaching the age of majority, these individuals may obtain information about their biological lineage from their original birth certificates in limited circumstances. *See* Iowa Code § 600.16A(2)(b). Iowans' rights to review those records is likely to expand in light of the

overwhelmingly successful and rapidly expanding national movement to afford adults not raised by their biological mother and father greater access to their original birth certificates. *See* Elizabeth J. Samuels, *The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 Rutgers L. Rev. 367, 435-36 (2001) ("[T]he movement of the states toward greater openness" with these records "has been nationwide and its pace has been accelerating sharply in recent years."). Troublingly, however, if this Court were to transform the presumption of paternity as urged by Petitioners, it would eliminate any public record of the complete biological ancestry of children born to a mother with a female spouse. This intentional expunging of a child's biological lineage demands careful legislative consideration before it is embraced across this State.

The State too has an interest in maintaining accurate records of its citizens' biological ancestry. Anyone in the State may access an individual's original birth certificate, even if under seal, where "necessary to save [a] life . . . or prevent irreparable physical or mental harm." Iowa Code § 600.16A(2)(d). And "[t]he state registrar may inspect such sealed information for purposes of properly administering the vital statistics program." Iowa Admin. Code 641-100.7(144). But regrettably, in its efforts to save a life, prevent irreparable injury, or administer the vital-statistics

program, the State will not have access to an accurate genetic lineage for these children.

Another significant policy consideration is the instability of parental rights created when the State applies a rebuttable presumption to circumstances where at least four interested individuals have standing to rebut the presumption and will *necessarily* succeed in doing so. Obviously, a mother's female spouse is never the biological father of the mother's child, so in every one of those situations, the presumption created under Section 144.13(2) will be automatically rebutted simply by asserting a challenge. Standing to rebut the presumption in these circumstances would extend to the biological father, *see Callendar*, 591 N.W.2d at 192, the biological mother, *see* Iowa Code § 600B.41A(3)(a)(1), the child, *see id.*, and the mother's female spouse, *see id.*[6] Indeed, under Iowa's statutory scheme, all four of these individuals would be able to automatically disestablish the mother's female spouse's parentage, thereby fostering great instability

[6] Following the misbegotten logic of Petitioners' statutory construction, it would necessarily follow that the mother's female spouse would have standing to challenge the presumption. Iowa Code Section 600B.41A(3)(a)(1) gives "the established father" standing to overcome the presumption, and this Court in *Callendar* found that "the established father" includes the mother's husband who, of course, is presumed to be the child's biological father. *Callendar*, 591 N.W.2d at 185. Under Petitioners' view, then, the mother's female spouse would qualify as "the established father" under Section 600B.41A(3)(a)(1) and have standing to challenge her parental designation.

concerning the child's legal parentage. *See* Nancy D. Polikoff, *A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century*, 5 Stan. J. Civ. Rts. & Civ. Liberties 201, 248 (2009) ("A nonbiological mother would always be able to disestablish her parentage and thereby end her support obligation, and a biological mother would always be able to disestablish her partner's parentage, potentially eliminating contact between the nonbiological parent and her child.").

Finally, the question presented here raises significant concerns about treating female same-sex couples more favorably than male same-sex couples. Male same-sex couples concededly are not entitled to Section 144.13(2)'s presumption because neither man in the couple can qualify as the "mother" under Section 144.13(2). Yet the district court would find that female same-sex couples are entitled to the presumption even though neither woman in the couple can qualify as the "father" or legitimately claim "paternity" under Section 144.13(2). While the district court seemingly approved of this, the Legislature might not accept such disparate and

irrational treatment between male same-sex couples and female same-sex couples.[7]

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's ruling and remand with instructions to dismiss the Petition for Judicial Review.

[7] The district court ignored these broader policy implications because it claimed that its "holding [was] limited to the facts of this case" where "the child was conceived by use of *in vitro* fertilization with an anonymous sperm donor." Dist. Ct. Ruling at 11. Yet nothing in the text of Section 144.13(2) suggests that the presumption's application should hinge on the method of conception or the State's ability to ultimately identify the child's biological father. Plus, the district court overlooked the burden placed on the Department and the myriad opportunities for manipulation created by a scheme requiring the Department to apply the presumption to a mother's female spouse when "the child was conceived by use of *in vitro* fertilization with an anonymous sperm donor," while ignoring the presumption in all other instances involving a mother and her female spouse.

Respectfully submitted this the 20th day of April, 2012

By: _____

Timm W. Reid (PK1000016)
Galligan & Reid, P.C.
300 Walnut Street, Suite 5
Des Moines, IA 50309-2239
(515) 282-3333
(515) 282-0318 Fax
TReid@galliganlaw.com
Local Counsel

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because:

This brief contains 3,706 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Word 2007 Times New Roman 14 point.

April 20, 2012
Date

Timm W. Reid (PK1000016)
Galligan & Reid, P.C.
300 Walnut Street, Suite 5
Des Moines, IA 50309-2239
(515) 282-3333
(515) 282-0318 Fax
TReid@galliganlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies one copy of this Final Brief of the Iowa Family Policy Center as Amicus Curiae in Support of Appellant was served on the 20th day of April, 2012, upon the following persons via U.S. Mail:

Sharon K. Malheiro
Davis, Brown, Koehn, Shors & Roberts, P.C.
The David Brown Tower
215 10th Street, Suite 1300
Des Moines, IA 50309

Heather Adams
Hoover State Office Building
2nd Floor
Iowa Department of Justice
1305 E. Walnut
Des Moines, IA 50319

Camilla B. Taylor
Lambda Legal Defense and Education Fund, Inc.
Midwest Regional Office
11 East Adams, Suite 1008
Chicago, IL 60603

Kenneth D. Upton, Jr.
Lambda Legal Defense and Education Fund, Inc.
South Central Regional Office
3500 Oaklawn Ave., Suite 500
Dallas, TX 75219

and the original and 18 copies filed with the clerk of the supreme court:

Clerk of the Iowa Supreme Court
Judicial Branch Building
1111 E. Court Avenue
Des Moines, IA 50319

Tiffany Murphy

IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 12-0243

Heather Martin Gartner and Melissa Gartner, individually, and as next friends of Mackenzie Jean Gartner, a minor child, Plaintiffs-Appellees, vs. Iowa Department of Public Health, Defendant-Appellant.	On appeal from the Iowa District Court for Polk County District Court Case No. CE067807 Hon. Eliza J. Ovrom, District Judge

MOTION OF THE IOWA FAMILY POLICY CENTER FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT

Timm W. Reid (PK1000016)
Galligan & Reid, P.C.
300 Walnut Street, Suite 5
Des Moines, IA 50309-2239
(515) 282-3333
(515) 282-0318 Fax
TReid@galliganlaw.com
Local Counsel

Byron J. Babione*
AZ Bar No. 024320
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 Fax
bbabione@telladf.org

**Pro Hac Vice Application Pending*

Attorneys for Amicus Curiae

The Center's amicus brief will aid this Court by highlighting four reasons why the district court erred in its attempt to construe the presumption of paternity codified in Iowa Code Section 144.13(2).

First, the plain terms of that statute demonstrate that its provisions do not require—or permit—Appellant Iowa Department of Public Health (the "Department") to list a mother's female partner (recognized as her "spouse" under state law) as a parent on the child's birth certificate.

Second, the preeminent purpose of Section 144.13(2) is to provide an efficient method for identifying and recording the child's biological parents on her birth certificate. That purpose, quite plainly, does not support the district court's order to apply Section 144.13(2)'s presumption in this case.

Third, this Court's opinion in *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009), did not purport to change the clear and unambiguous construction of Section 144.13(2); nor did the Court in that case have the authority to dictate a radically new interpretation of that statute.

Fourth, extending the presumption of paternity to the circumstances of this case raises weighty public-policy questions that should be considered by Iowans' elected legislative representatives rather than peremptorily decided by the judiciary through a novel and untenable interpretation of Section 144.13(2).

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Motion of the Iowa Family Policy Center for Leave to File Brief as Amicus Curiae in Support of Appellant was served on the 20th day of April, 2012, upon the following persons via U.S. Mail:

Sharon K. Malheiro
Davis, Brown, Koehn, Shors & Roberts, P.C.
The David Brown Tower
215 10th Street, Suite 1300
Des Moines, IA 50309

Heather Adams
Hoover State Office Building
2nd Floor
Iowa Department of Justice
1305 E. Walnut
Des Moines, IA 50319

Camilla B. Taylor
Lambda Legal Defense and
Education Fund, Inc.
Midwest Regional Office
11 East Adams, Suite 1008
Chicago, IL 60603

Kenneth D. Upton, Jr.
Lambda Legal Defense and
Education Fund, Inc.
South Central Regional Office
3500 Oaklawn Ave., Suite 500
Dallas, TX 75219

and the original and 4 copies were filed with the clerk of the supreme court:

Clerk of the Iowa Supreme Court
Judicial Branch Building
1111 E. Court Avenue
Des Moines, IA 50319

Tiffany Murphy

Rule 31.25 - Form 2: *Application for Admission Pro Hac Vice -- Supreme Court.*

IN THE IOWA SUPREME COURT

Heather Martin Gartner and Melissa Gartner, individually, and as next friends of Mackenzie Jean Gartner, a minor child, Plaintiff(s), vs. Iowa Department of Public Health, Defendant(s).	Case No. 12-0243 APPLICATION FOR ADMISSION PRO HAC VICE **(Iowa Court Rule 31.14)**

The undersigned seeks permission to appear pro hac vice in the above-captioned proceeding.

Applicant shall complete all of the following:

Did the applicant seek admission pro hac vice in the proceedings below?

Yes ☐ No ☒

If yes, attach copies of all related documents.

a. Applicant's full name, residential address, and business address.

Byron J. Babione, Scottsdale, AZ 85254 (residential address)
Alliance Defense Fund, 15100 N. 90th Street, Scottsdale, AZ 85260 (business address)

b. The name, address, and phone number of each client sought to be represented.

Iowa Family Policy Center, *as amicus curiae*, 1100 N Hickory Blvd., Suite 107, Des Moines, IA 50327, (515) 263-3495

c. The courts before which the applicant has been admitted to practice and the respective periods of admission.

State Court	Date Admitted
Supreme Court of Virginia	October 15, 1993
New York State Supreme Court, Appellate Division, Fourth Department	February 1996
Supreme Court of Arizona	April 13, 2007
Federal Court	**Date Admitted**
District Court for the Eastern District of Virginia	April 29, 1994

District Court for the Northern District of New York ..... January 9, 1998

District Court for the Western District of New York ..... May 6, 2002

District Court for the Eastern District of Michigan ..... January 12, 2007

District Court of Arizona ..... April 30, 2007

United States Court of Appeals for the 4th Circuit ..... November 2, 1993

United States Court of Appeals for the 2nd Circuit ..... April 11, 2003

United States Court of Appeals for the 9th Circuit ..... February 8, 2005

United States Court of Appeals for the 6th Circuit ..... March 7, 2007

United States Court of Appeals for the 10th Circuit ..... April 1, 2008

United States Court of Appeals for the 1st Circuit ..... August 18, 2010

Supreme Court of the United States ..... January 24, 2011

d. Has the applicant ever been denied admission pro hac vice in this state?
Yes ☐ No ☒

If yes, on a separate page specify the caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

e. Has the applicant ever had admission pro hac vice revoked in this state?
Yes ☐ No ☒

If yes, on a separate page specify the caption of the proceedings, the date of the revocation, and what findings were made. Attach copies of all related documents.

f. Has the applicant ever been denied admission in any jurisdiction for reasons other than failure of a bar examination?
Yes ☐ No ☒

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the date of the denial, and what findings were made. Attach copies of all related documents.

g. Has the applicant ever been formally disciplined or sanctioned by any court in this state?
Yes ☐ No ☒

If yes, on a separate page specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

h. Has the applicant ever been the subject of any injunction, cease-and-desist letter, or other action arising from a finding that the applicant engaged in the unauthorized practice of law in this state or elsewhere?
Yes ☐ No ☒

If yes, on a separate page, specify the nature of the allegations, the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings. Attach copies of all related documents.

i. Has any formal, written disciplinary proceeding ever been brought against the applicant by a disciplinary authority or unauthorized practice of law commission in any other jurisdiction within the last five years?

Yes ☐ No ☒

If yes, on a separate page specify as to each such proceeding: the nature of the allegations, the name of the person or authority bringing such proceedings, the date the proceedings were initiated and finally concluded, the style of the proceedings, and the findings made and actions taken in connection with those proceedings. Attach copies of all related documents.

j. Has the applicant ever been placed on probation by a disciplinary authority in any other jurisdiction?

Yes ☐ No ☒

If yes, on a separate page specify the jurisdiction, caption of the proceedings, the terms of the probation, and what findings were made. Attach copies of all related documents.

k. Has the applicant ever been held formally in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders?

Yes ☐ No ☒

If yes, on a separate page specify the nature of the allegations, the name of the court before which such proceedings were conducted, the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. Attach to this application a copy of the written order or a transcript of the oral rulings and other related documents.

l. Has the applicant filed an application to appear pro hac vice in this state within the preceding two years?

Yes ☐ No ☒

If yes, on a separate page list the name and address of each court or agency and a full identification of each proceeding in which an application was filed, including the date and outcome of the application. Attach copies of all related documents.

m. I acknowledge my familiarity with the rules of professional conduct, the disciplinary procedures of this state, the standards for professional conduct, the applicable local rules, and the procedures of the court before which I seek to practice.

Yes ☒ No ☐

n. List the name, address, telephone number, and personal identification number of an in-state lawyer in good standing of the bar of this state who will sponsor the applicant's pro hac vice request.

Timm W. Reid (PK1000016), Galligan & Reid, P.C., 300 Walnut Street, Suite 5, Des Moines, IA 50309-2239, (515) 282-3333

o. I acknowledge that service upon the in-state lawyer in all matters connected with the proceedings will have the same effect as if personally made upon me.

Yes ☒ No ☐

p. If the applicant has appeared pro hac vice in this state in five proceedings within the preceding two years, the applicant shall, on a separate page, provide a statement showing good cause why the applicant should be admitted in the present proceeding.

q. On a separate page the applicant shall provide any other information the applicant deems necessary to support the application for admission pro hac vice.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

4/18/12
Date

Signature of applicant

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this application was served on the 20th day of April, 2012, upon the following persons via U.S. Mail:

Sharon K. Malheiro
Davis, Brown, Koehn, Shors & Roberts, P.C.
The David Brown Tower
215 10th Street, Suite 1300
Des Moines, IA 50309

Heather Adams
Hoover State Office Building
2nd Floor
Iowa Department of Justice
1305 E. Walnut
Des Moines, IA 50319

Camilla B. Taylor
Lambda Legal Defense and
Education Fund, Inc.
Midwest Regional Office
11 East Adams, Suite 1008
Chicago, IL 60603

Kenneth D. Upton, Jr.
Lambda Legal Defense and
Education Fund, Inc.
South Central Regional Office
3500 Oaklawn Ave., Suite 500
Dallas, TX 75219

and four copies were filed with the clerk of the supreme court:

Clerk of the Iowa Supreme Court
Judicial Branch Building
1111 E. Court Avenue
Des Moines, IA 50319

Tiffany Murphy