IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1464
Polk County No. CVCV052834

TYLER DIX, JASON CATTELL, JIMMY MCCANN, and JULIE ELLER,
Plaintiffs-Appellees/Cross-Appellants,

v.

CASEY'S GENERAL STORES, INC. and CASEY'S MARKETING COMPANY,
Defendants-Appellants/Cross-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE MICHAEL D. HUPPERT, DISTRICT COURT JUDGE

RESISTANCE TO APPLICATION FOR FURTHER REVIEW BY PLAINTIFFS-APPELLEES/CROSS-APPELLANTS TYLER DIX AND JASON CATTELL OF COURT OF APPEALS DECISION DATED JANUARY 9, 2020

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RESPONSE TO STATEMENT SUPPORTING FURTHER REVIEW

Plaintiffs/Cross Appellants Tyler Dix and Jason Cattell ("Dix" and "Cattell") argue that further review is warranted because the Court of Appeals' decision "directly" conflicts with the Iowa Supreme Court's precedent in interpreting Iowa Code § 730.5. However, this Court should deny further review and/or affirm the decision of the Court of Appeals pertinent to Dix and Cattell's claims, because the Opinion in fact upholds pre-existing Iowa law consistent with the legislature's intent.

First, the Court of Appeals' ruling that the "substantial compliance" standard applies to the entirety of Iowa Code § 730.5 is consistent with the Court's decision in *Sims v. NCI Holding Corp.*, 759 N.W.2d 340 (Iowa 2009), as well as Iowa courts' holdings on the level of compliance for other important statutory and legal schemes.

Second, the Court of Appeals' ruling affirming that Casey's substantially complied with Iowa Code § 730.5 as to the identification and methodology of selection for employees included in its April 6, 2016 drug testing pool should not be subject to further review. This issue does not meet the grounds for further review articulated in Iowa Rule of Appellate Procedure

6.1103(b), and the Court of Appeals' ruling that Casey's complied with the reasonable objectives of the statute was reasonable and supported.

Third, to the extent the Court accepts this matter on further review, the Court should hold that there is in fact a "causation" element to a claim under Iowa Code § 730.5(15). The requirement that a plaintiff's employment be adversely affected by an identified violation of the statute is wholly consistent with the language of § 730.5 that only "an aggrieved employee" may bring an action for affirmative relief. Iowa Code §730.5(15)(a)(1); *see also* Black's Law Dictionary 73, 1154 (11th ed. 2019) (defining "aggrieved" as "having legal rights that are adversely affected," and "aggrieved party" as "a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions").

BRIEF IN SUPPORT OF RESISTANCE TO FURTHER REVIEW

I. FACTUAL AND PROCEDURAL BACKGROUND

This case was commenced as four separate civil actions under Iowa Code § 730.5(15) by Appellants/Cross-Appellees Tyler Dix, Jason Cattell, Jimmy McCann, and Julie Eller—all former employees of Casey's General Stores, Inc.'s Ankeny Distribution Center, a warehouse. (Opinion, pp. 2, 4, 6).

The lawsuits arose from Casey's decision to drug test a random pool of its "safety sensitive" warehouse employees on April 6, 2016. (Opinion, p. 5).

Consistent with Iowa Code § 730.5, Casey's introduced a new drug testing policy in January 2016, which allowed drug testing of employees consistent with its written policy and procedural safeguards. (Opinion, p. 2–3). Dix and Cattell signed verification forms, acknowledging their receipt and understanding of the policy. (App. p. 109).

On April 5, 2016, Casey's sent its third-party testing vendor ARCpoint a list of 184 warehouse employees scheduled to work from 10:00am to 2:00pm the next day, and asked ARCpoint to select 90% of them for testing. (App. 109; 514-517). ARCpoint selected 167 of these employees for drug-testing, which included Dix and Cattell, as well as 17 alternates. (App. pp. 109, 508-511). On the date of the drug-test, April 6, 2016, several employees scheduled for the drug test were not at work due to calling in sick, vacation, or other schedule changes. (Dist. Ct. Opinion, p. 5; Tr. V.1 15:3-6, 98:7–23).

The urine specimen provided by Dix tested positive for marijuana, and he did not request a confirmatory test. (App. p. 114). The urine specimen provided by Cattell tested positive for marijuana and amphetamines, and he

did not request a confirmatory test. (App. p. 114). Dix and Cattell were terminated from employment with Casey's. (App. 114).

Following a bench trial, the case was appealed to the Court of Appeals, which issued a decision on January 9, 2020. (*See* Opinion).

II. ARGUMENT

A. The Court of Appeals' Holding that Substantial Compliance is the Correct Level of Compliance Necessary to Satisfy Iowa Code § 730.5 is Consistent with Iowa Supreme Court Precedent.

This Court has already held substantial compliance applies to Iowa Code § 730.5. *See Sims v. NCI Holding Corp*., 759 N.W. 2d 333, 338 (Iowa 2009). Dix and Cattell argue that because Iowa Code § 730.5 frequently uses the word "shall," the legislature intended strict compliance to apply. This same argument was made by the plaintiff in *Harrison v. Employment Appeal Bd.*, which Dix and Cattell rely upon at pages 9-10 of their Application for Further Review; however, the Court in *Harrison* explicitly did "not find it necessary to resolve" the level of compliance applicable to § 730.5. *Harrison v. Employment Appeal Bd.*, 659 N.W.2d 581, 585-86 (Iowa 2003) (declining to resolve the issue despite the plaintiff's argument that § 730.5 "requires strict compliance with its terms as evidenced by the legislature's frequent use of the word 'shall.'"). Six years later, in *Sims v. NCI Holding Corp*., the Could held

that substantial compliance applies to § 730.5. 759 N.W.2d at 338 (Iowa 2009) (holding "if the employer's actions fall short of strict compliance, but nonetheless accomplish the important objective of providing notice to the employee of the positive test result and a meaningful opportunity to consider whether to undertake a confirmatory test, the employer's conduct will substantially comply with the statute."). Dix and Cattell argue the *Sims* holding is a narrow exception applicable only to the notice requirement of § 730.5, and strict compliance applies to the remainder of the statute. Nothing in the *Sims* decision supports Dix and Cattell's argument.

Moreover, even if Dix and Cattell are correct that the statute's frequent use of the word "shall" means the language is mandatory, the standard for mandatory statutory provisions is still substantial compliance. *See Hedrick Cmty. Sch. Dist. v. S. Prairie Area Educ. Agency 15*, 433 N.W.2d 746, 751 (Iowa 1988) ("Substantial compliance is … still the standard by which we measure whether the mandatory duties were performed." (citing *Boyle v. Burt*, 179 N.W.2d 513, 515 (Iowa 1970) (statute defining mandatory duty can require only substantial compliance))); 1A Sutherland § 25:2 ("Characterizing a statute as mandatory, directory, prohibitory or permissive is in reality *the result of a determination as to what effect should be given to its provisions*;

and there is no essential, inherent, intrinsic, or constitutional difference in statutes whereby their character can be determined initially to understand their effect." (Emphasis added.)). This is also consistent with *Sims*, wherein the Court held substantial compliance is applicable to the notice requirement of the statute, despite the word "shall" being used numerous times in the notice requirement provision. *See* 759 N.W.2d at 338; Iowa Code § 730.5(j)(1).

"Failing to comply with every word of a statute is not fatal in every situation. What we require is substantial compliance, which we have defined as 'compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.'" *Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 48 (Iowa 2016) (Citations omitted). The objectives of the drug-free workplaces statute are "to protect an employer's right to ensure a drug-free workplace" and to "ensure the accuracy of any drug test serving as the basis for adverse employment action." *Sims*, 759 N.W.2d at 338. Requiring strict compliance with the "byzantine provisions" of § 730.5 would undermine rather than further the objectives of the drug-free workplaces statute. (Opinion, p. 11).

Therefore, the Court of Appeals correctly found substantial compliance applies to all mandates in § 730.5, and it is not necessary for the Court to further review this holding.

B. The Court of Appeals' Finding that Casey's Substantially Complied with Iowa Code § 730.5 in Testing and Terminating Dix and Cattell for Positive Drug Results Does Not Warrant Further Review.

In their Application, Dix and Cattell urge the Supreme Court to review and reverse the Court of Appeals' opinion with respect to whether Casey's substantially complied with Iowa Code § 730.5 prior to their confirmed positive drug tests. They argued multiple grounds of alleged noncompliance with the statute before the District Court and Court of Appeals, but apparently only seek further review of whether Casey's substantially complied with the statute in selecting the pool of employees for its April 6, 2016 drug test.

First, this issue does not meet any of the grounds set forth in Iowa Rule of Appellate Procedure 6.1103(1)(b), and there is no need for further review by the Iowa Supreme Court. Dix and Cattell did not articulate in their Statement of Further Review or Brief how or why this issue meets a ground for further review, and the Court has the discretion to reject any issues raised in an application. *See, e.g.*, *Gits Mfg. Co. v. Frank*, 855 N.W.2d 195, 197 (Iowa 2014). However, to the extent the Court exercises its discretion to

review this issue, it should find that the Court of Appeals properly applied Iowa law in finding Casey's selection of employees for testing substantially aligned with the language and intent of Iowa Code § 730.5.

Under the drug-free workplaces statute, there are two components to the selection process. Iowa Code § 730.5(8) addresses the identification of employees for unannounced drug testing, (or the "*who*"):

> **8. Drug or alcohol testing**. Employers may conduct drug or alcohol testing as provided in this subsection:
>
> a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:
>
> (1) The entire employee population at a particular work site of the employer except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.
>
> (2) The entire full-time active employee population at a particular work site except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee or who have been excused from work pursuant to the employer's working policy.
>
> (3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are

> scheduled to be at work at the time testing is conducted, other than employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

Iowa Code § 730.5(1)(*l*) defines the methodology for selecting employees for unannounced drug testing, (or the "*how*"):

> l. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, . . . , subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

The Court of Appeals properly held that Casey's substantially complied with these statutory provisions on both *who* and *how* it selected to drug test on April 6, 2016. (Opinion, pp. 18-19). "Substantial compliance" for purposes of the drug-free workplace statute is "compliance in respect to essential

matters necessary to assure the reasonable objectives of the statute." *See Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009) (citations omitted). As noted by the Court of Appeals, the purpose of the statutory selection criteria is "to ensure employees are selected 'based on a neutral and objective' process and each has 'an equal chance of selection for initial testing.'" (Opinion, p. 18-19 (citing Iowa Code § 730.5(1)(l)).

Dix and Cattell's arguments attempt to unreasonably exploit the "linguistic jungle" of Iowa Code § 730.5. *Walsh v. Wahlert*, 913 N.W.2d 517, 521 (Iowa 2018). Both the District Court and the Court of Appeals reasonably and appropriately found that Casey's selection procedures, while not perfect, "assured the reasonable objectives of the statute." (Opinion, p. 19). Taking each of Dix and Cattell's arguments in turn:

Casey's reasonably generated a list of employees anticipated to be "scheduled to be at work at the time the testing." See Iowa Code § 730(8)(*a*)(3). The day before the April 6, 2016 drug test, Casey's sent its third-party vendor ARCpoint a list of 184 employees scheduled to work the next day between 10:00 a.m. and 2:00 p.m. (the testing window). (App. pp. 514-517). Unbeknownst to Casey's Human Resources team, the warehouse employees' work schedules had changed after being sent in by the warehouse

supervisors. (Tr. V.1 15:3-6, 98:7–23). As such, some employees who were originally scheduled to work were instead absent due to calling in sick, vacation, leaving early, or switching to another shift. (Dist. Ct. Opinion, p. 5).

However, as pointed out by the District Court, the list was formed in good faith and based on the information available to Human Resources; "the fact that the eventual number of employees tested did not track exactly with the number contemplated when the initial list was selected" does not place Casey's selection out of substantial compliance. (Dist. Ct. Opinion, p. 15). Instead, due to the large number of warehouse employees anticipated to be at work,[1] to create a perfect list would have resulted in "a 'Sisyphean task' where testing would be perpetually frustrated due to unforeseen changes in personnel." (Dist. Ct. Opinion, p. 15).

Casey's use of "alternates" was in substantial compliance with the statute. As was correctly found by the District Court, the use of alternates "are not specifically referenced in §730.5, [but] neither are they precluded." (Dist. Ct. Opinion, p. 15 n.8). This is not an error in legislative omission as argued in Dix and Cattell's Application, and does not take Casey's out of substantial

[1] Casey's anticipated 184 would be at work during the testing window. (Dist. Ct. Opinion, p. 4; App. pp. 514-517)

compliance with the statute. Iowa Code § 730.5(1)(*l*) states only that selection for unannounced testing "shall be done based on a neutral and objective selection process by an entity independent from the employer," and that employees have "an equal chance of selection for initial testing." If selection methodology is consistent with these objectives, it is consistent with the statute. *See Sims*, 759 N.W.2d at 338 (affirming "substantial compliance" means compliance with reasonable objectives of the statute). There is more than one way to meet these objectives; the statute does not prescribe or prohibit any number of procedural particulars, such as the use of alternates.

Dix and Cattell's second argument against alternates based on Iowa Code § 730.5(9)(*f*) is both nonsensical and inconsistent with the unambiguous language of the statute. The rules of statutory interpretation require the Court to "enforce the plain language of the statute when the statute's language is unambiguous." *Vance v. Iowa Dist. Ct. for Floyd Cty.*, 907 N.W.2d 473, 477 (Iowa 2018). Iowa Code § 730.5(9)(*f*) states that, while an employee may create more than one pool of "safety-sensitive employees" for testing, each individual employee may only be placed in one such pool. The clear intent of this provision is to prevent a single employee from being placed in two different designated pools for testing; for instance, an employee cannot be

included in a "safety-sensitive" pool of warehouse workers being tested on Monday, and also a safety-sensitive pool of "forklift drivers" being tested on Tuesday. That is not what occurred in this case; Dix and Cattell were on a single list of 184 warehouse employees, from which 167 employees and 17 "alternates" were selected, in order to attempt to reach Casey's desired threshold of 90% warehouse employees for testing. (Opinion, p. 18; Dist. Ct. Opinion, p. 4-5). This was a single selection from a single designated pool.

Moreover, these arguments are moot because neither Dix nor Cattell were identified as alternates. (App. pp. 508-511). There is no connection between Dix and Cattells' confirmed positive drug tests and Casey's use of alternates, which as explained in Argument Section (C), prevents them from being "aggrieved" employees for purposes of this claim.

Casey's test was sufficiently random. For this argument, Dix and Cattell improperly focus on the end result of who was tested, not the selection methodology as prescribed by the statute. Even though all employees at work were tested on April 6, 2016, this was based on circumstance and unforeseen changes in employee attendance; this does *not* affect whether there was a

properly drawn pool.[2] (Opinion, p. 19; Dist. Ct. Opinion p. 15 (noting the discrepancies between the list of anticipated employees provided to ARCPoint and those actually tested only resulted in "a slightly different list of employees [to be tested] that covered approximately 90% (the desired percentage) of the employees at work on the day of testing.")). The District Court and Court of Appeals properly affirmed that Casey's selection was substantially compliant in this particular.

Moreover, in support of this argument, Dix and Cattell concoct a fictitious "nightmare scenario" in which an employer "targets" an individual employee for drug testing through non-scheduled and alternate employees. Such a scenario is non-sensical, highly unlikely to occur, and is not a realistic risk of "broad public importance" warranting further review.

First, the legislature did not consider large-scale employee testing to be problematic. Under Iowa Code § 730.5, "entire employee populations at

[2] Notably, Iowa Code § 730.5 contains no minimum or maximum percentage or selection rate, as is the case under federal Department of Transportation drug-testing rules. *Compare* Iowa Code § 730.5, *with* https://www.fmcsa.dot.gov/regulations/notices/2019-28164 (increasing the minimum annual percentage rate for random controlled substances testing to 50 percent of the average number of driver positions."). The omission of a maximum selection rate indicates the legislature did not intend to impose one. *See Eaton v. Iowa Emp't Appeal Bd.*, 602 N.W.2d 553, 556 (Iowa 1999).

particular work sites" and "entire full-time active employee populations" can be subject to unannounced drug testing, as well as employees in designated "safety-sensitive pools." *See* Iowa Code § 730.5(8). Contrary to Dix and Cattell's suggestion, large-scale or "across-the-board" testing is permissible under the drug-free workplaces statute.

Second, it does not make logical sense for an employer to "target" a single employee by drug testing a whole employee population. Drug testing, especially large groups, is expensive, time-consuming, and requires third-party vendors for selection, testing, and confirmatory testing. *See, e.g.*, Iowa Code § 730.5(1)(*l*) (requiring use of a third-party vendor for randomized employee selection); *id*. § 730.5(6)(*b*) ("An employer shall pay all actual costs for drug or alcohol testing of employees[.]); *id*. § 730.5(6)(*c*) ("An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site."); *id*. § 730.5(7)(*h*) ("A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results[.]").

Also, employees in Iowa are generally "at-will," meaning they can be terminated at any time, for any lawful reason. *See, e.g.*, *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 281 (Iowa 2000). Using a controlled substance is **not** protected activity or conduct. If an employer believes an individual employee is using a controlled substance and/or under the influence at work, an employer can either perform a "reasonable suspicion" drug test, *see* Iowa Code § 730.5(6)(*c*) or conduct a Human Resources investigation into the employee's behavior. Even in the unlikely scenario that an employer is motivated to terminate an individual employee for an unlawful reason and institutes an "across-the-board" drug test in order to do so, the "targeted" employee would still have to have a confirmed positive drug test in order to be terminated under Iowa Code § 730.5. *See id*. § 730.5(9)(b) ("The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test."). In other words, Dix and Cattell's argument is a thinly-veiled attempt to use the complicated procedures of Iowa Code § 730.5 to insulate employees who test positive for drugs from testing or adverse employment action, which is not the intent of the statute.

Overall, to adopt Dix and Cattell's interpretation of "substantial compliance" in these particulars would require perfection, or for an employer never to drug test at all, which are not the objectives of Iowa Code § 730.5. *See Sims*, 759 N.W.2d at 338 (stating the law is "intended to protect an employer's right to ensure a drug-free workplace"). Further review is not warranted on the issue of Casey's substantial compliance with Iowa Code § 730.5 in its identification and methodology for selecting Dix and Cattell to drug test.

C. The Court of Appeals' Holding that Dix and Cattell were Not Entitled to Relief Because Casey's Substantially Complied with Iowa Code § 730.5 as to Dix and Cattell is Consistent with Iowa Supreme Court Precedent.

Dix and Cattell concede their inclusion in the testing pool was proper, and they do not challenge the accuracy of their positive drug test results. Nonetheless, Dix and Cattell argue that because the Court of Appeals found other employees—namely, McCann and Eller—were not properly included in the April 6 selection pool[3], Dix and Cattell's positive drug tests were "fruit of

[3] Casey's Application for Further Review filed January 30, 2020 challenges the Court of Appeals Opinion in this regard, whereby Casey's designation of an employment position as "safety-sensitive" for purposes of random pool drug testing was supplanted by the court's interpretation of whether the positions' job duties are "safety-sensitive."

the poisonous tree" and Casey's could not terminate them based on their positive drug test results for marijuana or marijuana and amphetamines, respectively.[4] In other words, Dix and Cattell argue their terminations were illegal because they *might* not have been selected for testing from a different pool of employees. Dix and Cattell's argument is essentially a "butterfly effect" argument; or that one or more changes in preceding variable events may or may not cascaded into their non-selection for the drug test. This argument should be rejected because it is not only undisputed that Dix and Cattrell were properly included in the drug-testing pool as "safety-sensitive" warehouse employees subject to testing, it is highly likely they would have

[4] Dix and Cattell rely on the language in *Harrison* and *Eaton* that an employer cannot "benefit" from an unauthorized drug test. Casey's would note the "benefit" to the employer referenced in those cases was not the fact the employee was terminated, but was the denial of unemployment benefits to the employee following termination based on the positive drug test result. *Eaton v. Iowa Employment Appeal Bd.*, 602 N.W.2d 553, (Iowa 1999) (holding "the agency erred in ruling that the employer had established misconduct based on Eaton's positive drug test" because "[i]t would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits."); *Harrison v. Employment Appeal Bd.*, 659 N.W.2d 581, 589 (Iowa 2003) (holding the agency "erred in relying on the results of Harrison's drug test in deciding that he was not entitled to unemployment benefits.").

been included in a differently drawn pool, given that Casey's desired to test 90% of the warehouse employees.

Moreover, Dix and Cattell concede that only an "aggrieved employee" may recover under the statute. *See* Iowa Code § 730.5(15)(a)(1). "Aggrieved" means "having legal rights that are adversely affected," and "aggrieved party" means "a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions." Black's Law Dictionary 73, 1154 (11th ed. 2019). As the Court noted in *Sims*, an employee who *accurately* tests positive for drugs has not been "adversely affected by an erroneous test result." *Sims*, 759 N.W.2d at 340 (holding employee was not entitled to relief where employer found not in substantial compliance with the notice provision of section 730.5, but finding the plaintiff's employment was not adversely affected by the noncompliance). Dix and Cattell could not succeed upon their section 730.5 claims because they were not adversely affected by any non-compliance with the statute—i.e. they were not "aggrieved employee[s]".

Moreover, because the objectives of the statute are "to protect and employer's right to ensure a drug-free workplace" and "to ensure the accuracy of any drug test serving as the basis for adverse employment action," when

the positive results are concededly accurate, the essential purposes of the statute have been served—substantial compliance exists. *See id.* at 407 ("'Substantial compliance is said to be compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.'" (Citation omitted)). While § 730.5(15)(b) places the burden on the employer to prove "that the requirements of this section were met," nothing in § 730.5 shifts the burden to the employer as to causation (i.e. whether the employee is an "aggrieved employee.").

The Court of Appeals correctly found Casey's substantially complied with § 730.5 as to the drug tests of Dix and Cattell, thereby preventing Dix and Cattell from recovering under the statute. Such holding is not inconsistent with precedent, and further review on this issue is not warranted.

CONCLUSION

The Court of Appeals correctly applied this Court's precedents in favor of Casey's on the claims of Dix and Cattell. Accordingly, further review of Dix and Cattell's claims should be denied.

Respectfully submitted,

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CERTIFICATE OF FILING

The undersigned hereby certifies that the Resistance to Application for Further Review of the Appellant was electronically filed via the Iowa Supreme Court's Electronic Data Management System (EDMS) on the 10th day of February, 2020.

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CERTIFICATE OF SERVICE

It is hereby certified that on the 10th day of February, 2020, the undersigned party, or person acting on its behalf, did file via EDMS the foregoing document, which gives notice thereof to the following:

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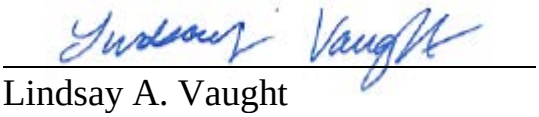

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOUME LIMITATION FOR AN APPLICATION FOR FURTHER REVIEW

This Application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

> This Application has been prepared in a proportionally spaced typeface using Microsoft Word Times New Roman in size 14 font, and contains 4,382 words, excluding the parts of the Application exempted by Iowa R. App. P. 6.1103(4)(a).

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