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**IN THE SUPREME COURT OF IOWA**

**SUPREME COURT NO. 22-1257**

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MARY KATHRYN C. WALLACE,

Petitioner-Appellant,

vs.

KRISTIN W. WILDENSEE and MARY KATHRYN C. WALLACE,

As Executors of the Estate of Douglas Ayer Wallace,

Respondent-Appellee.

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APPEAL FROM IOWA DISTRICT COURT FOR JOHNSON COUNTY

Johnson County No. DRCV083264

HONORABLE PAUL MILLER

SIXTH JUDICIAL DISTRICT OF IOWA

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APPELLANT'S FINAL BRIEF

AND

REQUEST FOR ORAL ARGUMENT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... 4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW ..... 6

ROUTING STATEMENT..... 9

STATEMENT OF THE CASE ..... 9

STATEMENT OF FACTS ..... 11

ARGUMENT ..... 15

I. THE COURT HAS LEGAL AUTHORITY AND OBLIGATION TO ENFORCE AN INTERSPOUSAL AGREEMENT REGARDING CONVEYANCE OF A PENSION ACCOUNT OWNED BY A MARRIED PERSON TO THE OTHER SPOUSE.....15

    A. CHAPTER 597 ALLOWS A COURT IN IOWA TO ISSUE A DOMESTIC RELATIONS ORDER DIVIDING A PENSION COVERED BY FEDERAL LAW.....15

    B. THE COURT IS NOT REQUIRED TO FIND A CASE OR CONTROVERSY EXISTS TO ENFORCE A MARITAL AGREEMENT REGARDING THE DIVISION OF A PENSION COVERED BY FEDERAL LAW.....20

II. THE REFUSAL TO IMPLEMENT A MARITAL PROPERTY AGREEMENT BY A MARRIED COUPLE BY ENTRY OF A QDRO WITHOUT A DIVORCE OR LEGAL SEPARATION VIOLATES PUBLIC POLICY.....27

III. EQUAL PROTECTION REQUIRES THAT A MARRIED COUPLE BE TREATED THE SAME AS A DIVORCING COUPLE REGARDING THEIR RECOURSE UNDER THE FEDERAL LAW AUTHORIZING

CONVEYANCE OF PENSION RIGHTS, TO ENFORCE A MARITAL AGREEMENT PROPERLY FORMED UNDER STATE DOMESTIC RELATIONS LAW.....29

CONCLUSION AND REQUEST FOR RELIEF..... 33

REQUEST FOR ORAL SUBMISSION.....33-34

CERTIFICATE OF FILING AND PROOF OF SERVICE.....34

ATTORNEY'S COST CERTIFICATE..... 34

CERTIFICATE OF COMPLIANCE.....35

## TABLE OF AUTHORITIES

### Cases

<i>Acuff v. Schmit</i> , 1956, 78 N.W.2d 480, 248 Iowa 272 (Iowa 1956).....	31
<i>ASARCO Inc. v. Kadish</i> , 490 U.S. 605 (1989).....	20-21
<i>Clark by Clark v. Iowa Dep't of Hum. Servs.</i> , 555 N.W.2d 472 (Iowa 1996).....	20
<i>Eisenstadt v. Baird</i> , 405 U.S. 438, 438, 92 S. Ct. 1029, 1031, 31 L. Ed. 2d 349 (1972).....	31
<i>Haywood v. Drown</i> , 556 U.S. 729 (2009).....	22, 23
<i>In re Marriage of Brown</i> , 776 N.W.2d 644 (Iowa 2009).....	24, 25, 27, 33
<i>In re Marriage of Bruns</i> , 535 N.W.2d 157 (Iowa Ct. App. 1995).....	19, 26
<i>In re Marriage of Hiller &amp; Nelsen</i> , 909 N.W.2d 442 (Iowa Ct. App. 2017).....	26
<i>In re Marriage of Mau</i> , 964 N.W.2d 358 (Iowa Ct. App. 2021).....	24
<i>In re Marriage of Morris</i> , 810 N.W.2d 880 (Iowa 2012).....	25
<i>In re Marriage of Sullins</i> , 715 N.W.2d 242 (Iowa 2014).....	23
<i>In re Marriage of Veit</i> , 797 N.W.2d 562, 564 (Iowa 2011).....	24
<i>In re Marriage of Vrban</i> , 293 N.W.2d 198 (Iowa 1980).....	31
<i>Laws v. Griep</i> , 332 N.W.2d 339 (Iowa 1983).....	28
<i>Matter of Est. of Wulf</i> , 471 N.W.2d 850 (Iowa 1991).....	16
<i>Sieren v. Bauman</i> , 436 N.W.2d 43 (Iowa 1989).....	32
<i>State v. Mitchell</i> , 757 N.W.2d 431 (Iowa 2008).....	30
<i>Redmond v. Carter</i> , 247 N.W.2d 268 (Iowa 1976).....	31
<i>Rohrbeck v. Rohrbeck</i> , 318 Md. 28, 566 A.2d 767 (1989).....	17, 18, 32

### State Statutes:

Code Chapter 597

§ 597.2.....	16
§ 598.3.....	16, 17, 20
§ 597.4.....	16
§ 597.18.....	26
§ 602.6101.....	21

**Federal Statutes:**

29 U.S.C. § 1056.....	17, 18
ERISA § 206(d)(3)(B)(i).....	18
ERISA § 514(a).....	20
ERISA § 514(b)(7).....	20
IRC § 414(p)(1)(A); (B).....	17, 18, 20

**Rules**

I.R.App.P. 6.14(6)(g).....	7, 15, 27, 30
I.R.App.P. 6.907.....	15, 27, 30
I.R.App.P. 6.1101.....	9
I.R.Civ.P. 1.904.....	11
U.S. Constitution Article III, § 2.....	20
U.S. Constitution, 14 <sup>th</sup> Amendment.....	30
Iowa Constitution, Article V., Section 6.....	21

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### I. THE COURT HAS LEGAL AUTHORITY AND OBLIGATION TO ENFORCE AN INTERSPOUSAL AGREEMENT REGARDING CONVEYANCE OF A PENSION ACCOUNT OWNED BY A MARRIED PERSON TO THE OTHER SPOUSE

Iowa R. App. P. 6.907

I.R. App. P. 6.14(6)(g)

#### A. CHAPTER 597 ALLOWS A COURT IN IOWA TO ISSUE A DOMESTIC RELATIONS ORDER DIVIDING A PENSION COVERED BY FEDERAL LAW

Iowa Code § 597.2

Iowa Code § 597.4

Iowa Code § 597.3

*Matter of Est. of Wulf*, 471 N.W.2d 850 (Iowa 1991)

*In re Marriage of Bruns*, 535 N.W.2d 157, 161–62 (Iowa Ct. App. 1995)

ERISA 1056(d)(3)(A)

29 U.S.C. § 1056(d)(3)(B) (i)

ERISA § 206(d)(3)(B)(i)

IRC § 414(p)(1)(A)

I.C. §597.18,

#### B. THE COURT IS NOT REQUIRED TO FIND A CASE OR CONTROVERSY EXISTS TO ENFORCE A MARITAL AGREEMENT REGARDING THE DIVISION OF A PENSION COVERED BY FEDERAL LAW

U.S. Constitution, Article III, § 2

*ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989)

*Haywood v. Drown*, 556 U.S. 729 (2009)

Iowa Code section 602.6101

Iowa Constitution, Article V., Section 6.

*In re Marriage of Sullins*, 715 N.W.2d 242 (Iowa 2014)

*In re Marriage of Brown*, 776 N.W.2d 644 (Iowa 2009)

*In re Marriage of Veit*, 797 N.W.2d 562 (Iowa 2011)

*In re Marriage of Mau*, 964 N.W.2d 358 (Iowa Ct. App. 2021)

*In re Marriage of Hiller & Nelsen*, 909 N.W.2d 442 (Iowa Ct. App. 2017)

*In re Marriage of Bruns*, 535 N.W.2d 157 (Iowa Ct.App.1995)

*In re Marriage of Morris*, 810 N.W.2d 880 (Iowa 2012)

II. THE REFUSAL TO IMPLEMENT A MARITAL PROPERTY AGREEMENT BY A MARRIED COUPLE BY ENTRY OF A QDRO WITHOUT A DIVORCE OR LEGAL SEPARATION VIOLATES PUBLIC POLICY

I.R.App.P. 6.907

I.R.App.P. 6.14(6)(g)

*Laws v. Griep*, 332 N.W.2d 339 (Iowa 1983)

III. EQUAL PROTECTION REQUIRES THAT A MARRIED COUPLE BE TREATED THE SAME AS A DIVORCING COUPLE REGARDING THEIR RECOURSE UNDER THE FEDERAL LAW AUTHORIZING CONVEYANCE OF PENSION RIGHTS, TO ENFORCE A MARITAL AGREEMENT PROPERLY FORMED UNDER STATE DOMESTIC RELATIONS LAW

I.R.App.P. 6.907.

I.R.App.P. 6.14(6)(g)

U.S. Constitution, 14th Amendment

Iowa Constitution, Article V., Section 6.

*State v. Mitchell*, 757 N.W.2d 431 (Iowa 2008)

*Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349  
(1972)

*Acuff v. Schmit*, 78 N.W.2d 480, 248 Iowa 272 (Iowa 1956)

*Redmond v. Carter*, 247 N.W.2d 268 (Iowa 1976)

*In re Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980)



## **ROUTING STATEMENT**

Appellant requests that the Supreme Court retain this case as we believe this case presents a substantial issue of first impression, and which presents a fundamental and urgent issue of broad public importance requiring prompt or ultimate determination by the supreme court, and which presents substantial questions of enunciating or changing legal principles. See, I.R.App.P. 6.1101.

## **STATEMENT OF THE CASE**

The underlying issues in this case were first presented to the District Court in Johnson County Iowa case DRCV083001, filed November 18, 2021. The matter was submitted to the court without hearing and the court entered an Order on December 8, 2021, denying without prejudice the request to enforce their interspousal agreement to divide a marital pension by adopting their proposed Domestic Relations Order. The court objected on three grounds and suggested that the parties supplement their pleadings and request a hearing.

Subsequently, on March 14, 2022, the parties filed a Joint Petition for Enforcement of Interspousal Agreement by Adopting Proposed Domestic Relations Order. (Apx. 4) Attached thereto was an Affidavit

by Mary Kathryn C. Wallace (hereinafter “Mary Kathryn”) along with her duly executed Iowa Statutory Power of Attorney regarding her husband, Douglas A. Wallace (hereinafter “Doug”); an Amended Interspousal Agreement; and a proposed Domestic Relations Order (hereinafter “DRO”). Mary Kathryn represented herself pro se and Doug was represented by attorney Hilary Strayer.

Doug’s attorney submitted a Memorandum of Law in support of the Petition. (Apx. 8) Said Memorandum specifically referenced the prior case in efforts to address and remedy the three deficiencies previously noted by the court. Accompanying the Memorandum was an Affidavit by Jamie Long, the Chief Patient Advocate at GolderCare Solutions Unlimited, LLC. (Apx. 19) Mr. Long’s affidavit explained his experience with using QDROs in cases such as this.

Mary Kathryn requested a hearing on the matter. (Request for Hearing filed 3/14/2022) At the hearing the parties waived a court reporter and proceeded informally before Judge Paul Miller April 20, 2022, on the written record, testimony, and oral argument. (Apx. 24) The court issued its written ruling by Order dated May 9, 2022. (Apx. 24) The court referenced the prior case and quoted the prior court ruling

dismissing that case. (Apx. 24) It also acknowledged the submission by Doug's attorney of two Iowa cases in the same vein approved by other courts. (Apx. 25) The court ruled that "there is no case or controversy for this court to decide", and found that Iowa Code Chapter 597, relied on the by Petitioners, did not grant jurisdiction for this cause and denied the Petition. (Apx. 25)

Petitioners timely filed a Motion to Reconsider pursuant to I.R.Civ.P. 1.904 May 24, 2022. (Apx. 27) The court issued its Order on June 29, 2022, reaffirming its prior decision that the case does not present a justiciable case or controversy and that Chapter 597 does not grant jurisdiction to approve the parties' agreement. (Apx. 35)

Petitioners timely filed Notice of Appeal on July 29, 2022. (Apx.37)

### **STATEMENT OF FACTS**

Mary Kathryn and Douglas Wallace are in their twilight years; they are both 83 years old. (Apx. 27-28) They were married on July 22nd, 1961, and have remained together for over 60 years. (Apx. 39) By Mary Kathryn's account, it has been a long and happy marriage. (Apx. 39-40; Apx. 48) They have resided in Johnson County since 1992. (Apx. 4) As frequently occurs in older years, Doug has become unable to live

in the community. (Apx. 39) As the record reflects, he has developed Parkinson's disease and is in need of full-time care. (Apx. 39) Mary Kathryn remains in the family home. At the time of the hearing, Doug resided at Legacy Gardens, an assisted living facility. (Apx. 39) Prior to his disability, Doug transferred a power of attorney to his wife and lifetime partner, on May 27, 2021. (Apx. pp. 39; 47) That power authorizes her to make transactions involving his pension rights, and specifically authorizes self-dealing and making gifts to herself. (Apx. pp. 42, 44, 45)

Like any responsible couple, Mary Kathryn and Doug sought financial guidance to plan for their retirement. (Apx. 9) The record contains an affidavit from Jamie Long, a specialist in long term planning. (Apx. pp. 19-23) Long assisted the parties in seeking a way to restructure ownership of their assets to the benefit of both parties as their needs continue to change with advancing age and health changes. (Apx. pp. 19-23) They determined it would be best to transfer Doug's pension account to Mary Kathryn. (Apx. 20-21) Doug is no longer available to assist Mary Kathryn in household chores, caretaking, and day-to-day activities. For Mary Kathryn to be adequately able to care

for Doug and herself, she needs funds to maintain herself in their home in the community and a means of transportation to visit him. Their main asset is a pension plan account accumulated by Doug over the course of a lifetime of work. (Apx. 22) The parties intended to retire together, but unfortunately that is no longer possible. (Apx. 20)

Due to the nature of pension plans controlled by ERISA, Doug cannot simply transfer his share to Mary Kathryn. (Apx. 13) Under federal law, such a transfer requires state court intervention by way of a state court domestic relations order for a qualified domestic relations order, QDRO. (Apx. 12-13) To that end, they entered into a contract for Doug to transfer his share of the pension plan to Mary Kathryn so that she can live in the community and maintain her lifestyle. (Apx. 48-50) Jamie Long is a care management and advocacy specialist who helps families bridge the gap in managing their loved ones' long-term care. (Apx. 19) On his advice, they approached the court for the domestic relations order needed to enforce the contract between them transferring Doug's pension account to Mary Kathryn. (Apx. 19-23)

Mary Kathryn initially filed a petition to enforce an interspousal agreement for transfer of assets in 2021. (Apx. 4) The first court

declined to enter the qualified domestic relations order on three separate grounds: the court questioned whether there was sufficient consideration for the agreement, whether it was a ripe controversy for the court to decide, and rejecting the authorities cited by the parties believing it did not have the authority to enter a domestic relations order without a dissolution of marriage action or separate maintenance action. (Apx. 24-25)

The first court declared that because the parties agreed that their contract was enforceable, there was no ripe controversy. (Apx. 8, 24-25) That court stated that there was no action necessary to enforce their agreement, that they need only to execute it. This language was repeated by the trial court in the case at bar. (Apx. 24)

Time is of the essence in a case such as this. Doug's condition cannot be ameliorated. Mary Kathryn's first attempt to obtain a QDRO ended in defeat. However, she did take the court's advice and modified and refiled her petition to enforce the parties' agreement through a QDRO, with additional information and explanation. (Apx. 4. 8-18) Unfortunately, that attempt ended with a second court essentially declining jurisdiction on the basis of lack of a case or controversy, and

lack of jurisdiction under chapter 597, the statute relied on by the Petitioner. (Apx. 24-25) Doug's attorney timely filed a Motion to Reconsider and an additional memorandum of law, which was again denied by the same judge. (Apx. 27, 35) This appeal is their last hope to put into place the plan they believe best suits their current and ongoing financial and healthcare needs.

## ARGUMENT

### I. THE COURT HAS LEGAL AUTHORITY AND OBLIGATION TO ENFORCE AN INTERSPOUSAL AGREEMENT REGARDING CONVEYANCE OF A PENSION ACCOUNT OWNED BY A MARRIED PERSON TO THE OTHER SPOUSE

Preservation of Error. Mary Kathryn properly preserved error on this issue through the Memorandum of Law, her Affidavit, the Affidavit of Jamie Long, and by argument and testimony at the hearing.

Standard of Review. This matter was tried in equity and review of equity cases is de novo. Iowa R. App. P. 6.907. The reviewing court gives weight to the facts found by the trial court but is not bound by them.

I.R. App. P. 6.14(6)(g).

### A. CHAPTER 597 AUTHORIZES IOWA COURTS TO ISSUE DOMESTIC RELATIONS ORDERS DIVIDING PENSIONS COVERED BY FEDERAL LAW

Married residents of Iowa explicitly have the right to make

contracts with one another the same as unmarried persons under Iowa Code Chapter 597. “When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, *except as provided in this chapter*. Iowa Code § 597.2.<sup>1</sup> Further on, Chapter 597 provides the mechanism for spouses to contract with one another. “A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.” Iowa Code § 597.4. Specifically, when a spouse obtains an interest in the property of the other, “[s]hould the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action therefore, or for any right growing out of the same, in the same manner and extent as if they were unmarried.” Iowa Code § 597.3.

The parties’ intention is to transfer Doug’s 401K pension plan

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<sup>1</sup> The Iowa Supreme Court has clarified that “[w]e have narrowly interpreted section 597.2, however, not to limit all transactions between husband and wife, but to shield one spouse's dower interest from exploitation by the other. *Young v. Young–Wishard*, 227 Iowa 431, 436, 288 N.W. 420, 423 (1939); *Garner v. Fry*, 104 Iowa 515, 518–19, 73 N.W. 1079, 1080 (1898).” *Matter of Est. of Wulf*, 471 N.W.2d 850, 853 (Iowa 1991) There is no dower interest in pension accounts because they are governed by Federal ERISA law, which preempts state law.



account to Mary Kathryn. However, they are unable to complete the transfer of legal title without a QDRO due to Federal ERISA law, as set forth below, so they entered into an interspousal agreement, and they are requesting the court to enforce the agreement and complete the transfer. (Apx. 48-50)

Mary Kathryn, as equitable owner, brought this action to obtain the legal title to the account, as permitted under Iowa Code § 597.3.

The Iowa Court of Appeals has summarized the purpose of ERISA and its anti-alienation provisions as follows:

The Employee Retirement Income Security Act of 1974, Pub.L. No. 93–406, 88 Stat. 829, (ERISA) was enacted by Congress to provide protection for participants and beneficiaries of employee pension plans in the private work place. One of the key components of the act was the spend-thrift provision, which prevents plan participants from assigning or alienating their plan benefits. In response to efforts by dependents and former spouses to obtain benefits from plans to satisfy family support obligations, Congress created an exception to the spend-thrift provision by enacting the Retirement Equity Act of 1984, Pub.L. No. 98–397, 98 Stat. 1433 [hereinafter REA]. *Baird*, 843 S.W.2d at 391; see also *American Tel. & Tel. Co. v. Merry*, 592 F.2d 118, 121–25 (2nd Cir.1979). This Act amended ERISA to allow participants of a pension plan to alienate or assign benefits if done pursuant to a QDRO. REA, §§ 104, 204 (codified as amended at 29 U.S.C. § 1056(d), 26 U.S.C. § 401(a)(13), 414(p) (1988)). ERISA otherwise preempts efforts to alienate or assign benefits by domestic relations orders that do not qualify as a QDRO. See *Rohrbeck*, 566 A.2d at 770–71.

ERISA does not require a QDRO to be part of the actual judgment

in a case. *Baird*, 843 S.W.2d at 392; *Rohrbeck*, 566 A.2d at 771.

In re Marriage of Bruns, 535 N.W.2d 157, 161–62 (Iowa Ct. App. 1995)

Given these legal requirements the contract to transfer funds from Doug’s pension plan is not self-executing as stated in the May 9th ruling. It requires a domestic relations order pursuant to ERISA 1056(d)(3)(A)

29 U.S.C. § 1056(d)(3)(B) (i) provides:

the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which--

- (I) relates to the provision of child support, alimony payments, or *marital property rights to a spouse*, former spouse, child, or other dependent of a participant, and
- (II) is made pursuant to a State domestic relations law (including a community property law). (emphasis added)

A "qualified domestic relation order" (QDRO) is a domestic relations order that creates or recognizes the existence of an “alternate payee's” right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable with respect to a participant under a retirement plan, and that includes certain information and meets certain other requirements. ERISA § 206(d)(3)(B)(i); IRC § 414(p)(1)(A) “[A] QDRO is more than a ministerial act; it is a necessary requirement

before ownership of pension benefits can be transferred.” Clark by Clark v. Iowa Dep't of Hum. Servs., 555 N.W.2d 472, 475 (Iowa 1996)

ERISA provides a federal remedy for persons in possession of pension plans covered by it. However, the right of alienation is only enforceable by the entry of an order in a state domestic relations court. Without access to the entry of a QDRO in a state court domestic relations case, the right of alienation under federal law cannot be enforced.

Iowa’s domestic relations law, including Chapter 597, is codified at Subtitle 1. “Domestic Relations” of Title XV, “Judicial Branch and Judicial Procedures”, comprising chapters 595-600C. Domestic relations cases are tried in equity. This case is in equity as it is seeking an equitable remedy.

QDRO rules are prescribed by Federal statute. A state authority, generally a court, must actually issue a judgment, order, or decree or otherwise formally approve a property settlement agreement before it can be a “domestic relations order” under ERISA. The mere fact that a property settlement is agreed to and signed by the parties will not, in and of itself, cause the agreement to be a domestic relations order. *See,*

ERISA §§ 206(d)(3)(B)(ii), 514(a), 514(b)(7); IRC § 414(p)(1)(B) ERISA rules require a State court Domestic Relations Order to implement the agreement. As Chapter 597 is part of the Iowa Domestic Relations law, a court in Iowa is authorized to enter a Domestic Relations Order approving a marital contract between spouses that transfers pension rights by agreement. Clearly, there is no requirement that a QDRO be incident to a divorce. In the case at bar, the parties entered into a contract to convey certain pension rights, which are a marital asset, and pursuant to I.C. §597.3. .4, and .18, they are entitled to make and enforce contracts the same as any other parties.

**B. THE COURT IS NOT REQUIRED TO FIND A CASE OR CONTROVERSY EXISTS TO ENFORCE A MARITAL AGREEMENT REGARDING THE DIVISION OF A PENSION COVERED BY FEDERAL LAW**

Article III, § 2 of the U.S. Constitution limits federal court jurisdiction to cases and controversies. But the Supreme Court has held “the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute.” ASARCO Inc. v.

Kadish, 490 U.S. 605, 617 (1989). Moreover, if a state opens its courts to state claims, it must also do so for analogous federal claims. *See* Haywood v. Drown, 556 U.S. 729 (2009). Accordingly, if a state's courts accept jurisdiction over private state statutory causes of action, they must do so for private causes of action created by federal statutes.

Jurisdiction in Iowa courts is not the same as the jurisdictional grant in federal courts. The U S Constitution specifically refers to "cases or controversies". The Iowa Constitution makes no such reference. In fact, Iowa courts have very broad jurisdictional mandates. The Iowa Constitution is enshrined in statutory provisions, namely, Iowa Code section 602.6101. Neither the Constitution nor the statute reference "case or controversy".

Iowa Constitution, Article V., Section 6. Jurisdiction of district court. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

§602.6101 of the Code Unified trial court.

A unified trial court is established. This court is the "Iowa District Court". The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body. The district court has all the power usually possessed and exercised by trial courts of general

jurisdiction, and is a court of record.

The trial court erred in refusing to take jurisdiction on the ground that it “simply does not have a case or controversy before it, and that it does not have jurisdiction pursuant to Iowa Code Chapter 597 to approve the parties’ agreement.” (Apx. 35-36) However, since no case or controversy is required, the parties to this case are entitled to the relief requested in their petition.

“This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures. Federal and state law “together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.” *Clafin v. Houseman*, 93 U.S. 130, 136–137, 23 L.Ed. 833 (1876)” *Haywood v. Drown*, 556 U.S. 729, 734–35, 129 S. Ct. 2108, 2114, 173 L. Ed. 2d 920 (2009)

“although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies.” *Haywood v. Drown*, 556 U.S. 729, 736, 129 S. Ct. 2108, 2114, 173 L. Ed. 2d 920 (2009)

By refusing to enter a QDRO in the case at bar, the court essentially nullified Doug’s Federal right or cause of action to transfer his share of his pension to his wife. *Ubi jus ibi remedium*—where there is a right there is a remedy.

Federal law allows the division of pension assets only through an order by a state court pursuant to that state's Domestic Relations law. In the case of divorce under Chapter 598, couples routinely come to court with a stipulated agreement and request the court to enter a QDRO dividing a pension plan. There is no challenge to a couple seeking a divorce and property settlement by agreement as presenting no case or controversy. In this case, a couple came to court under a different section of the Domestic Relations Law, Chapter 597, with the exact same request: the entry of a qualified domestic relations order to enforce their agreement for a division of pension funds. Pension plans are divisible marital property. In re Marriage of Sullins, 715 N.W.2d 242, 247 (Iowa 2014); In re Marriage of Brown, 776 N.W.2d 644, 649 (Iowa 2009) The only difference is that the marital asset the Wallaces ask to transfer by agreement does not involve a divorce. In Iowa chapter 598, the divorce statute, there is no mention of a qualified domestic relations order being authorized. Yet when a couple requests the entry of such an order by way of a stipulated agreement, courts enter the order, despite the parties not requesting the court to determine their respective rights. Thus, if a court in divorce cases can enforce the

Stipulation of the parties by dividing a pension through use of a QDRO, a married couple should be entitled to the same relief to enforce their marital property settlement agreement.

“A dissolution decree is construed like any other written instrument. *In re Marriage of Lawson*, 409 N.W.2d 181, 182 (Iowa 1987)” *In re Marriage of Brown*, 776 N.W.2d 644, 650 (Iowa 2009) Shortly after the *Brown* decision, the Supreme Court agreed that a QDRO is not itself a property settlement but is merely a method of effectuating the property division. See, *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011) If a dissolution decree approving a marital settlement agreement is construed like any other written instrument, it follows that a marital agreement such as the one at bar is equally enforceable and does not require an underlying “controversy” to be justiciable.

Recently the Court of Appeals had occasion to reaffirm the ruling in the *Brown* case in its ruling in *In re Marriage of Mau*, 964 N.W.2d 358 (Iowa Ct. App. 2021), an appeal from the denial of a motion to approve a qualified domestic relations order (QDRO). In overruling the District Court’s refusal to enter the order the appellate court considered



inequitable, the appellate court specifically ruled that the district court possessed authority to enter the QDRO as requested because it would implement the decree as stipulated by the parties, noting there is nothing inequitable in enforcing a bargained-for agreement.

This is exactly what the Wallaces request, that the Court enforce their agreement in the only way allowed by Federal law: the entry of a QDRO. “[A] QDRO is characterized properly as a procedural device required by federal law and entered to effectuate the property division made in the dissolution decree.” In re Marriage of Hiller & Nelsen, 909 N.W.2d 442 (Iowa Ct. App. 2017) ERISA does not require a QDRO to be part of the actual judgment in a case. In re Marriage of Bruns, 535 N.W.2d 157, 161–62 (Iowa Ct.App.1995) There is no reason to differentiate between a Stipulation made by parties in an uncontested divorce and a contract by married persons for a division of pension rights without a divorce. Both require a QDRO made pursuant to a State Domestic Relations law. “A stipulation and settlement in a dissolution proceeding is a contract between the parties.” *In re Marriage of Jones*, 653 N.W.2d 589, 593 (Iowa 2002), as quoted in In re Marriage of Morris, 810 N.W.2d 880, 886 (Iowa 2012)

Iowa law has included the use of a QDRO to pay support under other domestic laws. *See, e.g. In re Marriage of Brown*, 776 N.W.2d 644, 648 (Iowa 2009) Nowhere in Chapter 598 is “QDRO” or its full name ever mentioned, yet courts routinely use the QDRO as authorized by Federal ERISA law to divide pensions in divorce. Normally retirement accounts accrued before marriage are not considered marital property, but if a person wanted to settle a pre-marital pension account on the other in consideration of the pending marriage, Chapter 596 would presumably allow them to contract for the division of pension rights and obtain a QDRO if the antenuptial agreement is duly executed. I.C. § 597.18 specifically allows spouses to contract as if separate and unmarried, and to enforce such contracts. QDROs do not require an underlying judgment; they can stand alone. Therefore, “case and controversy” is not a necessary inquiry.

The district court erred in ruling that a “case or controversy” is a jurisdictional prerequisite in this case. The district court also erred in its assessment that “the parties do not, therefore, require any Order from the court to ‘enforce’ their purported agreement. Rather, they need only to execute it.” (Apx. p. 24) Based on Federal law, they are

precluded from enforcing their agreement; they absolutely require an Order from a court to do so.

## II. THE REFUSAL TO IMPLEMENT A MARITAL PROPERTY AGREEMENT BY A MARRIED COUPLE BY ENTRY OF A QDRO WITHOUT A DIVORCE OR LEGAL SEPARATION VIOLATES PUBLIC POLICY

Preservation of Error. Mary Kathryn properly preserved error on this issue through the Motion to Reconsider, page 5.

Standard of Review. This matter was tried in equity and review of equity cases is de novo. Iowa R. App. P. 6.907. The reviewing court gives weight to the facts found by the trial court but is not bound by them.

I.R. App. P. 6.14(6)(g).

The court's rejection of the parties' contract or agreement to transfer marital property rights without a divorce flies in the face of Iowa's public policy favoring marriage.

“The policy of this state is that the de jure family is the basic unit of social order. This policy is reflected in statutes governing the right to marry. See Iowa Code chapter 595 (1983). It is reflected in the rule recognizing common law marriages. It is demonstrated by statutes defining the rights and responsibilities of husbands and wives toward each other and toward their children. See, e.g., chapters 597 and 598. The policy favoring marriage is not rooted only in community mores. It is also rooted in the necessity of providing an institutional basis for defining the fundamental relational rights and responsibilities of persons in organized society.”

Laws v. Griep, 332 N.W.2d 339, 341 (Iowa 1983)

This couple has been married for over 60 years. (Apx. 1) It is a loving marriage. Through no fault of his own, Doug has reached an age where he requires more care than his loving wife is capable of providing. (Apx. 39-40; pp. 19-23) It is clearly against public policy to require people to get divorced, to become legally separated, or to make a sham effort at a divorce, simply to enforce their Federal right to transfer pension benefits from one spouse to the other. An elderly couple who has made a lifetime commitment to one another, and who have supported one another throughout the course of that marriage, should not be forced into poverty or into divorce in order to implement a transfer of assets that is necessary to best meet the current and future financial and care needs of both spouses. The pension assets were acquired through Doug's employment over the course of their marriage. Their intention was that they both should benefit from the assets upon retirement. (Apx. 19-23) Both parties are both 83 years of age and are dealing with various health challenges, and neither is capable of self-support through employment. (Apx. 19-23) Accordingly, they must rely on Social Security and their savings. Their savings consists primarily of Doug's

pension, which is controlled by ERISA. (Apx. 19-23) Mary Kathryn will remain in the community and requires their savings for her support. (Apx. 19-23) Doug, unfortunately, is consigned to an elder care facility. The pension should be transferred to her to provide for her needs, as the parties had planned. A divorce would deprive Doug of the loving care and support of his wife, a fate neither of them desires. Douglas is no longer capable of managing his own finances. (Apx. 4) He has designated Mary Kathryn as his attorney in fact under a general Power of Attorney, and as his spouse of 60 years she is the person most capable in the world of knowing and acting in his best interest. (Apx. 41-47) It is in Doug's best interest that Mary Kathryn have the ability to provide for her own needs while at the same time managing his finances as well as personal and healthcare decisions, and continuously supporting and monitoring his quality of life in the care facility. The reallocation of assets through the use of a QDRO is the best protection for this married couple. (Apx. 19-23)

**III. EQUAL PROTECTION REQUIRES THAT A MARRIED COUPLE BE TREATED THE SAME AS A DIVORCING COUPLE REGARDING THEIR RECOURSE UNDER THE FEDERAL LAW AUTHORIZING CONVEYANCE OF PENSION RIGHTS, TO ENFORCE A MARITAL AGREEMENT PROPERLY FORMED UNDER STATE DOMESTIC RELATIONS LAW**

Preservation of Error. Mary Kathryn properly preserved error on this issue through the Motion to Reconsider, page 4-5.

Standard of Review. This matter was tried in equity and review of equity cases is de novo. Iowa R. App. P. 6.907. The reviewing court gives weight to the facts found by the trial court but is not bound by them. I.R. App. P. 6.14(6)(g).

The Fourteenth Amendment to the United States Constitution and article I, section 6 of the Iowa Constitution provide individuals equal protection under the law. This principle requires that ‘similarly situated persons be treated alike under the law.’ State v. Mitchell, 757 N.W.2d 431, 435–36 (Iowa 2008)

“By providing dissimilar treatment for married and unmarried persons who are similarly situated, the statute violates the Equal Protection Clause or the Fourteenth Amendment.” Eisenstadt v. Baird, 405 U.S. 438, 438, 92 S. Ct. 1029, 1031, 31 L. Ed. 2d 349 (1972) (issue of birth control given to unmarried vs. married violated Mass. Law.) The concept that married and unmarried persons shall be treated alike is not a new concept. The US Supreme Court has recognized this fact for decades. Iowa established chapter 597 with the intent of abrogating

common law restrictions of coverture. See, Acuff v. Schmit, 78 N.W.2d 480, 248 Iowa 272 (Iowa 1956). To deny a married couple the same rights as a divorcing couple to access a Federal right to determine their pension benefits when there is a statute that plainly grants them the right to contract for such rights violates equal protection.

Iowa has had occasion to determine whether the disparate treatment of married and unmarried parents violates due process. In Redmond v. Carter, 247 N.W.2d 268, 271 (Iowa 1976) the Iowa Supreme Court stated:

The equal protection clause proscribes state action which irrationally discriminates among persons. *Brightman v. Civil Serv. Com'n. of City of Des Moines*, 204 N.W.2d 588, 591 (Iowa 1973). We recognize that it is often necessary for the state to divide persons into classes for legitimate state purposes, but the distinction drawn between classes must not be arbitrary or unreasonable. . . . Such discrimination is unreasonable if the classification lacks a rational relationship to a legitimate state purpose. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172, 92 S.Ct. 1400, 1405, 31 L.Ed.2d 768, 777 (1972).

This language was reaffirmed in In re Marriage of Vrban, 293 N.W.2d 198, 201 (Iowa 1980) where the Court found a rational basis to require married parents to pay for college after a divorce but not unmarried parents: that the state has a legitimate interest in promoting higher education for its citizens.

In the case at bar, the public policy in Iowa favoring marriage is a legitimate state interest that supports treating both married persons and divorcing persons similarly under Chapters 597 and 598 of the Iowa Domestic Relations law when seeking the court's assistance in enforcing the transfer of pension rights.

In a divorce case involving a QDRO dividing an IPERS plan, the court found:

As a general rule, "the property division in a marriage dissolution decree is self-executing with respect to the creation of new title or ownership interests." *Sieren v. Bauman*, 436 N.W.2d 43, 45 (Iowa 1989). All property awarded the parties in a dissolution becomes theirs the moment the decree is final. *Id.*

This principle is not entirely true as applied to pension divisions. Because of certain anti-alienation restrictions in the Employee Retirement Income Security Act (ERISA) and the federal tax code, a QDRO must be filed for every pension division undertaken pursuant to a divorce. *See generally Rohrbeck v. Rohrbeck*, 318 Md. 28, 566 A.2d 767, 768–71 (1989).

In re Marriage of Brown, 776 N.W.2d 644, 647–48 (Iowa 2009)

In the case at bar, the district court's determination that no action was required on its part to give effect to the parties' marital property agreement is both inaccurate and a violation of their rights to determine the distribution of pension rights available to a divorcing couple in the same situation. The ability of spouses to contract under



state domestic relations law with the enforcement mechanism of a Qualified Domestic Relations Order (QDRO) under federal law should be equally available under Iowa Chapters 597 and 598.

### CONCLUSION

The district court had the statutory authority and the obligation to enter a QDRO in this matter, and the court is further obligated to do so to provide equal protection as required under the US and Iowa Constitutions, and as a matter of public policy favoring marriage. Petitioner urges the Appellate Court to reverse the Trial Court decision and to remand the case for the entry of the QDRO as requested by the parties.

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### REQUEST FOR ORAL ARGUMENT

Upon submission of this matter to the Court, counsel for Appellant

Mary Kathryn Wallace requests that she be permitted to be heard in oral argument.

### CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on March 16, 2023, I electronically filed the foregoing final brief with the Clerk of the Supreme Court of Iowa using the Electronic Data Management System (EDMS). Participants in the case who are registered EDMS users will be served by the EDMS system.

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### CERTIFICATE OF COST

The undersigned certifies that the actual cost of printing the foregoing Appellant's Brief was \$0.00.

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

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 5,584 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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 Microsoft Word in Century Schoolbook 14.

March 16, 2023  
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