IN THE SUPREME COURT OF IOWA

No. 23-1115

JEFFREY PETERZALEK and MOLLY WEBER,

Certiorari Plaintiffs,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,

Certiorari Defendant.

Appeal from the Iowa District Court
Polk County Case No. LACL152080
Honorable Robert Hanson, District Judge

APPELLANT'S FINAL PROOF BRIEF

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ISSUE PRESENTED

I. Whether a district court should quash a deposition of an opposing party's attorney when that deposition is unlikely to produce relevant, non-privileged information.

Important Authorities

Fenceroy v. Gelita USA, Inc. 908 N.W.2d 235 (Iowa 2018)

Konchar v. Pins 989 N.W.2d 150 (Iowa 2023)

Keefe v. Bernard 774 N.W.2d 663 (Iowa 2009)

State v. Parker, 747 N.W.2d 196, 203 (Iowa 2008)

ROUTING STATEMENT

This Court should retain this case. This certiorari action challenges a district court order compelling a deposition of attorneys that represented the opposing party. This matter of first impression will resolve a threat to the inviolability of attorney-client privilege. The attorneys here represented an opposing party in a case, one of the attorneys at an earlier stage in the litigation. Thus, this case presents a substantial question of clarifying the scope of attorney-client privilege. Compelling testimony here will have an impact far beyond this case. It will chill attorney-client communications and create a major impediment to justice. Retention will allow this Court to clarify its own jurisprudence and establish clear rules for litigants going forward. *See* Iowa R. App. P. 6.1101(2)(c)–(d).

STATEMENT OF THE CASE

"Compelled depositions of opposing counsel have long been disfavored." *Fenceroy v. Gelita USA, Inc.*, 908 N.W.2d 235, 253 (Iowa 2018) (Waterman, J., dissenting) (citation omitted). This discovery dispute rises from a party seeking to depose opposing party's counsel. *See* App. at 70-72. The district court declined to quash the subpoenas, explaining that a protective order sealing the transcripts and the ability to object to questions on privilege grounds would suffice to protect the almost certain-to-come questions that would implicate privilege. App. at 122-125. That is not so.

And the district court acknowledged "it is less clear if Weber has relevant discoverable information" that could be disclosed in a deposition. *Id.* That presents a clean issue for this Court to review: Whether a district court should quash a deposition of an opposing party's attorney when that deposition is unlikely to produce relevant, non-privileged information. This matter of first impression before this Court may be aided by the long-standing and persuasive approach used by the Eighth Circuit. *See Smith-Bunge v. Wisconsin Cent., Ltd.*, 946 F.3d 420, 423 (8th

Cir. 2019) (relying on *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)).

STATEMENT OF THE FACTS

On December 3, 2021, Charis Paulson sued the Iowa Department of Public Safety ("DPS") and State of Iowa for employment discrimination in Polk County district court. App. at 4-20. Beginning in early spring of 2022, Paulson and Defendants began serving discovery requests and responses. Over one year later, discovery was still ongoing. *See*, *e.g.*, Dkt. 15. On April 14, 2023, Plaintiff subpoenaed former assistant attorney general Molly Weber and assistant attorney general Jeffrey Peterzalek ("Attorneys") to provide deposition testimony. *See* App. at 68-69.

The Attorneys here both represent or represented DPS, albeit in different capacities. Peterzalek has represented DPS as an agency client for nearly twenty years. *See* App. at 77. Weber represented DPS on a limited basis to respond to Paulson's Iowa Civil Rights Commission complaint. *Id.* at 9. That complaint was an earlier stage in what became this matter. Peterzalek still serves as an assistant attorney general, while Weber has since changed her employment. Both Peterzalek and Weber, as attorney and former attorney for DPS, have an attorney-client relationship with DPS. *Id.* at 6, 10.

The Attorneys sought to respond to Paulson's discovery requests without violating privilege. For example, the Attorneys asked Paulson to define the scope of questions for the requested oral depositions or to respond on written questions rather than oral depositions. *Id.* at 6. Had Paulson been willing to propound written questions rather than a live deposition, much of this controversy could have been avoided.

Plaintiff repeatedly demurred the Attorneys' attempts to find an alternative to an oral deposition. *Id.* After failing to agree on the depositions or their scope, the Attorneys moved to Quash the deposition subpoenas. *Id.* This matter was fully briefed, argued, and submitted to the Polk County district court.

On June 28, 2023, the district court denied the Attorneys' Motion to Quash as "[a]n asserted privilege is [to be] narrowly construed because it is an exception to our rules governing discovery" combined with the fact that discovery is to be "liberally construed." App. at 72. The district court declined to determine whether any communications were covered by the attorney-client privilege or the work-product doctrine. *Id.* The Attorneys timely filed a Petition for Writ of Certiorari, which this Court granted on

August 11, 2023. App. at 144. The district court stayed discovery and continued the trial. App. at 140-143.

ARGUMENT

I. Public Policy Precludes Deposing Agency Counsel Except When Absolutely Necessary.

A. Error Preservation and Standard of Review.

The Attorneys preserved error by objecting to Paulson's subpoena and filing a motion to quash. This Court "review[s] discovery rulings for abuse of discretion." *Matter of Dethmers Mfg. Co.*, 985 N.W.2d 806, 813 (Iowa 2023) (*Vaccaro v. Polk County*, 983 N.W.2d 54, 57 (Iowa 2022)). "A ruling based on an erroneous interpretation of a discovery rule can constitute an abuse of discretion." *Id.*

B. Deposing Attorneys With an Attorney-Client Relationship with a Party Creates a Pernicious "Chilling Effect" on Attorney-Client Communications.

Permitting Paulson to depose the Attorneys raises an important question of public policy about the propriety of deposing an opposing party's current or former counsel. This Court's decision on these deposition proceedings will affect more broadly attorney-client communications in Iowa. This is an important matter of first impression that will affect trial strategy going forward—both in cases that involve the State and cases between private parties.

In Iowa, attorney-client privilege applies to any "confidential communication between an attorney and the attorney's client." *Konchar v. Pins*, 989 N.W.2d 150, 159 (Iowa 2023) (quoting *Keefe v. Bernard*, 774 N.W.2d 663, 669 (Iowa 2009)). If the privilege attaches, that privilege is absolute as to disclosure against the will of the client. *Id.* That privilege "is 'of ancient origin' and 'is premised on a recognition of the inherent right of every person to consult with legal counsel and secure the benefit of his advice free from any fear of disclosure.'" *Id.*

Allowing a party to subpoena an opposing party's current or former counsel, even knowing the deponent may object on privilege grounds, risks violating that absolute privilege. Thus, members of this Court have recognized that "[c]ompelled depositions of opposing counsel have long been disfavored." *Fenceroy*, 908 N.W.2d at 253 (Waterman, J., dissenting) (citing *Hickman v. Taylor*, 329 U.S. 495, 511–13 (1947)). By following the longstanding approach present in the federal circuit court covering Iowa, this Court can harmonize with federal law while protecting important privileges. *See Shelton*, 805 F.2d at 1327.

Without the safe harbor of attorney-client privilege, there is a real risk of chilling communications between attorneys and clients. "The

attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (citation omitted). Indeed, that privilege's purpose is "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Id.*; *see Konchar*, 989 N.W.2d at 159.

Consistent with the privilege in federal courts, this Court has long held that corporations and public agencies, not only individuals, are also entitled to the privilege's protection. *See*, *e.g.*, *Chicago Great W. Ry. Co. v. McCaffrey*, 178 Iowa 1147, 160 N.W.818, 821 (Iowa 1917) (individuals); *Keefe*, 774 N.W.2d at 672 (corporations); *Tausz v. Clarion-Goldfield Cmty. Sch. Dist.*, 569 N.W.2d 126, 128 (Iowa 1997) (public agencies).

And consistent with the privilege's traditional scope, this Court has explained the privilege withstands attorney-client separation, the conclusion of the matters for which the attorney was retained, and death. *Bailey v. Chicago, B. & Q.R. Co.,* 179 N.W.2d 560, 564 (Iowa 1970). Recognizing the significant public policy implications of the privilege, this Court has held the "subjective freedom of the client" to communicate

with his attorney uninhibited, "could not be attained if the client understood that . . .the attorney could be compelled to disclose [his] confidences." *Id.*

Beyond the recognition of the import of the privilege and its accompanying public policy impact, the Eighth Circuit has gone one step further and recognized the "chilling effect" that deposing attorneys will have on "the truthful communications from the client to the attorney." *Shelton*, 805 F.2d at 1327. *Shelton* adopted a three-part test for whether to allow deposition of an opposing party's counsel: (1) the party moving to depose has no other way to obtain the information; (2) the information sought in the deposition is relevant to the action and nonprivileged; and (3) the information is crucial to the preparation of the case. *Id.*; *see also Engel v. Rapid City Sch. Dist.*, 506 F.3d 1118, 1127–28 (8th Cir. 2007).

Despite the potential to ease certain burdens on a litigating party, deposing opposing counsel "disrupts the adversarial system," "lowers the standards of the profession," and "adds to the already burdensome time and costs of litigation." *Shelton*, 805 F.2d at 1327. Moreover, deposing opposing counsel "detracts from the quality of client representation." *Id.*

Sure, "counsel's task in preparing for trial would be much easier if he could dispense with interrogatories, document requests, and depositions of lay persons, and simply depose opposing counsel in an attempt to identify the information that opposing counsel has decided is relevant and important to his legal theories and strategy." *Id.* But as *Shelton* recognized: the costs of such a practice outweigh those purported benefits.

Indeed, when a party can determine the information that it is seeking by asking other individuals or, when that party refuses to narrow the scope of his inquiry, *Shelton* may preclude discovery. *Smith-Bunge*, 946 F.3d at 423. In those circumstances, the Eighth Circuit affirmed a protective order preventing deposition of opposing counsel. *Id.*

While in recent years this Court has cited favorably to *Shelton*, it has yet to explicitly adopt *Shelton*'s test. *See State v. Leedom*, 938 N.W.2d 177, 195 (Iowa 2020) (favorably citing *Shelton* in affirming a motion to quash opposing counsel's testimony); *Fenceroy,* 908 N.W.2d at 253–54 (Waterman, J., dissenting) (encouraging adopting *Shelton*). Accordingly, the Attorneys urge this Court to explain that the *Shelton* test is

appropriate for district courts to use when assessing whether to compel testimony from an opposing party's counsel.

In applying *Shelton* here, it is clear Paulson fails to meet this burden. Paulson has failed to show how (1) the information she seeks cannot be obtained from another source; (2) the information sought is relevant and non-privileged; and (3) the information she seeks is crucial to the preparation of her case. *See Shelton*, 805 F.2d at 1327.

First, Paulson refuses to identify the information that she seeks or to impose her own guard rails on deposition questions. That failure rendered it difficult for the district court to know what information would be asked about—or, whether the information that she seeks could be sought from a different source. *See id.* Indeed, the district court said Paulson's requests for information had been "admittedly vague." App at 122. While the district court here preferred to defer to generally broad discovery principles, instead that court should have been solicitous of the protections afforded to attorney-client privilege. *Cf. State v. Retterath,* 974 N.W.2d 93, 99 (Iowa 2022) (holding "a defendant's 'general due process right'" should not "allow[] the defendant to acquire *all* privileged evidence in discovery").

As to *Shelton*'s second prong, Paulson has failed to show how the depositions will produce relevant and non-privileged information for either Attorney. *See Shelton*, 805 F.2d at 1327. That deficiency is most cleanly presented with Weber, who previously represented DPS in the underlying matter. When asked the subject of a potential Weber deposition, Paulson identified only privileged matters relating to her representation here. Dkt. 62, Ex. 2, at 1 ("Molly Weber has knowledge of the internal investigation conducted by Andrea Macy, as well as the facts and circumstances surrounding DPS's decision to file an ex-parte motion with the ICRC (which we allege was a discriminatory act).").

Indeed, the district court was unconvinced that Weber's deposition would result in any "relevant discoverable information." App. at 122. As to Peterzalek, Plaintiff fails to identify relevant non-privileged information she seeks besides his nearly twenty-year representation of DPS. Dkt. 62, Ex. 3 ¶ 8. Despite that, again out of deference to the district court's commitment to liberally construing discovery requests, the district court thought it would be inappropriate to quash the subpoenas. App. at 122. But protecting privilege, with or without *Shelton* to guide, should have compelled the opposite result.

Finally, Paulson appears content to proceed to trial without the depositions of the Attorneys. *See* Dkt. 103 ¶ 2 ("Plaintiff does not believe a continuance is warranted under the circumstances."). Plaintiff's willingness to proceed to trial without the depositions raises the question of whether the information she is seeking from the depositions is necessary for the preparation of her case. *Shelton*, 805 F.2d at 1327. Even if there are unique circumstances that occasion piercing attorney-client privilege, it is an odd decision when a plaintiff contends that such depositions are unnecessary for trial.

Attorney-client privilege is not merely an "ancient" privilege—the logic undergirding attorney-client privilege is alive and well in Iowa today. *See Konchar*, 989 N.W.2d at 159. Indeed, this Court often reviews matters shaping the scope of the attorney-client privilege and its extent. *See*, *e.g.*, *Konchar*, 989 N.W.2d at 159; *Iowa Supreme Court Att'y Disciplinary Bd. v. Said*, 953 N.W.2d 126 (Iowa 2021); *In re 2018 Grand Jury of Dallas Cnty.*, 939 N.W.2d 50 (Iowa 2020). As part of this Court's responsible role in shaping jurisprudence, adopting *Shelton* will provide clarity and consistency going forward.

Permitting Paulson to depose the Attorneys risks limiting the "subjective freedom of the client" to communicate with his attorney uninhibited, and thus, honest communication "could not be attained if the client understood that . . . the attorney could be compelled to disclose [his] confidences" in later depositions. *Bailey*, 179 N.W.2d at 564 (citations omitted).

Finally, this Court has recognized the importance of the "firmly established common law doctrines of work-product protection and attorney-client privilege" even in the context of the grand jury. *In re 2018 Grand Jury of Dallas Cnty.,* 939 N.W.2d at 58; *see id.* at 67 (McDonald, J., concurring in part and dissenting in part). Even if this Court demurs from adopting *Shelton*, it can shape a test that more adequately protects privilege outside of discovery's general and broad commands. Accordingly, this Court should quash the deposition subpoenas issued to the Attorneys.

C. Complying with Paulson's Deposition Subpoenas Will Require the Attorneys to Violate the Professional Code of Conduct for Iowa Lawyers.

Deposing the Attorneys also creates tension with their obligation to abide by the Iowa Rules of Professional Conduct for Attorneys ("Rules").

Iowa R. Prof'l Conduct 32. The Rules "Preamble" ensures that "a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private." Iowa R. Prof'l Conduct 32: PREAMBLE.

And the Rules mandate that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation," or, in limited scenarios, such as to comply with other law or a court order. Iowa R. Prof'l Conduct 32:1.6(a)(6), (b), (c). That expectation of confidentiality applies "not only to matters communicated in confidence by the client but also to all information relating to the representation whatever its source." *Id.* r. 32:1.6 cmt. [3].

Relevant here, Iowa attorneys are required to maintain that confidentiality for both current and former clients. *Id.* r. 32:1.9(c)(1)–(2). Both the Attorneys represented—or still represent—DPS as their client. Accordingly, the prohibition against disclosing confidential client information applies in this "proceed[ing] in which [the Attorneys] may be

called as [witnesses] or otherwise required to produce evidence concerning a client." *Id.* r. 32:1.6, cmt. [3].

Deposing the Attorneys here threatens their ability to comply with the Rules without potentially violating the discovery process. For those reasons, the deposition subpoenas should be quashed.

II. The Court Should Quash the Subpoenas Because Paulson is Not Entitled to Privileged Information.

A. The Court Is Vital to Protecting Privilege During Discovery.

Courts must ensure attorneys use subpoena power responsibly through their authority to quash subpoenas and enter protective orders. As this Court has so recently held, subpoenas are powerful tools. *Matter of Dethmers Mfg. Co.*, 985 N.W.2d at 809. Using a subpoena, an attorney can "compel free citizens to appear at specified places, give sworn testimony, produce documents, and more." *Id.* Thus, "with this [subpoena] power comes responsibility." *Id.* (citation omitted)*; see also* Iowa R. Civ. P. 1.715.

The subpoenas here are deposition subpoenas compelling the attendance of the Attorneys to provide testimony. *See* Iowa R. Civ. P. 1.701(1)(a). While the scope of discovery at the district court level is

liberally construed, with "[p]arties [having the ability to] obtain discovery regarding any matter," there are two notable conditions to that information-gathering: (1) the information sought must not be "privileged" and (2) "relevant to the subject matter involved in the pending action." Iowa R. Civ. P. 1.503(1).

B. As DPS is asserting the Attorney-Client Privilege, the Court needs to Determine whether the Testimony to be Elicited is in fact Privileged.

Attorney-client privilege exists for the benefit of the client. Thus the client alone—DPS in the underlying dispute—can waive the privilege. *State v. Bean*, 239 N.W.2d 556, 560 (Iowa 1976). DPS asserted attorney-client privilege over its communications with the Attorneys in the underlying controversy. Dkt. 62, Ex. 3 ¶¶ 15, 20. As such, DPS "has the burden of showing that a privilege exists and applies." *Hutchinson v. Smith Labs., Inc.* 392 N.W.2d 139, 141 (Iowa 1986) (citation omitted). To determine whether the testimony Plaintiff seeks to elicit from the Attorneys is privileged, the Court needs to answer three questions for both Weber and Peterzalek. First, did an attorney-client relationship exist between the attorney and DPS? Second, what was the scope of the attorney's representation? And third, does the testimony a plaintiff seeks

to elicit fall under that representation? *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008).

C. Paulson Seeks Privileged Information from Weber.

Before Paulson sued the State of Iowa for employment discrimination, she had to file a complaint before the ICRC. Iowa Code § 216.16(1). Accused employers then can respond. Responses to ICRC complaints require "supportive evidence," including "application materials, job descriptions, organizational charts, selection procedures, policies, procedures, employee handbooks, job descriptions, signed statements from witnesses, performance evaluations, discipline records, E-mails, photographs, internal investigation records, and other documents that are relevant." 161 Iowa Admin. Code r. 3.12(1)(b)(1). Ultimately, the response must show "how the complainant was treated and how persons similarly situated to the complainant were treated," and a thorough response requires effective investigation and advocacy. *Id.*

Consistent with that requirement, Paulson filed a complaint against DPS with the ICRC before suing. Former assistant attorney general Weber responded on behalf of DPS. Dkt. 62, Ex. 3 ¶¶ 17–18. Paulson does not dispute that the entirety of Weber's knowledge as to

Paulson's employment circumstances stem from Weber's representation of DPS in the course of responding to Paulson's complaint.

Despite Weber's limited scope and representation of DPS to one matter directly involving Paulson, she seeks to depose Weber about that matter. Paulson also seeks to ask Weber about her representation of DPS before the ICRC. Indeed, Paulson explained that she wants to know: why Weber filed a motion before the ICRC, why Weber's client asserted confidentiality, how Weber obtained information she used in defense of her client, and whether Weber learned of any similar complaints. App. at 107. Weber was representing DPS, in this matter, and that is the subject of Paulson's proposed questions. Each of Paulson's proposed topics for deposition are protected by attorney-client privilege. *Parker*, 747 N.W.2d at 203. And each of Paulson's proposed topics also implicate the work-product doctrine.

The district court abused its discretion in denying Weber's motion to quash. *See Shelton*, 805 F.2d at 1327. Accordingly, the district court should be reversed, and the deposition subpoena served on Weber should be quashed.

D. Plaintiff Seeks Privileged Information From Peterzalek.

Peterzalek represented DPS in his capacity as its attorney within the Attorney General's office for almost 20 years, exposing him to countless privileged matters. *See* Iowa Code § 80.1 (2023). While representing DPS, Peterzalek has appeared on behalf of the agency in administrative hearings, civil litigation, and provided a broad range of general advice on many topics, including human resources concerns. Dkt. 62, Ex. 3 ¶¶ 7–11. Peterzalek has advised to DPS's directors and constituent employees alike, both orally and in writing. *Id.* ¶¶ 11, 14. Given the breadth of scope and time of Peterzalek's representation of DPS, the district court's failure to impose limits or guardrails on his deposition is troubling. App. at 120-124.

For a public agency, protected communications are not limited to those between counsel and "management level" staff. *Keefe*, 774 N.W.2d at 672. Communications between agency staff and agency counsel are also protected. *See* Iowa R. Prof'l Conduct 32:1.13, cmt. [1]; *see also Henke v. Iowa Home Mut. Cas. Co.*, 87 N.W.2d 920, 923 (Iowa 1958). As Peterzalek has communicated with both "management level" staff and agency staff alike over his years of representation, Plaintiff's intent to

depose him without limitation of any kind raises significant attorney-client privilege concerns.

Not only does Plaintiff's intent to depose Peterzalek raise concerns over attorney-client privilege, but also raises concerns related to the work-product doctrine. In Iowa, the work-product doctrine protects "[r]ecords which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body." Iowa Code § 22.7(4). Indeed, the doctrine also protects the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Iowa R. Civ. P. 1.503(3); *see Fenceroy*, 908 N.W.2d at 246–47.

Peterzalek routinely reviews confidential documents, other confidential materials, and observed confidential, internal employee interactions while serving as counsel for DPS. And he advises DPS based on his review and analysis of this confidential information. Dkt. 62, Ex. 3 ¶ 10. Peterzalek's multi-decade review of work-product related to litigation and his mental impressions constitutes intangible work product that should warrant protection from overly broad inquiry.

Paulson's unwillingness to reveal the subjects that she seeks to address compound those problems.

Smith-Bunge's quashing of a deposition due to availability through other means helpfully illustrates why Peterzalek's deposition here should be quashed. 946 F.3d at 423. There, the party seeking a deposition sought information about conversations that opposing counsel had with employees and other individuals. *Id.* But the Eighth Circuit found the information could be found if the deposing party "ask[ed] other employees." *Id.* Indeed, it also recognized that "a party cannot depose opposing counsel to explore suspicions about opposing witnesses." *Id.* (citation omitted). To the extent deposing Peterzalek is intended to provide information available from, or to confirm suspicions about, other witnesses, *Smith-Bunge* applying *Shelton* would foreclose that inquiry.

Another similarity arises in *Smith-Bunge*'s treatment of the deposing party's unwillingness to "narrow his inquiry to respect the privilege." *Id.* The deposing party did not "identify any statements from . . . outside of the attorney-client privilege." *Id.* That failure to define the terms of the questioning, to explain how privilege issues could

be avoided, was in part fatal to the subpoena. Thus, the Eighth Circuit quashed that subpoena of opposing counsel. *Id.*

The district court here abused its discretion in permitting Peterzalek's deposition to proceed without requiring Paulson to make a showing the information was non-privileged, crucial to Paulson's case, and could not be obtained through any other means. *See Shelton*, 805 F.2d at 1327. To permit Paulson to depose Peterzalek in the underlying controversy risks both attorney-client privilege and the work-product privilege's protections to the client. Accordingly, the district court should be reversed, and the deposition subpoena served on Peterzalek should be quashed.

CONCLUSION

The district court's ruling should be reversed and the deposition subpoenas served on Peterzalek and Weber should be quashed.

REQUEST FOR ORAL SUBMISSION

The Attorneys request to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

/s/ *Eric Wessan*
Solicitor General

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 4,0021 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Eric Wessan*
Solicitor General

CERTIFICATE OF FILING AND SERVICE

I certify that on December 12, 2023, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ *Eric Wessan*
Solicitor General