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IN THE SUPREME COURT OF IOWA
No. 23–1186
Hardin County Case No. CVCV101911

KENT KASISCHKE,
Defendant–Appellant,

v.

SUMMIT CARBON SOLUTIONS, LLC,
Plaintiff–Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR HARDIN COUNTY
THE HONORABLE AMY M. MOORE, DISTRICT COURT JUDGE

BRIEF OF IOWA UTILITY ASSOCIATION AND IOWA ASSOCIATION OF ELECTRIC COOPERATIVES AS *AMICI CURIAE* IN SUPPORT OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

Case Law: 3

Statutes & Rules: 3

STATEMENT OF *AMICI CURIAE* OF THE IOWA UTILITY ASSOCIATION AND THE IOWA ASSOCIATION OF ELECTRIC COOPERATIVES 5

DISCLOSURE STATEMENT 6

INTRODUCTION 7

ARGUMENT 9

I. The Court Should Uphold the Decision of the District Court and Find Iowa Code Section 479B.15 is Constitutional 9

A. The District Court Decision Appropriately Recognizes Long-Standing Survey Rights in Iowa 9

B. The District Court's Decision Properly Emphasizes the Pragmatic Value of Iowa's Long-Standing Survey Rights to Large-Scale Development of the State 12

C. The District Court's Decision is In Step with Other Iowa District Court Decisions That Found Section 479B.15 is Constitutional 15

D. The District Court Correctly Held the Statute Is Not Facially Unconstitutional 21

II. Surveys Authorized by Statute are in the Public Interest and the Court's Decision Provides Stability and Encourages the Generation, Transmission, and Provision of Electricity and Natural Gas to Iowans 22

CONCLUSION 25

CERTIFICATE OF SERVICE AND FILING 26

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS 27

TABLE OF AUTHORITIES

Case Law:

Brakke v. Iowa Dep't. of Nat. Res., 897 N.W.2d 522, 550 (Iowa 2017)...... 19

Cedar Point Nursery v. Hassid, 141 S. Ct. 2063 (2021)........ 8, 16, 17, 19, 20

Dakota Access, LLC v. Johnson, No. EQCV040450, 2015 WL 14022674, at *7 (Iowa Dist. Aug. 7, 2015) 16

Gravert v. Nebergall, 539 N.W.2d 184, 186 (Iowa 1995) 9

Klemic v. Dominion Transmission, Inc., 138 F. Supp. 3d 676 (W.D. Va. 2015)... 11

Lucas, 505 at 1029, 112 S.Ct. at 2886 .... 19, 20

Navigator Heartland Greenway, LLC v. Hulse, No. EQCV204557, 2023 WL 5338305, at *4 (Iowa Dist. May 30, 2023) 15, 17, 18

Palmer v. Atl. Coast Pipeline, LLC, 801 S.E.2d 414, 418 & n.2 (Va. 2017) 13, 20

Summit Carbon Solutions, LLC v. Kasischke, No. CVCV101911, 2023 WL 5338286, at *3 (Iowa Dist. May 10, 2023) 9, 18, 21

Statutes & Rules:

199 IAC 10.1... 24

199 IAC 10.3(1) 24

199 IAC 11.5(1)“e”.. 23

Iowa Code § 314.9 .... 10, 22

Iowa Code § 354.4A 11

Iowa Code § 478.15 .... 10, 22

Iowa Code § 478.15(2) 23

Iowa Code § 479B.15 .... 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 22, 24, 25

Iowa Code § 479.30 .... 10, 17, 20

Iowa Code §§ 759, 778 (1851) 10, 20

Statutes & Rules:

Nichols, *The Law of Eminent Domain* § 112, p. 311 (1917)........................ 19

Restatement (Second) of Torts § 196 (1964)). 19

STATEMENT OF *AMICI CURIAE* OF THE IOWA UTILITY ASSOCIATION AND THE IOWA ASSOCIATION OF ELECTRIC COOPERATIVES

The Iowa Utility Association (IUA) helps Iowa thrive with a robust, sustainable energy grid that reliably delivers the power Iowans count on every day. The IUA was formed in 1971 and is a 501(c)(6) non-profit corporation. IUA members are regulated in various respects by the Iowa Utilities Board (Board).

The IUA's mission is to secure Iowa's energy future by improving the common business interests and operating conditions of Iowa's investor-owned electric, natural gas, and transmission utilities. IUA works with its member companies—Iowa's investor-owned electric, natural gas, and transmission utilities—to develop, coordinate, and promote common industry public policy. IUA member utility companies deliver indispensable energy for millions of Iowans—approximately 72 percent of electricity in Iowa and approximately 85 to 95 percent of Iowa's natural gas. These members include Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, Interstate Power and Light Company d/b/a Alliant Energy, ITC Midwest LLC, and MidAmerican Energy Company.

The Iowa Association of Electric Cooperatives (IAEC) is a trade association established in 1942 to support the interests of member-owned

electric cooperatives. The IAEC is made up of 39 local distribution co-operatives and nine generation and transmission cooperatives and works with its member cooperatives on regulatory oversight, education services and training, safety programs and advocacy, and communications support. Member-owned cooperatives in Iowa power the lives of Iowans in all 99 counties. The IAEC members own and maintain over 4,600 miles of electric transmission lines in Iowa.

The IUA and IAEC are linear, energy-critical infrastructure providers (rather than pipeline providers), and each has interests that align closely with the fighting issues of this case, namely an interest in statutory survey access rights. The decision made in this case will impact the activities of the IUA, the IAEC, and their respective members. Therefore, this Court should consider the unique viewpoints, information, and arguments submitted by the IUA and the IAEC in this Brief. See Iowa R. App. P. 6.906(5)(a)(3).

DISCLOSURE STATEMENT

IUA and IAEC's Brief of *Amici Curiae* has been authored wholly by counsel for IUA and IAEC, at the IUA and IAEC's sole expense. No other party has contributed money to fund the preparation or submission of the brief.

INTRODUCTION

The IUA and IAEC file this Brief of *Amici Curiae* to set forth their position that the Hardin County district court correctly found that Iowa Code section 479B.15 comports with the United States and Iowa Constitutions and to illustrate the ways in which any decision to the contrary would be overbroad, erroneous, and would adversely impact long-standing access and survey rights under Iowa law. The district court's decision protects and reinforces the ability of IUA and IAEC member companies to provide reliable, affordable, and safe utility services to their customers.

Iowa Code 479B.15, like similar code provisions relied upon by IUA and IAEC member companies, provides land survey access needed for proper planning, construction, siting, routing, and maintenance. None of these efforts can be accomplished without the ability to conduct pre-construction land surveys. This is why the Iowa Legislature created the statutory right for various entities to efficiently and effectively accomplish land survey operations while respecting and balancing the rights of commercial operators and landowners.

The framework for entry upon land to conduct surveys set forth in Iowa Code section 479B.15 is consistent or identical to numerous other provisions in Iowa law and is contained in a statute validly passed by the Iowa legislature

that balances the interests of individual landowners and entities that rely upon the need for surveys to advance the public interest.

Multiple Iowa district courts have reached the conclusion that Iowa Code section 479B.15 is constitutional, including the Hardin County district court order now before this appellate court. The one Iowa district court decision reaching a different result was a drastic departure and does not appropriately characterize the state of the law. Further, courts across the country acknowledge that survey rights are longstanding background restrictions on property and do not constitute a taking. This district court's decision recognizes the necessary work performed by Iowa utility companies to provide power to Iowa residents. By upholding long-standing survey rights, the decision protects maintenance, development and advancement in the utility industry, benefiting all Iowans. This brief will help the Court understand: (1) survey rights are deeply engrained in Iowa law and do not constitute a taking; (2) the district court's interpretation and application of the United States Supreme Court case of *Cedar Point Nursery v. Hassid* was appropriately tailored rather than overbroad or erroneous; and (3) will illustrate the adverse impact a decision to the contrary would have on Iowa utility companies and member-owned electric cooperatives, which rely on

necessary and appropriate survey and access rights to provide essential electricity and natural gas to Iowans.

ARGUMENT

I. The Court Should Uphold the Decision of the District Court and Find Iowa Code Section 479B.15 is Constitutional

The narrow issue before this Court is whether a statutorily authorized land survey should be considered an unconstitutional taking. To answer this question, the Court must examine whether a survey contemplated by Iowa Code section 479B.15 constitutes a taking under any circumstances. In examining the constitutionality of section 479B.15, the general presumption is that its enactment was constitutional. *Gravert v. Nebergall*, 539 N.W.2d 184, 186 (Iowa 1995). Multiple Iowa courts have found the surveys do not constitute a taking under the law and found section 479B.15 constitutional.

A. The District Court Decision Appropriately Recognizes Long-Standing Survey Rights in Iowa

Land survey access rights have been recognized for hundreds of years across the United States and in Iowa. These surveys are well-recognized background restrictions under the law permitting the right to access private property. *Summit Carbon Solutions, LLC v. Kasischke*, No. CVCV101911, 2023 WL 5338286, at *3 (Iowa Dist. May 10, 2023).

Since 1851, Iowa statutes have contemplated and authorized the taking of private property for works of public utility such as railroads, turnpikes and bridges and afforded accompanying survey rights. Iowa Code §§ 759, 778 (1851). Subsequently enacted statutes that have been in place for several decades have also permitted surveys and rights of access for several reasons.

Iowa Code section 479.30 applies to intrastate natural gas pipelines that enable the heating of homes and businesses throughout Iowa. Section 479.30 governs entry for land surveys for pipeline developers and contains language that mirrors Section 479B.15. This section permits entry "upon private land for the purpose of surveying and examining the land." Iowa Code § 479.30.

Similarly, and relevant to members of the IUA and the IAEC, Iowa Code section 478.15 enables a person, company or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain, to apply to the Iowa Utilities Board for a permit to enter land for the purpose of examining and surveying the land. *See* Iowa Code § 478.15.

Iowa Code § 314.9 governs entry for land surveys for purposes of highway construction and permits an agency in control of a highway to:

> "enter upon private property for the purpose of making surveys, soundings, drillings, appraisals, and examinations as the agency deems appropriate or necessary to determine the advisability or practicability of locating and constructing a highway on the

> property or for the purpose of determining whether gravel or other material exists on the property of suitable quality and in sufficient quantity to warrant the purchase or condemnation of the property."

Iowa Code section 354.4A permits entry on private property for land surveys for purposes of platting divisions and sub-divisions of land. The statute provides that "[a] land surveyor may enter public or private land or water in the state only to occupy, locate, relocate, install, or replace survey monuments, to locate boundaries, rights-of-way, and easements, to determine geodetic positions, **and to make surveys** and maps and may carry with them their customary equipment and vehicles." Iowa Code § 354.4A (emphasis added).

Iowa has a long-standing history of allowing surveys and rights of access to conduct surveys. Surveys like those contemplated by Iowa Code section 479B.15 and the statutes cited above, are necessary to maintain and advance Iowa's energy infrastructure and distribution of natural gas. Federal courts have acknowledged that "a landowner has no constitutionally protected property right to exclude an authorized utility from entering his property for survey purposes." *Klemic v. Dominion Transmission, Inc.*, 138 F. Supp. 3d 676, 690–91 (W.D. Va. 2015). The district court's decision maintains these survey rights in numerous areas including crucial rights relied upon by Iowa utility companies and cooperatives. These surveys are necessary to advance

the public interests in the areas of the utilities, development of roads and housing development. Long-standing rights to conduct surveys are necessary to advance public goals such as providing affordable, reliable and safe electricity and natural gas to Iowa citizens and the construction of Iowa roads.

Section 479B.15 was enacted by the Iowa legislature and sets forth a framework that balances advancement for the public good with the rights of landowners by requiring payment to landowners for any actual damages caused by entry, survey and examination of the land. Any decision other than the one reached by the district court would be overbroad, erroneous, and would cripple the ability of utilities and electric cooperatives to meet and advance Iowa's utility needs without facing an onslaught of litigation at every turn. The district court's decision should be upheld.

B. The District Court's Decision Properly Emphasizes the Pragmatic Value of Iowa's Long-Standing Survey Rights to Large-Scale Development of the State

Complex utility infrastructure projects require specific preparatory knowledge before physical construction begins. *See*, *e.g.*, *Borden Co. v. Borella*, 325 U.S. 679, 683 (1945) ("Economic production, in other words, requires planning and control as well as manual labor."); *Jaffe v. Jaffe*, Case No. 2348-96-2, 1997 WL 327429, at *3 (Va. Ct. App. Jun. 17, 1997) (Land usage "requires approval and regulation by both municipal and state

governments. It requires planning, financing, ***surveying***, building roads, and utilities…") (emphasis added).

Land surveys and examinations facilitate the acquisition of the knowledge necessary for construction, routing, siting, and planning for large-scale development projects. Surveys enable projects to be built safely and with sufficient resilience under relevant topographical conditions. *See*, *e.g*., *Tex. Int'l. Petroleum Corp. v. Delacriox Corp*, 650 So.2d 815, 818-19 (La. Ct. App. 1995) (being able "to physically retrace the footsteps of the original surveyors is also important because those surveyors calculated the locations of section lines and corners…In ascertaining the boundaries of surveys or patent, the universal rules is this: that whatever natural or permanent objects are embraced in the walls of either…[are] the legal guides for determining the question of boundary or the location of a land line…").

Courts have recognized that "there is persuasive evidence…establishing a long history of regulating land surveying." *Crownholm v. Moore*, 647 F. Supp. 3d 842, 857 (E.D. Cal. 2002). As the District Court correctly recognized, all fifty states have a statutory allowance for entries onto private property for pre-condemnation surveys without trespass liability. *See* D. Ct. Order, at p. 12 (May 10, 2023) (citing *Palmer v. Atl. Coast Pipeline, LLC*, 801 S.E.2d 414, 418 & n.2 (Va. 2017) (collecting

citations to such state provisions). Iowa has no reason to be an outlier amongst its sister states and should not rule that reasonable statutes regarding land surveying for infrastructure projects are improper, unreliable, or unconstitutional.

The Iowa Court of Appeals provided an apt analogy: "I wouldn't feel comfortable letting a blind man walk out of the police station alone." *State v. Martin*, Case No. 02-1509, 2004 WL 1836122, at *7 (Iowa Ct. App. Aug. 11, 2004) (Vogel, J. concurring). Adopting the Appellant's argument would be akin to asking those responsible for the construction of critical infrastructure enterprises—such as the IUA and the IAEC —to "walk blindly" when trying to build safe, reliable, and long-lasting projects that benefit the public good. *See id*. That cannot possibly be the intent the Iowa Legislature had when it enacted the land surveying laws in question, and it is not a sound basis for the Iowa Supreme Court to make the legal and public policy decision now before it. *See Burlington Comm. Sch. Dist. v. Pub. Employ. Relations Bd.*, 268 N.W.2d 517, 522 (Iowa 1978) (it is within the purview of the Court to determine legislative intent in light of the public policy motivated by legislative enactments); *see also Startis v. Avery*, 213 N.W. 769, 771 (Iowa 1927) (same).

Where, as here, the public policy judgments of the Iowa Legislature pass constitutional muster, it is not the judiciary's role to contravene those legal and constitutional judgments once they are codified into law without overwhelmingly compelling justifications. *See, e.g., AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 26 (Iowa 2019) (Waterman, J., controlling opinion); *see also id*. 928 N.W.2d at 43 ("I also agree it is not the role of the courts to find criticism of public policy based on disagreement over policy. Any such form of criticism, even implicit, has no place in the analysis by courts.") (Cady, C.J., dissenting). The district court's decision should be upheld.

C. The District Court's Decision is In Step with Other Iowa District Court Decisions That Found Section 479B.15 is Constitutional

The district court correctly found that rights of access and survey under section 479B.15 are constitutional and do not constitute an impermissible taking of any kind. Other Iowa district courts have reviewed challenges to Iowa Code Section 479B.15 and found the same. These decisions properly recognized these surveys are pre-existing limitations on a landowner's title and are "longstanding background restriction on property rights." *Navigator Heartland Greenway, LLC v. Hulse*, No. EQCV204557, 2023 WL 5338305, at *5 (Iowa Dist. May 30, 2023).

The constitutionality of Iowa Code section 479B.15 was first reviewed in 2015. Judge Haney of the Boone County District Court found Iowa Code section 479B.15 was constitutional and that the survey did not constitute a taking. The court stated the following:

> Based on the record in this matter, the Court is not convinced that the entry onto Johnson's land for the "purpose of surveying and examining the land to determine direction or depth of pipelines" constitutes a taking under the Iowa or United States constitutions. Entry onto Johnson's land by Dakota Access would entail walking across a corner of his land for a few hours to see if there are things that would affect the direction or depth of a pipeline and the possible use of hand tools to determine types and classes of soil. Any material which might be disturbed would be returned to its original location. **The activity is not a permanent physical invasion or occupation of Johnson's property. There will be no permanent impact on Johnson's use of the property. The risk of damage or harm to the property from this activity appears to be extremely low.**

Dakota Access, LLC v. Johnson, No. EQCV040450, 2015 WL 14022674, at *7 (Iowa Dist. Aug. 7, 2015) (emphasis added). The survey right under section 479B.15 was found not to be a taking.

In one case holding section 479B.15 was unconstitutional, an Iowa district court erroneously interpreted the 2021 United States Supreme Court case of *Cedar Point Nursery v. Hassid* in finding the surveys constituted a taking and finding section 479B.15 was unconstitutional. 141 S. Ct. 2063 (2021). In the present case, however, the district court followed other Iowa

courts by employing an appropriately tailored reading of *Cedar Point* to find that section 479B.15 is constitutional.

Almost eight years after an Iowa district court first found section 479B.15 is constitutional, in a decision also decided in May of 2023, Judge Sailer of the Woodbury County District Court found the surveys contemplated by section 479B.15 constituted a "longstanding background restriction on property rights" and this would not constitute a taking because it is merely an assertion of a "pre-existing limitation on the landowner's title." *Navigator Heartland Greenway, LLC v. Hulse*, No. EQCV204557, 2023 WL 5338305, at *4 (Iowa Dist. May 30, 2023).

Addressing surveys generally, the district court in *Hulse* recognized the following:

> [t]he authority is overwhelming that survey access is precisely the kind of "longstanding background restriction" that *Cedar Point* excepts from its newly created *per se* rule. The *Cedar Point* court cites specifically to both *Nichols on Eminent Domain* and the Restatement of Torts, both of which recognize that **survey access generally does not constitute a taking.**[34] This understanding is not only long-entrenched but it is also very widespread. **"**Today, every state has codified the common law privilege of a body exercising eminent domain authority **to enter private property to conduct preliminary surveys without trespass liability."**[35] In Iowa, this includes not only the statute at issue here, § 479B.15, but also § 314.9 (authorizing entry right for surveying in connection with locating and constructing highways) and § 479.30 (authorizing entry right for surveying in connection with natural gas pipelines). Besides the specific surveys related to the possible use of eminent domain, **the right**

> **of entry for land surveys in general is widely authorized by statute, including in Iowa, and has been for many years.**

Navigator Heartland Greenway, LLC, No. EQCV204557, 2023 WL 5338305, at *5 (Iowa Dist. May 30, 2023) (emphasis added). The court went on to state that the authority "from other jurisdictions is overwhelming" and that "courts across the country consistently uphold the constitutionality of statutes authorizing entry upon land for preliminary surveys because 'surveys are temporary intrusions which do not substantially interfere with the owner's property rights or enjoyment of the land' and are 'not a taking in the constitutional sense.'" *Id.* at *5. The court in *Hulse* appropriately found a proposed survey under section 479B.15 was not an unconstitutional regulatory taking because any physical intrusion "is neither substantial nor ongoing, and the economic impact of the regulation on the claimant, particularly considering any interference with distinct investment-backed expectations, is *de minimus*." *Id.* at *6.

In the decision giving rise to the issue now before the Supreme Court, the Hardin County district court afforded "substantial deference to the Iowa Legislature in their determination of 'what public needs justify the use of the takings power.'" *Summit Carbon Solutions, LLC v. Kasischke*, No. CVCV101911, 2023 WL 5338286, at *3 (Iowa Dist. May 10, 2023). The district court appropriately recognized that surveys and examination of land

can provide public benefit and that "the conduct permitted by Iowa Code § 479B.15 constitutes a valid 'public use' for the purposes of the Takings Clause of the United States and Iowa Constitutions. *Id.* at *3 (correction to statutory citation). The court in *Kasischke* recognized that "a reasonable landowner would be aware that private property is subject to survey access." *Id. at* *5 (citing *Brakke v. Iowa Dep't. of Nat. Res.*, 897 N.W.2d 522, 550 (Iowa 2017)). The court distinguished *Cedar Point* and stated the following:

> The court finds that Mr. Kasischke may not rely upon *Cedar Point* in support of his position, **as the United States Supreme Court made clear that its holding was not applicable to "government-authorized physical invasions... because they are consistent with longstanding background restrictions on property rights**..." *Id.*, 141 S.Ct. at 2079. These "background restrictions" include "traditional common law privileges to access property," including entry "in the event of public or private necessity." *Id.* In sum, "the government does not take a property interest when it merely asserts a 'pre-existing limitation upon the [property] owner's title.'" *Id.* 141 S.Ct. at 2079 (quoting Lucas, 505 U.S. at 1028-29, 112 S.Ct. at 2886).
>
> While the court agrees with Mr. Kasischke that *Cedar Point* makes no specific mention of survey access as a background restriction, the Court made clear that **the examples that were cited were not an exhaustive list.** *Id.*, 141 S.Ct. at 2079. Further, *Cedar Point* does indirectly provide that survey access is an inherent background restriction on property rights. **In its opinion, the Court cited to both Nichols on Eminent Domain and the Restatement of Torts, both of which recognize that common law and statutory survey access generally does not constitute a taking.** *Id.*, 141 S.Ct. at 2078-79 ((citing 1 P. Nichols, *The Law of Eminent Domain* § 112, p. 311 (1917) and Restatement (Second) of Torts § 196 (1964)). **Ultimately, *Cedar Point* did not disturb the well-settled**

> **principle that property interests are subject to these background restrictions, and the exercise of these limitations is permissible if they "inhere in the title itself"**. *Lucas*, 505 at 1029, 112 S.Ct. at 2886.
>
> In addition, Iowa law makes clear that survey access is a long-recognized background restriction on private property. As noted by Summit, access to property to conduct pre-condemnation surveying, even when conducted by an entity for "private profit," is a property restriction that has been recognized by the Iowa Legislature since 1851. See Iowa Code §§ 759, 778 (1851). Iowa has also granted statutory survey access specifically to private pipeline companies for decades. See Iowa Code § 479.30 (1981); Iowa Code § 479A.15 (1989); Iowa Code § 479B.15 (1997). Nationally, all fifty states have a statutory allowance for entities to enter private property for pre-condemnation surveys without trespass liability. *Palmer v. Atl. Coast Pipeline, LLC*, 801 S.E.2d 414, 418 & n.2 (Va. 2017). Based upon the foregoing, the court finds that section 479B.15 falls well within the background restrictions identified in *Cedar Point*, which renders its holding inapplicable to Mr. Kasischke's challenge.

Id. at *6.

The Hardin County district court acknowledged both the narrowness of *Cedar Point*'s holding and the *Cedar Point* Court's recognition that "longstanding background restrictions on property rights" do not constitute takings. Moreover, the district court recognized the fact that *Cedar Point* involved a dramatically dissimilar factual premise where the intrusion was daily for months—which is in stark contrast to the survey rights at issue in this case. The district court's decision comports with other Iowa court decisions as well as national trends and should be upheld.

D. The District Court Correctly Held the Statute Is Not Facially Unconstitutional

The district court found that Iowa Code § 479B.15 is facially valid under the Takings Clause of both the United States and Iowa State Constitutions. *See generally Summit Carbon Solutions, LLC v. Kasischke*, No. CVCV101911, 2023 WL 5338286 (Iowa Dist. May 10, 2023). To find to the contrary, an Appellant must show that every single solitary ground upon which the operation or effect of the challenged statute could never—under any circumstances whatsoever—be consistent with the constitutional framework alleged to prevent it. *See*, *e.g.*, *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2022). This is a "heavy burden [because] the party challenging the statute must prove ***beyond a reasonable doubt*** the statute's unconstitutionality." *State v. Keane*, 629 N.W.2d 360, 364 (Iowa 2001) (citing *State v. Robinson*, 618 N.W.2d 306, 311 (Iowa 2000)) (emphasis added). Courts lean heavily on the longstanding principle that a statute is cloaked in a presumption of constitutionality. *See*, *e.g.*, *Santi v. Santi*, 633 N.W.2d 312, 316 (Iowa 2001). If a statute can be construed in any ***manner*** that is aligned with constitutionality, the Court must adopt that construction and uphold its validity. *See id.*; *see also City of Eagle Grove v. Calahan Invest., Inc.*, 904 N.W.2d 552, 560 (Iowa 2017) (emphasis added) (citing and quoting authorities in rejecting a Takings Clause challenge against a

constitutional claim). The district court's finding of facial validity was correct and should be upheld.

II. Surveys Authorized by Statute are in the Public Interest and the Court's Decision Provides Stability and Encourages the Generation, Transmission, and Provision of Electricity and Natural Gas to Iowans

Surveys such as those contemplated by section 479B.15 are necessary to advance the public's interests and infrastructure. IUA and IAEC member companies rely on the availability of similar surveys for construction of infrastructure which provides essential energy to Iowans, and natural gas pipelines to provide energy to heat homes and businesses. The land survey statute at issue here is similar to those governing electric transmission lines and highways. *See* Iowa Code § 478.15 (applicable to electric transmission lines); Iowa Code § 314.9 (applicable to administrative matters related to highways). All strike a proper balance that precludes constitutional infirmity. The district court's finding that the surveys contemplated by section 479B.15 do not constitute a taking protects and stabilizes the maintenance, construction and advancement of Iowa's electric and natural gas infrastructure (and thereby infrastructure governed by analogous provisions of law including but not limited to highways), which is of paramount importance to all Iowans.

IUA members rely upon Iowa Code Chapter 478 which addresses Electric Transmission Lines. Section 478.15(2) grants any person, company,

or corporation proposing to construct a transmission line which involves the taking of property under the right of eminent domain, the right to request from the Iowa Utilities Board a permit to enter upon the land for the purpose of examining and surveying the same. Such access is critical to compile necessary documentation that must be filed with the Iowa Utilities Board (IUB) as part of the electric transmission line franchise process. 199 IAC 11.5(1)"e" describes certain information that must be submitted with a petition where the right of eminent domain is being requested. The applicable rule requires the following detailed information to be submitted:

> The exhibit shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought, and for each property:
>
> (1) The legal description of the property.
>
> (2) The legal description of the desired easement.
>
> (3) A specific description of the easement rights being sought.
>
> (4) The names and addresses of all affected persons.
>
> (5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of all electric lines and supports within the proposed easement, the location of and distance to any building within 100 feet of the proposed transmission line, and any other features pertinent to the location of the transmission line, the supporting structures, or to the rights being sought.

199 IAC 11.5(1)"e".

It is clear that access to conduct surveys is necessary order to compile required information. Iowa Code section 478.15(2) is the means by which

such survey access is obtained. Absent the availability of such access, there is the potential that critically important electric transmission line infrastructure could not be constructed. Iowa customers who would be served by such infrastructure should not be deprived of the same.

Survey rights are also authorized by statute and implicate the intrastate gas pipeline and underground storage siting process overseen by IUB. Regulations adopted by the IUB establish the procedures and filing requirements to obtain permits to "construct, maintain and operate intrastate gas pipeline[s]". *See* 199 IAC 10.1. An applicant is required to file detailed information with the IUB including legal descriptions of the beginning and ending points of a proposed pipeline, easements, and detailed maps depicting the proposed route of the pipeline. *See* 199 IAC 10.3(1). The detailed maps must also identify railroads, public roads, streams or bodies of water and "other pertinent natural or man-made features influencing the route." *See id.* If the finding that section 479B.15 is unconstitutional stands, this could also jeopardize or eliminate survey rights relied upon for the siting process before the IUB and may result in the IUB not having access to critical and legally required information. Inability to provide required information will lead to more questions by IUB staff, a longer permitting process, and ultimately higher costs borne by Iowa customers. Without the legally required

information that is aided by access and survey rights, the IUB would be left to rely on less detailed, less accurate information to make critical infrastructure decisions impacting Iowans.

Survey and access rights are permitted by and impact numerous Iowa statutes. These rights are relied upon by Iowa businesses and are critical to advance essential electric and natural gas services which directly benefit Iowans. The Court's decision has broad implications beyond Iowa Code section 479B.15 and the district court's decision must be upheld.

CONCLUSION

The Hardin County district court's decision is in agreement with the decisions of other Iowa district courts in support of Iowa's long-standing laws allowing land use surveys. The decision protects the maintenance, development and advancement of Iowa's infrastructure. Iowa Code section 479B.15 properly balances the interests of companies seeking pipeline permits, the public interest, and Iowa landowners.

The Iowa Utility Association and the Iowa Association of Electric Cooperatives request this Court find the surveys contemplated by Iowa Code section 479B.15 do not constitute a taking, find section 479B.15 is constitutional, and uphold the decision of the district court.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on December 26, 2023, I electronically filed this document with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch electronic filing system, which will send notice of electronic filing to all parties and attorneys of record.

<u>/s/ Tara Z. Hall</u>	<u>December 22, 2023</u>
Tara Z. Hall	Date

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

1. The brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) or (2) and Rule 6.906(4) because:

[X] this brief contains 4781 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1) and Rule 6.906(4) or

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