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IN THE SUPREME COURT OF IOWA

No. 22-1601

HUNTER THREE FARMS, LLC,

Plaintiff-Appellant,

vs.

RICHARD HUNTER,
individually and as member of Hunter Three Farms, LLC,

Defendant-Appellee.

ON APPEAL FROM THE IOWA DISTRICT COURT
FOR GREENE COUNTY
THE HONORABLE DEREK JOHNSON
CASE No. LACV022075

DEFENDANT-APPELLEE'S APPLICATION FOR FURTHER REVIEW TO THE IOWA SUPREME COURT

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QUESTION PRESENTED

I. Whether the consent of all members of an Iowa limited liability company is required to bestow standing and authority upon a limited liability company to bring a lawsuit in its own name against a minority member?

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Supreme Court should grant further review for several important reasons. First, the underlying decision is in direct conflict with prior decisions of the Iowa Supreme Court on important issues of statutory interpretation, construction, and separation of powers. And second, the court of appeals has decided a case in a manner which if permitted to stand, would signal a substantial change in legal principles on important questions of management and member-rights in limited liability companies formed and operating in Iowa.

A. The Underlying Decision Violates Iowa's Well-Established Rules of Statutory Construction by Inserting a "Disinterested Member" Condition for When Unanimous Consent is Necessary to Authorize Company Action Outside the Ordinary Course of Business.

The court of appeals' majority opinion reversing the district court and authorizing "direct litigation against a member-manager under exceptional circumstances with the consent of all disinterested member-managers," sets harmful precedent for minority-members of Iowa limited liability companies, and injects amorphous judicial-created "exceptional circumstances" and "disinterested member-manager" standards that are not supported by the statutory text actually adopted by the Iowa legislature. *See* Court of Appeals Opinion at 19; Iowa Code § 489.407.

Iowa courts first look to the plain meaning of a statute when applying the statute to a legal question. *See Goche v. WMG, L.C.*, 970 N.W.2d 860, 863–64 (Iowa 2022). As pertaining to an Iowa limited liability company's authority to act, Iowa Code section 489.407(2)(d)(2) requires that the "affirmative vote or consent of all the members is required to . . . undertake an act outside the ordinary course of the activities and affairs of the limited liability company." The court of appeals' majority opinion recognizes that it must "first search for plain meaning, then resort to the tools of statutory construction if we find ambiguity." Court of Appeals Opinion at 10; *see State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017). But the majority detoured from this clear statement of law when it proceeded to apply the tools of statutory construction without first determining whether there is any ambiguity in Iowa Code section 489.407. *See id.* ("In light of the dearth of Iowa LLC case law, we engage in both analyses."); *See* Iowa Court of Appeals Opinion at 22–23 ("As to governance, section 489.407(2) is the more specific, controlling provision covering how to resolve disputes among members about an LLC's activities.") (Langholz, J. dissenting).

The court of appeal's divergence from established Iowa precedent—as recognized by the dissent—detours into whether the parties' arguments are "reconcilable" within the statutory framework, rather than an examination of what the statutory framework actually says. *See* Iowa Court of Appeals Opinion at 11–

12); *Calcaterra v. Iowa Bd. of Medicine*, 965 N.W.2d 899, 905 (Iowa 2021) (recognizing the categorical plain language of a statute controls the scope of a statute, irrespective of whether additional exceptions or conditions were practiced by the parties). After determining a lawsuit filed by an LLC against a member-manager is an act outside the ordinary course of activities, nowhere in the majority's analysis does it wrestle with what section 489.407(2) actually says, that an "act outside the ordinary course of the activities of the company . . . may be undertaken ***only with the consent of all members***." (emphasis added). *See* Court of Appeals Opinion at 14–18 (analyzing partnership law to determine whether Iowa's limited liability statute requires unanimity of members to authorize the company to sue a member). Ultimately, the majority's diversion predictably results with the court analyzing whether any portion of the statutory scheme is superfluous without first determining what the relevant statutory authority—Iowa Code section 489.407—actually says. *See* Court of Appeals Opinion at 12 ("We conclude the plain meaning of the ***statutory scheme*** authorizes the LLC to sue one of its member-managers for breach of fiduciary duties and related claims without requiring unanimous consent." (emphasis added)).

The court of appeal's opinion supports this diversion by recognizing that a "disinterested member" principle "is addressed ***by statute*** for a broad array of other entities, convincing [the court] all the more it is appropriately applied to an LLC".

Court of Appeals Opinion at 19 (emphasis added). Judge Langholz's well-reasoned dissent recognizes that inclusion of a "disinterested member" principle in other member-authority statutes "cut[s] against implying such a standard into the LLC statute [because] [t]hey show that the legislature knows how to write such a standard." Court of Appeals Opinion at 24–25 (Langholz, J., dissenting).

Finally, the underlying decision concludes with the principle that "under exceptional circumstances," the consent of all disinterred member-managers is all that is need to authorize a limited liability company to sue an active member-manager. Court of Appeals Opinion at 19. The decision goes on to apply this "exceptional circumstances" threshold and hold that because Richard Hunter is *alleged* to have acted with improper or ulterior motives and not in good faith, the case against Richard Hunter satisfies the "exceptional circumstances" threshold and only the consent of all disinterested member-managers was required to authorize the lawsuit filed against Richard Hunter. Court of Appeals Opinion at 19–20.

Setting aside the confusing and contradictory process which could lead to "exceptional circumstances" for "acts outside the ordinary course of business" resulting in a *lower* voting threshold for member-manager authority to act, the only legal basis the underlying decision cites in its support of imposing an "exceptional circumstances" condition to lower the voting threshold is Iowa Code section

489.107, which only provides that: “Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.” This provision merely acknowledges that legal questions involving limited liability companies are subject to principles of law and equity *in addition* to the statutory language, and nowhere does the statute authorize the imposition or inclusion of judicial standards or requirements which detract from or undercut requirements that are contained in the statutory language itself.

The underlying decision’s creation and application of an “exceptional circumstances” standard as applied by the Iowa Court of Appeals is not supported by the Revised Uniform Limited Liability Company Act as adopted by the Iowa legislature, and in fact defeats the legislature’s express requirement contained in Iowa Code section 489.407 that all members in a member-managed limited liability company have a say in management decisions involving acts outside the ordinary course of the company’s business. *See* Court of Appeals Opinion at 28–29 (Langholz, J., dissenting); *Amana Society v. Colony Inn, Inc.*, 315 N.W.2d 101, 118 (Iowa 1982) (“[T]he argument that the statute is inappropriate . . . should have been addressed to the legislature, not to this court. We take the statute as we find it . . . [and] ‘[w]e believe it is our duty to enforce this statute as written.’” (quoting *Lane v. Travelers Ins. Co.*, 299 N.W. 553, 555 (Iowa 1941)).

The imposition of an "exceptional circumstances" and "disinterested member" principle on member-management decisions to lower the member-voting threshold on company action addressing "acts outside the ordinary course of the activities of the company" limits limited liability company's member-authority without appropriate legislative authorization, contradicts express statutory prescriptions for management equality between member-managers of limited liability companies, and violates Iowa Supreme Court precedent on both statutory interpretation and separation of powers grounds. *See Goche*, 970 N.W.2d at 866 ("But Iowa has not enacted that provision, and it is not our role to rewrite the Iowa statute in the guise of interpretation."); *Calcaterra*, 965 N.W.2d at 905; *Amana Society*, 315 N.W.2d at 118; Court of Appeals Opinion at 29–30 (Langholz, J., dissenting) (recognizing the Iowa legislature adopted the Uniform LLC Act rather than the alternative Prototype LLC Act). For these reasons, the Iowa Supreme Court must grant further review to correct the errors and reconcile the Iowa Court of Appeal's decision with established legislative requirements and Iowa Supreme Court precedent.

B. Allowing "Disinterested Members" of an LLC to Authorize Direct Litigation Against Minority Members Would Categorically Shift the Default Rules of Member-Manager Authority in Limited Liability Companies.

Iowa's rules governing limited liability companies recognize members or owners of a limited liability company "are vested with the power to manage the

entity or to oversee its management by managers. In both contexts, an entity's owners may also hold the power of control—the right to manage, direct, and oversee the entity." *Myria Holdings, Inc. v. Iowa Dep't of Revenue*, 892 N.W.2d 343, 349 (Iowa 2017) (citing Iowa Code §§ 489.407(1)–(3)). The term "ownership" has been recognized by the Iowa Supreme Court to mean "the bundle of rights allowing one to use, manage, and enjoy property . . . and implies the right to possess a thing, regardless of any actual or constructive control." *Id.* at 348 (cleaned up) (quoting *Ownership*, *Black's Law Dictionary* (10th ed. 2014)). "Control is defined as the direct or indirect power to govern the management and policies of a . . . entity, whether through ownership of voting securities . . .; the power or authority to manage, direct, or oversee." *Id.* at 348–49 (cleaned up) (quoting *Control*, *Black's Law Dictionary* (10th ed. 2014)).

In the underlying decision, the court of appeals recognized that allegations of impropriety against a minority member of a limited liability company are sufficient "exceptional circumstances" to warrant depriving a minority-member of his control over decisions "outside the ordinary course of the company's business". Court of Appels Opinion at 19–20. This deprivation of authority, control, and ownership was sanctioned by the court of appeals based purely on the default statutory regulations governing member-authority over limited liability companies. *See* Iowa Code §§ 489.407. If allowed to stand, not only would the underlying

decision represent a seismic-shift in member-relations within the context of the default statutory scheme, but the decision would have substantial impact for considerations of individuals and members when forming limited liability companies. *See* Iowa Code § 489.110 (describing the scope and authority of a limited liability company's operating agreement).

Most concerning about the underlying decision is its reliance on mere allegations to support a substantial deprivation of ownership or control over the operations of a limited liability company. In essence, the standard recognized and imposed by the court of appeals would allow minority or majority members of an Iowa limited liability company operating under the default statutory framework to file suit using the company's name and resources against a fellow member, and deprive the target-member of control or oversight over the company in material ways; including, oversight over expenditure of company resources in hiring and retaining legal counsel, strategy in litigation which likely would have a material impact on the operation, organization, and viability of a limited liability company. Further, these surface-level issues do not even begin to address questions regarding the member's own fiduciary duties of care and duty which would seemingly be violated if the member were forced to participate in litigation that is against what other members have determined to be the best interest of the company.

All of these issues raise substantial questions of property, fiduciary duty, and management/ownership interest which are not addressed in the underlying decision and which, if left in place, would inevitably lead to on-going litigation to define the contours of limited liability company member relations. The potential for an explosion of member-instituted litigation would not only be limited to instances where no operating agreement exists, like this case, but would bleed over into innumerable other cases and legal questions wherein operating agreements do exist and govern member relations, but those agreements rely on some or all of the default statutory framework to govern those relationships.

The issues regarding ownership interest, fiduciary duty, and operations of limited liability companies which would be raised if the court of appeal's decision is permitted to stand all strike at the very heart of limited liability company operations in Iowa. At a minimum, the potential upending of decades of legal analysis, common-practice, practical application, and statutory framework governing member rights and relationships in limited liability companies require further review, analysis and consideration by the Iowa Supreme Court before current and existing companies undertake the costly and time-consuming task of ensuring their operating agreements and member-relations continue in a manner they previously had authorized.

For these reasons, the Iowa Supreme Court must grant further review to correct the errors and ensure member-managers continue to enjoy "equal rights in the management and conduct of the limited liability company's activities and affairs." Iowa Code § 489.407(2)(b).

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

I. Brief Factual and Procedural Background

Hunter Three is a member-managed Iowa limited liability company based in Jefferson, Greene County, Iowa. (Petition ¶ 1, Appx. 005). Prior to March 3, 2017, Richard and his brothers, Robert and Gary, operated a general partnership farming operation involving numerous properties across Iowa. (Petition ¶ 7, Appx. 006; Ex. B, Appx. 060). Hunter Farms' properties included farms in Greene County, Iowa, Warren County, Iowa, and Polk County, Iowa. (Ex. B, Appx. 062). Following the 2016 marketing year, Hunter Farms was partitioned and Hunter Three was formed from certain partnership interests that remained in 2017. (Petition ¶ 7, Appx. 006; Ex. E, Appx. 074).

On or about March 3, 2017, Hunter Farms was certified as Hunter Three Farms, LP, an Iowa limited partnership. (Petition ¶ 7, Appx. 006; Ex. C, Appx. 067). On or about March 8, 2017, Hunter Farms L.P. was converted into Hunter Three, LLC, an Iowa limited liability company. (Petition ¶ 7, Appx. 006; Ex. D, Appx. 073). For purposes of this lawsuit, Hunter Three now includes three voting members—the Robert P. Hunter Revocable Trust, the Gary G. Hunter Revocable Trust, and Richard—who each individually own 20 voting units, or the equivalent of one-third of the limited liability company's 60 total outstanding voting units. (Petition ¶ 8, Appx. 006; Ex. D, Appx. 073). On March 9, 2017, Hunter of Iowa,

Inc., an Iowa corporation, was issued 40 non-voting units of Hunter Three. (Petition ¶ 9, Appx. 006).

Sometime before October 12, 2018, Richard became aware of public information concerning a Syngenta Corn Seed Settlement (the "Notification"), a Court approved claims administration program arising from a class action lawsuit brought against Syngenta for the marketing and sale of Agrisure Viptera and Agrisure Duracade corn seeds. (*See* CORN SEED SETTLEMENT, https://www.cornseedsettlement.com/Index.aspx (last visited June 9, 2022) (noting the last day to file a claim was October 12, 2018), Ex. J, Appx. 107). The Notification informed Richard that he was personally eligible to file a claim for settlement proceeds. (Petition ¶ 11, Appx. 006; *See* Corn Seed Settlement Program, Frequently Asked Questions, https://www.cornseedsettlement.com/docs/faqs.pdf (last visited June 9, 2022) (hereinafter "Syngenta FAQs) at 3–4, Ex. J, Appx. 110–11). Per Syngenta FAQs, a claim should be filed for each FSA-578 filed by a corn producer, grain handling facility, or ethanol production facility. (*Id.* at 20–21, Ex. J, Appx. 127–28). A "corn producer" is defined by the settlement agreement as "any owner, operator, landlord, waterlord, tenant, or sharecropper who shares in the risk of producing Corn and who is entitled to share in the Corn crop available for marketing between September 15, 2013 and April 10, 2018." (*Id.* at 3, Ex. J, Appx. 110).

Believing that he qualified as a "corn producer," Richard submitted an application for his one-third share of interest in the corn marketed by Hunter Farms between the marketing years of 2013 to 2016. (Ex. I, Appx. 089; District Court's Order at 2, Appx. 525). Richard eventually received and deposited a check from the settlement agreement in the amount of $62,467.91 (the "Settlement Payment"). (District Court's Order at 2, Appx. 525). Richard believed and still believes the Settlement Payment reflects his one-third share of Hunter Farms' marketable corn crop that was subject to the Syngenta settlement program. (Petition ¶ 15, Appx. 007).

On April 7, 2021, Robert P. Hunter as "President Hunter Three and Hunter of Iowa," acting through a power of attorney, and Gary Hunter as "Shareholder," sent a letter to "Richard Hunter and Associated entities" alleging the funds Richard received from the Syngenta Settlement Program were the rightful property of Hunter Three. (Ex. Q, Appx. 231). In a letter dated April 14, 2021, Steven Hunter (Richard's son) responded to the April 7 Letter and notified Robert and Gary Hunter that Richard had only applied for his third of the Settlement Payment, and if Hunter Three had any reason to believe Syngenta's payment was incorrect, to provide support for that claim and Richard would respond accordingly. (Ex. R, Appx. 237). No evidence of error has been provided by Hunter Three to date, much less that Richard as opposed to Syngenta would be the liable party for any error.

On August 23, 2021, Hunter Three filed a Petition at Law in the Iowa District Court for Greene County against Richard individually and in his capacity as a member of Hunter Three. (Petition, Appx. 005). The Petition alleged four separate counts: (1) Breach of Fiduciary Duty; (2) Breach of the Duty of Good Faith and Fair Dealing; (3) Conversion; and (4) Unjust Enrichment. (Petition, Appx. 008–10). On November 29, 2021, Richard filed his Answer and Affirmative Defenses. (Defendant's Answer, Appx. 011).

On July 14, 2022, Richard filed a Motion for Summary Judgment arguing in particular that Hunter Three lacked standing to bring the lawsuit, entitling Richard to judgment as a matter of law on all of the claims. (Defendant's Motion for Summary Judgment, Appx. 034). Hunter Three filed its own Motion for Summary Judgment on July 15, 2022. (Plaintiff's Motion for Summary Judgment, Appx. 242). On September 6, 2022, the district court entered an Order finding as a matter of law that Hunter Three lacked standing to bring the lawsuit against Richard and entering summary judgment in favor of Richard on all of Hunter Three's claims. (District Court's Order, Appx. 524).

Hunter Three filed their Notice of Appeal from the district court's September 6, 2022 Order on September 29, 2022. (Notice of Appeal, Appx. 535). The Iowa Court of Appeals filed its Opinion on January 24, 2024, reversing the district court and holding that pursuant to Iowa Code section 489.407, only the

unanimous consent of all disinterested members was required to bestow authority and standing on Hunter Three to file a lawsuit against one of its own member-managers. This Application for Further Review is filed in response to the January 24, 2024 Opinion.

II. Hunter Three's decision to file a lawsuit against its own member-manager was made without the unanimous consent of its membership, in violation of Iowa Code section 489.407, and the absence of unanimous consent deprives Hunter Three of standing or authority to prosecute this lawsuit.

The issue at the heart of this appeal, is whether Hunter Three had member authority thus affording it standing to pursue a lawsuit against an active, participating member of the limited liability company.

As the plaintiff, it is Hunter Three's burden to establish its authority and standing to pursue claims against Richard Hunter. *See Citizens for Comm. Improvement v. State*, 962 N.W.2d 780, 791 (Iowa 2021). While caselaw makes clear a limited liability company can have standing to pursue a lawsuit in the abstract, because Hunter Three can only act through its members, standing—in the form of a recognized legal interest in the litigation—can only be obtained via authority to act as conveyed by the members. *See Metropolitan Prop. And Cas. Ins. Co. v. Auto-Owners Mut. Ins. Co.*, 924 N.W.2d 833, 842 (Iowa 2019). Richard Hunter maintains, and the District Court and Iowa Court of Appeals held, that Hunter Three's filing of a lawsuit against a member is not an ordinary business

decision, and constitutes an act outside what the undisputed material facts demonstrate was Hunter Three's ordinary course of business.

Applying these holdings to the statutory framework governing member authority and a limited liability company's authority to bring suit, the district court found Iowa Code section 489.407 required unanimous consent of all company members to authorize the lawsuit, and the failure to obtain Richard Hunter's consent deprived Hunter Three of authority and standing to prosecute this lawsuit. On designated review from the Iowa Supreme Court, two judges of the Iowa Court of Appeals—over a dissent—disagreed, and held that under Iowa's default statutory framework governing the authority of members of a limited liability company, an LLC may bring direct litigation against a member-manager under exceptional circumstances without the unanimous consent of all members, so long as unanimous consent of all disinterested members is obtained.

In reaching this conclusion, the court of appeals also determined that allegations—standing alone—that Richard Hunter acted with improper motives and not in good faith in his relationship to Hunter Three were sufficient to satisfy the newly created "exceptional circumstances" standard, warranting reversal of the district court's dismissal of the litigation. Richard Hunter now seeks further review by the Iowa Supreme Court of the court of appeal's opinion, and requests the court of appeals opinion be vacated and the judgment of the district court be affirmed.

Facially, the court of appeal's majority adoption of Hunter Three's espoused position suffers from the legal deficiency that the "disinterested member" and "exceptional circumstances" requirements are not found in Iowa's default statutory framework governing the voting authority of members over activities outside the ordinary course of Hunter Three's operations. *See* Iowa Code § 489.407.

Relatedly, both the district court and the court of appeals recognized the decision to retain counsel and expend company resources to affirmatively litigate a claim in Iowa's courts is an act outside the ordinary course of Hunter Three's activities. *See Crouse v. Mineo*, 658 S.E.2d 33, 37–38 (N.C. App. 2008) (holding a law firm's decision to bring a lawsuit against a co-manager is "not carrying on in the usual way of the business" of the company despite a determination the usual way of business is the provision of legal services to clients).

Rather than follow this finding to the logical conclusion mandated by Iowa Code section 489.407, the court of appeal's majority decision veered towards an "equitable" resolution outside the express language of the statute. The court of appeal's majority opinion lands on the atextual conclusion that in extraordinary circumstances, the unanimous consent of all disinterested members is all that is needed to launch litigation against a fellow member-manager. *See* Court of Appeals Opinion at 22 (Langholz, J., dissenting). The court of appeal's conclusion constitutes reversible error.

As Judge Langholz explains, Iowa Code section 489.407 sets the default rules of governance for Iowa's limited liability companies. Court of Appeals Opinion at 21 (Langholz, J., dissenting). Regarding disputes as to matters outside the ordinary course of activities of the company, only the consent of all members authorizes the limited liability company to act. Iowa Code section 489.407(2)(d); *see id.* at 22 (Langholz, J., dissenting). The analysis of Hunter Three's authority and standing should end at that point. Once both the district court and court of appeals rightfully determined filing suit against a member-manager was outside the ordinary course of Hunter Three's activities, only the unanimous consent of *all* members could authorize the lawsuit and bestow standing on Hunter Three to pursue the claims. *See* Iowa Code § 489.407.

Despite the district court's well-sourced decision, and the dissent's weighty analysis and persuasive authority directly on point, a majority of the court of appeal's panel relied on partnership law to support the conclusion that the overarching statutory scheme of chapter 489, as well as principles of equity and references to partnership law, must allow for limited liability companies to bring direct actions against their own members absent those members consent. Judge Langholz rightfully points out several deficiencies with these holdings. *See Crouse*, 658 S.E.2d 33 (N.C. App. 2008).

First, Judge Langholz notes in his dissent that partnership law is an imprecise guidepost under these facts because a remedy derived from corporation law already exists in the LLC statutory scheme to allow *members* to bring derivative actions on behalf of the limited liability company when member intransigence arises or company action is not forthcoming. *See* Iowa Code §§ 489.902–.906; Court of Appeals Opinion at 23–24 (Langholz, J., dissenting); *Batinich v. Renander*, 2017 WL 1086220 at *5–*7 (Iowa Ct. App. Mar. 22, 2017) (disassociating members of a limited liability company through a derivative action based on their repeated violation of fiduciary duties); *see Crouse*, 658 S.E.2d 33 (N.C. App. 2008).

In fact, Iowa Code section 489.902 explicitly acknowledges that a derivative suit is the appropriate method for a member to "enforce a right of a limited liability company" that "other members" of the limited liability company refuse to enforce. The inclusion of a derivative action right in Iowa's limited liability company statutory scheme presupposes that individual members in closely held limited liability companies have the authority to refuse to enforce certain rights of the company pursuant to their authority to manage the company. *See* Iowa Code § 489.902; Iowa Code § 489.407(2)(b) ("Each member has equal rights in the management and conduct of the company's activities.").

Second, Judge Langholz notes that because a remedy exists under the plain text of the LLC statutory scheme, neither the statutory scheme nor the operations of a limited liability company are frustrated by requiring unanimous consent to prosecute litigation against a member-manager. The determination that the text and context of the governing statute afford remedies and means to avoid company intransigence ultimately led Judge Langholz to conclude that the majority's concerns regarding "immunization" of member wrong-doing were misplaced and the analysis should terminate with the plain text of the statute requiring unanimous consent of all members before litigation against a member-manager could be prosecuted. Court of Appeals Opinion at 25 (Langholz, J., dissenting).

In addition to the reasons put forth in Judge Langholz's dissent, Richard Hunter also notes that public policy further supports the affirmation that unanimous consent of all members is necessary for actions undertaken which are outside the scope of ordinary activities of a limited liability company.

Richard Hunter is undisputedly an active member-manager in Hunter Three. (Petition at ¶ 10, Appx. 006). Despite his undisputed statutory right to have a say in the management decisions of Hunter Three, Richard Hunter has been foreclosed from participating in or having his opinion heard regarding substantial commercial operations and expenditures incurred by Hunter Three during the pendency of this litigation. Hunter Three maintains that because Richard Hunter is an adverse party

to Hunter Three in a lawsuit—a status Richard Hunter did not cause or consent to—Hunter Three is within their rights to withhold records, documents, and information from Richard Hunter.

In effect, a majority of the membership of Hunter Three have used their unilateral decision making to commence litigation against a fellow member-manager as legal cover for the freezing out and oppression of a minority member. Hunter Three's unilateral and non-consensual freezing out of a limited liability company member should raise alarm bells regarding the potential for future abuse.

In this vein, "A member's rights in a limited liability company are bifurcated into economic rights (the transferable interest) and governance rights (including management rights, consent rights, rights to information, rights to seek judicial intervention)." *Wells Fargo Bank, Nat'l Ass'n v. Continuous Control Solutions, Inc.*, 2012 WL 3195759 at *3 n. 3 (Iowa Ct. App. Aug. 8, 2012) (quoting RULLCA § 502, 6B U.L.A. 497 cmt.).

In accordance with a member's non-transferable governance rights, Iowa Code section 489.410 identifies a number of categories of information that a "company shall furnish to each member . . . without demand, [including] information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the *proper exercise of the member's rights and duties under the operating agreement or this chapter*,

except to the extent the company can establish that it reasonably believes the member already knows the information." Iowa Code § 489.410(1)(b)(1) (emphasis added).

Pursuant to these statutory requirements, Hunter Three is required to furnish to Richard Hunter *without demand* information concerning Hunter Three's activities, financial condition, and other circumstances which Hunter Three knows are material to Richard Hunter's ability to participate in and exercise his management rights and duties under Hunter Three's Statement of Authority and Iowa Code. Very clearly, information pertaining to litigation involving Hunter Three—including the expenditure of company funds via the retention of legal counsel impacting the company's financial condition[1] and the ability to direct or manage litigation strategy—necessarily impacts Richard Hunter's ability to participate in and exercise his management rights and duties. Yet, Hunter Three has effectively voided or vetoed Richard Hunter's non-transferable management rights, and by implication his right to obtain necessary information relevant to his own duties of management under the guise that he is an adverse litigant, a condition he has been relegated to without his consent.

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[1] "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Iowa R. Prof'l Conduct 32:1.13(a), *accord Liquor Bike, LLC v. Iowa Dist. Ct. for Polk Cty*, 959 N.W.2d 693, 697 (Iowa 2021).

In addition to the blatant vetoing of Richard Hunter's management rights, the absence of Richard Hunter's consent to this lawsuit within the context of management rights is important because a member-manager's failure to appropriately exercise their management rights necessarily implicates fiduciary duties owed by Richard Hunter to Hunter Three. *See* Iowa Code § 489.409; *Batinich*, 2017 WL 1086220 at *7 (Iowa Ct. App. Mar. 22, 2017). In effect then, Hunter Three has unilaterally and without Richard Hunter's consent or action, placed Richard Hunter in an adverse litigation position to Hunter Three, forcing Richard Hunter to expend his own resources and time to assert his own interests against and in direct conflict with Hunter Three despite still owing Hunter Three fiduciary duties.

Applying the court of appeal's conclusions in accordance with a plain reading of a member-manager's fiduciary duties pursuant to the Iowa Code leads to the inescapable conclusion that Richard Hunter could be alleged to have breached various fiduciary duties merely by resisting and litigating his own rights in this lawsuit. Iowa law and public policy should not and must not countenance the non-consensual and the possible fiduciary breach which would arise if Hunter Three were permitted to place its own member in a Catch-22 of choosing between liability arising from a lawsuit they didn't consent to, or defending his rights and potentially violating his fiduciary duties to Hunter Three.

Thus, through no act or intent of his own, Richard Hunter has been deprived of his otherwise non-transferable management rights over Hunter Three, and has been placed in an adverse position to an entity that he owes statutory fiduciary duties. All of this in direct conflict with Iowa Code and the traditionally recognized operation of Iowa limited liability companies. In light of these public policy concerns and the immediate harm to minority members of limited liability companies if Iowa courts were to permit suits against minority members absent their consent, this Court should vacate the opinion of the court of appeals, affirm the district court's grant of summary judgment, and find Hunter Three lacks authority and standing to commence and pursue a lawsuit against its own member-manager, Richard Hunter absent the unanimous consent of all of its member-managers.

Finally, it is important to note that Richard Hunter's position adopted by the district court and found compelling by Judge Langholz, that unanimous consent of all members must be obtained prior to filing suit against a member, is only necessary in the absence of an express operating agreement to the contrary agreed to and unanimously voted on by the limited liability company's members. *See Homeland Energy Solutions, LLC*, 983 N.W.2d at 687; Iowa code § 489.111(1). As Judge Langholz makes clear in his dissent, members of Iowa limited liability companies are free to adopt the majority's standards of "exceptional

circumstances" and "disinterested members" if they so wish, but the ability to adopt those standards should not influence or shift the default statutory framework adopted and codified by the legislature, which Hunter Three was operating under. Court of Appeals Opinion at 24 (Langholz, J., dissenting).

In light of the undisputed facts and the plain text of the Iowa Code, there is no support for the creation of a "unanimous disinterested vote" threshold to institute or defend legal action in a limited liability company's management or operation. Such a clause—consented to and adopted by the members of a limited liability company in an operating agreement—may be advisable in light of a company's size or management structure. Nevertheless, in the absence of such a clause, majority members of a limited liability company must be required to obtain unanimous consent of all member-managers to file suit against a minority member. Absent unanimous consent, members of a company are afforded the option of pursuing an action via the derivative authority granted by Iowa statute and adopted from corporation law.

For all of these reasons, this Court should vacate the decision of the court of appeals, affirm the district court's judgment and find that Hunter Three lacked the authority and standing to sue its own minority member absent the unanimous consent of all of Hunter Three's member-managers.

CONCLUSION

For the reasons stated herein, Defendant-Appellee Richard Hunter requests the Iowa Supreme Court grant further review of the Iowa Court of Appeal's January 24, 2024 Opinion, vacate the January 24, 2024 Opinion, and affirm the judgment of the district court.

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CERTIFICATE OF COST

I hereby certify that the costs of printing the Appellee's brief was $0.00, exclusive of sales tax, delivery, and postage.

By: *__/s/ Benjamin J. Kenkel_____*

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4)(a) because this brief contains 5,536 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 14 point, Times New Roman.

By: *__/s/ Benjamin J. Kenkel_____*

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of Defendant-Appellee's Final Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the parties to this appeal by EDMS on the 13th day of February, 2024:

By: *__/s/ Benjamin J. Kenkel_______*