

IN THE SUPREME COURT OF IOWA

No. 24-0030

JESSENIA BURTON, NANCY BURTON, and TRACY BURTON,

Plaintiffs-Appellants,

v.

WEST BEND MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE ROBERT HANSON
Case No. LACL151685

AMICUS CURIAE BRIEF OF PEARSON CLINICAL ASSESSMENT

Angela E. Dralle (AT0002077)
DORSEY & WHITNEY LLP
801 Grand Avenue, Suite 4100
Des Moines, IA 50309-2790
dralle.angela@dorsey.com
Telephone: (515) 283-1000

Shannon L. Bjorklund
(pro hac vice application submitted)
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
bjorklund.shannon@dorsey.com
Telephone: (612) 340-2600

*ATTORNEYS FOR PEARSON CLINICAL
ASSESSMENT AS AMICUS CURIAE*

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IDENTITY AND INTEREST OF AMICUS CURIAE

With 80 years of experience, Pearson Clinical Assessment¹ (“Pearson”) provides world-class clinical assessment tools and services to over 300,000 education and healthcare professionals, including psychologists, occupational therapists, and speech-language pathologists. These professionals work in diverse settings such as schools, hospitals, correctional facilities, and clinics, and Pearson serves them globally from offices in 13 countries.

Pearson’s product portfolio is known for its validity, reliability, and high technical quality, and includes brands such as the Wechsler, Kaufman, and Millon families of products, and tests including the BASC, CELF, PLS, and BOT. Pearson’s assessment contributions have been recognized internationally in the areas of cognitive/ability, memory, neuropsychology, behavior, personality and psychopathology, achievement, and speech and language. Pearson also supports pharmaceutical clinical trials worldwide.

The Pearson Clinical Assessment team of over 700 employees is dedicated to innovating and enhancing test design, driven by an awareness of how effective assessment resources and interventions can change lives. Fifty percent of Pearson’s staff hold advanced degrees, and Pearson’s focus is on innovating to deliver

¹ Pearson Clinical Assessment is a business division of NCS Pearson, Inc.

optimal solutions for children, adults, educators, and clinicians in clinical assessment.

Although not a party in this case, Pearson's interests are directly implicated by the district court's Order granting Defendant-Appellee West Bend Mutual Insurance Company's ("West Bend") Motion to Compel Discovery (D0056, Order (9/14/2023)). The resulting Protective Order (D0069, Protective Order (1/12/2024)) not only conflicts with Iowa law, but also violates Pearson's contractual and intellectual property rights and risks the long-term validity and value of its psychological and cognitive assessments.

Pearson's assessments are designed and developed to evoke test subjects' genuine, spontaneous, and honest responses. The development of an assessment involves a "norming" process, whereby the results of initial test subjects—who all lack any foreknowledge of the test questions or protocols—are arrayed across a normal distribution. Future test subjects' responses are then compared to this normal distribution to objectively guide the interpretation of an assessment's results. For future results to remain valid and reliable, and thus useful, all test subjects must also lack advance knowledge of, or experience with, a given test's questions, procedures, and scoring structure.

Accordingly, test publishers like Pearson, and the trained professionals conducting the assessments follow careful protocols to ensure test security. It is

particularly important that “test materials” are not disclosed or disseminated outside of the administration of a test. “Test materials,” as defined by the American Psychological Association (“APA”) and used in this brief, include “manuals, instruments, protocols, and test questions or stimuli and does not include test data.”² “Test data” is separately defined as the “raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists’ notes and recordings concerning client/patient statements and behavior during an examination.”³ While Pearson agrees with Plaintiffs-Appellants’ position that the distinction between “test materials” and “test data” may in some cases be murky (see App. Br. 27-30) and that disclosures of test data may sometimes indirectly reveal test materials, the distinction remains important and necessary.⁴ The disclosure of test *data* implicates ethical, legal, and privacy concerns for an individual test subject like Plaintiff-Appellant Jessenia Burton, but the disclosure of test *materials* poses a broader threat, imperiling the long-term validity of psychological and cognitive testing for the reasons discussed herein.

² *Ethical Principles of Psychologists and Code of Conduct*, Am. Psyc. Ass’n, Section 9.11 (2017), <https://www.apa.org/ethics/code> (hereinafter “APA Code”).

³ APA Code Section 9.04.

⁴ See also Iowa Admin. Code r. 645-243.4(2)-(3) (2024) (separately defining rules governing and limiting release of “test data” and “test materials”).

If test security is not carefully maintained, a subset of test subjects may be able to use test materials to prepare their responses through advance knowledge or coaching. Even a disclosure that gives a single test subject advance knowledge could render that individual's test data unreliable. Widespread or repeated disclosures of test materials (or even test data) may undermine altogether a test's ability to serve as an objective, accurate tool for measuring psychological conditions or cognitive abilities.

Preventing the unnecessary and unwarranted disclosure of test materials preserves the value of the significant time and money Pearson invests in the creation and maintenance of its carefully developed assessments. But it also does more. Protecting the long-term validity of psychological and cognitive tests ensures that objective, comparable test results can continue to be used by courts, and in countless other education, healthcare, and professional contexts.

The district court's erroneous interpretation of Iowa law and its unnecessarily broad protective order, if endorsed by this Court, would be both harmful and unproductive. The district court's decisions would allow psychological test materials, including for at least six Pearson-owned tests,⁵ to be

⁵ The Pearson-owned tests at issue include the Wide Range Achievement Test 5th Edition, Beck Depression Inventory, Beck Anxiety Inventory, Wechsler Adult Intelligence Scale-IV, Benton Visual Retention Test, and Wechsler Memory Scale-IV. *See* Attachment to D0046, Plaintiffs' Exh. 1, Tranel Report at 9-10

disseminated to persons who are untrained in how to interpret test results and not bound by psychologists' ethical duties to maintain test security.

While Pearson recognizes that litigation often requires balancing competing interests between disclosure and protection, the district court's orders—which allow test materials and test data to be disseminated to lawyers, insurance adjusters, and potential lay jurors (who almost certainly lack the professional training to truly understand basic test materials or raw test results, unless interpreted by psychologists)—risk compromising the integrity of Pearson's assessments, while offering little-to-no relevant or necessary information to litigating parties or jurors.

Pearson submits this *Amicus Curiae* Brief in support of Plaintiffs-Appellants' position, and asks this Court to enforce the bright-line rule in Iowa Code Section 228.9 against disclosure of "psychological test material" to untrained and unlicensed persons.⁶ Even if it were not contraindicated by the plain text of Section 228.9 (it is), the district court's protective order would still be deeply problematic, as its unnecessarily broad definition of "qualified persons" imperils the long-term viability of Pearson's assessments.

(8/21/2023).

⁶ See also Iowa Admin. Code r. 645-243.4(2)-(3).

RULE 6.906(4) STATEMENT OF AUTHORSHIP

This *Amicus Curiae* Brief was authored entirely by the undersigned counsel for Pearson. No party, party's counsel, or other person contributed money to fund the preparation or submission of this Brief.

ARGUMENT⁷

The text of Iowa Code Section 228.9 is clear. It prohibits disclosure of “psychological test material” to any person, including the test subject, and specifically states that “the test material shall not be disclosed in any administrative, judicial, or legislative proceeding” (emphasis added). Section 228.9 further states that disclosure is only allowed when there is a written request of the test subject and further requires that any disclosures be provided only “to a psychologist licensed pursuant to chapter 154B.” As Appellants’ Brief demonstrates, the district court’s Order is out-of-step with the unambiguous text of the statute, and neither Iowa R. Civ. P. 1.508(1)(b) nor Iowa Code Section 228.6(4)(a) justifies allowing disclosures to non-psychologists in violation of Section 228.9.

⁷ To avoid repetition, *Amicus* Pearson relies on and incorporates Appellants’ summary of the Statement of the Case and Statement of Facts. *See* App. Br. 10-19.

While Appellant's Brief identifies a number of compelling legal, ethical, and policy arguments explaining why this Court should reverse the district court's Order, Pearson submits this *Amicus Curiae* Brief to further explain why the bright-line rule imposed by Iowa Code Section 228.9 is also necessary to protect the long-term validity of cognitive and psychological tests. Repeated exposure to, and unnecessary disclosure of, test materials risks allowing test subjects or those coaching them to naturally (or in some cases maliciously) craft their answers to reach a desired result, thus eroding the ability of a test to reliably measure psychological conditions or cognitive abilities. Undermining a test's reliability and validity not only harms the significant time and resources that Pearson and its partners devote to research, create, and maintain its tests, but it can destroy an important and valuable tool relied on by psychologists, researchers, policy makers, courts, and more.

For the reasons discussed below, and for the reasons outlined in the Appellants' Brief, this Court should reverse the district court's orders and remand to the district court to limit the disclosure of test materials and test data only to licensed psychologists, as required by Iowa Code Section 228.9.

I. Test Publishers Like Pearson Carefully Design Psychological and Cognitive Assessments That Are Relied Upon in Many Contexts.

When conducted by trained professionals, standardized psychological and cognitive assessments can provide accurate measurements of a test subject's

cognitive, emotional, personality, and/or adaptive functioning. Standardized assessments owned and distributed by Pearson and other companies are regularly used in a variety of settings. To name a few illustrative examples, in the educational environment, assessments are essential to measure academic achievement and to properly diagnose and provide accommodations for students' individualized learning and developmental needs. In medical settings, doctors use assessments to diagnose and prescribe treatments for their patients. In certain professions, assessments are used to discern specialized knowledge or suitable personality characteristics. And in courts, judges and juries routinely rely on test results when allocating damages and assessing criminal culpability.

Given the high-stakes use of psychological and cognitive assessments in these and other contexts, Pearson and other test publishers devote significant time, resources, and expertise to ensure their tests are reliable, valid, and objective. Pearson employs highly skilled assessment experts, many with specialized graduate degrees. Pearson also partners with psychologists, universities, and other practitioners to collect data for research purposes, eventually leading to new or refined measures.

The necessary research and “norming”—compiling and arraying the assessment results across a normal distribution to evaluate results based on the magnitude of deviation from a statistically derived “norm”—prior to publishing a

new test can take years, and cost millions of dollars. Given the significant investment, Pearson and other companies expect that their tests will remain valid and useful for years, if not decades. For example, Pearson's Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV), was originally developed in 2008 at a cost of over six-million dollars (\$6,000,000) and is still in use today. Pearson maintains and enforces intellectual property and contractual protections to safeguard its secured tests, utilizing trade secret and copyright protections. It also limits test distribution to psychologists with certain levels of training and who are governed by known ethical obligations that protect test materials. Pearson considers its test materials to be highly confidential and proprietary.

II. Disclosure of Test Materials Risks the Long-Term Reliability and Usefulness of Societally Beneficial Assessments.

Standardization and normalization are foundational principles in creating an objective, reliable psychological or cognitive assessment. Only by ensuring that the administration and scoring of a test is uniform and standardized can assessment results be reliably compared across test subjects and across time. Test publishers and facilitators must ensure that all test subjects lack advance knowledge of the test questions and procedures. This is particularly true for tests of memory and for tests assessing a subject's ability to respond or adapt to new problems.⁸ When some test

⁸ See *Test Security: An Update. Official Statement of the National Academy of*

subjects get access to or knowledge of test questions or procedures in advance, and others do not, tests risk losing their economic and societal value as tools to objectively measure and compare abilities or functions.

A. Test security is required to protect psychological and cognitive tests.

Test security has long been an important focus for those who publish and rely on tests and assessments. To take a common example, after completing the LSAT or SAT, a test subject is expressly prohibited from taking the test booklet out of the examination room or disclosing the questions. The psychological and cognitive tests at issue in this case pose an even greater risk. Unlike the LSAT or SAT where questions are different for each sitting, many psychological and cognitive tests do not consist of a large collection of test items that are rotated. Rather, these tests have one highly researched (and thus expensive) version, with the same or similar questions used each time the test is administered. The tests often measure psychological constructs or mental functions, not objective knowledge. For such tests, including Pearson's WAIS-IV, publication of the test

Neuropsychology Approved by the NAN Board of Directors 10/13/2003, Nat'l Academy of Neuropsychology, Inc. (2003), <https://www.nanonline.org/docs/paic/pdfs/nantestsecurityupdate.pdf> (hereinafter "NAN Test Security Statement").

materials in essence may provide a permanent answer key or accessible clues for persons seeking to “game” test responses.

Dissemination and distribution of test materials undermine tests’ reliability and validity both for an individual test subject and when attempting to construct and maintain a normal distribution of results at a population level. On an individual level, advance knowledge of the test materials risks allowing test subjects to prepare their responses in advance of examinations, adjusting their responses to score higher or lower than their actual aptitudes in order to achieve a desired test result.⁹ These purposeful manipulations can be exacerbated by targeted coaching, which research has shown to be prevalent and powerful, including in litigation settings.¹⁰ Even without any conscious desire to manipulate a score, the exposure to the test itself can affect subsequent results through practice effects—leading to increased or manipulated scores due to familiarity with a testing procedure.¹¹ These individual-level effects invariably undermine population-wide data and comparisons. Widespread variations from standardized procedures and testing

⁹ See Kyle Brauer Boone, et al., *Official Position of the Am. Acad. of Clinical Neuropsychology on Test Security*, 36 *The Clinical Neuropsychologist* 523, 524 (2022), <https://doi.org/10.1080/13854046.2021.2022214>; see also NAN Test Security Statement.

¹⁰ See Brauer Boone, *supra*, at 529.

¹¹ See, e.g., Am. Psychiatric Ass’n, *Diagnostic and Statistic Manual of Mental Disorders* 37 (5th ed. 2013) (discussing practice effects in context of intellectual disability diagnosis).

environments will shift the distribution of test results, undermining the ability to compare scores across time and across test subjects.¹² This invariably reduces the ability of psychologists, medical professionals, or others to rely on the test results to provide accurate diagnoses and care plans.

The United States Supreme Court has also recognized “the relationship between secrecy and test validity.” *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 315 (1979). In *Detroit Edison*, the Court reversed an order requiring a company to disclose to the opposing party “the test battery and answer sheets” of an aptitude test, holding that the disclosure order was an abuse of discretion. *Id.* at 312-17. In doing so, the Court determined that “the strength of the Company’s concern” including the argument that the “future validity of the tests is tied to secrecy, and disclosure to employees would not only threaten the Company’s investment but would also leave the Company with no valid means of measuring employee aptitude,” “has been abundantly demonstrated.” *Id.*

Many professional and academic organizations publicly support the need for maintaining test security.¹³ Pearson itself recognizes the need to maintain test secrecy and protects its significant economic investments in its clinical test products through a variety of means, all of which aim to prevent disclosure beyond

¹² See Brauer Boone, *supra*, at 526.

¹³ See Brauer Boone, *supra*, at 530 (listing organizations).

what is necessary to administer a test, and aim to prevent resulting improper use. Pearson initially limits the licensing and sales of its clinical products to “qualified users” to ensure that the persons who administer, score, interpret, and apply the results have the necessary training and experience.¹⁴ Pearson strictly enforces its qualifications policies and requires that the purchasers certify their qualifications prior to receiving test materials.¹⁵ Pearson also protects its products through contractual means, which are outlined in the terms and conditions required to purchase and use Pearson’s products. The terms and conditions limit access to test materials to only qualified persons, and include specific acknowledgements that “Pearson Products are protected by various intellectual property laws, including trade secrets, copyright, and trademark” and that “the use or disclosure of Pearson trade secrets or confidential information may cause Pearson irreparable harm.”¹⁶

B. The loss of test validity imposes economic harms.

When a widely-used test loses its validity and reliability, it may be removed from circulation, as psychologists are ethically obligated to avoid using or relying

¹⁴ See *Qualifications Policy*, Pearson, <https://www.pearsonassessments.com/professional-assessments/ordering/how-to-order/qualifications/qualifications-policy.html> (last visited July 25, 2024).

¹⁵ *Id.* See also *Legal Policies*, Pearson (Effective: June 15, 2021) <https://www.pearsonassessments.com/footer/legal-policies.html>.

¹⁶ *Terms and conditions of sale and use of Pearson products*, Pearson, <https://www.pearsonassessments.com/footer/terms-of-sale---use.html>.

on “obsolete tests.”¹⁷ This poses a direct economic harm to the test’s publisher, like Pearson. To attempt to salvage a test, expensive and time-consuming re-standardization may be required. For example, a re-standardization of Pearson’s earlier WAIS-III and WMS-III, which measure intelligence and memory, took more than five years to complete, requiring testing of over 5,000 individuals at a cost of millions of dollars.¹⁸ Once a new test is developed, practitioners will also need to invest time and resources to be re-trained in administering and evaluating it. Further, if unlicensed dissemination and resulting invalidation of tests becomes commonplace, test publishers and researchers may become unwilling or unable to devote the significant time and expense necessary to create replacements.

C. The negative consequences of reduced test security will be felt across society.

Beyond the significant economic costs, unnecessary disclosures and dissemination of test materials, and the resulting erosion of test validity, may limit or remove altogether the ability to objectively measure and compare mental capacities and conditions. As the APA has noted, “there may be a limited number of standardized psychological tests considered appropriate for a given purpose (in some circumstances only a single instrument). Therefore, tests often cannot easily

¹⁷ APA Code Section 9.08.

¹⁸ See NAN Test Security Statement at 3.

be replaced or substituted when the security of a test is compromised by test takers, administrators, groups, technologies, or in other ways.”¹⁹

Even if a replacement assessment is ultimately developed, the intervening months or years required to research, test, and implement an assessment will leave practitioners without the tools and measurements they need to make crucial decisions and provide adequate care to patients. For example, assessments are used in the hiring and advancement in positions of trust and safety like pilots, nurses, and doctors. Medical professionals themselves must rely on assessments to evaluate injuries and conditions and to guide prescriptions and treatments, especially for conditions that cannot be diagnosed via brain scans. The academic achievements and developmental needs of students are similarly evaluated through cognitive and psychological testing. And courts rely on the validity of evaluations and assessments to measure competency and mental states in criminal trials, in guardianship cases, and to evaluate injuries and measures of damages in civil litigation. Individuals and organizations in these contexts and more must be able to count on the availability of psychological and cognitive tests and must be able to trust in the accuracy of the test results.

¹⁹ *FAQs: Disclosures of Test Data and Test Materials*. Am. Psych. Ass’n (Apr. 11, 2019) <https://www.apa.org/science/programs/testing/data-disclosure-faqs>

Only by limiting the exposure and use of standardized tests to trained professionals who know how to conduct the tests and analyze the results, and are committed to preventing unauthorized disclosure, can these risks, and negative societal consequences, be mitigated.

III. This Case Exemplifies Why the Bright-Line Rule in Iowa Law is Necessary.

Pearson understands and supports the need to appropriately balance competing interests between protecting confidential and sensitive information and allowing for fact-finding and disclosures necessary for fair civil and criminal trials. Yet Iowa Code Section 228.9 represents an important and clear legislative dictate, requiring that the broader interests supporting the long-term viability of accurate and objective testing, also be protected.²⁰ Without the bright-line rule imposed in Section 228.9, district courts will likely resolve discovery disputes over disclosure of test materials with little-to-no regard to the potential harm to the tests' long-term validity, or to the valid, protectable interests of companies like Pearson or the many entities that rely on psychological and cognitive tests.

This case exemplifies that risk. Beyond a passing reference to the existence of copyright law and the interests of psychologists in maintaining ethical duties and fulfilling their standard of care, the district court's analysis focused only on the

²⁰ This statutory mandate is reinforced in Iowa Admin. Code r. 645-243.4(2)-(3).

competing interests of the parties to the case. *See* D0056, Order (9/14/2023). Nor should we count on the parties themselves to cite to or protect these broader interests or even to have the ability to identify and articulate to a court exactly what test components need protection and how best to structure protections.²¹ Especially in light of the liberal discovery rules, if this Court does not enforce the text of Iowa Code Section 228.9, it is likely that test materials will be ordered disclosed in many cases. *See* Iowa R. Civ. P. 1.501(2) (“The rules providing for discovery and inspection should be liberally construed, administered, and employed by the court . . .”).

Once produced in discovery, test materials are unlikely to be adequately protected, even by thoughtfully designed protective orders. In contrast to the text of Iowa Code Section 228.9 and Iowa Admin. Code r. 645-243.4(2)-(3), which limit disclosures to only licensed psychologists that are professionally and ethically bound to safeguard test materials,²² a protective order could allow not only lawyers and court personnel, but also a broad array of others to access these materials. Indeed, in this case the definition of “Qualified Persons” who can view the test

²¹ Indeed, in its Resistance to Appellants’ application for interlocutory appeal to this Court, West Bend questioned whether a plaintiff would even have standing to cite or rely on the interests of psychologists, test publishers, or others that utilize these tests to justify withholding the test materials and test data. *See* West Bend Resistance Br. at 10 (Jan. 18, 2024).

²² *See* APA Code Section 9.11.

materials and test data pursuant to the Protective Order includes West Bend’s adjusters and potentially lay jurors. D0069, Protective Order at 2 (1/12/2024). While courts could impose sanctions against officers of the court for violations, others may be beyond the reach of contempt or sanctions orders. Even with the threat of sanctions, given the use of similar or identical questions each time many psychological and cognitive tests are administered, a single disclosure violation, inadvertent or not, could lead to the test materials being posted and available online forever. Facing a similar situation, the Supreme Court recognized in *Detroit Edison* that a legal order prohibiting improper disclosure of test materials would not “adequately protect the security of the tests.” 440 U.S. at 315-16.

Beyond being foreclosed by the unambiguous text of Iowa Code Section 228.9, neither the district court’s order compelling discovery of test materials and test data nor its protective order granting access to a wide array of “qualified persons” is necessary for the parties to litigate this case in a zealous and fair manner. Even assuming *arguendo* that Plaintiffs-Appellants made Jessenia Burton’s “mental condition an element of their claim(s) in this case for purposes of Iowa Code Section 228.6(4)(a)” as the district court reasoned (D0056, Order at 5 (9/14/2023)), the test materials—“manuals, instruments, protocols, and test

questions or stimuli, [which] does not include test data”²³—offer little practical relevance or value to the litigating parties unless interpreted by a licensed psychologist. A generalist lawyer or judge (or lay juror) is unlikely to be able to effectively evaluate a given test’s validity or reliability by directly reading the assessment’s questions, answer guide, scoring or interpretation protocols, or other test materials. The APA notes a variety of similar concerns that arise when untrained persons attempt to use or interpret test materials and results, including “incompetent test interpretation resulting in misguided decisions . . . ; an underappreciation of the limitations of test data and test materials used out of context and without professional guidance; and the potential misuse of data and materials which could have harmful effects on the client, patient, or others.”²⁴

Applying Section 228.9 as written (without the statutory and court rule exceptions the district court read into the law) will not undermine parties’ ability to effectively litigate or defend cases relying on psychological testing materials. Instead, it will ensure that the materials are shared only between psychologists that are trained in and experienced with properly interpreting testing results and subject to ethical obligations. Given this training, associated ethical guidance, and

²³APA Code Section 9.11.

²⁴ *FAQs: Disclosures of Test Data and Test Materials*, Am. Psyc. Ass’n (Apr. 11, 2019) <https://www.apa.org/science/programs/testing/data-disclosure-faqs>.

experience, psychologists will know whether a test was poorly designed, whether it had a good original design, whether the test is reliable for assessment, and the extent to which the test has become eroded by exposure to too many potential test subjects. Both parties in this case, and all others, are free to retain psychologist experts to facilitate such appropriately limited discovery and trial use. Indeed, Dr. Tranel averred that he was fully willing to provide test materials to a psychologist retained by West Bend, yet West Bend did not accept that offer. *See* Attachment to D0046, Plaintiffs' Exh. 2, Tranel Affidavit at ¶ 12 (8/21/2023).

In the context of disclosure of computer program source code—which, like test materials is tightly protected and competitively valuable but, unlike test materials, typically does not pose a society-wide risk if over-disclosed—courts formulate stringent protections to prevent disclosures. For example, some courts²⁵ include in their form protective order language that source code can only be reviewed by retained individuals subject to the protective order, not parties or in-house counsel, and the review must occur (1) in the offices of producing counsel, (2) on a secured computer with no Internet access in a secured room, (3) without

²⁵ *See, e.g.*, Northern District of California, Model Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets ¶ 9, available at <https://www.cand.uscourts.gov/forms/model-protective-orders/>; District of Delaware, Default Standard for Access to Source Code, available at <https://www.ded.uscourts.gov/sites/ded/files/DefStdAccess.pdf>.

the reviewer being permitted to copy or remove any portion, and (4) reviewing counsel supervising to ensure no copying or removal. In enacting Iowa Code Section 228.9, the Iowa legislature adopted protections that are in line with, though in some ways less restrictive than, the protective order provisions governing disclosure of other types of sensitive material.

West Bend has an alternative, sufficient avenue to review and challenge the assessments: by retaining a properly qualified and ethically bound psychologist who can review the information within the confines of Iowa law and professional and ethical confidentiality. West Bend has simply chosen not to do so. The Iowa courts should not eviscerate the protections for this highly sensitive material simply because West Bend disagrees with the manner in which a proper and informed review should proceed.

CONCLUSION

Limiting disclosure of test materials and test data to only licensed psychologists, as Iowa Code Section 228.9 and Iowa Admin. Code r. 645-243.4(2)-(3) require, best ensures that Pearson's psychological and cognitive assessments are properly used and interpreted in this case and others. This Court should reverse and remand the district court to vacate its order to compel and to re-write its protective order to appropriately limit disclosures to psychologists that will uphold the necessary ethical and professional principles. This will not only maintain

Pearson's contractual and intellectual property rights, but will also protect the long-term reliability of the psychological and cognitive tests relied on across society.

Respectfully Submitted,

Dated: August 14, 2024

By /s/ Angela E. Dralle

Angela E. Dralle (AT0002077)
DORSEY & WHITNEY LLP
801 Grand Avenue, Suite 4100
Des Moines, IA 50309-2790
dralle.angela@dorsey.com
Telephone: (515) 283-1000

Shannon L. Bjorklund
(pro hac vice application submitted)
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
bjorklund.shannon@dorsey.com
Telephone: (612) 340-2600

*Attorneys for Pearson Clinical Assessment
as Amicus Curiae*

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(g) and 6.903(1)(i) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font and contains 4,536 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

/s/ Angela E. Dralle
Angela E. Dralle
DORSEY & WHITNEY LLP

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 14, 2024, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

/s/ Angela E. Dralle
Angela E. Dralle
DORSEY & WHITNEY LLP