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IN THE IOWA SUPREME COURT

SUPREME COURT NO. 25-1351

KEOKUK COUNTY NO. DREQ041508

AUSTON DAVID HERMAN,

Petitioner-Appellee,

v.

HOLLY NOEL MORRISON,

Respondent-Appellant.

FROM THE IOWA COURT OF APPEALS

DECISION DATED MAY 13, 2026

APPELLANT'S APPLICATION FOR FURTHER REVIEW

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Iowa Court of Appeals improperly place L.P.H. in the physical care of Auston Herman despite irrefutable evidence that he is a batterer?

II. Did the Iowa Court of Appeals improperly find that joint legal custody was appropriate in a case plagued with domestic violence perpetrated by Auston Herman?

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II. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING AN AWARD OF JOINT LEGAL CUSTODY WITHOUT APPLYING IOWA CODE § 598.41(1)(b)'S REBUTTABLE PRESUMPTION AGAINST JOINT LEGAL CUSTODY.

Hines-Miller v. Teter, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026)
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STATEMENT REGARDING FURTHER REVIEW

Further review under Iowa R. App. P. 6.1103 is warranted because the Court of Appeals decision is in direct conflict with this Court's prior precedent and this Court's recent decision in *Hines-Miller v. Teter*. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026).

Importantly, the Court of Appeals acknowledged that this was "an admittedly close case." [Ct. App. Opin. at 2]. The Court of Appeals did not have the benefit of *Hines-Miller* which directly informs the proper outcome in this matter. *Id*.

In *Hines-Miller*, this Court held three things directly relevant here. *Id*.

First, "the district court's focus on the absence of a 'direct negative effect' of the domestic abuse on the child and its subsequent conclusion contradict what our appellate courts have said for more than thirty years on the matter." *Id*. at *8. The Court of Appeals in the present case rested its affirmance squarely on that very rationale, emphasizing that "No safety concerns were identified at that time relating to Auston's care of the child." [Ct. App. Opin. at 3].

Next, "a parent's history of serial domestic abuse is a significant consideration in physical care determinations regardless of whether the parent directly perpetrated that abuse of the child or in the child's presence."

Id. at *9. The Court of Appeals here treated Auston's abuse history as substantially neutralized by his completion of services, while overlooking that Holly was directly abused, that L.P.H. was struck in the face by Auston with bruising documented by Child Protection Worker Brigham, and that the record reflects prior protective orders involving two earlier romantic partners.

Lastly, *Hines-Miller* adopts a controlling three-factor framework for weighing a history of domestic abuse: (1) time since the last act of abuse; (2) parental acknowledgment of the abuse; and (3) steps taken beyond court-ordered treatment. *Id*. at *9. The Court of Appeals never applied this framework. Auston fails each factor on this record.

Further review is independently warranted on the grounds that the legal custody determination in the present case directly contradicts the rebuttable presumption against joint custody in cases involving domestic violence. Iowa Code § 598.41(1)(b). The Court of Appeals affirmed an award of joint legal custody on this record without ever applying that presumption, thereby inverting the statutory burden Auston was required to carry.

Because the Court of Appeals' decision cannot be reconciled with this Court's decision in *Hines-Miller*, this Court should grant further review, vacate

the Court of Appeals' decision, and reverse the district court. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026).

ARGUMENT

I. THE COURT OF APPEALS' AWARD OF PHYSICAL CARE TO A PARENT WITH AN ESTABLISHED HISTORY OF DOMESTIC ABUSE IS DIRECTLY CONTRARY TO PRECEDENT AND MUST BE REVERSED.

a. Preservation of Error.

Holly properly preserved this issue for review in the district court by presenting it at trial. Holly then timely appealed and briefed this issue to the Court of Appeals. Accordingly, Holly has preserved error throughout the course of this case.

b. Standard of Review.

This case arises in equity and should be reviewed de novo. *In re Marriage of Frazier*, 1 N.W.3d 775, 778 (Iowa 2024); Iowa R. App. P. 6.907.

c. Domestic Abuse Is the Most Compelling Factor in a Physical Care Determination, and the Court of Appeals' Affirmance Rests on the Very Reasoning Iowa Law—Most Recently *Hines-Miller*—Forecloses.

For more than thirty years, Iowa law has treated a parent's history of domestic abuse not as one factor among many but as the most compelling consideration bearing on physical care. The Iowa Court of Appeals has expressly found "the detrimental effects of family violence to be the more compelling factor when considering which custodial award would be in the

best interest of the children." *In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa Ct. App. 1997). A parent's "violent tendencies . . . adversely impact on the fitness of that parent to be the primary caretaker of a child," and that harm is not confined to children who are themselves struck because children raised in a home marked by domestic abuse suffer lasting psychological injury and face a heightened risk of physical abuse themselves. *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa Ct. App. 1994) The Legislature reinforces that priority by requiring courts to weigh a history of domestic abuse as a mandatory factor in the best-interest inquiry. Iowa Code § 598.41(3)(j). The result is that, among the many considerations bearing on physical care, domestic abuse is the one factor Iowa courts have consistently treated as carrying greater weight than the rest. The Iowa Supreme Court again recognized the inherent danger of domestic violence and the importance of its consideration in physical care determinations in *Hines-Miller*. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026).

The Court of Appeals' physical care analysis in the present matter turned on three primary findings: (1) "No safety concerns were identified at that time relating to Auston's care of the child" (2) L.P.H. "does not exhibit the same behavioral concerns during Auston's parenting time as during Holly's

time" and (3) "Auston had addressed his deficiencies and that the child was safe in his care" [Ct. App. Opin. 3-9]. Each finding exemplifies the very approach this Court rejected in *Hines-Miller*. *Id*. at *9.

In *Hines-Miller*, the district court likewise found "no evidence that Javonte's convictions had 'a direct negative effect on [K.M.],'" and the Court of Appeals affirmed in a split decision. *Id*. at *4. This Court reversed and held the trial court's reliance on the absence of a direct effect "contradict[ed] what our appellate courts have said for more than thirty years on the matter." *Id.* at *8. The Court invoked this precedent in finding that domestic abuse is a significant consideration which is inherently contrary to the best interest of the child. *Id*. (additional citations omitted).

After *Hines-Miller*, the proposition the Court of Appeals invoked to affirm that L.P.H. was "safe" with Auston and showed no current symptoms of distress in his care, is no longer a permissible basis for discounting an established history of domestic abuse. *Id*. "Domestic abuse is, in every respect, dramatically opposed to a child's best interests." *In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997). The Court of Appeals' finding that joint legal custody and physical care to Auston "preserves both parents' involvement while ensuring stability in the child's daily life" is the reasoning

Hines-Miller identified as deficient. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026). [Ct. App. Opin.at 6].

d. Auston Fails Each Factor Outlined in *Hines-Miller*.

Hines-Miller holds that in deciding how much weight to give a parent's history of domestic abuse, "courts should consider the following factors: (1) how much time has passed since the last act of abuse; (2) whether the parent has acknowledged their role in the abuse; and (3) what steps the parent has taken beyond mere compliance with a court-ordered treatment to prevent future abuse, including addressing any substance abuse that has contributed to the parent's abusive actions." *Id*. at *8. Auston fails each factor as a matter of record.

The first factor *Hines-Miller* made controlling asks how much time has passed since the parent's last act of abuse. *Id*. The most recent documented incident in this record occurred in September 2023, roughly twenty-two months before the July 17, 2025, trial. [D0156, Exhibit A1, 08/21/2025]. That interval neutralizes nothing. This Court held that a comparable gap, "a little over a year and a half," "offers little consolation, considering Javonte's history of domestic incidents dates back to 2012." *Id*. at *9. Auston's documented history is no shorter. It reaches back at least to the August 2020 domestic-abuse-assault charge arising from his assault on Holly during her pregnancy,

and it continues through documented incidents in December 2022, February 2023, and September 2023. [D0157, Exhibit B1, 08/21/2025; D0123, Exhibit 1, 08/21/2025; D0159, Exhibit D1, 08/21/2025; D0156, Exhibit A1, 08/21/2025; D0190, Tr. p. 98:2–17, 09/28/2025]. Moreover, there are two prior protective orders that two earlier partners, Amy Wells and Brittney Adams, obtained against him well before his relationship with Holly even began [D0190, Tr. p. 60:22-61:22, 09/28/2025; D0158, Exhibit C1, 09/28/2025]. That is exactly the kind of "serial" abuse history *Hines-Miller* found especially significant. *Id*.

The second factor asks whether the parent has acknowledged his role in the abuse, which Auston has repeatedly refused to do so. He testified flatly at trial, "I have not assaulted her." [D0190, Tr. p. 72:11-16, 09/28/2025]. He denied that L.P.H. was ever bruised, asserting that "they claimed there was a bruise, but there never was," he denied the strangulation, he denied the gun threat, and he dismissed Holly's reports as nothing more than an effort to "get [him] in trouble." [D0190, Tr. p. 72:25-73:1, 09/28/2025; D0190, Tr. p. 9:6-11, 09/28/2025; D0190, Tr. p. 9:6-11, 09/28/2025]. He maintained those denials even after pleading guilty to third-degree burglary on Holly's property, where the factual basis recited: "I did commit 3rd degree burglary upon the property of [Holly Morrison]." [D0156, Exhibit A1 p. 20, 08/21/2025]. This is

precisely the conduct *Hines-Miller* treated as dispositive: "Despite his guilty plea and the police reports, photographs, and bodycam footage to the contrary, Javonte continued to minimize and deny any domestic violence issues. . . . This evidence does not suggest that Javonte has meaningfully addressed his domestic violence issues." *Id*. at *10. Auston's denials are indistinguishable, and they fail this factor for the same reason Javonte's did. His refusal to acknowledge his violent tendencies is not even confined to this relationship: two earlier partners, obtained protective orders against him, yet he has never admitted any wrongdoing as to either. [D0190, Tr. p. 60:22-61:25, 09/28/2025; D0190, Tr. p. 64:5-21, 09/28/2025].

The third factor asks what the parent has done beyond mere compliance with court-ordered treatment, and the record shows that Auston has done nothing. His only relevant steps were the court-ordered programming itself and the minimal services required of him in the CINA proceeding. He presented no evidence of any voluntary effort beyond what the court and the department required of him, and no evidence that he has matured or improved in this area beyond his own testimony. On this record, Auston offers only compliance with what the court and the department required of him which is precisely the showing the third factor treats as insufficient.

Applying *Hines-Miller*'s framework to this record produces only one answer. *Id*. The Court of Appeals erred in concluding that Auston's history of domestic abuse was not enough to make Holly the superior parent.

e. The Initial-Determination Posture of This Case Makes Hines-Miller Apply With Greater Force.

Hines-Miller arose from a modification action. *Id*. The present matter is an initial physical care determination under Iowa Code § 600B.40(2). That distinction makes the *Hines-Miller* framework apply with greater force here, not less. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026). While modifications presumptively favor preservation of existing arrangements, no comparable deference attaches to initial determinations. Auston's claim to physical care here rests not on years of stable caregiving but on a temporary order Holly contested while unrepresented. [D0017, Affidavit of Holly Morrison, 11/12/2024]. Whatever margin *Hines-Miller*'s framework affords an existing custodian, no such margin protects Auston as a parent seeking an original physical care award. *Id*.

f. The District Court and the Court of Appeals Erred in Their Analysis of Holly's Ability to Minister to L.P.H.'s Long-Range Best Interests.

Physical care is ultimately decided by determining, on the whole record, "which parent can minister more effectively to the long-range best interests of the children." *In re Bowen's Marriage*, 219 N.W.2d 683, 687–88 (Iowa 1974).

That determination turns on the multitude of factors set out in Iowa Code § 598.41 and developed in the caselaw, all directed at placing the child "in the environment most likely to bring [him] to a healthy physical, mental, and social maturity." *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). *Hines-Miller* settles which way that inquiry tips when a stable, abuse-free home is set against an offending parent: "stability is the trump card." *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774, at *10 (Iowa May 15, 2026). On this record Holly is plainly the parent better equipped to minister to L.P.H.'s long-range interests, and both the district court and the Court of Appeals got that question wrong.

Holly has been L.P.H.'s primary caregiver for his entire life; Auston was absent from the child's life until L.P.H. was approximately two years old. [D0190, Tr. p. 96:16-22, 09/28/2025]. She maintains a stable household in Comfrey, Minnesota with her partner, her own children, and her partner's children. [D0190, Tr. p. 91:21-92:11, 09/28/2025]. Her testimony reflected a detailed, firsthand knowledge of her son including his ADHD diagnosis and how she manages his hyperactive behavior, his daily routine and school schedule, the chores he keeps at home, his close relationships with his siblings and her partner's children, the things he loves like the trampoline and the sprinkler, and his plain attachment to her as a "momma's boy." [D0190, Tr.

p.118:19-119:15; D0190, Tr. p. 121:21-112:4, 09/28/2025; D0190, Tr. p. 121:4-20, 09/28/2025]. An early childhood screening identified no concerns with his mental or physical health. [D0166, Exhibit K1, 08/21/2025]. None of it was rebutted. Tellingly, apart from the grievance that Holly withheld the child, Auston offered no evidence of any kind impugning her parenting.

Against Holly's detailed showing, Auston offered nothing. He gave no testimony about L.P.H.'s personality, his likes and dislikes, his academic inclinations, or any particular need the child has—an absence that should have spoken volumes. He did not explain how he would meet L.P.H.'s physical, mental, and social needs, what he would do for childcare if granted primary care, or where the child would attend school. Yet the trial court found, with no evidence to support it, that Auston had shown an ability to provide for L.P.H.'s needs. [D0098, Decree, 07/22/2025].

Instead of weighing Holly's unrebutted account of her care, both the trial court and the Court of Appeals was fixated on the fact that Holly withheld L.P.H. from Auston. While it is appropriate for the trial court to consider which parent is better suited to foster the child's relationship with the noncustodial parent, it is only one of a multitude of factors in determining a physical care placement that is in the best interest of a minor child. Concerningly, the trial court did not appropriately consider Holly's reasons for doing so, including

protecting the wellbeing of L.P.H. The Iowa statute *explicitly* notes that domestic abuse may be just cause for both withholding contact with the other parent and relocating away from the other parent. Iowa Code § 598.41(c) and Iowa Code § 598.41(d). Despite the fact that it was required to do so under Iowa law, the trial court sidestepped any balancing tests of these competing interests. In fact, the Iowa Court of Appeals has specifically weighed the presence of domestic violence against denial of visitation and stated: "We find the detrimental effects of family violence to be the more compelling factor when considering which custodial award would be in the best interest of the children." *In re Marriage of Daniels,* 568 N.W.2d 51, 56 (Iowa Ct. App. 1997).

The Court of Appeals compounded the error by considering which parent would support the other party's relationship with L.P.H. as the determinative factor for primary physical care without regard for the domestic violence that plagued this relationship and the criminal no contact order between the parties.

There, the district court treated the non-offending parent's "lack of a history of domestic abuse [as not] enough to make her a superior parent," and this Court rejected that view, explaining that "a household free from domestic abuse was not the only way Ashlea would parent differently" and that dwelling on the "general paucity in the record of the positives that Ashlea is

prepared to bring" ignores the settled rule that "stability is the trump card." *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774, at *10 (Iowa May 15, 2026).

The child's own characteristics confirm where his interests lie. *In re Winter's Marriage*, 223 N.W.2d 165, 166–67 (Iowa 1974). L.P.H. is closely bonded to Holly and, because of what he has endured, has grown hyper-focused on his mother. (D0131, Ex. 9, at 3.) After a young life marked by instability and chaos, stability and security are what he needs most, and Holly is the parent who provides them. Weighing the factors Iowa law directs the court to consider, the conclusion is inescapable: Holly is better able to minister to L.P.H.'s long-range best interests, the courts below overlooked the evidence that makes it clear, and the physical-care award should be reversed.

II. THE COURT OF APPEALS FAILED TO APPLY IOWA CODE § 598.41(1)(b)'S REBUTTABLE PRESUMPTION AGAINST JOINT LEGAL CUSTODY—A PRESUMPTION THIS COURT REAFFIRMED IN *HINES-MILLER v. TETER*.

a. Preservation of Error.

Holly raised this issue both at trial and on appeal. Error is preserved.

b. Standard of Review.

De novo review applies. *In re Marriage of Frazier*, 1 N.W.3d 775, 778 (Iowa 2024); Iowa R. App. P. 6.907.

c. The Statutory Presumption Was Triggered as a Matter of Law.

Hines-Miller reaffirms that "if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists," Iowa Code § 598.41(1)(b), and that this presumption governs joint legal custody determinations. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774, at *5 (Iowa May 15, 2026). The presumption is mandatory. Once triggered, an unrebutted finding of a history of domestic abuse "shall outweigh consideration of any other factor specified in subsection 3 in the determination of the awarding of custody." Iowa Code § 598.41(2)(c). In assessing whether the evidence is sufficient to constitute a history of domestic abuse and trigger that presumption, the court weighs the abuse's nature, severity, repetition, and to whom it was directed. *In re Marriage of Forbes*, 570 N.W.2d 757, 760 (Iowa 1997).

Each of those considerations points the same way here. The abuse was severe and repeated, and it was directed at both Holly and the child. Auston admitted, in the factual basis for his guilty plea, to committing third-degree burglary upon Holly's property—conduct originally charged as first-degree burglary and domestic abuse assault with a dangerous weapon arising from the September 2023 incident. [D0156, Exhibit A1, 08/21/2025]. That offense produced a five-year sentencing no-contact order under Iowa Code § 664A.5. [D0156, Exhibit A1, 08/21/2025]. The injuries are documented in

photographs which show Holly's black eyes, bruising, and split lip. [D0161, Exhibit F1, 08/21/2025] Child Protection Worker Brigham independently observed bruising on Holly's jaw, chin, neck, arms, and chest, along with bruising behind L.P.H.'s ear. [D0123, Exhibit 1 p. 4, 08/21/2025]. Auston's own twelve-year-old daughter reported hearing him tell Holly he "wanted to kill her and rip her throat out" and hearing Holly plead with him to "stop choking" her. [D0159, Exhibit D1, 08/21/2025]. Critically, the abuse was not directed at Holly alone; L.P.H. was himself a victim, which weighs all the more heavily against an award of joint legal custody. *In re Marriage of Forbes*, 570 N.W.2d 757, 760 (Iowa 1997).

The Court of Appeals itself characterized this evidence as "significant and concerning" and found that the record "depict[s] visible bruising to Holly's face, neck, and body," reflects "multiple reported incidents of physical conflict," and contains "third-party observations of injuries and statements describing volatile interactions within the home." [Ct. App. Opin. at 8.] That characterization is, as a matter of law, a finding of a history of domestic abuse sufficient to trigger the Iowa Code § 598.41(1)(b) presumption against joint legal custody. *In re Marriage of Forbes*, 570 N.W.2d 757, 760 (Iowa 1997).

Once the presumption is triggered, the burden shifts to the parent seeking joint custody. Iowa Code § 598.41(1)(b). Auston fails to provide any

evidence to rebut a presumption that sole legal custody to the non-batterer parent is appropriate.

Neither the district court nor the Court of Appeals ever found that Auston carried that burden. The Court of Appeals' affirmance of joint legal custody rested on a single conclusory sentence: "[J]oint legal custody may remain appropriate where both parents are capable of participating in major decisions affecting the child." [Ct. App. Opin.at 6.) That standard inverts the statutory burden. Under Iowa Code § 598.41(1)(b), joint custody is presumptively *inappropriate* once the presumption is triggered, not presumptively appropriate where both parents are simply "capable" of participating.

d. The Five-Year Criminal No-Contact Order Makes Joint Legal Custody Practically Unworkable.

Joint legal custody requires consultation on major decisions affecting the child's education, medical care, and welfare. "Cooperation and communication are essential to joint legal custody." *In re Marriage of Gensley*, 777 N.W.2d 705, 715 (Iowa Ct. App. 2009). Tension alone will not defeat joint legal custody, but where the parties' acrimony "goes well beyond the normal discord attendant to separating couples," that arrangement is contrary to the child's best interest and sole legal custody is appropriate. *In re Marriage of*

Nimrick, 24 N.W.3d 781 (Iowa Ct. App. 2025). The criminal no-contact order prohibits all communication between Auston and Holly for five years. [D0156, Exhibit A1, 08/21/2025]. The district court itself found the parties "cannot communicate." [D0098, Decree, 07/22/2025]. The Court of Appeals acknowledged "significant communication difficulties" and then affirmed joint legal custody anyway. [Ct. App. Opin. at 6].

That holding cannot be reconciled with the requirement that joint legal custody be practically workable. The court did not explain how Holly and Auston are to discuss whether L.P.H. should be evaluated for ADHD medication, where he should attend school, or how to address his medical needs when they are legally prohibited from speaking. Awarding joint legal custody to two parents whom the law forbids from communicating defies logic. Vesting the decisions in one parent instead "ensure[s] the decisions are made and result[s] in a more stable atmosphere for the children to carry on with their daily lives," and on this record that parent must be Holly. *In re Marriage of Gensley*, 777 N.W.2d 705, 715 (Iowa Ct. App. 2009).

CONCLUSION

This Court's decision in *Hines-Miller v. Teter*, supplies a controlling framework the Court of Appeals could not apply. *Hines-Miller v. Teter*, --- N.W.3d ----, 2026 WL 1353774 (Iowa May 15, 2026). Under that framework,

Auston's history of serial domestic abuse, his continued denial of the conduct underlying his guilty pleas, and his reliance on only court-ordered programming foreclose an award of physical care to him. Holly's lifelong primary caregiving, her stable household, and her abuse-free home are sufficient. The Court of Appeals' separate failure to apply Iowa Code § 598.41(1)(b)'s presumption against joint legal custody, and its silence on the textual operation of the no-contact order, are independent grounds for reversal.

Holly respectfully requests that this Court grant further review, vacate the Court of Appeals' decision, reverse the district court, designate Holly the primary physical caretaker of L.P.H., designate Holly the sole legal custodian, and award Holly reasonable appellate attorney fees.

REQUEST FOR ORAL ARGUMENT

Holly does not believe an oral argument is necessary in this matter. Should the Appellate Court wish to hear form the parties, Holly respectfully requests an opportunity to participate in oral argument.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellee's Reply Brief was served by electronic filing and electronic delivery via the EDMS system on June 2, 2026, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.315(1)(b).

By */s/ Sydnee Waggoner*
Sydnee M. Waggoner

CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing Appellee's Reply Brief was filed with the Iowa Supreme Court by electronically filing the same on June 2, 2026, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.302(1).

By */s/ Sydnee Waggoner*
Sydnee M. Waggoner

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(5)(a) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 pt. and contains 4,308 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(5)(a).

/s/Sydnee Waggoner June 2, 2026
Signature 06/02/2026