IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. CHRISTOPHER C. HAWK, Defendant-Appellant.	)))))))))	S.Ct. No. 19-1814

APPEAL FROM THE IOWA DISTRICT COURT
FOR WAYNE COUNTY
HONORABLE DUSTRIA A. RELPH (MOTION TO SUPPRESS), MICHAEL K. JACOBSEN (GUILTY PLEA) & PATRICK W. GREENWOOD (SENTENCING), JUDGES

APPELLANT'S REPLY BRIEF

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FINAL

CERTIFICATE OF SERVICE

On the 10th day of September, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Christopher Hawk, 2023 NW 86th, Apt. 69, Clive, IA 50325.

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/s/ Stephan J. Japuntich

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Iowa Code § 910.7(4) (2020)

State v. Damme, 944 N.W.2d 98, 103 fn 1 (Iowa 2020)

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Medina v. California, 505 U.S. 437, 447-48, 112 S.Ct. 2572, 2578, 120 L.Ed.2d 353, 364 (1992)

D. Does SF457 impermissibly restrict the role and jurisdiction of Iowa's appellate courts?

State v. Allen, No. 16-0095, 2017 WL 2181178, at *1 (Iowa Ct. App. May 17, 2017)

State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009)

Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002)

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STATEMENT OF THE CASE

COMES NOW the defendant-appellant, pursuant to Iowa R. App. P. 6.903(4), and the Supreme Court's order of August 28, 2020, and hereby submits the following arguments in reply to the plaintiff-appellee's brief.

ARGUMENT

I. THE SUPREME COURT IS AUTHORIZED TO DECIDE HAWK'S APPEAL AS SF457 DOES NOT APPLY RETROACTIVELY AND IS AN UNCONSTITUTIONAL EXERCISE OF LEGISLATIVE POWER WHICH VIOLATES DUE PROCESS BY PRESUMING THE ABILITY TO PAY, IN DEPRIVING DEFENDANTS OF COUNSEL, BY POTENTIALLY CAUSING DEFENDANTS TO PAY EXCESSIVE FINES, DEPRIVING THEM OF PROPERTY AND BY IMPERMISSIBLY RESTRICTING THE ROLE AND JURISDICTION OF THE SUPREME COURT.

A. The provisions of SF457 do not apply to Hawk's case and are not retroactive:

The State incorrectly assumes that SF457 is applicable to the instant case and proceeds to argue on that basis. (State's Appellate Brief pp. 24-26).

Iowa Code § 910.7(4), came into existence on June 25, 2020 as part of SF457 and provides:

4. An appellate court shall not review or modify an

> offender's plan of restitution, restitution plan of payment, or any other issue related to an offender's restitution under this subsection, unless the offender has exhausted the offender's remedies under this section and obtained a ruling from the district court prior to the issue being raised in the appellate courts.

Iowa Code § 910.7(4) (2020).

The provision does not express legislative intent to apply the statute retroactively, nor does any other provision contained in SF457. The effective date for application of statutes impacting the criminal appeals process is the date of judgment and sentencing. State v. Damme, 944 N.W.2d 98, 103 fn 1 (Iowa 2020).

The sentencing order in this case is already a permanent order, despite the State's claim to the contrary. (State's Appellate Brief p. 14). All of the amounts were known and despite the fact that the final amount charged for court-appointed counsel was unknown, Hawk was assessed a known amount, "…up to a maximum of $250." (10/02/19 Judgment Entry and Sentence p. 1) (App. p. 26).

Interim orders should make it clear that no sums are due prior to the entry of a final order. State v. Davis, 944 N.W.2d

641, 642 (Iowa 2020). The order in this case contains no such statement. (10/02/19 Judgment Entry and Sentence) (App. pp. 26-28).

Therefore, appeal was perfected as Hawk's appeal of the sentence imposed constitutes "good cause" and this case is properly before the Supreme Court despite the statutory changes. Iowa Code § 814.6(1)(a)(3) (2020); State v. Damme, 944 N.W.2d 98 at 105. "A permanent restitution order entered at the time of sentencing is part of the final judgment of sentence as defined in section 814.6 and shall be considered in a properly perfected appeal." Iowa Code § 910.3(8) (2020).

The State asserts that this appeal should be dismissed for failure to exhaust all remedies pursuant to the provisions and that Hawk's only remedy is to be found in Iowa Code § 910.7. Additionally, the State cites to language in Iowa Code 910.2B(3) indicating that the provisions in question pertain to all cases including those on appeal, and the State cites to SF457 § 73 for the proposition that the new statutes apply to Hawk's case. (State's Appellate Brief pp. 14-19).

The State further asserts that Hawk's restitution order "…has been converted to a 'permanent restitution order' within the meaning of the new legislation" necessitating a challenge "…through the filing of a petition pursuant to section 910.7." (State's Appellate Brief p. 15).

However, this conversion cannot take place as this case was already on appeal and the district court lacks jurisdiction to issue the conversion order. And, as noted above, Hawk's appeal was properly perfected.

Hawk was sentenced on October 2, 2019. (Judgment Entry and Sentence) (App. pp. 26-28). A notice of appeal was filed on October 30, 2019. (Notice of Appeal) (App. pp. 29-30).

Hawk's page-proof brief was filed on May 22, 2020, more than a month prior to the enactment of SF457. (Page-Proof Brief).

In State v. Macke, 933 N.W.2d 226, 228 (Iowa 2019), this Court reaffirmed the principle announced in James v. State wherein "…it is the general rule that, unless the legislature clearly indicates otherwise, 'statutes controlling appeals are

those that were in effect at the time the judgment or order appealed from was rendered.'" James v. State, 479 N.W.2d 287, 290 (Iowa 1991) (*citations omitted*).

"The clear indication of intent for retroactive application must be found in the text of the statute; legislative history is no substitute." State v. Macke, 933 N.W.2d 226 at 228 (*citation omitted*).

The authorities cited for the proposition that the Supreme Court has the authority to hear this case are reflected and reaffirmed in the Court's supervisory order filed on July 7, 2020 which states "A defendant sentenced on or after June 25, 2020, shall be subject to the requirements of S.F. 457." (In the Matter of Interim Procedures Governing Ability to Pay Determinations and Conversion of Restitution Orders p. 5).

Retroactive application of SF457 also conflicts with Iowa Code § 4.13(1) which states that the amendment of a statute does not affect the prior operation of the statute, nor can it result in the abrogation of rights previously acquired. This includes the right to appeal the restitution portion of a

sentencing order. Iowa Code §§ 4.13(1)(a-b) (2020); State v. Macke, 933 N.W.2d 226, 232 (Iowa 2019).

Clearly the Supreme Court has the authority to address Hawk's appeal.

B. Presuming the defendant has the ability to pay restitution and shifting the burden to the defendant to prove inability to pay is unconstitutional and violates the defendant's due process rights.

Even if the Act applies to the defendant, SF457 is unconstitutional because it presumes the defendant's ability to pay. Under a particular provision, codified at Iowa Code § 910.2A (2020), an offender is presumed to have the reasonable ability to pay "category B" restitution, which includes the restitution ordered in this case. Iowa Code § 910.2A(1) (2020).[1]

[1] Although not part of the 2020 legislation in question, Iowa Code § 909.7 "Ability to pay fined presumed" is defective for the same reasons.

Under the new law, the offender must request a hearing and prove by a preponderance of the evidence that he or she is unable to reasonably make payments toward the full amount of the restitution. Iowa Code §§ 910.2A(2)(2)(a-d) (2020).

SF457 provides for the conversion of all restitution orders, regardless of stage of completion, to permanent status. Iowa Code § 910.2B (2020).

Prior to the passage of SF457 the law was settled that a determination of the defendant's reasonable ability to pay is a constitutional prerequisite for a criminal restitution order provided by Iowa Code chapter 910. State v. Haines, 360 N.W.2d 791, 797 (Iowa 1985); State v. Harrison, 351 N.W.2d 526, 529 (Iowa 1984). State v. Jenkins, 788 N.W.2d 640, 646 (Iowa 2010) (denying defendant an opportunity to challenge, before the district court, the amounts of the restitution order implicates his right to due process).

It is error for the district court to shift the burden for raising the issue of the ability to pay to the defendant, by providing that the full amount will be assessed unless ability to

pay is affirmatively challenged by the defendant. Rather, the court is obligated to affirmatively make an ability to pay determination before ordering payment for restitution. See State v. Dudley, 766 N.W.2d 606, 615 (2009) (reimbursement obligation "may not be constitutionally imposed on a defendant unless a determination is *first* made that the defendant is or will be reasonably able to pay the judgment.") (emphasis added); Goodrich v. State, 608 N.W.2d 774, 776 (Iowa 2000) ("Constitutionally, a court must determine a criminal defendant's ability to pay *before* entering an order requiring such defendant to pay criminal restitution pursuant to Iowa Code section 910.2.") (emphasis added). This Court recently stated that in order to assess attorney's fees, the district court had to "determine the defendant's reasonable ability to pay the attorney fees without requiring him to affirmatively request a hearing on his ability to pay." State v. Coleman, 907 N.W.2d 124, 149 (Iowa 2018) (citing Goodrich v. State, 608 N.W.2d 774, 776 (Iowa 2000)).

The sentencing court is constitutionally compelled to make an ability to pay determination prior to assessing the amount of restitution and the legislature is prohibited from circumventing this requirement.

The forfeiture provisions (Iowa Code §§ 910.2A(3)(a) and (b)) improperly relieve the State of its burden of proving the voluntariness of the waiver of fundamental rights (e.g. due process rights prohibiting deprivation of property without due process, excessive fines). "Because of the importance of fundamental rights, the State must prove the waiver of such rights was knowingly, intelligently, and voluntarily given." State v. Wallace, 475 N.W.2d 197, 200 (Iowa 1991)(*citing* State v. Whitsel, 339 N.W.2d 149, 152 (Iowa 1983)).

The State's assertion that Hawk is barred from seeking relief by operation of law is without merit. (State's Brief pp. 24-26). The presumption of ability to pay is unconstitutional as the sentencing court must determine the defendant's reasonable ability to pay prior to assessing restitution.

C. SF457 denies criminal defendants due process rights including the right to counsel and the guarantee against deprivation of property and would potentially deny criminal defendants their rights under the Excessive Fine clauses of the state and federal constitutions:

The right to counsel is guaranteed by under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, section 10 of the Iowa Constitution.

The imposition of excessive fines is prohibited under the Eighth Amendment to the U.S. Constitution and Article I § 17 of the Iowa Constitution.

The right to counsel, the guarantee against deprivation of property without due process and the prohibition against excessive fines are fundamental rights and as such can only be waived if done so in a knowing and intelligent manner. Zerbst v. Johnson, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 68 L.Ed. 1461, 1466 (1938). "...presuming waiver of a fundamental right from inaction, is inconsistent with this Court's pronouncements on waiver of constitutional rights." State v.

Gorham, 206 N.W.2d 908, 911 (Iowa 1973).

Under the new statutory scheme, if the defendant fails to timely request a hearing the court is directed to issue a permanent order requiring the defendant to pay the full amount of category "B" restitution and any assertion of lacking the reasonable ability to pay is considered waived. Iowa Code §§ 910.2A(3)(a-b) (2020).

Additionally, if the defendant, acting pro se (as he must under SF457), fails to plead all of the relevant facts, the court may refuse to grant a hearing as Iowa Code § 910.7(1) provides that "…court shall grant a hearing if on the face of the petition it appears that a hearing is warranted." Iowa Code § 910.7(1) (2020).

The language of Iowa Code § 910.7(1) begs the question as to whether the court can refuse to honor an application based upon the defendant's failure to provide sufficient legal authority supporting the request for a hearing.

Additionally, the provisions in 910.7 only allow the defendant to seek relief based on the ability to pay during

incarceration and while on supervised probation or parole. If, in a case like this one, the court finds that the defendant is able-bodied and able to work, is the defendant relegated to shouldering the obligation for life, even if his ability to earn is curtailed?

SF457 is unlike the recoupment statute addressed by the U.S. Supreme Court in Fuller v. Oregon wherein the Court found the Oregon law to be "…carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so." Fuller v. Oregon, 417 U.S. 40, 52, 94 S.Ct. 2116, 2124, 40 L.Ed.2d 642 (1974).

The statutory scheme at issue here gives no such assurance, but rather serves as a trap which will guarantee that some defendants are barred from contesting their ability to pay, and/or that they will be without counsel as they attempt to provide the proof necessary to prevail.

SF457 will not ensure that "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay." *Id.*

It is fundamentally unfair to put the burden on the indigent defendant to initiate the proceedings following conviction and sentencing during which time he is commonly incarcerated, does not have counsel appointed to represent and advise him on the procedures involved in, and the merits of, litigating a challenge to an order of restitution.

Prior to the enactment of SF457, an indigent defendant appealing a conviction and sentence was assured of having an attorney appointed to examine the record for purposes of protecting rights subject to compromise during prosecution and up until the date of the filing of a notice of appeal. Under SF457 an appellate attorney will not be able to address restitution issues on a direct appeal.

The new legislation imposes obstacles on defendants, in particular the requirements listed under Iowa Code § 910.2A(2), individuals who are commonly incarcerated and unable to avail themselves of rapid means of communication such as through internet access. It remains to be seen how many will be wrongfully assessed the entirety of category "B" restitution due

to defective notice procedures like those referenced in State v. Gross wherein the notice was sent to the defendant's home in Des Moines when he was actually confined at the State Penitentiary in Mount Pleasant, Iowa. State v. Gross, 935 N.W.2d 695, 697 (Iowa 2019).

And, what of defendants who do not possess the ability to read or understand the directions provided to them (if there are directions provided)? Will they too be prevented from ever challenging the imposition of overly-burdensome obligations by virtue of failing to act timely or because they lack the education necessary to navigate the statutory prerequisites to a challenge?

The constitutional infirmities, and subsequent violations, are inherent in the statutory scheme in question and are thus "capable of repetition, yet avoiding appellate review." State v. Hernandez-Lopez, 639 N.W.2d 226, 235 (Iowa 2002).

The implementation of the new statutory scheme will result in the deprivation of the right to counsel and other due process violations including the deprivation of property. "'The test of whether due process has been violated is whether the

challenged practice or rule 'offends some principle of justice so rooted in the traditions and conscience of our people to be ranked as fundamental.'" State v. Haines, 360 N.W.2d 791, 796 (Iowa 1985)(citation omitted); U.S. Const. am XIV; Iowa Constitution Art. I, § 9.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Eldridge v. Matthews, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (*citations omitted*). The statutory scheme in question denies defendants the right to be heard at a meaningful time and in a meaningful manner by placing an onerous burden of self-help upon them and denying them the right to counsel at a critical juncture of the criminal proceedings during which they stand to suffer a deprivation of property, in the guise of restitution, which imposes undue hardship and/or in violation of the constitutional prohibition against excessive fines.

The statutory provisions in question are unfair to defendants, especially those who happen to be indigent, and

this is unacceptable in a system in which "…the touchstone of due process analysis remains fundamental fairness." State v. Becker, 818 N.W.2d 135, 152 (Iowa 2012) overruled on other grounds by Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699, 708 n.3 (Iowa 2016), (*citing* Medina v. California, 505 U.S. 437, 447-48, 112 S.Ct. 2572, 2578, 120 L.Ed.2d 353, 364 (1992).

D. SF457 impermissibly restricts the role and jurisdiction of Iowa's appellate courts:

The State asserts that SF457 "eliminates appellate jurisdiction to decide restitution claims unless an offender has preserved error and exhausted his remedies in the district court". (State's Appellate Brief p. 13).

The legislature cannot impose error preservation standards upon the Supreme Court in cases involving unconstitutional, therefore illegal, sentences. "Illegal sentences are unconstitutional sentences, and the ordinary rules requiring issue preservation are not applicable." State v. Allen, No. 16-0095, 2017 WL 2181178, at *1 (Iowa Ct. App. May

17, 2017)(*citing* State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009).

In depriving this Court of the authority to decide restitution claims on appeal, and in imposing error preservation requirements, SF457 violates the separation of powers doctrine, interferes with this Court's inherent jurisdiction and the Court's role in addressing constitutional violations. "The separation-of-powers doctrine is violated 'if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the constitution to another branch.'" Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002) (quoting State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)). The doctrine stands for the proposition that one branch of government may not impair another branch in "the performance of its constitutional duties." *Id.*

Recently, the Iowa Supreme Court examined the judicial branch's role within Iowa's "venerable system of government":

> The Iowa Constitution, like its federal counterpart, establishes three separate, yet equal, branches of

> government. Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts.
>
> Our framers believed "the judiciary is the guardian of the lives and property of every person in the State." Every citizen of Iowa depends upon the courts "for the maintenance of [her] dearest and most precious rights." The framers believed those who undervalue the role of the judiciary "lose sight of a still greater blessing, when [the legislature] den[ies] to the humblest individual the protection which the judiciary may throw as a shield around [her]."

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018)(internal citations omitted) (alteration in original).

The divisions of Iowa's state government are provided for in the Iowa Constitution:

> The powers of the government of Iowa shall be divided into three separate departments —
> the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Iowa Constitution Art. III, § 1.

All judicial power in Iowa is vested in the Iowa Supreme Court and its inferior courts. Iowa Const. art. V, § 1. "Courts

constitute the agency by which judicial authority is made operative. The element of sovereignty known as judicial is vested, under our system of government, in an independent department, and the power of a court and the various subjects over which each court shall have jurisdiction are prescribed by law." Franklin v. Bonner, 207 N.W. 778, 779 (Iowa 1926).

The Iowa Constitution grants appellate jurisdiction to the Supreme Court subject to "…restrictions as the general assembly may, by law, prescribe". Iowa Constitution Art. V § 4. Can the legislature restrict this Court's jurisdiction in light of the Court's authority to "…issue all writs and process necessary to secure justice to parties, and … exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state"? *Id.*

A comparison of the Iowa and U.S. Constitutions reveals differences in the power granted legislatures to limit the respective courts. The restrictions clause of the Iowa Constitution bestows appellate jurisdiction upon the Supreme Court subject to "…restrictions as the general assembly may,

by law, prescribe", whereas the exceptions clause of the U.S. Constitution appears to be more open-ended as evidenced by the language "…with such Exceptions, and under such Regulations as the Congress shall make." Art. III § 2 cl. 2.

The ability of the legislature to "prescribe" the "manner" of jurisdiction should not be confused with an ability to remove jurisdiction from the Court. Subject matter jurisdiction is conferred upon Iowa's courts by the Iowa Constitution. In re Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988). The Supreme Court has general jurisdiction over all matters brought before it and the legislature can only prescribe the manner of its exercise; the legislature cannot deprive the courts of their jurisdiction. Id. (quoting Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875)); Schrier v. State, 573 N.W.2d 242, 244–45 (Iowa 1997).

The Iowa Supreme Court has previously recognized statutory limitations placed on the right to appeal, for example. *See* In re Durant Comm. Sch. Dist., 106 N.W.2d 670, 676 (Iowa 1960) (citations omitted) ("We have repeatedly held the right of

appeal is a creature of statute. It was unknown at common law. It is not an inherent or constitutional right and the legislature may grant or deny it at pleasure."); see also Wissenberg v. Bradley, 229 N.W. 205 (Iowa 1929). The United States Supreme Court has held similarly. McKane v. Durston, 153 U.S. 684, 687–88 (1894) ("A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, . . . is not now a necessary element of due process of law.").

However, these holdings are subject to criticism. See Cassandra Burke Robinson, The Right to Appeal, 91 N.C.L.Rev. 1219, 1221 (2013) (arguing U.S. Supreme Court has relied on "nineteenth century dicta" for the proposition that due process does not require a right of appeal and expressing concerns that states will attempt to eliminate appeals as of right "in order to save fiscal and administrative resources."); Marc M. Arkin, Rethinking the Constitutional Right to an Appeal, 39 UCLA L. Rev. 503 (1992); Jones v. Barnes, 463 U.S. 745, 756 n. 1 (1983) (Brennan, J. dissenting)

(predicting that if the court were squarely faced with the issue, it would hold that due process requires a right to appeal a criminal conviction).

One observer has noted that "…, both Article I and Article III of the Constitution require that any tribunals that Congress chooses to create must remain inferior to the one "supreme" court identified in the Constitution." James E. Pflander, *JURISDICTION-STRIPPING AND THE SUPREME COURT'S POWER TO SUPERVISE INFERIOR TRIBUNALS,* 78 Tex. L. Rev. 1433, 1500 (June 2000). In the case of congressional overreach, the author suggests "… the Court might plausibly invoke the constitutional requirement of supremacy and inferiority under Articles I and III to invalidate the restriction as inconsistent with its constitutional supremacy." *Id.* at 1500-1501.

Iowa Code section 602.4102 contemplates the Iowa Supreme Court hearing criminal appeals. The statute proclaims that "The jurisdiction of the supreme court is coextensive with the state." Iowa Code § 602.4102(2) (2020).

However, Iowa Code § 910.7(4) would make claims involving fundamental constitutional rights unreviewable on direct appeal, and the forfeiture provisions contained in Iowa Code § 910.2A(3)(a) have the potential of making them forever unreviewable. In the case of review, the appellate court would not be able to ascertain the district court's reasoning as the district court is not required to provide reasons. Iowa Code § 910.2A(5) (2020).

This is an encroachment upon the Court's inherent jurisdiction. The Iowa Supreme Court has both the jurisdiction and the duty to invalidate state actions that conflict with the state and federal constitutions. See Varnum v. Brien, 763 N.W.2d 862, 875–76 (Iowa 2009) (noting the courts have an obligation to protect the supremacy of the constitution).

"The judicial power of the United States is extended to all cases arising under the constitution." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178 2.L.Ed. 60 (1803). In like manner,

this Court has jurisdiction and authority over cases in which constitutional rights are implicated.

Congressional power to limit jurisdiction and authority are arguably broader under the United States Constitution as it does not limit the exceptions available to the legislature.

Conversely, the Iowa Constitution imposes a limit consisting of exceptions the legislature may impose "by law". It is asserted here, that the legislature does not have authority to deprive this Court of jurisdiction or authority to decide matters of constitutional magnitude based upon the Court's role as the "ultimate arbiter" of the constitution. Furman v. Georgia, 408 U.S. 238, 360, 92 S.Ct. 2726, 2787 (1972)("We know that at some point the presumption of constitutionality accorded legislative acts gives way to a realistic assessment of those acts." *Id.*).

Another notable difference consists of the Iowa Constitution's directive stating that the Supreme Court "… shall exercise a supervisory and administrative control over all

inferior judicial tribunals throughout the state." Iowa Constitution Article V § 4.

Article III of the U.S. Constitution contains no provision specifically granting supervisory and administrative authority over inferior courts.

Additionally, the Iowa Supreme Court is the ultimate arbiter of statutory interpretation. "The Iowa Supreme Court has the ultimate authority in interpreting the Iowa Code." In re Big Sky Farms Inc. ex rel. Ernst & Young, Inc., 212 B.R. 219 (Bankr.N.D.Iowa 2014)(*citing* Mullaney v. Wilbur, 421 U.S. 684, 691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); Pearson v. Robinson, 318 N.W.2d 188, 190 (Iowa 1982).

The legislature should not deprive the Supreme Court of its authority, and its duty to supervise inferior courts and issue pronouncements on statutory and constitutional interpretation.

CONCLUSION

WHEREFORE, for the reasons urged above, Christopher C. Hawk respectfully requests that this Court find the provisions contained in SF457 inapplicable to this case, that

this Court determine that the cited provisions of that body of law be deemed unconstitutional for the reasons argued herein, and reverse and remand this case for a determination of Hawk's reasonable ability to pay the obligations in question.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $3.74, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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/s/ Stephan J. Japuntich Dated: *9/10/20*

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