No. 19-1852

IN THE SUPREME COURT OF IOWA

LARRY C. BEVERAGE, Individually and as Personal Representative of the Estate of CHARLES E. BEVERAGE, deceased, LINDA K. ANDERSON, and BONNIE K. VALENTINE,

Plaintiffs-Appellants,

v.

Alcoa, INC., a Pennsylvania Corporation, and IOWA-ILLINOIS TAYLOR INSULATION, INC., successor-in-interest to IOWA ILLINOIS THERMAL INSULATION, INC., an Iowa Corporation,

Defendants-Appellees.

Appeal from the Scott County District Court,
District Court No. LACE129455,
The Honorable Judge Patrick A. McElyea, presiding.

AMENDED FINAL BRIEF OF DEFENDANT-APPELLEE, ARCONIC, INC., f/k/a ALCOA, INC.

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ROUTING STATEMENT:
THIS APPEAL SHOULD BE TRANSFERRED TO THE IOWA COURT OF APPEALS

This case centers on the application of Iowa Code Section 686B.7(5), which clearly and unambiguously limits liability of certain defendants in an asbestos action. "A defendant in an asbestos . . . action shall not be liable for exposures from a product or component part made or sold by a third party." Iowa Code § 686.7(5). The District Court applied this section to enter summary judgment in favor of Arconic, Inc., f/k/a Alcoa, Inc. (hereinafter "Arconic") and Iowa-Illinois Taylor Insulation, Inc. (hereinafter "IITI").

On appeal, the Plaintiffs present this Court with three arguments challenging the District Court's application of this Iowa Code Section 686B.7(5) and consequential entry of summary judgment in favor of Arconic. However, the Plaintiffs have preserved only one argument.

While presented on appeal, the Plaintiffs did not raise their due process or equal protection arguments before the District Court. As such, these arguments are not preserved and the Plaintiffs have waived these arguments on appeal.

The Plaintiffs did raise a form of the statutory interpretation argument before the District Court, the District Court ruled upon that argument, and that limited argument is likely preserved.

This appeal will be resolved by the application of established legal principles to common issues of preservation and statutory interpretation. Transfer to the Iowa Court of Appeals is proper under these circumstances. *See* Iowa R. App. P. 6.1101(3)(a).

In the unlikely event the Court entertains the Plaintiffs' unpreserved due process and equal protection arguments, transfer of the case to the Iowa Court of Appeals would still be warranted. Established legal principles govern and resolve the Plaintiffs' due process and equal protection claims. *See id.*

It is respectfully submitted this appeal should be routed to the Iowa Court of Appeals. *See id.*

STATEMENT OF THE CASE

In September 2015, Charles Beverage was diagnosed with malignant mesothelioma and died on October 7, 2015.

I. The Plaintiffs' initially selected Missouri as their litigation forum.

On July 6, 2016, the Plaintiffs filed suit in the State of Missouri against Arconic and others but did not include IITI. (Missouri Petition,

App. 8-30). The Missouri Petition included claims for asbestos exposure while Charles Beverage worked at the Arconic's aluminum facility in Iowa. (Missouri Petition, paras. 2, 46-51, App. 23-24). The Missouri Petition included a premises liability claim against Arconic. (Missouri Petition, paras. 56-61, App. 26-28). On August 10, 2016, Arconic filed a motion to dismiss the Plaintiffs' Missouri lawsuit for lack of personal jurisdiction. (Arconic Missouri MTD, App. 31-42).

II. While litigating in Missouri, Iowa enacted Iowa Code Section 686B.7(5).

On February 28, 2017, Iowa Senate Bill 376 was introduced. 2017 Bill Tracking IA S.B. 376. It passed the Senate and House and the Governor signed the Bill on March 23, 2017. *Id.* As introduced and signed, Senate Bill 376 contained what would become Iowa Code Section 686B.7(5). 2017 Ia. SF 376. "A defendant in an asbestos . . . action shall not be liable for exposures from a product or component part made or sold by a third party." Iowa Code § 686B.7(5). The Statute provided that it would apply to all asbestos actions filed on or after the effective date. Iowa Code §686B.9. Iowa Code Section 686B.7(5) became effective as of July 1, 2017. 2017 Ia. SF 376.

III. Following enactment of Iowa Code Section 686B.7(5), the Plaintiffs switched forums – to Iowa.

On September 27, 2017, the Plaintiffs elected to file suit in the Iowa District Court for Scott County against Arconic, IITI, and others. (Petition). On October 6, 2017, the Plaintiffs then dismissed their Missouri case against Arconic without prejudice due to lack of personal jurisdiction. (Missouri Dismissal, App. 59-60).

Taken in context, the Plaintiffs filed their Iowa Petition: 721 days after Charles Beverage passed away; 413 days after Arconic moved to dismiss their Missouri lawsuit for lack of personal jurisdiction; 188 days after Iowa Code Section 686B.7(5) was enacted; and 88 days after the Statute became effective. In other words, the Plaintiffs knew that their Missouri lawsuit was subject to dismissal for lack of personal jurisdiction and knew or should have known that Senate Bill 376 was being considered, was enacted to become effective on July 1, 2017, and, yet, still waited 100 to 124 days file their Iowa Petition after having notice of the impending Statute.

IV. The Plaintiffs omitted a premises liability claim in their Iowa litigation.

In their Iowa Petition, the Plaintiffs made claims against Arconic for negligence, strict liability for the manufacture and sale of defective products, breach of express and implied warranties of merchantability and

fitness for intended purposes, and loss of consortium. (Petition, pp. 2-5). Apparently knowing that Iowa Code Section 686B.7(5) was effective, they did not include a premises liability claim in their Iowa Petition. (Petition).

On November 8, 2017, Arconic filed its Answer denying the substantive aspects of the Beverage petition and asserting several affirmative defenses, including a failure of Plaintiffs to comply with Iowa Code Chapters 686B. (Arconic Answer).

V. The Plaintiffs did not address the application of Iowa Code Section 686(B).7 in the summary judgment proceedings.

On August 16, 2019, Arconic filed for summary judgment arguing, among other things, that Iowa Code Section 686B.7(5) immunized it from the claims of the Plaintiffs. (Arconic Brief in Support of MSJ, pp.5-8).

The Plaintiffs filed resistances to the summary judgment motion but did not meaningfully address the application of Iowa Code Section 686B.7(5) in their written resistance. (Plaintiffs' Brief in Resistance to Arconic MSJ).

In their written response to the motion for summary judgment filed by Arconic, the Plaintiffs admitted that Arconic did not manufacture an asbestos-containing product. (Beverage Resistance to Arconic MSJ, p. 3). According to the Plaintiffs, their "claims against [Arconic] were not based

on the allegation that [Arconic] manufactured or distributed asbestos-containing products." (Beverage Resistance to Arconic MSJ, p. 9). The Plaintiffs took the position that Iowa Code Section 686B.7(5) did not apply to their claims for failing to warn and prevent aspiration of friable asbestos fibers because their claim did not rely on manufacturing or distribution of asbestos-containing products. (Beverage Resistance to Arconic MSJ, pp. 9-10).

On August 28, 2019, the District Court conducted oral argument on the summary judgment motions filed by Arconic. (Order Setting Hearing on MSJ). At the oral argument, Plaintiffs argued that their Petition should be read to include a premises liability claim against Arconic. (MSJ Tr. 24:6-27:7, App. 704-707). The District Court indicated it would be inclined to permit the Plaintiffs to amend their petition, over Arconic's objections. (MSJ Tr. 27:2-27:7, App. 707).

At oral argument, Arconic set out the basis for summary judgment under Iowa Code Section 686B.7(5) noting that the language was straightforward, should be applied to Arconic, and that the Plaintiffs apparently agree "because they have not resisted that portion of our motion." (Tr. 29:8-29:9, App. 709). The District Court prompted the

Plaintiffs to directly confront the Iowa Code Section 686B.7(5) arguments. (Tr. 29:14-29:15, App. 709).

The Plaintiffs responded by contesting the interpretation of Iowa Code Section 686B.7(5) by suggesting ambiguity and the need to look for intent beyond the plain meaning of the Statute. (Tr. 29:23-36:16, App. 709-716). Rebuttal argument was given by Arconic – that the Statute is plain and unambiguous, and Plaintiffs' proffered interpretation fails as a result. (Tr. 36:18-38:20, App. 716-718). The District Court prompted the Plaintiffs asking what aspect of "a premises liability claim makes it a product that [Arconic] made or sold?" (Tr. 38:24-38:25, App. 718). In response, the Plaintiffs admitted that Arconic did not make or sell the asbestos-containing products, instead according to the Plaintiffs, the Statute was "not designed to cover this kind of scenario." (Tr. 39:1-39:7, App. 719). Final argument was made by Arconic bringing the District Court back to the central point – that Iowa Code Section 686B.7(5) is clear, unambiguous, and should be applied based on its clear language. (Tr. 62:9-62:15, App. 742).

The Plaintiffs' Resistance to the summary judgment and arguments raised by the Plaintiffs at oral argument, lacked any mention of due process or equal protection. (Plaintiffs' Brief in Resistance to Arconic MSJ; Tr:

29:8-62:15, App. 709-742). The Plaintiffs never raised any argument before the District Court about retroactive application of Iowa Code Section 686B.7(5) or deprivation of a vested right in violation of due process. The Plaintiffs never raised any argument before the District Court about equal protection, treating asbestos-related claimants differently from non-asbestos-related claimants, or that there was no rational basis supporting a legitimate state interest in enacting Iowa Code Section 686B.7(5).

VI. The Plaintiffs added a premises liability claim.

On September 19, 2019, the Plaintiffs filed their Amended Petition adding a premises liability claim. (Beverage Amended Petition). Two days later, Arconic filed its Answer to the Amended Petition denying the substantive aspects and setting forth affirmative defenses, including a failure of Plaintiffs to comply with Iowa Code Chapters 686B. (Arconic Answer to Amended Petition).

VII. The District Court properly entered summary judgment in favor of Arconic.

On October 1, 2019, the District Court entered its Order on the summary judgment motion filed by Arconic. (10-1-19 Order, App. 768-777). The District Court set out the proper standard for evaluating the summary judgment motion, considered the arguments raised by the Parties, and undertook a learned interpretation of Iowa Code Section 686B.7(5) by

evaluating the plain and unambiguous terms and applying the Statute to grant summary judgment in favor of Arconic. (10.1.19 Order, pp. 1-9, App. 768-776). Because the Plaintiffs did not raise any due process or equal protection argument, the District Court's Summary Judgment Order did not consider or rule upon such arguments. (10.1.19 Order, App. 768-777).

VIII. The Plaintiffs appealed.

On October 31, 2019, and within the allowable thirty-day period, the Plaintiffs filed a notice of appeal challenging the District Court's Order on Summary Judgment. (Notice of Appeal, App. 804-806).

As the Plaintiffs concede on appeal, the due process and equal protection arguments were not invoked before the District Court. (Plaintiffs' Brief, pp. 20, 42). The Plaintiffs, however, imply that these constitutional challenges to the Statute were somehow preserved by making their constitutional arguments on appeal. (Plaintiffs' Brief, pp. 20, 42). A review of the Plaintiffs' resistance to summary judgment and transcript of the oral argument on summary judgment reveals, however, that the Plaintiffs never referenced in any way, the due process and equal protection arguments they have raised for the first time on appeal.

STATEMENT OF THE FACTS

Charles Beverage owned Beverage Construction. (10.1.19, Order, p. 1). He and his construction company performed construction projects at the Arconic plant in Bettendorf, Iowa as a construction contractor and not as an employee. (10.1.19, Order, pp. 1-2; Larry Beverage Depo. 14:15-17:21, 18:2-18:10). During his work at the plant, Charles Beverage was allegedly exposed to asbestos. (10.1.19, Order, p. 2).

"There are no allegations that Arconic manufactured or produced an asbestos containing product or component part." (10.1.19, Order, p. 7). "The record is completely devoid of any evidence that [Arconic] was responsible for manufacturing, creating, or selling asbestos or an asbestos containing product." (10.1.19, Order, p. 7). Indeed, the Plaintiffs have admitted that Arconic did not manufacture an asbestos-containing product. (Beverage Resistance to Arconic MSJ, p. 3).

ARGUMENT

The District Court's Order granting summary judgment in favor of Arconic should be affirmed. The Plaintiffs' constitutional arguments (Brief Points I and III) were not preserved and are, therefore, waived. If the Plaintiffs' equal protection argument (Brief Point III) was preserved, which is disputed, they have failed to articulate a class of similarly situated

plaintiffs who are allegedly treated differently and there is a rational basis supporting legitimate state interests in enacting Iowa Code Section 686B.7(5). As such, their equal protection claim fails as a matter of law. If the Plaintiffs' due process argument (Brief Point I) was preserved, which is disputed, the argument fails because there is a rational basis supporting retroactive application of the Statute and Plaintiffs had more than a reasonable amount of time to file their Iowa suit before the Statute became effective. As to their only argument that is preserved, interpretation of Iowa Code Section 686B.7(5) (Brief Point II), the District Court committed no error of law when interpreting the Statute and granting summary judgment in favor of Arconic.

I. The Plaintiffs' constitutional arguments (Brief Points I and III) are not preserved; as such, they are waived.

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before [Iowa's appellate courts] will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (citing *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) ("issues must be presented to and passed upon by the district court before they can be raised and decided on appeal."); *Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401-402 (Iowa 1992) ("issues must be raised and decided by the [district] court before they may be decided on

appeal."). "When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." *Meier*, 641 N.W.2d at 537 (citing *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995), *and, State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206 (Iowa 1984)).

The reason that issues must be raised before the District Court stems from the Constitutional and Statutory authority provided to Iowa's appellate courts. The Iowa Supreme Court and Iowa Court of Appeals have appellate jurisdiction to correct errors at law. Iowa Const., Art. V § 4; Iowa Code § 602.4102(1-2). Appellate jurisdiction over an issue requires, therefore, that the trial court be given an opportunity to consider and rule on the error raised on appeal. *See* Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 44 (Fall 2006) ("If alleged error was not pointed out to the trial court, it is hard to see how the trial court's failure to rule on an objection that was never made can properly be called an error of law amenable to correction.")

"The scope of the error preservation principle encompasses nearly every possible issue in every possible case." 55 Drake L. Rev. at 46. "Even

issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal." *Taft v. Iowa Dist. Court for Linn Cty.*, 828 N.W.2d 309, 322 (Iowa 2013) (refusing to consider due process claim on appeal when not adequately raised before and decided by the district court) (citing *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (rejected strict scrutiny argument to equal protection claim because it was not first raised to the district court); *also, see, Strand v. Rasmussen*, 648 N.W.2d 95, 100-101 (Iowa 2002) (holding that a due process issue raised for the first time on appeal was not preserved and holding that equal protection issue raised without ruling by the District Court was not preserved), *and, In re Det. of Johnson*, No. 01-1151, 2002 Iowa App. LEXIS 1065 at *14 (Iowa Ct. App. October 16, 2002) (after review of the pleading claimed to raise an issue of substantive due process and finding only a general assertion to that effect, and after review of the district court order, it was held that error was not preserved on substantive due process argument because it was not first raised to the district court).

The Iowa Rules of Appellate Procedure facilitate review of the jurisdictional preservation of error on appeal. *See* Iowa R. App. P. 6.903(2)(g)(1). In this regard, parties to an appeal must set out for each issue in appeal "how the issue was preserved for review, with references to

the places in the record where the issue was raised and decided." Iowa R. App. P. 6.903(2)(g)(1), *and, see, Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 866 (Iowa 2001) (citing Iowa R. App. P. 6.14(1)(f), now Iowa R. App. P. 6.903(2)(g)(1)).

The failure to state how the issue was preserved, and/or the failure to refer to portions of the record showing where the issue was raised and decided by a district court, results in waiver of the issue on appeal. *See Channon*, 629 N.W.2d at 866; *and, see, e.g.*, *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582, 584-85 (Iowa 2002) (defendant-appellant failed to mention how or where their constitutional claims was raised in the trial court, resulting in waiver of the argument for a lack of preservation). To be clear, constitutional arguments not urged in the trial court are waived on appeal. *See Martin v. Raytheon Co.,* 497 N.W.2d 818, 820 (Iowa 1993) (oblique references to constitutional rights do not suffice to alert the district court to the issue and fail to preserve error for appeal resulting in waiver), *and, Metz*, 581 N.W.2d at 599 (due process claim never raised before the district court and therefore waived).

On the one hand, the Plaintiffs concede in their Appeal Brief that their due process and equal protection arguments (Plaintiffs' Brief Points I and III) were not invoked below. (Plaintiffs' Brief, pp. 20, 42). On the

other hand, the Plaintiffs still present their constitutional arguments on appeal. The Plaintiffs seemingly suggest that they raised the due process claim to the District Court by arguing that they retained their premises liability claim against Arconic and their products liability claim against IITI. (Plaintiffs' Brief, pp. 20-21). They also seemingly suggest they raised the equal protection claim to the District Court by arguing that premises owners could expose persons to asbestos with impunity. (Plaintiffs' Brief, pp. 42-43).

The Plaintiffs' attempt to incorporate their constitutional challenges into broader arguments that may have been raised before the District Court is not sufficient to preserve error under the law because they were not raised before the District Court. *See Meier*, 641 N.W.2d at 537. Even if the Plaintiffs made an oblique reference to the constitutional challenges, it would be insufficient, but the Plaintiffs did not even make an oblique reference to these arguments before the District Court. *See id.* The Plaintiffs did not request that the District Court rule on those issues (because they were not raised in the first place) and the failure to have the District Court consider and rule on the constitutional issues results in a failure to preserve error. *See id.* This Court lacks appellate jurisdiction as a result. *See* Iowa Const., Art. V § 4, *and* Iowa Code § 603.4102(1-2). This is

true even though the Plaintiffs' arguments are based on the constitution. *See Taft,* 828 N.W.2d at 322, *Biddle*, 652 N.W.2d at 203, *Strand,* 648 N.W.2d at 100-101, *In re Det. of Johnson*, No. 01-1151, 2002 Iowa App. LEXIS 1065 at *14, *and Martin*, 497 N.W.2d at 820.

The Plaintiffs have also failed to set forth in their Appeal Brief where and how their constitutional arguments were preserved and have waived the arguments as a result. (Plaintiffs' Brief, pp. 20-21. 42-43). *See* Iowa R. App. P. 6.903(2)(g)(1), *and, Channon*, 629 N.W.2d at 866.

Moreover, their apparent suggestions of preserving these constitutional claims as incorporated in broader arguments are refuted by the record. A review of the record confirms that the Plaintiffs have not raised their due process or equal protection arguments to the District Court.

The Plaintiffs' resistances to the summary judgment motions and arguments raised by the Plaintiffs at oral argument, lacked any mention of due process or equal protection. (Plaintiffs' Brief in Resistance to Alcoa MSJ; Plaintiffs' Brief in Resistance to IITI MSJ; Tr: 29:8-62:15, App. 702-735). The Plaintiffs never raised any argument before the District Court about retroactive application of Iowa Code Section 686B.7(5) or deprivation of a vested right in violation of due process. The Plaintiffs

never raised any argument before the District Court about equal protection or treating asbestos-related claimants differently from non-asbestos-related claimants or that there was no rational basis supporting a legitimate state interest in enacting Iowa Code Section 686B.7(5).

On October 1, 2019, the District Court entered its Order on the summary judgment motions filed by Alcoa and IITI. (10-1-19 Order, App. 768-777). The District Court set out the proper standard for evaluating the summary judgment motions, considered the arguments raised by the Parties, and undertook a learned interpretation of Iowa Code Section 686B.7(5) by evaluating the plain and unambiguous terms and applying the Statute to grant summary judgment in favor of Alcoa and IITI. (10.1.19 Order, pp. 1-9, App. 768-776). Because the Plaintiffs did not raise any due process or equal protection argument, the District Court's Summary Judgment Order did not consider or rule upon such arguments. (10.1.19 Order App. 768-777).

In short, the Plaintiffs have failed to preserve and have waived their arguments about due process and equal protection. Even if they had preserved error on these issues, which is disputed, the merits of the Plaintiffs' constitutional arguments fail.

II. If the Plaintiffs' equal protection argument (Brief Point III) was preserved, which is disputed, they have failed to articulate a class of similarly situated plaintiffs who are allegedly treated differently and there is a rational basis supporting legitimate state interests in enacting Iowa Code Section 686B.7(5).

A. Standard of Review and Preservation of Error

This Court reviews summary judgment rulings for correction of errors at law. *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 30-31 (Iowa 2019). Because the Plaintiffs appeal from the District Court ruling on summary judgment, review for correction of errors at law is the proper standard of review in this case. *See id.*

As argued above, the Plaintiffs did not preserve error on their equal protection argument.

Had the Plaintiffs raised and preserved an equal protection argument before the District Court, which is disputed, the standard of review on the constitutional argument would be *de novo*. *Id.* at 31. *De novo* review of constitutional claims, however, is subject to the strong presumption that statutes are constitutional. *Id.* ("statutes are cloaked with a presumption of constitutionality"). If they preserved error on the equal protection argument, the Plaintiffs would have had to satisfy a heavy burden to overcome the strong presumption of constitutionality and prove unconstitutionality beyond a reasonable doubt. *See id.* The Plaintiffs,

furthermore, would have had to "refute every reasonable basis upon which the statute could be found to be constitutional." *See id.* If the statute is capable of being construed in more than one manner, one of which is constitutional, the Plaintiffs could not satisfy their burden and the Court would have had to adopt the construction of the statute that is constitutional. *See id.*

Despite not preserving error on their equal protection argument, which has been raised for the first time on appeal, the Plaintiffs would be unable to satisfy their heavy burden to prove beyond a reasonable doubt that Iowa Code Section 686B.7(5) violates equal protection. *See id.*

B. The Plaintiffs have failed to articulate a class of similarly-situated plaintiffs who are allegedly treated differently.

"Essentially, the Equal Protection Clause requires that similarly-situated persons be treated alike." *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002), *accord, AFSCME Iowa Council 6*, 928 N.W.2d at 31-34. The Equal Protection Clauses of the Iowa Constitution and Fourteenth Amendment are generally analyzed in the same way.[1]

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[1] The Iowa Supreme Court has usually found the federal and state equal protection clauses identical in scope, import, and purpose; and applied the same analysis under both clauses. *Bowers*, 638 N.W.2d at 689. This is especially true when the parties, as they do in this case, do not ask the

The threshold determination in all equal protection challenges is whether persons are similarly situated. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 45 (Iowa 2012). In other words, the "first step of an equal protection claim is to identify the classes of similarly situated plaintiffs singled out for differential treatment." *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 204 (Iowa 2002), *accord, Carter v. Rowe*, No. 05-0750, 2005 Iowa App. LEXIS 1547, at *6-8 (Ct. App. Dec. 21, 2005). "If people are not similarly situated, their dissimilar treatment does not violate equal protection." *NextEra Energy Res. LLC*, 815 N.W.2d at 45 (internal punctuation modified) (citing *Bowers*, 638 N.W.2d at 689 and quoting *In re Morrow*, 616 N.W.2d 544, 547 (Iowa 2000)). Determining whether classifications involve similarly situated individuals is "often intertwined with whether the identified classification has any rational basis." *AFSCME Iowa Council 61*, 928 N.W.2d at 32.

If it is determined that persons are similarly situated, the Court applies "one of three levels of scrutiny depending on the legislative classification under attack." *NextEra Energy Res. LLC*, 815 N.W.2d at 45.

Court to depart from the unified analysis. *See NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 45 (Iowa 2012) (jealously reserving the right to apply federal equal protection principles differently under the Iowa Constitution).

The Plaintiffs concede in their Appeal Brief that their claimed distinction should be evaluated on the least rigorous equal protection scrutiny because it does not involve a fundamental right or inherently suspect classification. (Plaintiffs' Brief, p. 44). If the Plaintiffs have identified disparate treatment of similarly situated persons, the rational basis test would be the appropriate level of equal protection scrutiny to apply in this case. *See NextEra Energy Res. LLC*, 815 N.W.2d at 46 (identifying the three different levels of scrutiny that depend on the type of legislative classification under attack).

As the lowest level of scrutiny, the rational basis test is very deferential. *Id.* "Even in the zealous protection of the constitution's mandate of equal protection, courts must give respect to the legislative process and presume its enactments are constitutional." *AFSCME Iowa Council 61*, 928 N.W.2d at 31 (quoting *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009)).

> The rational basis test defers to the legislature's prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision, and, again, a merely rational relationship between the classification and the policy justification.

AFSCME Iowa Council 61, 928 N.W.2d at 32 (quoting *Varnum*, 763 N.W.2d at 879).

> Under the rational-basis standard, a statute enjoys a presumption of constitutionality which can only be overcome by proof that the law is patently arbitrary and bears no rational relationship to a legitimate governmental interest. A classification is reasonable if it is based upon some apparent difference in situation or circumstances of the subjects placed within one class or the other which establishes the necessity or propriety of distinction between them. A classification does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations.

Biddle, 652 N.W.2d at 203 (internal punctuation modified).

To establish a violation of equal protection, the Plaintiffs bear "the heavy burden of showing the statute is unconstitutional and must negate every reasonable basis upon which the classification may be sustained." *AFSCME Iowa Council 61*, 928 N.W.2d at 32. This Court cannot declare a statute unconstitutional under the rational-basis test unless "it is clearly, palpably, and without doubt infringes upon the constitution." *Id.* (internal punctuation modified).

The rational-basis test is comprised of a three-part analysis. *AFSCME Iowa Council 61*, 928 N.W.2d at 32 (citing *Residential & Agric. Advisory Comm., Ltd. Liab. Co. v. Dyersville City Council*, 888 N.W.2d 24, 50 (Iowa 2016)).

First, the Court "must determine whether there was a valid, realistically conceivable purpose that served a legitimate government

interest." *Id.* (internal punctuation modified). "To be realistically conceivable, the statute cannot be so overinclusive and underinclusive as to be irrational." *Id.* (internal punctuation modified).

Second, the Court "must evaluate whether the reason has a basis in fact." *Id.* (internal punctuation modified). "Although actual proof of an asserted justification is not necessary, the court will not simply accept it at face value and will examine it to determine whether it is credible as opposed to specious." *Id.* (internal punctuation modified). In other words, the Court will "uphold legislative classifications based on judgments the legislature could have made, without requiring evidence or proof in either a traditional or a nontraditional sense." *Id.* (internal punctuation modified).

> Legislative facts are relevant in deciding these constitutional issues because courts must normally analyze whether there exist circumstances which constitutionally either legitimate the exercise of legislative power or substantiate the rationality of the legislative product. Legislative facts may be presented either formally or informally and consist of social, economic, political, or scientific facts.

AFSCME Iowa Council 61, 928 N.W.2d at 34 (citing *Varnum*, 763 N.W.2d at 881; quoting 2 John W. Strong, *McCormick on Evidence* § 328, at 370 (5th ed. 1999); and quoting *Welsh v. Branstad*, 470 N.W.2d 644, 648 (Iowa 1991)).

Third, the Court evaluates "whether the relationship between the classification and the purpose for the classification is so weak that the classification must be viewed as arbitrary." *Id.* (internal punctuation modified).

Taken together the three-part rational-basis test still only provides the Court with "a limited role." *AFSCME Iowa Council 61*, 928 N.W.2d at 34.

> [The] rational-basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. Nor does it authorize the judiciary to sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. Further, a legislature that creates these categories need not actually articulate at any time the purpose or rationale supporting its classification. Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

AFSCME Iowa Council 61, 928 N.W.2d at 34 (internal punctuation modified). The Court's role in this regard is also limited by the Iowa Constitution – the Court must uphold legislative classifications based on judgments that the legislature could have made without a requirement of

proof. *Id.* (citing *Quest Corp. v. Iowa State Bd. of Tax Review*, 829 N.W.2d 550, 560 (Iowa 2013) and *King v. State*, 818 N.W.2d 1, 30 (Iowa 2012)).

Applying the highly deferential rational-basis test to Iowa Code Section 686B.7(5) and the equal protection challenge raised by the Plaintiffs, requires that the Statute be upheld. The Plaintiffs' equal protection claim fails at the threshold question – failing to identify the classes of similarly situated plaintiffs singled out for differential treatment. *See NextEra Energy Res. LLC,* 815 N.W.2d at 45, *Grovijohn*, 643 N.W.2d at 204, *and, Carter v. Rowe*, No. 05-0750, 2005 Iowa App. LEXIS 1547, at *6-8 (Ct. App. Dec. 21, 2005).

"A defendant in an asbestos action or silica action shall not be liable for exposures from a product or component part made or sold by a third party." Iowa Code § 686B.7(5). The Plaintiffs claim on appeal that this Code Section violates equal protection because it deprives plaintiffs with asbestos-related injuries of a remedy against "premises owners who have a dangerous condition on their property" and "suppliers who sell defective or unreasonably dangerous products" while permitting "any person with non-asbestos-related injuries retains a remedy against premises owners and product suppliers." (Plaintiffs' Brief, p. 43). In other words, the Plaintiffs claim that Iowa Code Section 686B.7(5) singles out a class of similarly

situated plaintiffs for disparate treatment – that class being plaintiffs who make premises or product liability claim with asbestos-related injuries as compared to generalized plaintiffs with no asbestos-related injuries.

In *Grovijohn v. Virjon, Inc.*, the plaintiff was a passenger that became injured while traveling in a vehicle operated by a driver who had been served to the point of intoxication at a local bar. 643 N.W.2d at 201. The plaintiff gave notice of intent to file suit under Iowa dram shop act thirteen months after the car accident. *Id.* The dram shop filed for summary judgment because the plaintiff failed to provide the notice within six months as required by Iowa Code Section 123.93 and did not satisfy any exceptions to the six-month notice requirement. *Id.* The District Court granted the motion for summary judgment and the plaintiff appealed arguing that Section 123.93 violated his state and federal rights to equal protection. *Id.* at 202.

The plaintiff in *Grovijohn* did not articulate the class of similarly situated plaintiffs that are allegedly treated differently under the dram shop statute. *Id.* at 204. However, the Iowa Supreme Court found that "[d]ramshop plaintiffs are a class of plaintiffs uniquely created by the legislature and, as such, are different from personal injury claimants generally." *Id.* "It is significant all dramshop plaintiffs, as a unique class,

are treated alike amongst themselves." *Id.* "All such plaintiffs are subject to the same requirements of the dramshop statute." *Id.* Because the plaintiff in *Grovijohn* did "not satisfy the first step in an equal protection analysis, [the Court] did not address whether the dramshop statute has a rational relationship to a legitimate governmental interest." *Id.* Because all dramshop plaintiffs are subject to the same notice requirement under the dramshop statute, they would be similarly situated, and the plaintiff could not establish that the dramshop statute violated equal protection. *See id.*

In *Carter v. Rowe*, a plaintiff was bucked off a horse owned by the plaintiff's father and she filed suit. No. 05-0750, 2005 Iowa App. LEXIS 1547, at *1-2 (Ct. App. Dec. 21, 2005). Jury instructions were submitted at the trial based, in part, on Iowa Code Chapter 673. *Id.* at *2. This Chapter eliminates a remedy for plaintiffs when they sue an owner of a domesticated animal for damages resulting from the inherent risks of a domesticated animal activity. *Id.* at *3. The plaintiff objected to these instructions as violative of the equal protection clause among other constitutional protections. *Id.* After the jury returned an adverse verdict, she appealed. *Id.*

On appeal, the plaintiff argued that Chapter 673 violated equal protection because it singles out classes that allegedly receive differential

treatment. *Id.* at *7. In this regard, the plaintiff argued that the following groups were treated differently: (1) persons bitten or attacked by dogs, who may sue in strict liability under Iowa Code § 351.28; (2) professional providers of domesticated animals who must give written notice of their domesticated animal activities under Iowa Code § 673.3; and (3) individuals who supply faulty tack or equipment under Iowa Code § 673.2. *Id.*

The Iowa Court of Appeals rejected the plaintiff's efforts to draw a distinction amongst groups that were not similarly situated. *Id.* at *7-*8. According to the Court, the plaintiff "misses the mark with these examples." *Id.* at *7. "Plaintiffs injured by domesticated animal activities are a class of plaintiffs uniquely created by the legislature and, as such, are different from personal injury claimants generally." *Id.* (citing *Grovijohn*, 643 N.W.2d at 204). "What is significant is that all individuals who are injured by domesticated animal activity are treated in a like manner; in other words, they may only recover for reckless behavior [under Chapter 673]." *Id.* Because the plaintiff failed to satisfy the threshold question, failing to identify the classes of similarly situated plaintiffs singled out for differential treatment, the Court of Appeals rejected the plaintiff's equal protection argument and refused to apply the rational basis test to determine whether

Chapter 673 had a rational relationship to a legitimate governmental interest. *Id.* at *7-*8.

The *Grovijohn* and *Carter* cases are instructive in evaluating the Plaintiffs' due process argument. Like the plaintiffs in those cases, the Plaintiffs try and draw a distinction between plaintiffs who have developed asbestos-related injuries from plaintiffs generally. (Plaintiffs' Brief, p. 43). *See id.* at *7, *and*, *Grovijohn*, 643 N.W.2d at 204. The Iowa Legislature created a unique class of plaintiffs in an asbestos or silica action and, as such, are different from personal injury plaintiffs generally. *See id.* It is significant that all plaintiffs in an asbestos or silica action, as a unique class, are treated alike amongst themselves. *See id., and,* Iowa Code §686B.7(5). All such plaintiffs are equally subject to the same limitations of Iowa Code Section 686B.7(5). *See id.* The Plaintiffs cannot establish a violation of equal protection by trying to distinguish between the unique legislatively created class under Iowa Code Section 686B.7(5) and groups that were not similarly situated, plaintiffs in general. *See id.*

The Plaintiffs have not satisfied their first step in the equal protection analysis. *See NextEra Energy Res. LLC*, 815 N.W.2d at 45, *Grovijohn*, 643 N.W.2d at 204, *and, Carter*, No. 05-0750, 2005 Iowa App. LEXIS 1547, at *6-8. Because plaintiffs in an asbestos or silica action are not similarly

situated to premises liability plaintiffs generally, "their dissimilar treatment does not violate equal protection." *See NextEra Energy Res. LLC*, 815 N.W.2d at 45, *Bowers*, 638 N.W.2d at 689, *and In re Morrow*, 616 N.W.2d at 547). The Section 686B.7(5) "classification does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations." *See Biddle*, 652 N.W.2d at 203.

C. Iowa Code Section 686B.7(5) bears a rational relationship to a legitimate governmental interest.

Because the Plaintiffs have not satisfied the threshold question in the equal protection challenge, it should be unnecessary to assess whether Iowa Code Section 686B.7(5) bears a rational relationship to a legitimate governmental interest. To the extent determining whether classifications involve similarly situated individuals is intertwined with whether the identified classification has a rational basis, however, there is a rational relationship to a legitimate governmental interest. *See AFSCME Iowa Council 61*, 928 N.W.2d at 32.

The establishment of a unique class of plaintiffs having an asbestos and silica actions under Iowa Code Section 686B.7(5) is based on an apparent difference in the situation or circumstance that establishes the necessity or propriety of the distinction. *See Biddle*, 652 N.W.2d at 203.

Limiting liability for exposure in asbestos and silica actions to those who made or sold asbestos products or asbestos-containing parts serves a legitimate governmental interest by protecting Iowa residents and entities from claims of exposure to asbestos made or sold by a third party. *See AFSCME Iowa Council 61*, 928 N.W.2d at 32. It is a valid and realistically conceivable purpose that is narrowly tailored to asbestos and silica actions and, thus, neither overinclusive nor underinclusive. *See id.* As such, Iowa Code Section 686B.7(5) satisfies the first in the three-part equal protection analysis. *See id.*

In their Appeal Brief, the Plaintiffs endeavor to show that the Statute is unfair in limiting the relief of plaintiffs with an asbestos-related illness to those entities who made or sold the asbestos or asbestos-containing product. (Plaintiffs' Brief, pp. 45-50). However, the Plaintiffs fail to assail their heavy burden of negating every reasonable basis upon which the classification may be sustained. *See id.*

The Plaintiffs ignore the valid, realistically conceivable purposes of the Statute that serve a legitimate governmental interest. *See id.* The Statute limits liability to those who make or sell an asbestos-containing product or component part shifting the focus of liability to the most appropriate parties – those who manufacture and sell asbestos-containing

products. This is a purpose that has a secondary benefit of streamlining litigation and reducing the resources otherwise used by the courts and litigants. By limiting and prioritizing claims under Iowa Code Section 686B.7(5) it shifts the focus of liability to those who manufacture and sell asbestos-containing products or component parts. The Statute also removes liability of Iowa residents and entities who would, otherwise, face litigation and the associated costs and potential liability. Furthermore, as the District Court found, there is a valid rationale that the legislature may have intended – "litigation with the actual producers of products containing asbestos rather than the entities who purchase it." (10.1.19 Order, p. 8 App. 775). The Plaintiffs cannot negate these benefits as they are clearly set forth in the language of the Statute.

Protecting Iowa residents and entities from liability for exposure to asbestos from a product or component part made or sold by a third-party has a self-evident basis in fact. *See id.* Actual proof that Iowa residents and entities benefit from a freedom of such liability is not required but obviously credible. *See id.* This case is a prime example. But for Iowa Code Section 686B.7(5), Arconic could be subject to further litigation and trial.

The Court must uphold the legislative classification because the legislature could have made the determination to free Iowa residents and entities from such liability. The freedom from legal liability in an asbestos or silica action is a social, economic, and political fact that substantiates the rationality of Iowa Code Section 686B.7(5). *See id.* at 34 (citing *Varnum*, 763 N.W.2d at 881). As such, the second step of the three-part equal protection analysis is satisfied and in favor of upholding the Statute. *See id.*

Finally, the relationship between the classification of the Statute and the objective of protecting Iowa residents and entities from liability for asbestos and silica actions where there is exposure from a product or component part made or sold by a third-party is not so weak as to be arbitrary. *See id.* Instead, the relationship is solidly connected and limited to those who do not make or sell asbestos-containing products or component parts. *See* Iowa Code § 686B.7(5). Plaintiffs in an asbestos or silica action maintain a remedy, but it is limited to those who make or sell asbestos-containing products or component parts. *See id.* This is consistent with the nature of the Asbestos and Silica Claims Priorities Act and subsection titled, "procedures and limitations", which is Section 686B.7(5). *See id.*

Perhaps because the Statute readily satisfies the rational-basis test, the Plaintiffs set up and attack a straw-man[2] by interpreting the Statute to include an unwritten component limiting "asbestos and silica claims to those plaintiffs with physical impairment from their disease." (Plaintiffs' Brief, pp. 45-46). As the Plaintiffs' straw-man attack goes, the interest in making physical impairment an element has nothing to do with abolishing claims under Iowa Code Section 686B.7(5). (Plaintiffs' Brief, pp. 45-46). The Plaintiffs are logically correct in knocking down their fallacious straw-man arguments but, in so doing, do not challenge the Statute on its merits – it has a valid, realistically conceivable purpose to serving a legitimate governmental purpose of protecting Iowa residents and entities from liability for exposure to an asbestos-containing product or component part made or sold by a third-party. *See* Iowa Code § 686B.7(5). This remains true despite flanking by the Plaintiffs in creating a similar fallacious straw-man argument about the Statute codifying the bare metal defense. (Plaintiffs' Brief, p. 46). The Statute is plain and unambiguous and does exactly what it says and no more. *See id.*

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[2] Attacking a straw-man is an illegitimate form of argumentation. It creates a fallacy giving the impression of refuting an argument while actually creating an argument that was not raised, but is easier to refute.

The fallacious straw-man arguments by the Plaintiffs cannot satisfy their heavy burden of showing the Statute is unconstitutional and negating every reasonable basis by which the Statute may be sustained. *See AFSCME Iowa Council 61,* 928 N.W.2d at 32. By doing so, it is unfair for the Plaintiffs to encourage this Court to ignore its deferential duty to respect the legislative process and presume its enactments are constitutional. *See id.* at 31-32.

The Plaintiffs draw heavily on the cases of *Bierkamp v. Rogers* and *Miller v. Boone County Hospital* as momentum for the Court to act similarly and find no rational-basis supporting Iowa Code Section 686B.7(5). (Plaintiffs' Brief, pp. 47-50). However, those cases are distinguishable.

In *Bierkamp*, the Iowa Supreme Court analyzed the Iowa Guest Statute, which drew a distinction between guests in automobiles. *Bierkamp v. Rogers*, 293 N.W.2d 577, 578-579 (Iowa 1980). The purpose advanced to support the statutory classification was the fostering of hospitality among automobile drivers and prevention of collusive lawsuits. *Id.* at 582. The Court took up the case because federal cases and cases from other states were trending away from upholding the rational basis of such guest statutes, in part, because the rational basis no longer existed. *Id.* at

580. "[T]he passage of time may call for a less deferential standard of review as the experimental or trial nature of legislation is less evident." *Id.* at 581. Such was the case in *Bierkamp* and while the Iowa Supreme Court determined that Iowa's Guest Statute did not satisfy the rational-basis test, it does not detract from the analysis that the Court must undertake in the case at bar or stand for the proposition that Iowa Code Section 686B.7(5) does not satisfy the rational-basis test. Indeed, because Iowa Code Section 686B.7(5) is relatively new, the experimental or trial nature of the legislation should be evident and the mandatory legislative deference under the rational-basis test followed closely. *See AFSCME Iowa Council 61*, 928 N.W.2d at 32 (citing *Varnum*, 763 N.W.2d at 879).

In *Miller*, the Iowa Supreme Court analyzed whether an accelerated notice and limitations period under the Municipal Tort Claims Act classified victims of municipal torts differently than victims of private torts. *Miller v. Boone County Hospital*, 394 N.W.2d 776, 777 (Iowa 1986). Like with *Bierkamp*, the Court revisited the issue whether the classification satisfied the rational basis test for equal protection having once found that a rational basis existed. *See id.* (referring to *Lunday v. Vogelmann*, 213 N.W.2d 904, 908 (Iowa 1973)). Like in *Bierkamp*, present day conditions had changed and the basis once advanced to support the existence of a

rational basis no longer existed. *See id.* at 779-780. The former reasons once supporting a rational basis were, in the time of the *Miller* decision, found to be "totally lacking in today's circumstances." *Id.* at 781. Thus, like *Bierkamp*, the *Miller* decision provides no basis to avoid this Court's obligation to assess the rational basis of Iowa Code Section 686B.7(5) on its own merits. Again, because Iowa Code Section 686B.7(5) is relatively new, the experimental or trial nature of the legislation should be evident and the mandatory legislative deference under the rational-basis test followed closely. *See AFSCME Iowa Council 61*, 928 N.W.2d at 32 (citing *Varnum*, 763 N.W.2d at 879).

This Court is provided only a limited role by the rational-basis test. *See id.* at 34. The arguments from the Plaintiffs provide this Court with no legitimate foundation to question the rational basis of the Statute. To adopt the Plaintiffs' arguments would cause this Court to diverge from its proper role and judge the wisdom, fairness, or logic of legislative choices. *Cf. id.* at 34. This Court cannot serve as a superlegislature to judge the desirability of Iowa Code Section 686B.7(5). *See id.*

The Plaintiffs have failed to preserve error on their equal protection argument, but even if they did, which is disputed, they failed to satisfy the threshold question of identifying a class of similarly situated plaintiffs

singled out for differential treatment, and, even if they did, there is a rational basis supporting Iowa Code Section 686B.7(5). The Plaintiffs' equal protection argument fails on all three points.

III. If the Plaintiffs' due process argument was preserved, which is disputed, application of Iowa Code Section 686B.7(5) does not violate due process.

A. Standard of review and error preservation.

This Court reviews summary judgment rulings for correction of errors at law. *AFSCME Iowa Council 61*, 928 N.W.2d at 30-31. Because the Plaintiffs appeal from the District Court ruling on summary judgment, review for correction of errors at law is the proper standard of review in this case. *See id.*

As argued above, the Plaintiffs did not preserve error on their due process argument. Had the Plaintiffs raised and preserved a due process argument before the District Court, which is disputed, the standard of review on the constitutional argument would be *de novo*. *Id.* at 31. *De novo* review of constitutional claims, however, is subject to the strong presumption that statutes are constitutional. *Id.* ("statutes are cloaked with a presumption of constitutionality"). If they preserved error on the equal protection argument, the Plaintiffs would have had to satisfy a heavy burden to overcome the strong presumption of constitutionality and prove

unconstitutionality beyond a reasonable doubt. *See id.* The Plaintiffs, furthermore, would have had to "refute every reasonable basis upon which the statute could be found to be constitutional." *See id.* If the statute is capable of being construed in more than one manner, one of which is constitutional, the Plaintiffs could not satisfy their burden and the Court would have had to adopt the construction of the statute that is constitutional. *See id.*

If the Court reaches the merits of the Plaintiffs' unpreserved due process argument, the context of the argument should be considered. A statute may be challenged either on its face or as-applied. *See Honomichl v. Valley View Swine, LLC*, 914 N.W.2d 223, 231 (Iowa 2018). "A facial challenge is different from an as-applied challenge." *Id.* "A facial challenge is one in which no application of the statute could be constitutional under any set of facts." *Id.* In other words, under a facial challenge the statute must be unconstitutional under any set of facts. *See id.* An as-applied challenge, in contrast, questions whether a statute is unconstitutional as applied to a particular set of facts. *See id.*

In this case, Plaintiffs do not challenge Iowa Code Section 686B.7(5) on its face. Their Appeal Brief is entirely focused on the application of the Statute to their circumstances. (Plaintiffs' Brief, pp. 20-30). To the extent

Court reaches the merits of Plaintiffs' unpreserved due process argument in its decision, any holding must be limited to an as-applied challenge. Indeed, Plaintiffs could not establish that Iowa Code Section 686B.7(5) is unconstitutional under any set of facts because an application to claims that accrue and vest after the effective date of the Statute would be constitutional even under Plaintiffs' due process argument. *See id.*

B. Plaintiffs' due process is not violated by application of Iowa Code Section 686B.7(5).

A statute that cuts off a remedy after a reasonable period of time does not violate the protections of due process. *See Brewer v. Iowa Dist. Court*, 395 N.W.2d 841, 843 (Iowa 1986). "[S]tatutes of limitation do not necessarily operate to deprive a person of property without due process, even though enacted subsequently to the arising of the claim." *Id.* (quoting 16 C.J.S. *Constitutional Law* § 615, at 1237). In other words, due process concerns are not implicated when persons adversely affected by shortening of a limitations period are provided a reasonable time after the change in the law to avoid the consequential elimination of the remedy. *See id.*

While the Plaintiffs attempt to square their situation with other lines of case law in which accrued and vested rights in a cause of action may not be defeated by subsequent legislation, their predicament is more akin to that of a change in the statute of limitations. *See id., cf. Thorp v. Casey's*

General Stores, Inc., 446 N.W.2d 457, 460 (Iowa 1989) *and cf. W. Des Moines State Bank v. Mills*, 482 N.W.2d 432, 435-365 (Iowa 1992). Admittedly, Iowa Code Section 686B.7(5) did not establish a new statute of limitations, *per se*, but it is a statute that cut off a remedy after a reasonable period of time – after Plaintiffs had actual or constructive notice that the Statute was being considered, enacted, and made effective at a later date.

In this regard, the Plaintiffs' Missouri lawsuit (including its premises liability claim) was facing dismissal for lack of personal jurisdiction and they had an opportunity to file suit in Iowa. (Missouri Petition, paras. 56-61, App. 26-28; Arconic Missouri MTD, App. 31-42). The Plaintiffs knew their Missouri suit was subject to dismissal as of August 10, 2016, when the motion to dismiss was filed. (Arconic Missouri MTD, App. 31-42). On February 28, 2017, Iowa Senate Bill 376 was introduced. 2017 Bill Tracking IA S.B. 376. The Governor signed the Bill on March 23, 2017. *Id.* As introduced and signed, Senate Bill 376 contained what would become Iowa Code Section 686B.7(5). 2017 Ia. SF 376. The Statute provided that it would apply to all asbestos actions filed on or after the effective date. Iowa Code §686B.9. Iowa Code Section 686B.7(5) became effective as of July 1, 2017. 2017 Ia. SF 376.

Despite knowing their Missouri lawsuit was subject to dismissal, and knowing or constructively knowing that Iowa Code Section 686B.7(5) was forthcoming, Plaintiffs did not file their Iowa suit in this case until 413 days after Arconic moved to dismiss their Missouri lawsuit for lack of personal jurisdiction; 188 days after Iowa Code Section 686B.7(5) was enacted; and 88 days after the Statute became effective.

Importantly, Plaintiffs had at least 100 days advanced notice that Iowa Code Section 686B.7(5) would become effective (100 days between the March 23, 2017, date of enactment and July 1, 2017, effective date). Indeed, the Plaintiffs had notice that the legislation was pending since February 28, 2017, or 124 days before the effective date of the Statute. The Plaintiffs could have brought suit in Iowa before the effective date of the Statute. However, they waited to file their Iowa Petition. They waited 100 days between the enactment and effective dates. And, they waited an additional 88 days after Iowa Code Section 686B.7(5) was made effective before filing their Iowa lawsuit.

In *Brewer v. Iowa District Court*, the plaintiffs sought postconviction relief and challenged the determination that their claims were barred by a three-year statute of limitations, which came by way of subsequently enacted legislation that ended the ability to file for postconviction relief at

any time. *See Brewer*, 395 N.W.2d at 842. Akin to what the Plaintiffs argue on appeal in the case at bar, the plaintiffs in *Brewer* argued on appeal that it was improper for the District Court to apply a limitations period to a conviction that became final before the new statute was effective. *Id.* at 843.

The Iowa Supreme Court rejected the plaintiff's argument reasoning that a "statute which merely cuts off a remedy, after a lapse of time, within which time, the claimant was free to assert the remedy does not offend against due process." *Id.* (internal punctuation modified) (quoting *Swanson v. Pontralo*, 27 N.W.2d 21, 24 (Iowa 1947)).

> While limitations must comply with the requirements of due process of law, and while a statute of limitations which attempts to bar a debt or other claim without giving a reasonable time within which the right may be preserved is violative of the due process clause, nevertheless statutes of limitation do not necessarily operate to deprive a person of property without due process, even though enacted subsequently to the arising of the claim.

Id. According to the Iowa Supreme Court, these considerations require that "persons adversely affected by the shortening of a statute of limitations must be given a reasonable time after the change in the law to avoid its consequences." *Id.*

With regard to the Plaintiffs in the case at bar, they had been given a reasonable time after the enactment of Iowa Code Section

686B.7(5) in which to avoid its consequences. *See id.* The Plaintiffs had a reasonable time period (between 100- and 124-days advanced notice) in which to file their Iowa lawsuit. As such, due process is not offended. *See id.*

The Plaintiffs rely heavily on *Thorp v. Casey's General Stores, Inc.*, for their due process argument. (Plaintiffs' Brief, pp. 20-30). However, that case is distinguishable. *Thorp* did not involve a forum shopping situation where the plaintiff had previously filed suit in another forum and faced dismissal for lack of personal jurisdiction. *Thorp,* 446 N.W.2d at 459. Instead, that case dealt with a dram shop claim that accrued when the plaintiffs' decedent was on April 1, 1985, struck and killed by a drunk driver, who purchased beer at a Casey's store, and brought suit in Iowa. *Id.* The Plaintiffs filed suit in Iowa after the legislature changed the Iowa dramshop statute to limit recovery to those who serve a person to the point of intoxication rather than sell or give alcohol to a person while intoxicated. *Id.* While the *Thorp* plaintiffs had an accrued cause of action in 1985, the statute was enacted in 1986 followed by filing of a lawsuit in 1987, they did not have a pending lawsuit readymade for filing in Iowa like the Plaintiffs in the case at bar.

The Plaintiffs had no vested right in the anticipated continuation of the law as it was when their claims accrued. *See id.* at 460 (citing *Schwarzkopf v. Sac County Board of Supervisors*, 341 N.W.2d 1, 8 (Iowa 1983) ("[A] vested right requires something more than a mere expectation based on the anticipated continuance of present law, and that the right or interest must be fixed or established before it is considered vested."). Here, Plaintiffs had a pending lawsuit in Missouri and knew transfer to Iowa would be necessary in light of the lack of personal jurisdiction. Plaintiffs could not have anticipated a continuance of the law in effect at the time their claim accrued because legislation that would become Iowa Code Section 686B.7(5) was introduced and enacted providing the Plaintiffs with a reasonable time in which to file their Iowa lawsuit before the effective date. Plaintiffs had a matured cause of action that was acted upon and filed in another jurisdiction and capable of being filed in Iowa before the effective date of Iowa Code Section 686B.7(5). To the extent due process is implicated by cutting off a remedy after the lapse of time, the Plaintiffs received all the process that was due in being timely notified of the change in the law and an opportunity to file suit in Iowa before the Statute's effective date.

The Plaintiffs claim a violation of due process by the retroactive application of the Statute, but do not address any procedural due process deficiencies. As such, the Plaintiffs' claim implicates substantive due process. *See Zaber v. City of Dubuque,* 789 N.W.2d 634, 639 (Iowa 2010).

Generally, substantive due process protects from governmental conduct that shocks the conscious or interferes with rights implicit in the concept of ordered liberty. *Id.* at 640. Substantive due process is not easy to prove and is reserved "for the most egregious governmental abuses against liberty or property rights." *Id.* When there is no fundamental right at issue, substantive due process "demands no more than a reasonable fit between the governmental purpose and the means chosen to advance that purpose." *Id.* (internal punctuation modified) (quoting *Smokers Warehouse Corp.*, 737 N.W.2d 107, 111 (Iowa 2007). In this circumstance, the least restrictive rational-basis test applies. *Id.*

Iowa Code Section 686B.7(5) satisfies the rational-basis test and the Plaintiffs cannot satisfy their heavy burden of negating every reasonable basis upon which the Statute may be sustained. *See id.* Retroactive application of the Statute "is itself justified by a rational legislative purpose." *See id.* at 645.

By making the Statute retroactive, Iowa Code Section 686B.7(5) shifts liability for Plaintiffs' asbestos claim, which, as the Plaintiffs argue, resulted in the October 7, 2015, death of Charles Beverage – between 39 and 48 years after his alleged exposure to asbestos. In other words, the Statute serves a reasonable function of limiting liability for asbestos exposure cases to the manufacturer and freeing other defendants from liability from stale asbestos claims having a long time between exposure and accrual of a cause of action. This is a purpose that has a secondary benefit of streamlining litigation and reducing the resources otherwise used by the courts and litigants. By limiting and prioritizing claims under Iowa Code Section 686B.7(5) it shifts the focus of liability to those who manufacture and sell asbestos-containing products or component parts and removes liability of Iowa residents and entities who would, otherwise, face litigation and the associated costs and potential liability. The Plaintiffs cannot negate these benefits as they are clearly set forth in the language of the Statute.

The Court must uphold the retroactive application of the Statute because the legislature could have made the determination to free Iowa residents and entities from liability for stale asbestos claims. The freedom from legal liability in an asbestos or silica action is a social, economic, and

political fact that substantiates the retroactive application of Iowa Code Section 686B.7(5). *See id.*

The fairness of retroactively applying the Statute to the Plaintiffs' asbestos action is also evident. The legislative process provided the Plaintiffs with reasonable notice of the impending effective date of the Statute. Plaintiffs simply opted not to timely file their lawsuit before the effective date, despite actual or constructive notice and having already filed facing dismissal in another jurisdiction.

The Plaintiffs cannot overcome the strong presumption that the Statute is constitutional, prove unconstitutionality beyond a reasonable doubt, and refute every reasonable basis upon which the Statute could be found to be constitutional. *See AFSME Iowa Council 61,* 928 N.W.2d at 30-10. The Plaintiffs' due process argument should fail.

IV. The District Court committed no error of law when interpreting Iowa Code Section 686B.7(5) and granting summary judgment in favor of Arconic.

A. Standard of Review and Preservation of Error.

Arconic filed for summary judgment in the District Court based upon Iowa Code Section 686B.7(5). As set out in more detail above in the Statement of the Case, the Plaintiffs resisted summary judgment arguing for a different interpretation of the Statute. Thus, unlike the constitutional

arguments raised for the first time on appeal, the Plaintiffs raised the issue of statutory interpretation when resisting the summary judgment motions filed by Arconic. (Beverage Resistance to MSJ). As such, the Plaintiffs' issue of statutory interpretation is preserved. *See, e.g., Meier*, 641 N.W.2d at 537 ("issues must be presented to and passed upon by the district court before they can be raised and decided on appeal.").

This Court reviews summary judgment rulings for correction of errors at law. *AFSCME Iowa Council 61*, 928 N.W.2d at 30-31, *Slaughter v. Des Moines Univ. Coll. of Osteopathic Med.*, 925 N.W.2d 793, 800 (Iowa 2019). "Summary judgment is proper when the movant establishes there is no genuine issue of material fact and it is entitled to judgment as a matter of law." *Slaughter*, 925 N.W.2d at 800; *also, see*, Iowa R. Civ. P. 1.981(3). Because the Plaintiffs appeal from the District Court ruling on summary judgment, review for correction of errors at law is the proper standard of review in this case. *See id.*

The same standard of review applies when this Court reviews the statutory interpretation of the District Court – reviewing for correction of errors at law. *See Sanford v. Fillenwarth*, 863 N.W.2d 286, 289 (Iowa 2015). Because the Plaintiffs appeal from a preserved issue regarding the statutory interpretation of Iowa Code Section 686B.7(5), review for

corrections of errors of law is the proper standard of review in this case. *See id., and, Slaughter*, 925 N.W.2d at 800.

B. The District Court properly interpreted Iowa Code Section 686B.7(5).

The starting point when interpreting a statute is the language of the statute itself. *Myria Holdings, Inc. v. Iowa Dep't of Revenue*, 892 N.W.2d 343, 348 (Iowa 2017). When interpreting statutes, the main goal of the Court is to ascertain legislative intent. *Id.* The Court may not consider or weigh the merits of the statute when interpreting a statute and its legislative intent. *See Auen v. Alcoholic Beverages* Div., 679 N.W.2d 586, 590 (Iowa 2004). The Court is prohibited from extending, expanding, or changing "the meaning of a statute under the guise of construction, even if [the Court] believes doing so would mitigate the hardship of a consequence or if [the Court] questions the statute's wisdom." *Myria Holdings, Inc.*, 892 N.W.2d at 348.

"The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code." Iowa Code § 4.2. "The provisions and all proceedings under [the Iowa Code] shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice." *Id.* By enacting a statute, it shall be presumed that "[a]

just and reasonable result is intended" and the "[p]ublic interest is favored over any private interest." Iowa Code § 4.4 (3)(5).

If a word is undefined by the statute, the Court assigns the word its common, ordinary meaning, interpreted within the context of the statute and its history. *Myria Holdings, Inc.*, 892 N.W.2d at 348. The Court is confined to "the words chosen by the legislature, not what it should or might have said." *Auen*, 679 N.W.2d at 590. The Court is not permitted to "speculate as to the probable legislative intent apart from the words used in the statute." *IBP, Inc. v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001) (internal punctuation omitted) (quoting *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996)). The Court has "long held that the legislature is presumed to know the usual meaning ascribed by the courts to language and to intend that meaning unless the context shows otherwise." *Nixon v. State*, 704 N.W.2d 643, 652 (Iowa 2005) (quoting *State v. Shafranek*, 576 N.W.2d 115, 118 (Iowa 1998)).

"The court applies the rules of statutory construction *only* when the terms of the statute are ambiguous." *IBP, Inc.*, 633 N.W.2d at 325. Statutory ambiguity arises only "if reasonable persons could disagree as to its meaning" either from the meaning of particular words or "from the general scope and meaning of a statute when all its provisions are

examined." *Id.* (quoting *Holiday Inns Franchising, Inc. v. Branstad,* 537 N.W.2d 724, 728 (Iowa 1995)). If ambiguity is present, to resolve the ambiguity and determine legislative intent the Court considers: "(1) the language of the statute; (2) the objects sought to be accomplished; (3) the evils sought to be remedied; and (4) a reasonable construction that will effectuate the statute's purpose rather than one that will defeat it." *Id.* (citing *Voss v. Iowa Dep't of Transp.,* 621 N.W.2d 208, 211 (Iowa 2001) (quoting *State v. Green*, 470 N.W.2d 15, 18 (Iowa 1991)).

With the above principles in mind, the District Court engaged in learned analysis of the summary judgment motion before it and properly interpreted Iowa Code Section 686B.7(5) to conclude that Arconic was not liable for the Plaintiffs' claims. (10.1.19 Order, pp. 1-9, App. 768-776). The District Court undertook the correct approach under the law and interpreted each of the key terms of the Statute. The Plaintiffs are critical of the District Court for interpreting the terms of the Statute in this manner, (Plaintiffs' Brief, pp. 34-35), but the District Court did not err. The District Court analyzed the Statute beginning at the proper starting point, looking to the language of the statute itself. *See Myria Holdings, Inc.*, 892 N.W.2d at 348.

As the District Court found, the language chosen by the Iowa Legislature in Section 686B.7(5) is short, plain, clear, direct, and unambiguous. (10.1.19 Order, p. 8, App. 775). *See* Iowa Code § 686B.7(5). Under its plain language, the Statute insulates from liability all defendants in an asbestos action, save those defendants who made or sold a product or component part alleged to be the source of the plaintiff's asbestos exposure. *See* Iowa Code § 686B.7(5).

The District Court properly interpreted the Statute by analyzing the key terms and for each term using their definitions, where defined, and applying the common, ordinary meaning, to undefined terms in the Statute. *See Myria Holdings, Inc.*, 892 N.W.2d at 348. The District Court's interpretation was not erroneous.

In relation to the term "defendant," the District Court properly found it to be unambiguous and applied the common meaning to include Arconic. (10.1.19 Order, p. 5, App. 772). This is correct because the Plaintiffs made Arconic a defendant to their "asbestos action." (Petition). The Plaintiffs claim on appeal that the Court erred in applying that meaning to the term "defendant." (Plaintiffs' Brief, p. 35).

On appeal, the Plaintiffs claim that the term "defendant" as used in the Statute must be read as "defendants who make asbestos products."

(Plaintiffs' Brief, pp. 35-36). But, of course, that is not what Iowa Code Section 686B.7(5) provides. To reach their preferred meaning of the term "defendants" the Plaintiffs would have this Court improperly extend, expand, or change the meaning of the Statute in order to "mitigate the hardship of a consequence" or "the statute's wisdom." *Cf. Myria Holdings, Inc.*, 892 N.W.2d at 348 (prohibiting such modification when interpreting statutes). However, this Court is confined to "the words chosen by the legislature, not what [the Plaintiffs think the Statute] should or might have said." *See Auen*, 679 N.W.2d at 590. Adopting the Plaintiffs' unfounded supposition would require this Court to impermissibly speculate as to the legislative intent preferred by the Plaintiffs and apart from the words used in the statute. *See IBP, Inc.*, 633 N.W.2d at 325. When the legislature used the term "defendant" the legislature knew the usual meaning ascribed by the courts to that language and intended that meaning. *See Nixon*, 704 N.W.2d at 652. The context does not show otherwise. *See id.*

The Plaintiffs suggest the District Court's analysis was "strained" even though it followed the rules for proper statutory interpretation. (Plaintiffs' Brief, p. 34). According to the Plaintiffs, the District Court should not have defined the terms used in the Statute and conclude the terms were plain and unambiguous, which they claim to be an oversimplification. (Plaintiffs'

Brief, p. 34-35). Instead, the Plaintiffs surmise the term "defendant" is ambiguous and the District Court should have expanded the statutory interpretation to imply that the term "defendant" was really a "defendant that makes or sells an asbestos product." (Plaintiffs' Brief, p. 35). Had the legislature intended for the term "defendant" to be defined as such, it could and most certainly would have defined the term in that manner. Because the legislature did not define the term "defendant" as the Plaintiffs suggest, it is evidence of legislative intent not to define "defendant" in such manner. *See id.* (the legislature is presumed to know the usual meaning ascribed by the courts to language and to intend that meaning unless the context shows otherwise.").

The District Court properly interpreted the next term in the Statute, "asbestos action." (10.1.19 Order, p. 5, App. 772). The District Court found the term to be unambiguous, defined by statute, and incorporating the claims raised by the Plaintiffs in this case. (10.1.19 Order, p. 5, App. 772). The Plaintiffs do not raise any issue to contest the District Court's interpretation in this regard. Any argument to that effect is absent in their Appeal Brief and, thus, waived. *See* Iowa R. App. P. 6.903(2)(g) (failure to raise an issue may be deemed waiver of that issue).

The District Court properly interpreted the next term in the Statute, "shall not be liable." (10.1.19 Order, p. 5, App. 772). The District Court found the term unambiguous and referred to the common, ordinary meaning, given the term by Black's Law Dictionary. (10.1.19 Order, p. 5, App. 772). According to the District Court and Black's Law Dictionary this term is intended to create an immunity from suit. (10.1.19 Order, p. 5, App. 772). *See Liability,* Black's Law Dictionary (11th ed. 2019). The Plaintiffs do not raise any issue to contest the District Court's interpretation in this regard. Any argument to that effect is absent in their Appeal Brief and, thus, waived. *See* Iowa R. App. P. 6.903(2)(g) (failure to raise an issue may be deemed waiver of that issue).

The District Court properly interpreted the next unambiguous term, "product or component part," as used in Iowa Code Section 686B.7(5). (10.1.19 Order, p. 6, App. 773). The District Court correctly drew from a case in which the Iowa Supreme Court defined the term "product" as "anything produced." (10.1.19 Order, p. 6, App. 773) (referring to *State v. Steenhoek*, 182 N.W.2d 377, 379 (Iowa 1970)). The District Court also rightly looked to the definition provided by the dictionary, finding that the common, ordinary meaning, was "to cause to have existence or to happen" or "to give being, form or shape to" or "to compose, create, or bring about

by intellectual or physical effort." (10.1.19 Order, p. 6, App. 773) (referring to *Produce*, Merriam-Webster's Collegiate Dictionary 991 (11th ed. 2003)). As with the term "product" the District Court looked to Iowa case decisions and the dictionary in relation to the term "component part." (10.1.19 Order, pp. 6-7, App. 773-774) (referring to *United Properties, Inc. v. Home Ins. Co.*, 311 N.W.2d 689, 691 (Iowa Ct. App. 1981) and *Constituent*, Merriam-Webster's Collegiate Dictionary, 402 (11th ed. 2003)). The District Court applied the term "product or component part" to the case at bar, finding that the case involves asbestos insulation used at the Arconic plant and that the case undisputedly involves alleged exposure to asbestos from those products or component parts. (10.1.19 Order, pp. 6-7, App. 773-774). The Plaintiffs do not raise any issue to contest the District Court's interpretation of "product or component part" or application to the alleged asbestos exposure in this case. Any argument to that effect is absent in their Appeal Brief and, thus, waived. *See* Iowa R. App. P. 6.903(2)(g) (failure to raise an issue may be deemed waiver of that issue).

The District Court then appropriately interpreted and applied the terms "made," "sold," and "third party" as used in Iowa Code Section 686B.7(5). (10.1.19 Order, p. 7, App. 774). The District Court found these terms easy to define and the analysis is well written in the Court's Order.

(10.1.19 Order, p. 7, App. 774). The District Court then applied these unambiguous terms finding that there were no allegations that Arconic manufactured, created, or sold asbestos or asbestos-containing products. (10.1.19 Order, p. 7, App. 774). "Viewing the record in the light most favorable to [the Plaintiffs] the record simply shows that [Arconic] was a consumer of asbestos insulation provided by a third party, IITI." (10.1.19 Order, p. 7, App. 774).

Contrary to the Plaintiffs' arguments on appeal, the Statute does not reference premises liability or products liability claims or an intent to eliminate those claims. (Plaintiffs' Brief, pp. 40-41). The District Court, furthermore, did not interpret the Statute to eliminate those claims, it properly interpreted the statute to eliminate liability for defendants in an asbestos or silica action from asbestos exposure from products or components made or sold by a third party. (10.1.19 Order, pp. 8-9, App. 775-776). The District Court applied the Statute finding that Arconic was not the manufacturer or seller of any asbestos product or component part and held them not liable. (10.1.19 Order, pp. 8-9, App. 775-776).

In their appeal arguments, the Plaintiffs write into the District Court Order faulty analysis that is not present. (Plaintiffs' Brief, pp. 31, 40-41). As the Plaintiffs would have the District Court Order on Summary

Judgment read, the District Court abolished all premises liability claims against property owners and products liability claims against sellers of asbestos products and components. (Plaintiffs' Brief, pp. 31, 40-41). The Plaintiffs seemingly reach this result by backing in the effect the summary judgment, dismissing the Plaintiffs premises liability and products liability claims. But the interpretation of the Statute cannot rise and fall on the effect of the summary judgment to the Plaintiffs' claims or because the Plaintiffs consider the ruling "an absurd result." *See Myria Holdings, Inc.*, 892 N.W.2d at 348 (The Court is prohibited from extending, expanding, or changing "the meaning of a statute under the guise of construction, even if [the Court] believes doing so would mitigate the hardship of a consequence or if [the Court] questions the statute's wisdom.").

By the plain reading of the Statute and use of standard statutory interpretation principles, the District Court correctly held that Arconic was not liable for the claims of the Plaintiffs. (10.1.19 Order, pp. 8-9, App. 775-776).

The Plaintiffs claim that Iowa Code Section 686B.7(5) is unrelated to larger Statute "Asbestos and Silica Claims Priorities Act." (Plaintiffs' Brief, pp. 36-37). Contrary to the assertions of Plaintiffs, the Statute provides more than just ensuring proof of physical impairment for claims based on

non-malignant asbestos-related diseases as the Plaintiffs claim. The Statute does establish certain upfront evidence in order to pursue a case with non-malignant disease, but it also relates to all asbestos and silica actions. In this regard, the Asbestos and Silica Claims Priorities Act defines asbestos action by referring to Iowa Code Section 686A.2, where "asbestos action" is defined for the companion statute, the "Asbestos Bankruptcy Trust Claims Transparency Act," which also relates to all asbestos actions *See* Iowa Code § 686B.2(3), *and,* Iowa Code § 686A.2(1). "Asbestos action" is defined to mean,

> a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

Iowa Code § 686A.2. By defining "asbestos action" in such a way, the Legislature clearly intended for Iowa Code Section 686B.7(5) to apply to all claims in a civil action that arise out of asbestos exposure. *See id.* The limitation on liability is entirely related to the apparent purpose of Chapter 686B because it is defined to apply to an "asbestos action," which is not limited to claims based on non-malignant asbestos-related diseases but includes claims such as those made by Plaintiffs. *See id.*

The arguments raised before the District Court by the Plaintiffs differed significantly from what they have crafted on appeal, but unlike their constitutional challenges raised for the first time on appeal, the Plaintiffs did try to contest the fairness of the Statute and extent of the Statute's reach. (10.1.19 Order, p. 8, App. 775). For the arguments raised before the District Court about interpretation of the Statute, the District Court was right when it rejected the Plaintiffs' arguments because they would require a "search for meaning beyond the express terms of [Iowa Code Section 686B.7(5)]." (10.1.19 Order, p. 8, App. 775). The Plaintiffs' arguments about statutory interpretation have become more refined on appeal, if not entirely novel, but they still suffer from the same fault.

The Plaintiffs focus their attack on the District Court's Order, not by directly addressing the District Court's interpretation of the terms of the Statute, but for refusing to speculate about the probable legislative intent apart from the words in the Statute. *See IBP, Inc.,* 633 N.W.2d at 325. There is no ambiguity in the plain terms of the Statute and, thus, it would be improper to search for meaning beyond the express terms of the Statute. *See IBP, Inc.*, 633 N.W.2d at 325.

Because the District Court properly interpreted Iowa Code Section 686B.7(5) and properly held that Arconic was not liable for the Plaintiffs' asbestos action, this Court should affirm the District Court.

At least two other District Court cases have interpreted and applied Iowa Code Section 686B.7(5) in the same manner as the District Court in the case at bar. *See Clester v. Alcatel-Lucent USA, Inc.,* No. LACV012499 (Clarke Co. November 14, 2019) (granting summary judgment for Ford Motor Company after interpreting Iowa Code Section 686B.7(5), App. 796-803); *Fankhauser v. Borg-Warner Tel., Inc.,* No. LACL150972 (Polk Co. August 14, 2019, App. 778-795). Indeed, in the case of *Fankhauser v. Borg-Warner Tel., Inc.,* the District Court had repeatedly analyzed and granted summary judgment motions from several named defendants based on Iowa Code Section 686B.7(5). *See id.*

The District Court order granting summary judgment to Arconic should be affirmed.

CONCLUSION

This Court should affirm the District Court's Order granting summary judgment in favor of Arconic. The Plaintiffs' equal protection and due process arguments (Brief Points I and III) were not preserved and are, therefore, waived.

If the Plaintiffs' equal protection argument (Brief Point III) was preserved, which is disputed, they have failed to articulate a class of similarly situated plaintiffs who are allegedly treated differently and there is a rational basis supporting legitimate state interests in enacting Iowa Code Section 686B.7(5). As such, their equal protection claim fails as a matter of law.

If the Plaintiffs' due process argument (Brief Point I) was preserved, which is disputed, there is a rational basis supporting retroactive application of Iowa Code Section 686B.7(5) to limit liability of stale asbestos claims to the manufacturer of asbestos products, streamline litigation, and free Iowa residents and entities from litigation. Plaintiffs did not have a vested right in their asbestos action because they could not have anticipated a continuance in the law having actual or constructive knowledge of the impending enactment of the Statute while their Missouri lawsuit was subject to dismissal. Furthermore, Plaintiffs had more than a reasonable amount of time to file their Iowa lawsuit before the effective date of the Statute.

As to their only argument that is preserved, interpretation of the Statute (Brief Point II), the District Court committed no error of law when

interpreting Iowa Code Section 686B.7(5) and granting summary judgment in favor of Arconic.

Summary judgment is proper because there is no genuine issue of material fact and Arconic is entitled to judgment as a matter of law under Iowa Code Section 686B.7(5). *See Slaughter*, 925 N.W.2d at 800; *also, see*, Iowa R. Civ. P. 1.981(3).

REQUEST FOR ORAL ARGUMENT

Because this appeal is predominated by straightforward legal issues and limited pertinent factual allegations, oral argument is unlikely to assist the Court in resolving the appeal. As such, it is respectfully submitted that oral argument is unnecessary.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type-volume limitation of Iowa Rules of Appellate Procedure 6.903 (1)(d), 6.903(1)(e)(1) and 6.903(1)(g)(1) because this brief has been prepared with Microsoft Word in a proportionally spaced typeface, Georgia, size 14; and contains 13,661 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Robert M. Livingston

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on July 31, 2020, the above and foregoing Amended Final Brief was electronically filed with the Clerk of Court for the Supreme Court of Iowa using the EDMS system, service being made by EDMS upon the following:

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