IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 16-1290

BRIAN JAMES MAXWELL,
Petitioner-Appellant

vs.

IOWA DEPARTMENT OF PUBLIC SAFETY,
Respondent-Appellee

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE LAWRENCE P. MCLELLAN

PETITIONER-APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the Petitioner-Appellant's Final Brief with the Electronic Document Management System with the Appellate Court on the 3rd day of January, 2017.

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I hereby certify that on the 3rd day of January, 2017, I did serve Petitioner-Appellant's Final Brief on Appellant by mailing one copy to:

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ROUTING STATEMENT

This case presents the issue of whether an individual convicted of a sex offense is required to enroll on the Sex Offender Registry during the pendency of the individual's criminal appeal when probation is contingent upon the completion of the term of imprisonment, the individual has tendered an appeal bond, and the criminal judgment has been stayed pending appeal. The answer to this question turns on the interpretation of Iowa Code § 692A.103(1).

This statutory question is a substantial issue of first impression and should be retained by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c). As the Polk County District Court noted, "There is no question that section 692A.103 does not speak explicitly to the factual situation presented by this case." (47/16 Order at 5). The issue presented by this case is also of broad public importance both because "purpose of the registry is protection of the health and safety of individuals, and particularly children," *State v. Iowa Dist. Court ex rel. Story Cty.*, 843 N.W.2d 76, 81 (Iowa 2014), and because individuals convicted of sex crimes need to know with certainty their obligations to register lest they be prosecuted for failing to comply with the requirements of Chapter 692A, *see State v. Reiter*, 601 N.W.2d 372, 373 (Iowa 1999) ("It is well established that penal statutes must give fair

warning of the conduct prohibited[.]"). These interests call for a prompt resolution of this statutory question by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(d).

CASE STATEMENT

On May 11, 2015, Mr. Maxwell was found guilty of Lascivious Conduct with a Minor, in violation of Iowa Code § 709.14. (App. 22, ¶¶ 4–5). Immediately after his sentencing on August 18, 2015, Mr. Maxwell filed a Notice of Appeal and posted an appeal bond. (App. 23, ¶¶ 10, 12).

Mr. Maxwell subsequently filed a Petition for Judicial Review and Application for Injunctive Relief in the instant case asking the Polk County District Court to enjoin the Iowa Department of Public Safety ("DPS") from placing him on the Sex Offender Registry during the pendency of his criminal appeal. (App. 4-5, ¶ 22). The Polk County District Court concluded that Mr. Maxwell was required to register as of the date of his sentencing. (App. 101-02). Mr. Maxwell now appeals that ruling.

FACTS

I. Underlying Facts

On May 11, 2015, the Madison County District Court entered a ruling finding Mr. Maxwell guilty of Lascivious Conduct with a Minor, in violation of Iowa Code § 709.14 in Madison County Case No. SRCR107912. (App. 22, ¶¶ 4–5). Mr. Maxwell was not in custody during

the pendency of Case No. SRCR107912, nor did he serve any time in jail prior to the Madison County District Court's imposition of sentence. (App. 95). The Madison County District Court sentenced Mr. Maxwell on August 18, 2015 at 3:01 p.m., imposing a 1-year sentence and further specified that "after Defendant has served one hundred twenty (120) days of the sentence, the remainder is suspended and Defendant is placed on probation for a period of two (2) years." (App. 22-23, ¶¶ 6–9).

Even before the sentencing judgment had been filed, Mr. Maxwell filed a Notice of Appeal. (App. 23, ¶ 10 (appeal filed at 2:47 p.m. on August 18, 2015)). Mr. Maxwell also posted an appeal bond at 3:12 p.m. on August 18, 2015. (App. 23, ¶ 12).

On August 20, 2015, the 5th Judicial District Department of Correctional Services ("DCS") notified Mr. Maxwell's counsel via email that Mr. Maxwell would not be required to report for probation or register with the Sex Offender Registry. (App. 23, ¶ 13).

The Madison County District Court entered an Order Nunc Pro Tunc on August 27, 2015 modifying Mr. Maxwell's sentencing order to strike from the original order language stating "Defendant shall not contact any person under the age of 18 or work of volunteer for any organizations that involve people under the age of 18." (App. 23, ¶¶ 14–15). The Madison

County District Court clarified that an Order of Protection entered on August 24, 2015 "contains the controlling directives with respect to the no contact order." (App. 23, ¶¶ 14–15).

DPS mailed Mr. Maxwell a correspondence dated September 24, 2015 informing him that he was required to register on the Sex Offender Registry. (App. 23, ¶¶ 16). Mr. Maxwell reported to the Madison County Sheriff's Department to complete the sex offender registration process on October 12, 2015. (12/31/15 Stipulation at 2, 17–24).

On or about October 14, 2015, Mr. Maxwell mailed an Application for Determination to the DPS Division of Criminal Investigation, Sex Offender Registry. (App. 23, ¶¶ 15–16). On December 30, 2015, DPS issued a Decision of Determination that concluded Mr. Maxwell is required to register despite his pending appeal. (App. 65).

II. Petition for Judicial Review and Application for Injunctive Relief

On October 23, 2015, Mr. Maxwell filed a Petition for Judicial Review and Application for Injunctive Relief in the instant case. (App. 1). Mr. Maxwell asked the Polk County District Court to enjoin DPS from placing him on the Sex Offender Registry during the pendency of his criminal appeal in Case No. SRCR107912. (App. 4-5).

The Polk County District Court issued a decision on Mr. Maxwell's Petition for Judicial Review and Application for Injunctive Relief on April 7, 2016. (App. 76). In that order, the Polk County District Court erroneously found that "Maxwell had served one hundred and twenty (120) days of the sentence." (App. 82). The Polk County District Court thus believed the Madison County District Court's sentencing order had "released" Mr. Maxwell and that Mr. Maxwell was placed on probation as of the date of sentencing. (App. 83-84 ("He was released from incarceration by the district court when his sentence was suspended and he was placed on probation. On that same date he was placed on probation.")). Based on that misperception, the Polk County District Court incorrectly concluded Mr. Maxwell's duty to register was triggered on the date of sentencing. (App. 85).

Mr. Maxwell pointed out the Polk County District Court's misapprehension of the facts in his April 22, 2016 Motion to Enlarge or Amend Findings and to Reconsider. (App. 87). DPS "agree[d] with Maxwell that the Court's finding that Maxwell had already served 120 days of incarceration prior to sentencing in his criminal case appears to be in error and should be amended." (App. 92, ¶ 2).

The Polk County District Court accordingly issued an order on June 29, 2016 acknowledging that Mr. Maxwell has not served any time in custody. (App. 97-98, 100). The Polk County District Court commented:

> The court erred in its prior ruling on the petition for judicial review when it stated Maxwell was on probation immediately following sentencing. Maxwell had not served the unsuspended 120-days of his one year sentence and therefore was not yet on probation. The agency committed this same factual error. DPS ruled that Maxwell was to register because he was placed on probation on August 18, 2015.

(App. 100). Nevertheless, the Polk County District Court reaffirmed its conclusion that Mr. Maxwell was required to register as of the date of his sentencing. (App. 101-102).

Mr. Maxwell subsequently filed a Second Motion to Enlarge or Amend Findings and to Reconsider, (App. 104), which the Polk County District Court denied, (App. 108). Mr. Maxwell timely appealed. (App. 110).

III. New Criminal Charges

While Mr. Maxwell's Petition for Judicial Review and Application for Injunctive Relief was pending, the State charged Mr. Maxwell in Polk County Case No. AGCR293592 with three counts of "Failure to Comply Sex Offender Registry, Exclusion Zones," in violation of Iowa Code §§ 692A.111 and 692A.113. (Case No. AGCR293592 3/11/16 Criminal Complaint; Case No. AGCR293592 5/3/16 Trial Information). These

charges are currently pending, with trial scheduled for May 8, 2017. (Case No. AGCR293592 8/11/16 Order).

IOWA CODE § 692A.103 DOES NOT REQUIRE A CONVICTED DEFENDANT TO ENROLL ON THE SEX OFFENDER REGISTRY WHEN PROBATION IS CONTINGENT ON THE COMPLETION OF THE TERM OF IMPRISONMENT AND THE UNDERLYING CRIMINAL JUDGMENT HAS BEEN STAYED PENDING APPEAL

I. Preservation & Standard of Review

Mr. Maxwell exhausted his administrative remedies by submitting an Application for Determination to DPS, (App. 23, ¶¶ 15–16), and receiving an adverse decision, (App. 65). Mr. Maxwell presented this issue to the Polk County District Court, (App. 1; App. 22; App. 87; App. 104), and received a ruling on the merits, (App. 76; App. 96; App. 108).

This appeal turns on the interpretation of Iowa Code § 692A.103(1). The Polk County District Court correctly found that the legislature did not clearly vest DPS with interpretive authority over Iowa Code Chapter 692A. (App. 78-80; App. 98-100). Accordingly, review is for correction of errors at law. Iowa Code § 17A.19(10)(c); *accord SZ Enterprises, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441, 449 (Iowa 2014). If the Court concludes the "substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . [b]ased on an erroneous interpretation of a

provision of law," the Court may reverse the agency's decision. Iowa Code § 17A.19(10)(c).

II. Applicable Code Sections

Iowa Code Chapter 692A governs the Sex Offender Registry and associated restrictions on those who are required to register.[1] Iowa Code § 692A.103(1) sets forth when "a person who has been convicted of a sex offense" is required to register as a sex offender.[2] That section "prescribes who is covered by the registration requirements"; it does not grant a district court discretion to decide who is covered. *In Interest of S.M.M.*, 558 N.W.2d 405, 407 (Iowa 1997). Iowa Code § 692A.103(1) states:

> A sex offender shall, upon a first or subsequent conviction, register in compliance with the procedures specified in this chapter, for the duration of time specified in this chapter, commencing as follows:
>
> a. From the date of placement on probation.
> b. From the date of release on parole or work release.
> c. From the date of release from incarceration.
> d. Except as otherwise provided in this section, from the date an adjudicated delinquent is released from placement in a juvenile facility ordered by a court pursuant to section 232.52.
> e. Except as otherwise provided in this section, from the date an adjudicated delinquent commences attendance as

[1] Prior to 2009, Chapter 692A contained sections numbered 1 through 16. Chapter 692A was repealed in its entirety in 2009 by 2009 Acts, ch. 119 § 31 and replaced with sections 101 through 130, *id.* §§ 1–30.

[2] Mr. Maxwell does not dispute that he is a "person who has been convicted of a sex offense" for purposes of § 692A.103(1).

> a student at a public or private educational institution, other than an educational institution located on the real property of a juvenile facility if the juvenile has been ordered placed at such facility pursuant to section 232.52.
> f. From the date of conviction for a sex offense requiring registration if probation, incarceration, or placement ordered pursuant to section 232.52 in a juvenile facility is not included in the sentencing, order, or decree of the court, except as otherwise provided in this section for juvenile cases.

Iowa Code § 692A.103(1).

Failure to comply with the restrictions of Chapter 692A triggers criminal liability. *Id.* § 692A.111 (setting forth criminal penalties for noncompliance). Specifically, Iowa Code § 692A.111 imposes criminal liability on "A sex offender who violates any requirements of [several sections of Chapter 692A]." Chapter 692A defines "sex offender" as "a person who is required to be registered under this chapter." *Id.* § 692A.101(26). Accordingly, if a person is not required to register under Chapter 692A, that person cannot be prosecuted for failing to comply with the other requirements of Chapter 692A.

Although the registration requirements of Chapter 692A have been characterized by the Iowa Supreme Court as "remedial" and "motivated by a concern for public safety," *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997), it nevertheless remains that Chapter 692A imposes criminal liability on those who are required to register under that chapter and fail to comply

with its restrictions. Acknowledging this harsh reality, the Iowa Supreme Court has "construed strictly" the duties imposed by Chapter 692A. *Reiter*, 601 N.W.2d at 373 (rejecting State's argument that Chapter 692A should be "liberally interpret[ed]" due to the public safety concerns underlying registration process).

III. Applicable Interpretive Principles

Because Chapter 692A imposes criminal liability, interpretive principles applicable to criminal statutes govern here. As summarized in *Reiter:*

> In construing statutes, we search for intent from what the legislature said, rather than what it should or might have said. Iowa R. App. P. [6.904(3)(*m*)]. It is well established that penal statutes must give fair warning of the conduct prohibited and are to be construed strictly, with doubt resolved in favor of the accused.

601 N.W.2d at 373 (internal citations omitted); *accord State v. Halverson*, 857 N.W.2d 632, 637 (Iowa 2015) ("To the extent there is an unresolved ambiguity, [Iowa] cases require a narrow construction of the statute."); *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011) ("It has also been maintained that the rule of lenity is necessary to promote democratic responsiveness in the establishment of crimes."); *State v. Welton*, 300 N.W.2d 157, 160 (Iowa 1981) ("If a criminal statute is ambiguous, courts resolve any doubt in favor of the accused.").

IV. Interpretation of Iowa Code § 692A.103(1)

Iowa Code § 692A.103(1) provides, "A sex offender shall, upon a first or subsequent conviction, register in compliance with the procedures specified in this chapter, for the duration of time specified in this chapter, commencing as follows[. . . .]" Following that sentence are six alternative triggering events, labeled (a) through (f). Those triggering events, then, set the date upon which an individual must register and also start the clock for the "duration of registration" period. *See id.* § 692A.106(1) (standard "duration of registration" is for a period of ten years). It is logical that the legislature would tie the date of registration and the "duration of registration" start date together; it would make no sense if a person was required to register at some point prior to when registration began to count against the "duration of registration" period. Obviously, a person's "duration of registration" would be longer than the statutorily prescribed period if that person had to register at some point prior to when they began receiving credit against their "duration of registration."

Iowa Code § 692A.103(2) further evidences the legislature's understanding that date on which an individual is required to register is the same date as the "duration of registration" start date. That section states, "A sex offender is not required to register while incarcerated. However, the

running of the period of registration is tolled . . . if a sex offender is incarcerated." *Id.* § 692A.103(2) demonstrates that the legislature anticipated some incarcerated individuals might register before they were required to by § 692A.103(1). To ensure that incarcerated individuals did not receive credit towards their "duration of registration" before they were required to register, the legislature specifically tolled the running of the period of registration.

The next stage of the analysis requires closer examination of the specified triggering events. Again, Iowa Code § 692A.103(1) sets forth six alternative events that "commenc[e]" a sex offender's duty to register. It must be remembered that "legislative intent is expressed by omission as well as by inclusion of statutory terms." *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011). Likewise, "the express mention of one thing implies the exclusion of other things not specifically mentioned." *Hawkeye Land Co. v. Iowa Utilities Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (internal quotation marks omitted). By specifying a list of triggering events rather than issuing a blanket rule that the duty to register inheres upon judgment, the legislature indicated that the triggering events are limited in nature.

Alternative (b) is the "date of release on parole or work release," which plainly does not apply. Alternatives (d) and (e) govern adjudicated

delinquents and also plainly do not apply to Mr. Maxwell. This leaves alternatives (a), (c), and (f) for discussion.

A. Alternative (a): "date of placement on probation"

Iowa Code § 692A.103(1)(a) provides that "the date of placement on probation" triggers a sex offender's duty to register. Mr. Maxwell was never placed on probation and thus does not fall under alternative (a). The sentencing order states that "*after Defendant has served one hundred twenty (120) days of the sentence*, the remainder is suspended and Defendant is placed on probation for a period of two (2) years." (App. 22, ¶ 6 (emphasis added)). The plain language of the sentencing order demonstrates that service of 120 days imprisonment is a condition precedent to Mr. Maxwell's placement on probation. Because Mr. Maxwell's term of imprisonment has been stayed by his appeal bond, he will not serve any of his 120 days imprisonment until his criminal appeal has concluded. Thus, only *after* his criminal appeal has concluded and (assuming arguendo he is unsuccessful) *after* he has he has served 120 days imprisonment will he be placed on probation.

DPS argued below that the stay of Mr. Maxwell's incarceration due to his posting of an appeal bond rendered him "subject to immediate probation placement." (App. 61). This is patently incorrect for several reasons. First

and foremost, DPS cites no authority for the proposition that a stay of imprisonment would accelerate a defendant's probation obligation. This is simply not the case. It would be illogical for a *stay* of one type of punishment to *trigger* another type of punishment. Moreover, there is no legal support for the idea that an appeal bond and corresponding stay can eliminate an express condition precedent in a sentencing order.

Second, Mr. Maxwell's appeal bond "stay[ed] the execution of judgment," Iowa Code § 814.13; *see also State v. Friend*, 236 N.W. 20, 22–23 (1931) ("Without the bail, the state will immediately compel the defendant to execute the sentence or pay the fine. When the bail is furnished, such execution is suspended until after the appeal is terminated. Here in the matter before us the defendant, by posting the bond, obtained his liberty, as before explained."). Mr. Maxwell's placement on probation is but one piece of the "execution of judgment" and therefore was included in the stay obtained via Mr. Maxwell's appeal bond. Further, the Iowa Rules of Criminal Procedure confirm that "[a]n order placing the defendant on probation may be stayed if an appeal is taken." Iowa. R. Crim. P. 2.26(2)(c).

Third and finally, DCS has confirmed Mr. Maxwell is not required to report for probation during the pendency of his appeal. (12/31/15 Stipulation at 1, 13). For these reasons, DPS can find no succor in alternative (a).

B. Alternative (c): "date of release from incarceration"

Iowa Code § 692A.103(1)(c) provides that "the date of release from incarceration" triggers a sex offender's duty to register. Iowa Code § 692A.101(14) helpfully defines "incarcerated" as:

> [T]o be imprisoned by placing a person in a jail, prison, penitentiary, juvenile facility, or other correctional institution or facility or a place or condition of confinement or forcible restraint regardless of the nature of the institution in which the person serves a sentence for a conviction."

Because the term "release" is used in reference to "incarceration," it is clear that it is employed consistent with its first dictionary definition: "to set free from restraint, confinement, or servitude." "Release." Merriam-Webster.com. Merriam-Webster, *available at* http://www.merriam-webster.com/dictionary/release; *see also* RELEASE, Black's Law Dictionary (10th ed. 2014) (defining "release" as "[t]he action of freeing or the fact of being freed from restraint or confinement"); *Oyens*, 808 N.W.2d at 193 ("When construing a statute, we assess the statute as a whole, not just isolated words or phrases."); *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010) ("We rely on the dictionary as one source to determine the meaning of a word left undefined in a statute.").

Mr. Maxwell was not "imprisoned" in any "institution" as a result of the charges in Case No. SRCR107912; his term of incarceration has been

stayed by his appeal bond. Iowa Code § 692A.101(14). Nor has he been "release[d]" from imprisonment. He has *not* been set free from his obligation to complete his sentence of imprisonment. Mr. Maxwell therefore does not fall within the plain language of alternative (b).

The Polk County District Court concluded, however, that Mr. Maxwell "was subject to a 'condition of confinement' on August 18, 2015" because he was sentenced to 120 days imprisonment. (App. 101). The Polk County District Court then reasoned Mr. Maxwell's appeal bond "released [him] from serving the 120 days pending the appeal" and thus "on August 18, 2015 he was released from this condition of confinement." (App. 101-102). This led the Polk County District Court to determine Mr. Maxwell was required to register under Iowa Code § 692A.103(1)(c). (App. 101-102).

The fundamental error in the Polk County District Court's analysis is its redefinition of "release." The Polk County District Court treated "release" as nothing more than a synonym for "stay." But a stay is "the stopping or arresting of execution on a judgment *for a limited period*." *First Nat. Bank of Glidden v. Matt Bauer Farms Corp.*, 408 N.W.2d 51, 54 (Iowa 1987) (emphasis added); *see also* STAY, Black's Law Dictionary (10th ed. 2014) ("1. The postponement or halting of a proceeding, judgment, or the like. 2. An order to suspend all or part of a judicial proceeding or a judgment

resulting from that proceeding."). A stay, which merely postpones an action, is sharply distinct from a release, which is permanent in nature. The stay Mr. Maxwell obtained did not release him—set him free—from any obligation; it only paused execution of the judgment for the pendency of his appeal.

The second error in the Polk County District Court's analysis is that it disregarded the opening phrase of Chapter 692A's definition of "incarceration": "to be imprisoned." Iowa Code § 692A.101(14). The Polk County District Court concluded it was enough that Mr. Maxwell was "subject to a 'condition of confinement'" on August 18, 2015. But being "subject to a 'condition of confinement'" is not the same thing as "being imprisoned by a condition of confinement." *Cf. In re Det. of Selby*, 710 N.W.2d 249, 253 (Iowa Ct. App. 2005) (finding legislature's use of the present tense relevant to statutory interpretation). If the legislature wished to define "incarcerated" as "subject to imprisonment" or "sentenced to imprisonment," it could have done so. But it did not. It instead defined "incarcerated" as "to be imprisoned." Iowa Code § 692A.101(14); *see also Hawkeye*, 847 N.W.2d at 210 ("[L]egislative intent is expressed by what the legislature has said, not what it could or might have said." (internal quotation marks omitted)). Because Mr. Maxwell was never actively

imprisoned or released from any imprisonment, he does not fall within alternative (c).

C. Alternative (f): "date of conviction for a sex offense requiring registration if probation, incarceration, or placement . . . in a juvenile facility is not included in the sentencing, order, or decree of the court"

Iowa Code § 692A.103(1)(f) provides that "the date of conviction for a sex offense requiring registration" triggers a sex offender's duty to register "if probation, incarceration, or placement ordered pursuant to section 232.52 in a juvenile facility is not included in the sentencing, order, or decree of the court." Iowa Code § 692A.103(1)(f) is not a catchall; it governs a specific circumstance. Again, Mr. Maxwell falls outside the plain language of this alternative because both probation and incarceration were expressly included in his sentencing order.

CONCLUSION

Neither DPS nor the Polk County District Court identified any ambiguities in § 692A.103(1). Mr. Maxwell agrees that the language of the statute is plain and unambiguous. Yet none of the alternative triggering events delineated in Iowa Code § 692A.103(1) apply to the facts of this case. And this is where the inquiry must end: "When a statute's language is clear, [courts] look no further for meaning than its express terms." *State v.*

Kamber, 737 N.W.2d 297, 298–99 (Iowa 2007) (internal quotation marks omitted).

It is not absurd that the legislature would allow an appeal to stay an individual's obligation to register. If a convicted criminal is allowed to postpone confinement and probation, why not registration? While a court may believe the purpose of the statute is better served by immediate registration, "the role of a court is to apply the statute as it is written—even if [it] think[s] some other approach might accord with good policy." *State v. Nicoletto*, 845 N.W.2d 421, 427 (Iowa 2014) (alterations and internal quotation marks omitted); *Anderson v. State*, 801 N.W.2d 1, 1 (Iowa 2011) (" 'Ours not to reason why, ours but to read, and apply.' "); *State v. Wedelstedt*, 213 N.W.2d 652, 656–57 (Iowa 1973) ("It is not our function to rewrite the statute. If changes in the law are desirable from a policy, administrative, or practical standpoint, it is for the legislature to enact them, not for the court to incorporate them by interpretation." (internal citations and quotation marks omitted)).

The erroneous interpretation of Iowa Code § 692A.103 by DPS and the Polk County District Court has severely prejudiced Mr. Maxwell's substantial rights: he is now subject to a new criminal prosecution based on the misinterpretation of that code section. This Court should reverse the

decision of the lower court and enjoin DPS from placing Mr. Maxwell on the sex offender register during the pendency of his criminal appeal.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE

This brief does complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); this brief contains 4,262 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.

/S/ *Brandon Brown*

Dated: January 3, 2017
Brandon Brown