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## **STATEMENT OF THE CASE**

### **Introduction**

This case concerns the limited question of whether the Woodbury County District Court had jurisdiction to adjudicate the termination of the Vermont civil union of two Sioux City women, Kimberly Brown and Jennifer Perez, and their respective rights in its amended order, dated December 24, 2003. Iowa courts have clear jurisdiction to dissolve marital and non-marital unions and the court properly exercised its jurisdiction no matter how the parties' relationship is characterized. Plaintiffs' efforts to elicit from the Court premature rulings on broader issues should be rebuffed. Indeed, Plaintiffs lack standing to interfere in this matter at all.

Each plaintiff has only an ideological interest in this case – none can demonstrate any injury flowing from the district court's amended order at all, let alone an injury that is different from that of the general public. Consequently, none has standing to bring this action. Plaintiffs' request that this Court exercise its supervisory jurisdiction also is not well taken. Plaintiffs use the occasion of the district court's decree as an excuse to lay out their philosophy of marriage, but do not give any good reason for the Court to enter the debate, particularly since the district court amended its decree. This Court should decline Plaintiffs' invitation and annul the writ for lack of standing.

Should this Court choose to consider the merits of Plaintiffs' arguments, the Court should not disturb the district court's ruling or venture beyond the narrow legal issue presented. The amended decree does not treat the parties as married. Moreover, this Court's precedents establish that district courts have equity jurisdiction to hear petitions for dissolution, regardless of whether the plaintiffs are married, or simply

cohabitants. Additionally, the contractual nature of a Vermont civil union provides an independent basis for the district court's exercise of jurisdiction. Because Iowa law permits unmarried cohabitants to enter into contracts governing their respective property rights, and because a civil union constitutes a form of contract incorporating the law of Vermont, the district court also had authority to take jurisdiction of the matter under its authority to declare the rights of parties to contractual agreements. The Court need not reach whether civil unions are recognized under Iowa law in order to determine that the district court acted properly in issuing its amended order. Nor does this case require the Court to decide whether parties to Vermont civil unions should be treated as married in Iowa.

The district court's decree was a proper exercise of equity jurisdiction to permit Ms. Brown and Ms. Perez to move on with their lives with clarity as to their legal rights now and in the future. Iowa residents who need to terminate their civil unions must be able to petition for dissolution of their legal relationship, or they will face uncertainty with respect to custodial rights, property rights. If they are unable to obtain a court decree terminating their civil unions, these Iowans will be unable to engage in meaningful financial planning, and legal uncertainty will threaten any new family that they might try to create. These are quintessential reasons for exercising a court's equity jurisdiction.

#### **Nature of the Case, Course of Proceedings and Disposition of the Case**

In August, 2003, Ms. Brown and Ms. Perez petitioned the Woodbury County District Court for a dissolution of marriage. (Petition for Dissolution, filed Aug. 1, 2003 ("Petition"); App. \_\_.) In their papers, the women stipulated that they were

“married” on March 25, 2002, in Bolton, Vermont.<sup>1</sup> (Petition; App. \_\_.) On November 14, 2003, Judge Neary entered a Decree of Dissolution of Marriage. (Decree, Equity No. CDCD119660, dated Nov. 14, 2003 (“Original Decree”); App. \_\_.) On December 16, 2003, six state legislators, a member of Congress, a pastor, and a church petitioned this Court for a writ of certiorari, demanding that the original decree be annulled. (Petition for Certiorari, No. 03-1982, dated December 16, 2003; App. \_\_.)

On December 24, 2003, the district court, *sua sponte*, entered an amended decree stating that the trial court had “knowledge that the parties entered into a civil union under the laws of the State of Vermont,” and making the following findings:

1. The Court has jurisdiction of the parties and has subject matter jurisdiction.
2. However, the Court does not have subject matter jurisdiction to grant a dissolution of marriage from a Vermont civil union under Chapter 598 of the Code of Iowa.
3. Pursuant to *Metten vs. Bengel*, 366 N.W.2d 577 (Iowa 1985) and the general equity powers of the Court, the Court does have equitable subject matter jurisdiction to declare the status and rights of these parties.
4. The “Decree of Dissolution of Marriage” entered herein on November 14, 2003, should be and hereby is vacated in part, and the following equitable relief is granted.

The court then granted the following equitable relief:

1. The Vermont civil union is terminated and both parties are free of any obligations incident thereto.
2. The Petitioner and Respondent are declared to be single individuals with all rights of an unmarried individual, including, but not limited to, the right to marry.
3. All of the terms, provisions and agreements set out [in the stipulation submitted with the petition for dissolution] are hereby ratified, confirmed and approved and made a part of this Decree to the same extent as though fully set out herein (Decree, Equity No. CDCD119660, dated Dec. 24, 2003 (“Amended Decree”); App. \_\_.

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<sup>1</sup> Many gay and lesbian couples united in civil unions are also religiously married and/or consider themselves married, although Vermont does not consider them married under Vermont law.

On February 3, 2004, this Court granted the writ and directed the parties “to brief the issue of the plaintiffs’ standing to bring this certiorari action.” (Order, dated February 3, 2004.) Plaintiffs served their proof brief on the Court on April 8, 2004.

### **Routing Statement**

The Supreme Court should retain this case in order to dismiss for lack of standing under Iowa. R. App. P. 6.401(2)(f).

### **ARGUMENT**

#### **Scope of Review**

In an original certiorari proceeding, this Court’s review is for errors at law. *See, e.g., Sorci v. Iowa Dist. Ct. for Polk County*, 671 N.W.2d 482, 489 (Iowa 2003).

#### **I. The Plaintiffs Lack Standing**

Certiorari is not a tool for purely ideological disputes. Although Plaintiffs state that they have interests in promoting their view of marriage from the pulpit, in the legislature, Congress, or the court of public opinion, none has demonstrated injury from the court’s decree, let alone an injury that is different from that of the general public. Indeed, Plaintiffs mainly insist that the parties should be regarded as unmarried persons, which is exactly what the decree declares them to be. Plaintiffs’ interest in this case is purely political. Many people have strong opinions about marriage, as they do about divorce, child custody, zoning, and many other issues, but if everyone were allowed to petition for certiorari simply because of ideological objections or strongly held philosophical beliefs that an order should not have been entered, then there would be no limits to the petitions brought. Iowa law has never permitted such unwarranted

interference in other peoples' cases. Simply having an opinion does not suffice for standing.

Certiorari, which is an extraordinary remedy, lies when an inferior court is alleged to have exceeded its jurisdiction or to have acted illegally. Iowa R. Civ. P. 1.1401 (“A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally”); *Hadjis v. Dist. Ct.*, 275 N.W.2d 763, 765 (Iowa 1979); *Hohl v. Bd. of Educ. of Poweshiek County*, 250 Iowa 502, 508, 94 N.W.2d 787, 791 (1959); *Keely v. Bd. of Supervisors of Dubuque County*, 158 Iowa 205, 205, 139 N.W. 473, 474 (1913). A proper petitioner for certiorari from a lower court decision bears the burden of demonstrating that the trial court exceeded its jurisdiction or otherwise acted illegally. *Cedar Rapids Steel Transp. v. Iowa State Commerce Comm’n*, 160 N.W.2d 825, 831 (Iowa 1968).

However, certiorari is available only to those who can show specific injury from the challenged lower court decision – that is, a particularized injury demonstrating that the plaintiffs are situated differently from members of the public:

Certiorari, which is an extraordinary remedy, is available to all persons who show a substantial interest in the activity challenged. Generally, only a party to an action may obtain the writ. An exception exists, however, when the public is concerned with the subject matter of the action, in which case anyone interested may petition. *In order for persons who are not parties to assert a claim, they must prove that they have been injured in a special manner, different from that of the public, generally.*

*State v. West*, 320 N.W.2d 570, 573 (1982) (citations omitted) (emphasis added).

**A. The Plaintiffs Cannot Obtain Standing Simply By Claiming To Represent The Public Interest**

Plaintiffs argue that they ought to have standing because they are members of the public, which has an interest in marriage. Plaintiffs, who suggest their views represent the monolithic views of Iowans, take language out of context from *Keely, supra*, 158 Iowa 205, *Hohl, supra*, 250 Iowa at 508, and *Hemmer v. Bonson*, 139 Iowa 210, 210, 117 N.W. 257, 259 (1908), to suggest that anyone may petition for certiorari from any judgment in which the public is concerned in the subject matter. *See* Plaintiffs' Brief at 10, 11-22. To permit this would be tantamount to eliminating standing requirements altogether, especially on matters of ideological conflict, and would contradict all of this Court's prior rulings on standing to obtain writs of certiorari.

This Court has made clear that a petitioner must do more than state simply that he or she is a member of the public, and that the matter is one of public concern. The petitioner must also demonstrate injury distinct from the rest of the community. *West, supra*, 320 N.W.2d at 573. In other words, by holding that certiorari is open to "all persons who may show a substantial interest in the matter challenged," this Court was not using "interest" in the sense of "curiosity" or even "passionate ideological belief." *See Hohl, supra*, 250 Iowa at 508. To be sufficient, an "interest" must be legally cognizable and reflect some form of specific harm different from that of the public, generally. *Id.*; *see, also, Polk County v. Dist. Ct. of Polk County*, 133 Iowa 710, 110 N.W. 1054, 1054-55 (1907) ("mere citizenship confers no right to maintain [an action in certiorari]," and plaintiffs cannot attempt "to represent the general public rather than their individual interests").

Neither *Keely, supra*, 158 Iowa 205, nor *Hohl, supra*, 250 Iowa at 508, permits a writ of certiorari in a "representative capacity" on behalf of the public without

any demonstration of specific injury. In *Keely*, this Court stated that petitioners for certiorari may be “persons whose interests are identical with the mass of the community, where the matter sought to be reviewed affects the public generally, or where private rights are invaded by persons clothed with authority,” but dismissed the action for lack of standing because the petitioners in that case failed to claim any specific injury from an allegedly invalid appointment of certain public officials. *Keely, supra*, 158 Iowa at 205. *Keely* does not obviate a demonstration of particularized injury. And although this Court stated in *Hohl, supra*, 250 Iowa at 508, that certiorari “is an extraordinary remedy, and courts may make it available to all persons who may show a substantial interest in the matter challenged,” this Court has also stated expressly that the language in *Hohl* does not eliminate the requirement that a petitioner for certiorari have a legally recognizable interest in the underlying case. *Bd. of Dirs. of Linden Consol. School Dist. v. Bd. of Educ. in and for Dallas County*, 251 Iowa 929, 936, 103 N.W.2d 696, 701 (1960).

Similarly, Plaintiffs cite *Hemmer, supra*, 117 N.W. 257, for the proposition that “an individual may petition for a writ of certiorari in a representative capacity ‘for the protection of public interests.’” Plaintiffs’ Brief at 10. This is not *Hemmer’s* holding. *Hemmer* involved a statute in effect in 1908 that permitted any citizen to bring an action “in a representative capacity” on behalf of the public against saloons for maintenance of a “liquor nuisance.” *Id.* at 257, 259. After an individual named “Thorne” sued a certain saloon, the trial court entered an order with the consent of both parties, prohibiting the saloon from operating at certain times, but permitting the saloon to operate in other respects contrary to the provisions of the nuisance statute. *Id.* at 257. Another citizen – who lived within 50 feet of the same saloon – then petitioned

for certiorari from this order. *Id.* at 258. The Supreme Court allowed the petition and annulled the trial court's consent decree, finding that because the underlying nuisance statute permitted individuals to sue saloons for the protection of public interests, Thorne was unauthorized to consent to an order "to the prejudice of the public." The Court found that the neighboring petitioner had standing *under the standing rules of the underlying statute*, permitting any citizen to bring suit in a representative capacity on behalf of the public, generally. *Id.* at 259. *Hemmer* never held that, as a general matter, individuals may petition for certiorari without making the required showing of particularized injury.

The case most closely analogous to the instant one is *Polk, supra*,<sup>110</sup> N.W. 1054, which involved a decision by a judge in Polk County, with the concurrence of all the other county judges, to invalidate the county's juror selection lists as illegally drawn. Several individuals and Polk County itself petitioned for certiorari, requesting this Court to set aside this order. The petitioners argued that they had standing *inter alia* as citizens of the county, and as litigants with pending cases before Polk County courts whose cases were delayed because the invalidation of the juror selection lists prevented Polk County courts from doing "any jury business for a period of two years." *Id.*

This Court dismissed for lack of standing. *Id.* at 1054-55. With respect to petitioners' concern about delay to pending cases, the Court noted that petitioners had suffered no real injury to date, but were merely anticipating one, which was insufficient. *Id.* at 1055. The Court stated, "it is fairly apparent from the pleadings and the record that the plaintiffs are attempting to represent the general public rather than their individual interests, and they have failed to show authority or warrant for so doing." *Id.*

Here, plaintiffs assert very general public interests and passionate beliefs but do not establish a particularized, actual injury. Plaintiffs' Brief at 10, 11-22. Moreover, most of those beliefs concern recognition of marriage, which is not an issue in the case. Plaintiffs' Brief at 12-19. Abstract philosophy cannot constitute the type of particularized injury necessary to meet standing requirements, and therefore the petition should be dismissed.

**B. None of the Plaintiffs Can Demonstrate Any Specific Injury to Justify Standing**

**1. The State and Federal Legislator Plaintiffs Do Not Have Standing Simply Because They Are Legislators**

Plaintiffs argue that the six state legislators and one member of Congress have standing because they have an interest, as legislators, in seeing that laws are properly implemented. Plaintiffs' Brief at 23, 26. Three of them claim to have been "active" in the Iowa legislature at the time that Iowa Code § 595.2 (1) was amended to state that "[o]nly a marriage between a male and a female is valid." Plaintiffs' Brief at 22. Another claims an interest in federal laws governing marriage. *Id.* at 28-30. The legislators all contend that the district court's decree terminating the civil union of two individuals "usurped the power of the state legislature" and thereby violated their "specific constitutional and statutory rights." *Id.* at 23. No such violation occurred, and none of these purported interests is sufficient for standing in a certiorari proceeding.

Legislatures speak through laws. Individual legislators cannot base standing on the limitless principle that a court judgment involves statutory interpretation, or that the legislators are "active" in a body whose job it is to pass laws. Legislative power is the "power to make, alter, and repeal laws," while "[j]udicial power is that of

construing and interpreting the Constitution and laws, and applying them and deciding controversies.” *Hutchins v. City of Des Moines*, 157 N.W. 881, 887 (Iowa 1916); *accord*, *Lynch v. Saddler*, 656 N.W.2d 104 (Iowa 2003) (“It is the legislature’s duty to declare the law and the court’s responsibility to interpret the law”). It is the exclusive function of the *judiciary* “to decide and pronounce a judgment and carry it into effect.” *See Klouda v. Sixth Jud. Dist. Dep’t of Corr. Servs.*, 642 N.W.2d 255, 261 (Iowa 2002) (citing Black’s Law Dictionary 1362 (6<sup>th</sup> ed. 1990)). “That which distinguishes a judicial function from a legislative act is that the one is a determination of what an existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of future cases falling under its provisions.” *In Interest of D.C.V.*, 569 N.W.2d 489, 496-97 (Iowa,1997).

The district court here was simply doing its duty in interpreting the law and its jurisdiction in a case properly before it. *See Hutchins, supra*, 157 N.W. at 887; *see also, Gormley v. Robertson*, 83 P.3d 1042 (Wa. Ct. App. 2004) (holding that a court’s decision that it had the authority to “‘examine [an unmarried same-sex couple’s] relationship and the property accumulations and make a just and equitable disposition of the property’” is a judicial, not a legislative, extension of the rights and protections of marriage to intimate, unmarried cohabitants”) (citing *Marriage of Lindsey*, 678 P.2d 328 (Wash. 1984)). A court order does not create standing for individual legislators who disagree with the court’s interpretation of the law.<sup>2</sup>

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<sup>2</sup> In contrast, what likely *would* violate the separation of powers mandated by the Iowa Constitution is if individual legislators were permitted to intervene in lawsuits simply to instruct the courts in interpreting legislation. *See Iowa Const.*, art. III.

Judicial power vested in the courts by the Iowa Constitution is the power

Moreover, the interests in marriage policy asserted by these legislators are not implicated here because no marriage was found or dissolved. The legislators have claimed an interest solely in Iowa and federal marriage laws that have nothing to do with this court's decision. The trial court's amended decree did not implicate Iowa Code § 595.2 (1), which states that "only a marriage between a male and a female is valid," or any federal law relating to marriage, because the district court did not conclude that the parties were married. *See* Section III, *infra*.

## **2. The Plaintiffs Do Not Have Standing By Virtue of Being Married**

Plaintiffs next claim standing simply because they, like thousands of Iowans, are married. Plaintiffs' Brief at 30. The trial court's decree terminating another couple's civil union did not implicate, let alone harm, anyone else's marriage, and Plaintiffs demonstrate no injury to their marital unions. Plaintiffs have described merely a political opinion, and not an injury "in a special manner, different from the public generally." *West, supra*, 320 N.W.2d at 573.

## **3. Plaintiffs Do Not Have Standing As Taxpayers**

Plaintiffs also claim that they have standing to petition for certiorari as taxpayers, arguing that, by terminating a civil union, the district court "opened up the judicial system to a new class of petitioners and respondents outside those individuals

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to decide and pronounce a judgment and carry it into effect. Any encroachment upon that power is a violation of the separation-of-powers doctrine. *Allee v. Gocha*, 555 N.W.2d 683, 685 (Iowa 1996); *Richardson v. Fitzgerald*, 132 Iowa 253, 255, 109 N.W.866, 867 (1906) ("any direction by the Legislature that the judicial function shall be performed in a particular way is a plain violation of the Constitution").

*Klouda, supra*, 642 N.W.2d at 260-61 (some citations omitted).

provided for under state law, which will require the provision and expenditure of additional state judicial resources beyond those approved by the state legislature.” Plaintiffs’ Brief at 31. This is too slender a reed on which to support taxpayer standing, and would, again, open the door to limitless certiorari petitions.

Plaintiffs cite cases in which petitioners for certiorari claimed taxpayer standing to challenge a government official’s failure to collect a tax, *Iowa Mut. Tornado Ins. Ass’n v. Timmons*, 252 Iowa 163, 176, 105 N.W.2d 209, 216 (1960), or failure to assess property values appropriately for tax purposes, *Pierce v. Green*, 294 N.W. 237 (Iowa 1940). Plaintiffs’ Brief at 30-31. However, in contrast to these cases, which directly involve the validity of the state’s methods for collecting tax revenue, the district court’s order in the instant case does not involve a tax dispute, disputed methods of valuation or taxation, or discrete disbursements of public funds.

The most analogous case to this one is *Polk, supra*, 110 N.W. 1054, in which the petitioners for certiorari argued *inter alia* that they had standing as taxpayers because the challenged court judgment would require taxpayers to pay the expenses of a court system that could not do jury business or hear their cases, and expenses from detaining accused persons for longer periods. *Id.* at 1054. In dismissing the plaintiffs’ claims of taxpayer standing, this Court wrote:

Conceding, for the purpose of this case, that the plaintiffs, as taxpayers, may be affected financially because of the conditions pleaded, we are of the opinion that they cannot maintain this action on account thereof. *The courts are not ordinarily the dispensers of public funds, and have no control over such funds save as incident to the expeditious and proper conduct of the business before them, and then only by direction to the proper authorities charged with the disbursing of such funds. In the case before us, no order has been made that will either increase or diminish any fund to which any of the plaintiffs have already or to which they may in the future contribute, except as such fund may be affected incidentally by*

the future administration of the law, and it is manifest that a taxpayer may not control judicial action because such action involves indirectly and incidentally the expenditure of public funds to which he has contributed, or to which he may in the future contribute. If such a rule were to be established, every taxpayer in the state might by certiorari or other proceedings question the jurisdiction of the courts whenever judicial proceedings involved an expenditure of public funds, as such proceedings always do. *It is clear that certiorari will not lie to review the action of a court when such action involves only the expense necessary to the maintenance of the courts and the due administration of the law.*

*Id.* at 1054-55 (emphasis added). Because this case similarly does not involve any order increasing or diminishing the general revenue, but only highly speculative allegations that more judicial resources will be needed to administer the legal system, Plaintiffs cannot maintain taxpayer standing.

#### **4. Pastor Matthew Wentz Does Not Have Standing Simply Because He Has Solemnized Marriages**

Plaintiff Matthew Wentz argues that he has standing because he is a pastor and has solemnized marriages and counseled married people. He claims that he faces “uncertainty and possible criminal charges” because a heterosexual couple may approach him in the future, seeking his services in getting married, and one of them may have been party to a previous civil union not yet terminated or dissolved, creating confusion concerning this person’s ability to marry under Iowa law. Plaintiffs’ Brief at 32-33. However, “simply anticipating some wrong or injury” will not suffice for standing. *Polk, supra*, 110 N.W. at 1055. Pastor Wentz has identified no injury that provides standing to attack the district court’s order.<sup>3</sup>

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<sup>3</sup> Additionally, to the extent that Pastor Wentz worries about his potential liability in solemnizing a marriage between members of a couple, one of which has been a party to a civil union, the district court’s order should diminish, rather than aggravate, his concern. The district court’s order terminating a civil union provides certainty that the parties were free to marry.

**5. The Church of Christ of LeMars Does Not Have Standing Simply Because of the Beliefs of its Members**

The Church of Christ of LeMars argues that it has standing because it has an interest in preserving “traditional marriage,” and because many Iowa citizens look to the Church for guidance. Plaintiffs’ Brief at 34. Additionally, the Church claims that its teachings concerning marriage are undermined by the district court’s decree. Again, the Church has articulated only that it has an opinion on issues, which cannot suffice for standing. The cases cited by Plaintiffs in support of the Church’s standing are distinguishable because those plaintiffs alleged real injury, and not merely objection to an opposing viewpoint. *See Sorci, supra*, 671 N.W.2d 482 (involving a non-profit organization comprising hundreds of attorneys who petitioned for certiorari from a judgment removing all of them from court cases because of allegations of conflict of interest); *Grandview Baptist Church v. Zoning Bd. of Adjustment of City of Davenport*, 301 N.W.2d 704 (Iowa 1981) (involving a zoning dispute over a building permit sought by the church). The Church’s religious role and teachings do not enhance its claim of standing to petition from a judgment in a dissolution proceeding. “In law, marriage is a civil contract, . . . [and w]ith its religious aspect or its sanctity, courts have nothing to do.” *Beach v. Beach*, 160 Iowa 346, 141 N.W. 921, 922 (1913).

**II. This Court Should Not Exercise Its Supervisory Jurisdiction Over This Dispute**

Plaintiffs argue that this Court should not concern itself with standing but exercise its supervisory jurisdiction under the Iowa Constitution, contending that resolution of the issues in this case “is in the interest of the public.” Plaintiffs’ Brief at 35, citing *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 566 (Iowa 1976);

*Warren County v. Judges of the Fifth Jud. Dist.*, 243 N.W.2d 894 (Iowa 1976). Plaintiffs' allegation that the district court has acted illegally is plainly wrong, *see* Section III, *infra*, and therefore there is no cause for the Court to exercise its supervisory jurisdiction. Moreover, this Court has never held that standing is irrelevant simply because an issue has prompted public debate, and should not do so here. Finally, this case is an inappropriate vehicle for interpreting the marriage laws or opining on the validity of civil unions in Iowa because the district court's amended decree did not depend upon a finding that the parties were married, or that civil unions "exist" under Iowa law.

Although this Court has described its supervisory power over lower tribunals as "unlimited," and "hampered by no specific rules or means for its exercise," *see Welty v. McMahon*, 316 N.W.2d 836, 838 (Iowa 1982), the Court does not invoke this power lightly, *see id*; *McKeever v. Gerard*, 268 N.W.2d 116 (Iowa 1985), and should decline to do so here. This case does not involve the kind of issues that have caused the Court to exercise its supervisory jurisdiction in other cases. Past examples of this Court's exercise of supervisory power, including those Plaintiffs cite, are factually distinguishable from this case, which consists simply of a private dispute between two parties adjudicated under clear precedent established by this Court. *Critelli, supra*, 244 N.W.2d at 566, concerned the authority of district judges to institute rules applying to all criminal defendants in the Fifth Judicial District. *Warren County, supra*, 243 N.W.2d at 897, involved the collective authority of county judges to appoint magistrates. In *Judges of Mun. Ct. of City of Cedar*, 256 Iowa 1135, 1136, 130 N.W.2d 553, 554 (1964), this Court curbed two trial judges' "pattern of procedure . . . show[ing] a consistent disregard

for the rights of litigants,” an “arbitrary and capricious course of conduct in the handling of cases,” and “an oppressive and improper use of the power of the court.” In *State v. Davis*, 493 N.W.2d 820, 822 (Iowa 1992), the State petitioned for certiorari from magistrates’ refusals to impose statutorily-mandated minimum jail sentences. These cases directly affected numerous other litigants and the public at large. Here, as explained below, the district court exercised routine equitable powers that neither raise a specter of judicial overreaching nor affect any other litigants.

Moreover, exercise of the Court’s supervisory jurisdiction does not render the issue of Plaintiffs’ standing irrelevant. Even when this Court has exercised supervisory power in the past, either the Court performed a rigorous inquiry into whether the people requesting supervisory jurisdiction had anything at stake in the underlying action, or the petitioners’ individualized interests were obvious. For example, in *Critelli, supra*, 244 N.W.2d at 566, and *Warren County, supra*, 243 N.W.2d at 897, this Court expressly determined which parties had standing before considering the merits of any claim. In *Bousman v. Dist. Ct. for Clinton County*, 630 N.W.2d 789, 792 (Iowa 2001), the Court exercised its supervisory jurisdiction when a man petitioned for certiorari after the State improperly demanded that he submit to a DNA test, even though he had not been charged with any crime, and in violation of his constitutional rights. Clearly he had a vital stake in the underlying action and the prosecutor’s actions threatened core constitutional rights. In *Welty, supra*, 316 N.W.2d at 838, petitioners were putative public officials who had been prevented from taking office by the Supreme Court clerk’s certification of the results of a disputed election. By contrast, the district court’s action here does not concern other litigants, involve a deprivation of core constitutional

guarantees, or inherent judicial power to make appointments. Despite Plaintiffs' protestations, the public has no abiding concern with a limited order clarifying the state of two parties' personal ties and property rights. Plaintiffs cannot demonstrate any connection to the case because, as with the public generally, the case has no impact on their rights.

Plaintiffs argue that it would be in the public interest for the Court to comment favorably on Plaintiffs' views of marriage for same-sex couples, but for two reasons this is not the appropriate case for what would amount to an advisory opinion on contentious issues that were never briefed by the parties. First, the amended decree was extremely limited in nature – it simply adjudicated two parties' division of property, and declared their civil union at an end. The women never demanded to be treated as married going forward or otherwise asserted a claim for equal marriage rights. As discussed further below, *see* section III, *infra*, Iowa law permitted the district court to enter its amended decree without necessitating a conclusion about whether the parties were married, or the status of a civil union under Iowa law.

Second, Plaintiffs themselves belatedly have admitted that this case does not raise the marriage issue. After spending much of their opening brief on issues of marriage and civil union, Plaintiffs take a step back in their papers resisting *Amici's* motion for leave to file an *amicus* brief: "This [C]ourt is not required to decide any homosexual issue relative to legal status, civil union or marital rights in order to resolve the case before it . . . . This Court is simply being asked to determine whether or not the Woodbury County District Court acted within the bounds of its constitutional authority as to jurisdiction or whether it exceeded its jurisdiction . . . ." (Plaintiffs' Resistance to

Motion to File *Amicus* Brief, dated April 26, 2004, at ¶¶ 3-5.) In fact, Plaintiffs originally asked this Court to exercise supervisory jurisdiction in order to opine on civil unions, marriages, and legal recognition of gay and lesbian families. Given the limited nature of the district court's amended decree, the Court should decline Plaintiffs' invitation.

### **III. The District Court Properly Terminated the Civil Union**

Iowa district courts are courts of general jurisdiction. Iowa Code § 602.6101 (“The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body”). District courts have broad authority to issue declaratory judgments. Iowa Code §§ 1.1101-02.

Ms. Brown and Ms. Perez sought the order below not as a political statement, but for practical reasons. A decree terminating the parties' civil union was the only way that they could settle their affairs definitively and get on with their lives, resolving uncertainty as to issues including financial planning, marriage to other persons, family relationships, and inheritance. They could not obtain a dissolution from a Vermont court without severe burden because, although there is no residency requirement to marry or form a civil union, a Vermont court will not dissolve either one unless one party has resided in the state for at least one year preceding the dissolution. Vt. Stat. Ann. tit. 15 § 1206 (2003). Their only option was to petition the Woodbury County District Court for a decree terminating their civil union and declaring them free of any continuing obligation to each other. In terminating their civil union, the district court acted consistently with this Court's prior precedent regarding the scope of a court's

powers in equity, and with the court’s authority to enforce a contract between cohabitants that incorporates the law of Vermont.

**A. Terminating the Civil Union Was Within The Equity Jurisdiction of the District Court**

This Court need not determine whether, under Iowa law, by virtue of their civil union in Vermont, Ms. Brown and Ms. Perez were properly considered married or unmarried, or even whether a civil union “exists” or confers protections or rights under Iowa law, in order to find that the trial court in this case was properly exercising its jurisdiction in equity by adjudicating their division of property and terminating their civil union.<sup>4</sup> Iowa courts have presided over unmarried cohabitants’ dissolution proceedings on numerous occasions, citing equitable jurisdiction. This case fits squarely within that precedent.

An action for dissolution of marriage is an equitable proceeding. Iowa Code § 598.3 (“An action for dissolution of marriage shall be by equitable proceedings . . . .”); *Marriage of Stogdill*, 428 N.W.2d 667, 669 (Iowa 1988). Citing jurisdiction in equity, Iowa courts often have presided over dissolution proceedings and adjudicated the status and rights of parties, even after determining that no marriage ever existed between the parties. *See Metten v. Benge*, 366 N.W.2d 577, 579 (Iowa 1985) (district court had equitable jurisdiction to determine property and custodial rights of cohabitants who amended dissolution petition to remove any allegation that they were married); *Harris v.*

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<sup>4</sup> Plaintiffs claim that the “record is devoid of any testimony, evidence, or allegation . . . tending to prove the existence of a legally recognized Vermont Civil Union” (Plaintiffs’ Brief at 40), but the trial court found in its amended decree that it “ha[d] knowledge that the parties entered into a civil union under the laws of the State of Vermont.” (Amended Decree; App. \_\_\_.)

*Iowa Dist. Ct. for Cherokee County*, 584 N.W.2d 562, 563 (Iowa 1998) (relying on *Metten, supra*, district court divided property and debts of cohabitants despite absence of common law marriage); *Marriage of Stogdill, supra*, 428 N.W.2d at 671 (court possessed equitable jurisdiction to determine paternity rights of unmarried couple); *Marriage of Martin*, 671 N.W.2d 532, 533, 2003 WL 22090441 \*1 (Iowa Ct. App. 2003) (unpublished and attached as exhibit A) (dividing property rights of unmarried cohabitants notwithstanding absence of common law marriage resulting from one partner's lack of intent to marry and inconsistent public declaration that couple were husband and wife).

In *Metten*, 366 N.W.2d 577, a woman petitioned for dissolution of marriage, but amended her petition on the day of trial to strike the allegation that the parties had been married. She substituted a paragraph requesting such relief “as is permitted . . . by the general equity powers of this Court.” *Id.* at 578. Her “husband” moved to dismiss her petition on the ground that nothing existed for the court to dissolve.

This Court upheld the trial court's refusal to dismiss the case:

Although the petition in this case was initially framed as a petition for dissolution of marriage under Iowa Code chapter 598, it does not follow from that fact that the court, in hearing the amended petition, was limited to only the equity jurisdiction conferred by that statute. A court may take jurisdiction of a case in equity if the allegations of the petition state a claim cognizable in equity. Because we believe that the petition, as amended, in this case stated claims cognizable in equity, we conclude that the district court had jurisdiction to hear the case.

*Metten*, 366 N.W.2d at 579 (citations omitted). The Court noted that the petition for dissolution laid out claims for child support, custodial rights, and division of property, and stated:

These allegations are sufficient to support the exercise of equity jurisdiction. A court of equity has the power to determine questions of child custody and support. . . . A court of equity may also partition real and personal property. . . . *Regardless of how the parties' marital status affected the court's jurisdiction to hear the case under [the dissolution of marriage provisions of the domestic relations statutes], [the claims for child support, custody, and distribution of property] stated claims within the equity jurisdiction of the court.*

*Id* (emphasis added).

Similarly, in *Marriage of Stogdill, supra*, 428 N.W.2d at 668, a district court considered a woman's dissolution petition alleging a common law marriage, and requesting division of property, child custody, child support, and attorneys fees. The alleged father denied both paternity and the existence of a common law marriage. *Id.* The trial court found that the woman failed to establish the elements of a common law marriage. *Id.* at 669. Unlike in *Metten*, the petition was not amended specifically to reflect the absence of a marriage or assert the general equity jurisdiction of the court. *Id.* at 671. Nonetheless, this Court held that the district court, exercising general equitable powers available in a dissolution proceeding, properly adjudicated paternity, child custody and support despite the absence of an actual marriage. *Id.*

Plaintiffs complain that the parties in this case claimed solely that they were married, and never amended their petition to state that they were unmarried or that they had obtained a civil union. Plaintiffs' Brief at 40. Clearly, the district court was aware of the parties' civil union. Moreover, as *Stogdill, supra*, makes clear, the district court has the equitable authority to preside over a dissolution proceeding to determine the

rights of unmarried cohabitants even if they are not validly married and do not amend their petition to clarify their status.<sup>5</sup>

Plaintiffs also claim that the district court affirmatively recognized a civil union under Iowa law, simply by declaring it terminated. However, Iowa courts have adjudicated dissolutions after finding that no lawful marriage under Iowa law existed. *See Stogdill, supra*, 428 N.W.2d 667. “Equitable claims are not dependent on the ‘legality’ of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties.” *Vasquez v. Hawthorne*, 33 P.3d 735, 738 (Wash. 2001). Furthermore, there is no doubt that the couple had a valid civil union in Vermont and that the district court had knowledge of it. (Amended Decree; App. \_\_\_.) An Iowa court’s power to adjudicate a couple’s claims against each other must include declaring the civil union at an end. Otherwise, legal uncertainty would remain, thwarting equity’s aims.

**B. The District Court Had Authority to Adjudicate and Enforce the Terms of a Civil Union Because it is a Contract**

The district court not only had jurisdiction in equity to terminate a civil union and divide the parties’ property, but also was authorized to do so because of the contractual nature of a Vermont civil union, and the district court’s jurisdiction to enforce

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<sup>5</sup> Moreover, jurisdiction under Iowa Code Chapter 598 is not as narrow as Plaintiffs contend. This chapter expressly governs not only dissolution proceedings from valid marriages, but also annulments of illegal marriages. *See* Iowa Code § 598.29 (authorizing dissolution petitions to annul illegal marriages); Iowa Code § 598.30 (authorizing parties to file a dissolution petition if the validity of the marriage is doubted); Iowa Code § 598.28 (mandating that petitions for annulment follow the same procedure as petitions for dissolution); *Ricard v. Ricard*, 143 Iowa 182, 121 N.W. 525 (1909) (permitting alimony award in annulment action and clarifying that the procedure for annulment petitions is the same as that for dissolutions of valid marriages). The Court need not reach the issue of what status a civil union has in Iowa to decide that the district

such contracts. Members of a couple may enter into enforceable contracts governing their respective property rights. *See, e.g., Shold v. Goro*, 449 N.W.2d 372, 373 (Iowa 1989). A Vermont civil union is such a contract, and it incorporates by reference the law of Vermont. District courts have authority to enforce the terms of a civil union contract pertaining to dissolution and division of property whether or not a civil union exists in Iowa as a relationship status because entry into a civil union evidences a mutual, enforceable contract.

A Vermont civil union has a dual character – it confers on couples the status of spouses under Vermont law (*see* Vt. Stat. Ann. tit. 15 § 1201(a)), and it comprises a contract for a set of default terms governing the legal and financial relationship of the couple. Because both express and implied contractual agreements between cohabitants are enforceable in Iowa, *see Shold, supra*, 449 N.W.2d at 373, the contractual nature of a civil union provides an alternative basis for the district court’s jurisdiction. When Ms. Brown and Ms. Perez entered into a civil union in Vermont, they mutually promised to submit to the laws of Vermont governing civil unions. They promised to be “responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons.” Vt. Stat. Ann. tit. 15 § 1204 (e).

The Vermont legislature explicitly invoked the contractual nature of civil unions by providing that “parties to a civil union may modify the terms, conditions, or effects of their civil union in the same manner and to the same extent as married persons who execute an antenuptial agreement or other agreement recognized and enforceable

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court had jurisdiction to enter the dissolution order.

under the law, setting forth particular understandings with respect to their union.” Vt. Stat. Ann. tit. 15 § 1205. By permitting modification of a civil union’s terms, the legislature demonstrated that a civil union is a contractual relationship whose default terms are set by Vermont law and subject to modification by the parties.

Agreements between cohabiting couples are enforceable under Iowa law, and disputes may be litigated and resolved in the courts. *See, e.g., Shold, supra*, 449 N.W.2d at 373 (quoting *Watts v. Watts*, 405 N.W.2d 303 (Wis. 1987)):

Courts traditionally have settled contract and property disputes between unmarried persons, some of whom have cohabited. Nonmarital cohabitation does not render every agreement between the cohabiting parties illegal and does not automatically preclude one of the parties from seeking judicial relief, such as statutory or common law partition, damages for breach of express or implied contract, constructive trust and quantum meruit where the party alleges, and later proves, facts supporting the legal theory. The issue for the court in each case is whether the complaining party has set forth any legally cognizable claim.

*Accord, Kerkove v. Thompson*, 487 N.W.2d 693, 696 (Iowa Ct. App. 1992). Indeed, courts in the vast majority of jurisdictions have been willing to enforce express or implied contracts between unmarried cohabitants.<sup>6</sup> Thus, regardless of what *status* parties to a

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<sup>6</sup> *See Wood v. Collins*, 812 P.2d 951 (Alaska 1991); *Carol v. Lee*, 712 P.2d 923 (Ariz. 1986); *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976); *Salzman v. Bachrach*, 996 P.2d 1263, 1268 (Colo. 2000); *Poe v. Levy*, 411 So. 2d 253 (Fla. Dist. Ct. App. 1982); *Maria v. Freitas*, 832 P.2d 259 (Haw. 1992); *Bright v. Kuehl*, 650 N.E.2d 311 (Ind. Ct. App. 1995); *Ellis v. Berry*, 867 P.2d 1063 (Kan. Ct. App. 1993); *Murphy v. Bowen*, 756 S.W.2d 149 (Ky. Ct. App. 1988); *Attorney Grievance Comm'n v. Ficker*, 572 A.2d 501, 509 (Md. 1990); Minn. Stat. Ann. § 513.075 (West 1990); *Hudson v. DeLonjay*, 732 S.W.2d 922 (Mo. Ct. App. 1987); *Hay v. Hay*, 678 P.2d 672 (Nev. 1984); *Kinkenon v. Hue*, 301 N.W.2d 77, 80 (Neb. 1981); *Crowe v. DeGioia*, 495 A.2d 889 (N.J. Super. Ct. App. Div. 1985); *Merrill v. Davis*, 673 P.2d 1285 (N.M. 1983); *Morone v. Morone*, 413 N.E.2d 1154 (N.Y. 1980); *Suggs v. Norris*, 364 S.E.2d 159 (N.C. Ct. App. 1988); *Kohler v. Flynn*, 493 N.W.2d 647 (N.D. 1992); *Tarry v. Stewart*, 649 N.E.2d 1 (Ohio 1994); *Beal v. Beal*, 577 P.2d 507 (Or. 1978); *Knauer v. Knauer*, 470 A.2d 553 (Pa. Super. Ct. 1983); *Connel v. Francisco*, 898 P.2d 831 (Wash. 1995); *Goode v. Goode*, 396 S.E.2d 430 (W. Va. 1990); *Watts v. Watts*, 405 N.W.2d 303 (Wis. 1987); *Kinnison v. Kinnison*, 627 P.2d

civil union may have in Iowa – married, unmarried, or neither – the contractual nature of a civil union provides an independent basis for recognition of the district court’s jurisdiction.

**CONCLUSION**

Because none of the Plaintiffs has standing to petition for a writ of certiorari, *Amici* respectfully ask the Court to annul the writ. Alternatively, should the Court choose to address the merits of Plaintiffs’ arguments, *Amici* respectfully ask the Court to affirm the amended decree of the district court.

Respectfully submitted,

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## REQUEST FOR ORAL ARGUMENT

Pursuant to Iowa Rules of Appellate Procedure 6.18 and 6.21 (1), *Amici* request permission to be heard in oral argument upon submission of the case. Iowa Rule of Appellate Procedure 6.18 permits *amici* to participate in oral argument under extraordinary circumstances, which are present in this case. Neither the Woodbury County District Court nor the two women in this case have resisted the writ so far, and if these respondents choose not to submit briefing, this Court will not have the opportunity to hear argument in support of the district court's decision to enter its decree terminating the civil union without *Amici's* participation. *Amici* offer unique expertise and perspective in order to assist the Court in making a more informed and proper disposition of this petition for certiorari.

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**PROOF OF SERVICE AND CERTIFICATE OF FILING**

I certify that on May 10, 2004, I served this document by mailing one (1) copy to all other parties in this matter at their addresses as follows:

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I further certify that on May 10, 2004, this Proof Brief was filed by personally delivering the original and three (3) copies thereof to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319

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