IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 16-1731
Polk County Case No. CVCV051620

PAULA J. TYLER and MARK J. ALCORN,
Appellants/Petitioners

vs.

IOWA DEPARTMENT OF REVENUE,
Appellee/Respondent

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
The Honorable Robert J. Blink

APPELLANTS' FINAL BRIEF

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1. U.S. Iowa Const. art. I, § 6
2. Baker v. City of Iowa City, 867 N.W.2d 44 (Iowa 2015)
3. Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980)
4. Catholic Charities of Archdiocese of Dubuque v. Zalesky, 232 N.W.2d 539 (Iowa 1975)
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36. Iowa R. App. P. 6.903
37. 701 Iowa Administrative Code 7.17(12)
38. Iowa Dep't of Human Servs., Child and Family Servs. Div., Permanency for Children, Practice Bulletin (Jan. 2009)
39. Giovanna Shay, Similarly Situated, 18 Geo. Mason L. Rev. 581 (2011)
40. Susan Steward, The Characteristics and Well-being of Adopted Stepchildren, 59 Family Relations: Interdisciplinary Journal of Applied Family Studies 558 (2010)

ROUTING STATEMENT

The Appellants believe this case should properly be retained by the Iowa Supreme Court as the case "present[s] substantial constitutional questions as to the validity of a statute, ordinance, or court or administrative rule." See Iowa R. App. P. 6.1101(2)(a); see also Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 4 (Iowa 2004) ("It is this court's constitutional obligation as the highest court of this sovereign state to determine whether the challenged classification violates Iowa's constitutional equality provision.").

STATEMENT OF THE CASE

In 2003, the Iowa Legislature decided that it wanted to raise additional tax revenue[1], and it chose to obtain this money by paring and dividing the class of "stepchildren"—taxing some and exempting others. This case generally arises under the Equal Protection Clause, Article I, Section 6 of the Iowa Constitution. Appellants Paula J. Tyler ("Paula") and Mark J. Alcorn ("Mark") allege that Iowa Code chapter 450 imposes an unconstitutional tax by creating a distinction between two classes of individuals: (a) stepchildren whose parents divorced prior to a decedent-stepparent's death, and (b)

[1] (See App. 131 at 18:2–6 (positing "the need to raise revenue" as a first and basic justification for the disputed tax law).)

stepchildren whose parents remained married until the death of either parent. Because there is no justification for this disparate treatment that can withstand constitutional scrutiny, Appellants request that the Court find the definition of "stepchild" set forth in Iowa Code section 450.1(1)(e) violates Iowa's Equal Protection Clause.

On October 29, 2013, the Estate of Donald H. Hitzhusen filed its Iowa Inheritance Tax Return stating that a tax was owed by Appellants Paula and Mark. (See App. 103–04.) The return indicated that Paula's and Mark's inheritance taxes were paid "under protest," and that a "demand for refund" would be "forthcoming based upon the stepchild relationship with testator." (See id.) Upon a demand for refund from counsel (See App. 107–08), the Iowa Department of Revenue ("the Department") issued a letter on April 10, 2014 denying the refund. (See App. 109.) In support of its decision, the Department explained that under Iowa law Paula and Mark were not considered "stepchildren" at the time of the decedent's death. The Department based its position on Iowa Code section 450.1(1)(e), the statute at issue in this case. (See id.)

On May 7, 2014, Paula and Mark filed a protest with the Department challenging its denial of a refund of inheritance tax based on the

unconstitutionality of Iowa Code section 450.1(1)(e). (See App. 1–8.) The case proceeded to a contested hearing on April 10, 2015. Following the hearing, Administrative Law Judge Christie J. Scase issued an order rejecting Appellants' constitutional challenge and upholding the Department's denial of Appellants' request for refund. (See App. 9–21.) Paula and Mark thereafter appealed the decision to Polk County District Court on March 31, 2016, which Judge Robert J. Blink subsequently affirmed on September 14, 2016. (See App. 22–38; see App. 43–56.) From these decisions, Paula and Mark now appeal. (See App. 57–58.)

STATEMENT OF FACTS

The facts of this case are largely undisputed. (See generally App. 123–25; see App. 128 at 7:4–12.) Paula and Mark are the stepchildren of the decedent, Donald H. Hitzhusen ("Donald"). Donald died testate on July 16, 2012. (See App. 99–101.) Paula and Mark are the primary beneficiaries under Donald's Last Will and Testament. (See App. 59–66.)

Paula and Mark are the biological children of Constance R. Smith-Alcorn ("Constance"). (See App.131–32, 143 at 21:21–22:16, 66:7–19.) Paula was born July 22, 1963. Mark was born November 20, 1958. (See id.) Constance and her husband separated and divorced shortly after Paula was

born. (See id.) Constance later married Donald on July 31, 1966. (See App. 99–100.) It was the second marriage by Constance and the first marriage of Donald. The family moved to the Hitzhusen farm near Rockford, Iowa, and both Paula and Mark attended the Rockwell-Swaledale School District, where they graduated. (See App. 132, 143 at 22:5–24:3, 66:9–68:3.)

Donald was unable to have children of his own and following his marriage to Constance embraced Mark and Paula as his own children. (See, e.g., App. 73–74, 102.) Donald held out to the public that Paula and Mark were his daughter and son. (See App. 132, 145 at 25:14–19, 76:11–23.) He tended to their upbringing and taught them the value of hard work. (See App. 133 at 26:3–29:10.) He paid for Mark to attend Iowa State University, where he graduated in 1981. (See App. 133 at 28:3–15.) Paula also attended Iowa State University from 1981 through 1983, and Donald assisted her as well. (See App. 143 at 67:7–68:12.)

Donald himself was born in 1933 and attended the same schools as did his children, Rockwell-Swaledale. (See App. 99–100.) Donald then attended the University of Missouri where he completed a degree in Psychology. (See id.) After that, Donald was engaged in farming, insurance, and real estate following his term of military service. (See id.)

After both Mark and Paula had left home and married and settled in Texas, Constance and Donald separated and eventually divorced in 2001. (See App. 134, 143 at 32:10–21, 67:7–68:12; see App. 123 at ¶ 3.) Following the divorce, the relationship between Donald and his children became even closer than it was before; Mark took over the family farm business, and Mark and Paula attended to the medical needs of Donald both in Iowa and eventually in Texas. (See App. 132–36, 144 at 32:22–40:13, 70:23–71:24.) Donald gave Mark and Paula his power of attorney to assist him in financial matters and also executed a Durable Power of Attorney and Living Will as his dependence upon them grew. (See App. 67–72.)

In May of 2008, Donald prepared a Revocable Trust, which identified Paula and Mark as his children and named them as Successor Trustees. (See App. 75–98.) On July 21, 2008, Donald executed his Last Will and Testament, which once again identified Mark and Paula as his children. (See App. 59–66.) Mark was also nominated as Executor, with Paula being nominated in the event Mark could not serve. (See id., App. 59–66.) Much of the property that Donald accumulated through his life was given to Mark and Paula. (See id.) The initial Iowa Inheritance Tax Return shows Donald's gross Estate to be in the amount of $1,912,947.04. (See App. 103–04.)

The Department thereafter assessed and collected inheritance tax from Mark and Paula solely on the basis of the definition of "stepchild" under Iowa Code section 450.1, that is, that Paula and Mark were Donald's stepchildren, but their parents were no longer married on the date of Donald's death. (See App. 109.) The Department found that Paula and Mark were not "stepchild[ren]" as defined in chapter 450, and it thus assessed taxes against Paula and Mark as non-exempt, collateral beneficiaries. See Iowa Code §§ 450.9–10 (2014). Because the definition of "stepchild" in Iowa Code section 450.1 unconstitutionally discriminates among different classes of stepchildren and violates Iowa's Equal Protection Clause, Paula and Mark have filed this action against the Department seeking a refund of the inheritance tax in the amount of $202,755.00 plus interest. (See App. 1–8.)

ARGUMENT

The lower courts erred in upholding the constitutionality of Iowa Code section 450.1(1)(e). Iowa's law of inheritance tax, set forth in Iowa Code chapter 450, defines "stepchild" in a manner that discriminates between two types of stepchildren. The law creates a distinction between two classes of individuals: (a) stepchildren whose parents divorced prior to a decedent-stepparent's death, and (b) stepchildren whose parents remained married until

the death of either parent. The law grants privileges in the form of inheritance tax exemptions to one class of stepchildren while at the same time imposing a heavy tax on another class of stepchildren. See Iowa Code §§ 450.1, .9–.10 (2014).

The Iowa Legislature has no valid reason to treat one group differently from another group. Because the law distinguishes between these classes based on the manner and circumstance that the stepchild is bereft of a stepparent—that is, by death versus by divorce and death—and because this distinction lacks a sufficient justification under the Iowa Constitution, the law is invalid and unenforceable. Paula and Mark therefore request the Court strike Iowa Code section 450.1(1)(e) as offending Iowa's Equal Protection Clause.

I. The "Stepchild" Distinction Created by Iowa's Inheritance Tax Code Violates the Iowa Equal Protection Clause.

Preservation of Error

This issue has been preserved for appellate review. See Iowa R. App. P. 6.103. The parties raised and submitted the issue to both the Department of Inspections and Appeals and to the district court. (See App. 1–8 at ¶¶ 4–5; see App. 22–38.) Both the Department of Inspections and Appeals and the district

court made rulings on the issue, which materially affected the final decision. (See App. 37–38; see App. 55.)

Scope and Standard of Review

The Court's review is de novo because this case involves the resolution of a constitutional issue. See Bierkamp v. Rogers, 293 N.W.2d 577, 580 (Iowa 1980) (citing State v. Matlock, 289 N.W.2d 625, 627 (Iowa 1980)). The burden of proof remains on the party challenging the constitutionality of the statute. Id.

Argument

The definition of "stepchild" in Iowa Code section 450.1 and the inheritance taxes imposed by chapter 450 unconstitutionally discriminate against Paula and Mark in violation of Iowa's Equal Protection Clause. Iowa's Equal Protection Clause states: "All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens." Iowa Const. art. I, § 6.

Like its federal counterpart, Iowa's Equal Protection Clause is a decree that "[a]ll persons in like situations should stand equal before the law." See Racing Ass'n of Cent. Iowa, 675 N.W.2d at 7 (citing Chicago & N.W. Ry. v.

Fachman, 125 N.W.2d 210, 217 (Iowa 1963)); see also City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (stating that the federal Equal Protection Clause stands for the proposition that "all persons similarly situated should be treated alike"). When a law fails to treat like people in like ways, it is subject to constitutional scrutiny. See, e.g., Racing Ass'n of Cent. Iowa, 675 N.W.2d at 7–8; Bierkamp, 293 N.W.2d at 581. In interpreting the Iowa Constitution, Iowa courts are not bound by interpretations of the U.S. Constitution; but, courts may look to the federal counterpart when reviewing "parallel" provisions. See generally State v. Ochoa, 792 N.W.2d 260 (Iowa 2010).

The Legislature added the definition of "stepchild" in chapter 450 of the Iowa Code in 2003, and it provides as follows:

> e. "Stepchild" means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage to the decedent.

See Iowa Code § 450.1(1)(e). The definition creates a distinction between stepchildren whose parents divorce prior to the decedent-stepparent's death and stepchildren whose biological parent dies before the decedent-stepparent's death. If the natural parent dies during the marriage and the stepchildren inherit from their stepparent, their inheritance is exempt. See id.

§ 450.9. If the marriage to the stepparent ends in divorce, the stepchildren are denied an exemption and must pay inheritance tax. See id. § 450.10.

To put that into the practical terms of this case, if Constance had died in 2001, her children would have received the inheritance from their stepfather and been exempt from the payment of inheritance tax. Because Constance divorced Donald in 2001, Donald's stepchildren were required to pay inheritance tax in excess of $200,000. For the reasons discussed herein, this differential tax treatment does not withstand constitutional scrutiny.

A. Analytical Framework.

In analyzing whether a tax statute violates the Equal Protection Clause, courts apply rational basis review. See, e.g., Racing Ass'n. of Cent. Iowa, 675 N.W.2d at 7–8. First, the court determines whether the Iowa legislature had a "valid reason" for distinguishing between those that are taxed and those that are un-taxed, that is, whether the distinction "serve[s] a legitimate governmental interest." See id. (citations omitted). The government must demonstrate a "credible" and "realistically conceivable" policy reason for the classification that is not "specious" or merely "superficially fair." See id. at 7 n.3, 8 (citations omitted).

Next, the court must decide "whether this reason has a basis in fact." See id. at 8 (citing Fitzgerald v. Racing Ass'n. of Central Iowa, 539 U.S. 103, 108 (2003), for the proposition that the reviewing court must determine that the "legislature could rationally believe [that the] facts upon which [the proffered] classification [are] based are true"). This means that the court must examine "the credibility of the asserted factual basis for the challenged classification rather than simply accepting it at face value." See id. at 8 n.4. Even though this element "does not require 'proof' in the traditional sense," the court has the latitude to consider and assess legislative facts under the equal protection analysis. See id.; see also Varnum v. Brien, 763 N.W.2d 862, 880–81 (Iowa 2009) ("At times, . . . judicial decision-making involves crafting rules of law based on social, economic, political, or scientific facts. These facts . . . become relevant to judicial decision-making when courts are required to decide the constitutionality of a statute, among other occasions.") (citations omitted).

Third and finally, the court assesses the relationship between the governmental interest and the means to achieve it. The court must determine "whether the relationship between the classification . . . and the purpose of the classification is so weak that the classification must be viewed as arbitrary."

See Racing Ass'n. of Cent. Iowa, 675 N.W.2d at 8 (citing Fitzgerald, 539 U.S. at 107). To survive constitutional scrutiny, there must be a rational relationship between the governmental interest and the means of advancing that interest; the court cannot uphold a statute if the relationship is "so attenuated as to render the distinction arbitrary or irrational." See Fitzgerald, 539 U.S. at 107 (citing Nordlinger v. Hahn, 505 U.S. 1, 11–12 (1992)).

Historical Framework of the "Stepchild" Definition in Chapter 450.

In this case, there is no known legislative history that might shed light on the purpose of the "stepchild" statute or the rationale for creating the 2003 distinction among the class of stepchildren. (See, e.g., App. 129, 131 at 11:14–12:1, 18:22–19:2.) However, the State of Iowa has enacted inheritance tax schemes for property transfers by will or by intestacy for more than a century. See Iowa Code §§ 1467, 1474–75 (1897). Although the law of inheritance tax has been revised many times over the years, each version of the law has included a partial or total exemption and/or a reduced tax rate for property transferred to certain family members. For example, in its first iteration, the tax did not apply to the "father, mother, husband, wife, lineal descendant, adopted child, [or] the lineal descendant of an adopted child of a decedent." See Iowa Code § 1467 (1897). In 1906, this same tax exemption was expanded

to also include the decedent's "step-child[2], or the lineal descendent of a step-child of a decedent." See 1906 (31st G.A.) ch. 54, § 1; see Iowa Code § 1467 (1907).

Later statutory schemes employed variable rate taxation rather than complete exemptions, with a decedent's husband, wife, father, mother, and children—including legally-adopted children and so-called "illegitimate children" entitled to inherit—paying at the lowest rate. See Iowa Code § 7313 (1924). In 1931, the legislature notably revised the inheritance tax code to employ a hybrid of both exemptions and variable tax rates. See 1931 (44th G.A.) ch. 185, §§ 3–4; see Iowa Code § 7312-d1, 7313 (1931). This hybrid system of both exemptions and variable tax rates continues to the present day.

Historical Treatment of the Stepparent-Stepchild Relationship in Iowa.

It is significant that Iowa Code section 450.1(1)(e) had a narrowing effect on the tax exemption for stepchildren. That is, prior to the amendment in 2003, Iowa law treated Paula and Mark as "stepchildren" by virtue of their

[2] As it concerns inheritance taxes, the term "step-child" was not defined by the Iowa Legislature at this time or at any time until the 2003 statute. Nor does the current Iowa Code chapter 450 specifically define the other familial relations under its purview—the terms "surviving spouse," "brother," "sister," "brother-in-law," "sister-in-law," "parents," "children," and "grandchildren," for example, are not specifically defined in the current Iowa Code chapter 450.

affinal relationship with Donald. To briefly review, when Donald married Constance in 1966, Donald became the stepfather of his wife's children, Mark and Paula. The marriage created the relationship of affinity between Donald and his wife's children that Constance had with her own children by consanguinity.

Iowa courts have long recognized that the affinal relationship between a stepfather with his wife's children continues after the death of the wife. See Farnsworth v. Iowa State Tax Comm'n, 132 N.W.2d 477, 480 (Iowa 1965) (citing Simcoke v. Grand Lodge of A. O. U. W. of Iowa, 51 N.W. 8–9 (Iowa 1892) ("A stepfather is a relative by affinity, and the relationship continues after the death of the wife, on whom the relationship depends.")); accord In re Estate of Bordeaux, 225 P.2d 433, 441 (Wash. 1950) (citing Simcoke as a "leading case" on the issue). Consistent with this view, the Department itself interpreted the "stepchild" exemption to extend to any child whose biological parent and stepparent divorced prior to the stepparent's death. See Iowa Dept. of Revenue Internal Memoranda on Inheritance Tax Exemptions (Dec. 15, 1999), available at http://itrl.idr.iowa.gov/, search for document No. 99700170 [hereinafter "Internal Memo"]. At the April 10, 2015 hearing on

this matter, Revenue Examiner Joel Bohnenkamp testified on behalf of the Department as follows:

> Q: Now, this Code section that you referred to, 450.1, subsection E, the one containing the stepchild definition, that was put in place in 2003, and I'm not certainly expecting you to know that, but what I would ask you is, do you have some familiarity with how the Department would have treated Mrs. Tyler and Mr. Alcorn had it not been for that definition?
>
> **A: As I'm familiar with the law, that law being put into place in 2003, there was a practice by the Department prior to that time of treating persons in the scenario with the affinity -- the idea of affinity in mind, and that would be any in-laws or stepchildren would be treated as if the relationship had not been severed due to death or divorce prior to the advent of that law.**
>
> Q: And so to maybe ask the same question, but in more specific terms and to make sure we understand the Department's position, if Mr. Hitzhusen had passed away, let's say in 2002 -- so that would have been after the divorce from Mrs. Alcorn; correct?
>
> **A: Sure. I recognize that.**
>
> Q: But before the definition was put in place?
>
> **A: Correct.**
>
> Q: Would Mr. Alcorn and Mrs. Tyler have been responsible for inheritance tax?
>
> **A. From my research we would have treated them as exempt at that time.**

(See App. 151 at 98:17–99:23.) On re-direct, the testimony continued:

> Q: Very good. Did I understand you correctly that the Department policy prior to July of 2003 was that once there was a marriage, creating stepchildren, that they remained stepchildren notwithstanding divorce or death?
>
> **A: That is correct.**

(See id. at 101:15–21.) Thus, the Department previously followed the rule of law stated in the Simcoke and Farnsworth decisions by the Iowa Supreme Court: A relationship by affinity, such as that of a stepchild to a stepparent, is not severed due death or divorce, but continues regardless of the dissolution of the underlying relationship that created the affinal bond. See Farnsworth, 132 N.W.2d at 480; see Simcoke, 51 N.W. at 8–9. This was the status quo prior to the adoption of the challenged statute.

B. There Is No Rational Relationship Between the "Stepchild" Distinction and the Proposed Governmental Interests in This Case.

In 2003, the Iowa Legislature amended the law of Iowa Code chapter 450 to impose a tax on some, but not all, stepchildren. See Iowa Code § 450.1(1)(e). In order to satisfy the Equal Protection Clause of the Iowa Constitution, the distinction created by Iowa Code section 450.1(1)(e) must be justified in its purpose. Under rational basis review, applicable here, the law must be "rationally related" to a "legitimate governmental interest." See, e.g., Racing Ass'n. of Cent. Iowa, 675 N.W.2d at 7–8; LSCP, LLLP v. Kay-

Decker, 861 N.W.2d 846, 858 (Iowa 2015). Paula and Mark have the burden to "negat[e] every reasonable basis that might support the disparate treatment." See Racing Ass'n of Cent. Iowa, 675 N.W.2d at 8.

Over the course of proceedings in this matter, it appears that the Department and the lower courts have posited eight distinct, sometimes overlapping, justifications for Iowa Code section 450.1(1)(e). These proposed justifications are as follows:

1. Raising tax revenue (see App. 131 at 18:2–5; see Department's DIA Brief at 8, 14–15);

2. Achieving an "equitable and fair distribution of the tax burden" in Iowa (see App. 131 at 18:6–8; see Department's DIA Brief at 14–15);

3. Achieving "certainty, predictability, [and] uniformity in tax administration" (see App. 131 at 18:8–13; see Department's DIA Brief at 10–11, 19);

4. Avoiding "unnecessary litigation to ease the burden on the courts," which would occur in the absence of Iowa Code section 450.1(1)(e) (see App. 131 at 18:13–19; see Department's DIA Brief at 19–21);

5. Incentivizing saving, investment, and economic growth to increase the tax base (see Department's DIA Brief at 15);

6. Encouraging stepparent adoption[3];

7. "[P]romot[ing] the development of close family relationships and stability in families raising stepchildren" (see id. at 17; see also App. 19–20); and,

8. Incentivizing "close legal relationships" within the family unit that was created through marriage. (See Department's District Court Brief at 15; see also App. 50.)

None of these interests justifies the current statutory scheme of imposing taxes on some stepchildren while exempting some other stepchildren. This section addresses each of these items in the order presented above.

As a threshold matter, Paula and Mark observe that the Department has offered few facts in support of its justifications. The Appellants acknowledge, however, that this is not especially damaging when a court considers "legislative facts" pursuant to a constitutional challenge. The Iowa Supreme

[3] The Department has not expressly identified this rationale in briefing and argument thus far in the proceedings. However, Paula and Mark previously argued that stepparent adoption was a potential justification that the Department may advance based on its discovery questions in this matter. (See Protestors' DIA Brief at 7.) For the reasons discussed below, the concept of "encouraging stepparent adoption" more directly states the purposes that the Department and the lower courts have posited elsewhere and in other words.

Court specifically acknowledged that courts may receive legislative facts informally, through conventional methods like witness testimony and briefing, or even pursuant to the court's own, independent research. See Varnum, 763 N.W.2d at 881. Thus, this Court has considerable discretion to determine whether any proffered governmental interest is "legitimate" and whether the challenged statute "rationally relates" to that interest on the basis of the Court's own knowledge, research, or "rational speculation." See id.; see Baker v. City of Iowa City, 867 N.W.2d 44, 57 (Iowa 2015) (quoting Heller v. Doe by Doe, 509 U.S. 312, 319–21 (1993)).

Increasing Tax Revenue.

As to the first point raised by the Department, the government's bare interest in raising tax revenue, without more, cannot justify violating Iowa's Equal Protection Clause. If this were true, then no tax law would ever violate the Equal Protection Clause. In the face of any challenge, the government could simply assert that it wanted to dole out disparate tax burdens because it wanted tax revenue.

The notion that tax laws always satisfy rational basis review is demonstrably false. See, e.g., Racing Ass'n of Cent. Iowa, 675 N.W.2d at 16. Taxes do not justify themselves *ipso facto*, and the Department's proffered

justification fails to address the central question of equal protection: What is the reason for the disparate treatment? Cf. id. at 13 (concluding that aiding the financial position of riverboats was an insufficient justification by itself because, if that were so, "any differential tax would be constitutional because a lower tax always benefits the financial situation of the taxpayer subject to the lower rate") (emphasis in original).

"Equitable" Taxation.

The second proffered justification, achieving an "equitable and fair distribution of the tax burden," suffers from a similar problem. Paula and Mark take issue with the disparate treatment precisely because they believe the State has unfairly imposed a tax on them as collateral beneficiaries in violation of the Equal Protection Clause. The Department's summary response that the disparate treatment is justified because it is "fair" is, in fact, no response at all. Iowa's Equal Protection clause demands a greater justification than a tautological insistence that the law is "equitable and fair." See id. at 7 n.3 (observing that "specious" or "superficial[]" reasons for singling out a class of individuals "should not pass constitutional muster").

Avoiding Uncertainty and Litigation.

Both the third and the fourth proffered justifications incorrectly assume that Paula and Mark's success in the instant lawsuit would somehow generate litigious results. This is not the case, however, as demonstrated by the Department's own practices prior to the Legislature's adoption of section 450.1(1)(e). The Department's sole witness, Revenue Examiner Joel Bohnenkamp, testified that the Department previously extended the section 450.9 exemption to individuals like Paula and Mark before the adoption of the "stepchild" statute in 2003. (See App. 151 at 98:17–99:23.) Prior to 2003, the Department's internal policies would have analyzed Paula and Mark's inheritance from Donald as tax exempt under Iowa Code chapter 450. See Internal Memo. The Department's rationale was based on Iowa common law and one of the same arguments that Paula and Mark have advanced: Neither death nor divorce severs the stepparent-stepchild relationship. See id.; see Farnsworth, 132 N.W.2d at 480 (citing Simcoke, 51 N.W. 8–9). Thus, the Department's former policy was essentially, "Once a stepchild, always a stepchild."

Based on this prior practice, it is apparent that striking the "stepchild" distinction as offending equal protection will not generate uncertainty, unpredictability, or additional litigation. (See Department's DIA Brief at 10–

11, 19.) The result will simply be a return to the former status quo. Therefore, even if the government's interest in tax certainty and predictability and in reducing tax litigation is legitimate, the "stepchild" distinction is not rationally related to this interest. The evidence shows that the Department already understands precisely how to operate in the absence of Iowa Code section 450.1(1)(e), and tax administration under the former policy did not require a "subjective, case-by-case analysis of the relationship between the child and the former stepparent" as the Department suggests. (See Department's DIA Brief at 19.)

Promoting Saving and Investment Via Tax Exemptions.

As to the fifth point, the governmental interest in incentivizing saving, investment, and economic growth to increase the tax base also does not justify the "stepchild" distinction. To the extent this rationale depends on increasing the tax base, it simply overlaps the previous discussion: Disparate tax treatment is not justified by a bare desire for tax revenue. This *ipso facto* reasoning cannot satisfy the Equal Protection Clause Cf. Racing Ass'n of Cent. Iowa, 675 N.W.2d at 13.

The Department has further argued that "granting an inheritance tax exemption promotes saving and investing" on the part of the decedent-

testators "because they know they can devise all of their wealth to their biological children, for instance, free from inheritance tax." (See Department's Resistance to Petitioners' Motion to Amend and Enlarge at ¶ 12 (Oct. 6, 2016).) This explanation is also untenable. In the first instance, it is difficult to see how this rationale even applies to the specific, challenged statute in this case. Even if it is true that "granting an inheritance tax exemption promotes saving and investing," this is irrelevant here because the "stepchild" definition has a narrowing effect on the inheritance tax exemption. The 2003 definition does not grant an exemption—it imposes more taxes than before. Consider also that the assumption in this justification (decreased taxation, which increases saving and investment) actually belies the Department's first claimed and basic justification (the State's interest in increasing tax revenue).

Moreover, if this truly was the government's purpose in adopting section 450.1(1)(e), then it would suggest broader exemptions or that all stepchildren would be exempt because there would be less "crowding out" of investable funds by taxation. There is no principled reason to draw a line between Paula and Mark and other stepchildren with respect to this purpose. Again, Paula, Mark, and other stepchildren-beneficiaries were already

considered tax-exempt prior to the 2003 amendment, so the Legislature could not have hoped to decrease taxation and increase "saving and investment" via the "stepchild" definition. The distinction created by Iowa Code section 450.1(1)(e) does not advance the legislative goal posited here—it is actually opposed to that purported goal. Thus, the justification is "specious" and does not satisfy rational basis review. See Racing Ass'n of Cent Iowa, 675 N.W.2d at 7 n.3.

Altering the Course of Familial Relations: Stepparent Adoption.

The sixth, seventh, and eighth potential governmental interests all draw from a similar well. Specifically, each of these potential rationales suggests a connection between Iowa's law of inheritance tax and the choices that individuals make in their day-to-day, familial relationships. The Department has also suggested through its own discovery questions that promoting the adoption of children by stepparents is a legitimate governmental interest and that imposing an inheritance tax on individuals like Paula and Mark is a rational means of advancing this interest. (See App. 110–22.)

At a general level, Paula and Mark do not dispute that promotion of adoption can be a legitimate governmental interest insofar as it advances the State's interest in "providing a stable, loving homelife" for children without

undue delay. See In re P.L., 778 N.W.2d 33, 38 (Iowa 2010) (citing Santosky v. Kramer, 455 U.S. 745, 787–89 (1982) (Rehnquist, J., dissenting)); see In re C.M., 652 N.W.2d 204, 211 (Iowa 2002) ("The State has the duty to assure that every child within its borders receives proper care and treatment, and must intercede when parents fail to provide it.") (citations and quotations omitted); see Catholic Charities of Archdiocese of Dubuque v. Zalesky, 232 N.W.2d 539, 545 (Iowa 1975) ("Surely the sovereign, as parens patriae, has a legitimate socio-humanitarian interest in every child within its boundaries".).

However, the "adoption interest" is most pertinent in circumstances where other, conflicting rights or interests somehow create barriers to placing a child in a stable, caring home. See, e.g., In re C.M., 652 N.W.2d at 211 (in the context of termination of parental rights proceedings, analyzing a parent's equal protection right to full appellate procedures against the State's interest in "establish[ing] child custody quickly"); see also Catholic Charities, 232 N.W.2d at 545–46 (in the context of adoption proceedings, analyzing the State's interest in quickly providing a stable, caring home against the equal protection rights of a biological father to have notice, to participate, and to consent to the proceedings). In such circumstances, the State's interest in adoption is legitimate because it is tantamount to timely providing a caring

parent—and by extension, a "stable, loving homelife"—to a child who may otherwise be without or whose familial stability is languished by custody litigation.

By comparison, such interests are not in play in the specific circumstances encompassed by the "stepchild" distinction in Iowa Code chapter 450. At the time the stepparent-stepchild relationship is created, the child in interest already has at least one custodial parent who can provide the committed care that the State endeavors to ensure. The child may even have two caring and committed biological parents at the time the stepparent-stepchild relationship is created, which obviates the need for stepparent adoption. It is even possible that a stepparent adoption petition could actually interfere with a stable, loving, and existing parent-child relationship. See generally Iowa Code § 600.3 (setting forth the general rule that termination of existing parental rights is a prerequisite to filing an adoption petition).

There is nothing about stepparent adoption *per se* that coincides with the governmental interest in child welfare, so this cannot be a legitimate interest for purposes of Iowa's Equal Protection Clause. Nor could the Iowa Legislature credibly believe that stepparent adoption is an end in itself. Cf. Racing Ass'n. of Cent. Iowa, 675 N.W.2d at 7–8 (court reviewing an equal

protection challenge must assess "whether [a proffered] reason has a basis in fact"). A study conducted by Dr. Susan Stewart, a sociology professor at Iowa State University found "no significant differences in well-being between . . . nonadopted stepchildren, and adopted stepchildren on any measure of well-being regardless of the child's age." See Susan Steward, The Characteristics and Well-being of Adopted Stepchildren, 59 Family Relations: Interdisciplinary Journal of Applied Family Studies 558, 567 (2010), available at http://www.soc.iastate.edu/staff/stewart/Family%20Relations%202010.pdf.

As Dr. Stewart explained:

> Adopted stepchildren start out as stepchildren. The process and circumstances of adoption are unique for stepchildren as are parents' motivation to adopt. On the positive side, adopted stepchildren, unlike children adopted by two parents, have at least one biological parent in the home and a stepparent who wants to adopt him or her. On the other hand, some of stepparents' reasons for adopting a stepchild, such as a name-change for the child, to provide them with health insurance, or to establish a "proper" family may or may not reflect the high level of commitment commonly associated with adoption. Some evidence suggests that the adoption may have little effect or no effect on the stepchild, or even may have a negative one.

See id. at 561 (internal citations omitted). Stewart concluded that there is no "adoption advantage" for adopted stepchildren. See id. at 567. In fact, the Iowa Code already imposes a support obligation upon stepparents simply by

virtue of the stepparent-stepchild relationship, so stepparent adoption may do very little to advance the interests of a child-adoptee in that respect. See Iowa Code §§ 252A.2–.3 (support obligation to one's "child" includes stepchildren).

Thus, while the State has a significant interest in child welfare, which can be promoted by the adoption, stepparent adoption is distinct from that interest. "Child welfare" is not the same as "stepparent adoption" or "close legal relationships" or "close family relationships," and the Court should not conflate or confuse the concepts; simply put, these are distinct interests. Because stepparent adoption is not a legitimate governmental interest, this Court should find that the inheritance tax statutes at issue violate Iowa's Equal Protection Clause.

"Close Family Relationships"

Paula and Mark maintain that the seventh and eighth potential justifications for Iowa Code section 450.1(1)(e) are, at their core, other iterations of the "stepparent adoption" concept discussed above. To begin, the challenged statute cannot be rationally related to promoting "[c]lose family relationships," as suggested by the lower court. (See App. 19–20.) The Court should reject this contention for at least three reasons.

First, consider that the specific, disputed legislative act in this case was the narrowing of an inheritance tax exemption. Even if it is true that "the individual exemptions in Iowa's inheritance tax statute are intended to promote close family relationships" (see id.), and even if it is true that this is a legitimate governmental interest, that justification is irrelevant here because the challenged definition does not grant an exemption—it actually imposes taxes on more individuals than before. The Court can also ponder whether this rationale holds true in the opposite scenario: Does the imposition of inheritance tax discourage "close family relationships?" If so, then this is the effect of the Iowa Legislature's actions in 2003.

The Court may also question whether encouraging close family relationships is the same as punishing non-adoption or divorce. Through the definition at issue, the Iowa Legislature has imposed a tax on the stepchildren and not on the divorcing stepparent and the biological parent, thus effectively penalizing the stepchild for decisions and actions that are utterly beyond the control of the stepchild. See Iowa Code § 450.10. The U.S. Supreme Court has previously held that such compulsion by the State is inconsistent with equal protection as it illogical and unjust to "visit . . . condemnation" on the child for the actions and choices of the parents. See Trimble v. Gordon, 430

U.S. 762, 769, 776 (1977) (striking down an Illinois law of intestate succession on equal protection grounds and holding that challenged law was not justified on the ground that it promoted a legitimate family relationship as the State may not "attempt to influence the [social] actions of men and women by imposing sanctions on the children"). Although Paula and Mark's mother, Constance, made the conscious decision to terminate her relationship with Donald, Donald did not choose to terminate his relationships with Paula and Mark. (See, e.g., App. 59–66 at Art. I.) Likewise, as demonstrated by Paula's and Mark's testimony, they did not disregard the enduring bond they formed with Donald. (See id.; see App. 132, 139, 143 at 25:4–19, 51:7–52:13, 66:17–19.)

Second, the Court should reject the "close family relationship" justification because it muddles the cause and effect aspects of equal protection analysis. It is unclear whether (a) the State is granting a tax exemption because the parties are "more likely to have an ongoing close relationship" (as suggested by Judge Scase (see App. 20)) or (b) the parties are more likely to have an ongoing close relationship because the State is granting a tax exemption (as the means-ends analysis of equal protection requires). Also, the narrowing of an inheritance tax statute—with the

consequences of the statute often taking effect long after the family relationship is established—cannot meaningfully advance that interest. The problems with causation lead to the conclusion that there is no rational relationship here. See Federal Land Bank v. Arnold, 426 N.W.2d 153, 156 (Iowa 1988) ("First we must examine the legitimacy of the end to be achieved; we then scrutinize the means used to achieve that end.").

Third, if "close family relationships" was a legitimate interest that formed the rational basis for the definition in Iowa Code section 450.1, then all "close" stepchildren, would be treated the same. The simple fact that the stepchild is receiving an inheritance is itself evidence that the stepparent has continued to care for the stepchild following a divorce, that the affinal relationship is intact, and that the "closeness" sought by the State is already engendered. See Estate of Robitaille v. New Hampshire Dept. of Revenue Admin., 827 A.2d 981, 984 (N.H. 2003); see also Succession of Zaring, 527 So.2d 417, 419 (La. 1988) ("[T]he mere bequest to a stepchild, a completely voluntary act, is the most powerful and persuasive indication of the affinity, in its common meaning, which existed between the testator and the legatee."); see also In re Estate of Iacino, 542 P.2d 840, 841 (Colo. 1975) ("The very fact that the testatrix in this case chose to make the bequest indicates that the

relationship engendered by the marriage continued between the testatrix and these children.").

To put it another way, consider that under Iowa law the "stepchild" definition can never affect a stepchild in intestacy because stepchildren are never intestate heirs under any circumstance. See Iowa Code §§ 633.210–.19. Under Iowa's scheme of intestacy, a decedent's property goes to the surviving spouse, if any, then to the decedent's issue, if any, and then "up" the family tree to the decedent's parents and their issue. See id.

It follows therefore that the "stepchild" definition only affects stepchildren who receive property through a will. Of course, giving property by will is a free and voluntary act by the testator and is compelling evidence of the enduring relationship between the (step)parent and (step)child. Thus, the challenged statute merely divides up the class of persons who are already "close" to each other, as demonstrated by the bequest itself. The State cannot encourage any type of closeness by its act of splitting a class of already close individuals. In fact, the State is not incentivizing any close relationships—the statute only operates in response to close relationships. The State does not encourage anything by dividing the class of stepchildren-beneficiaries into taxed and untaxed groups.

Under an equal protection analysis, this signifies that the State's chosen means for encouraging close family relationships involves "extreme degrees of overinclusion and underinclusion." Cf. Racing Ass'n. of Cent. Iowa, 675 N.W.2d at 10–11 and cases cited therein. The challenged statute can only adversely affect pre-existing close relationships between stepparents and stepchildren; the challenged statute cannot positively affect any "step" relationship whatsoever. Thus, the connection between the purported end and the means are so attenuated that the distinction in Iowa Code section 450.1(1)(e) is both arbitrary and irrational.

"Close Legal Relationships"

Eighth and finally, the district court erred in finding that the challenged statute is "rationally related to the legitimate state interests of promoting the development of close legal relationships and stability in families raising stepchildren." (See App. 50–51.) Foremost, the posited "close legal relationship" is a vague concept here, and it is simply unknown to the law of equal protection. It is unclear precisely what constitutes a "close legal relationship" and precisely why the State in 2003 would have a "legitimate . . . interest [in] promoting the development of close legal relationships." (See App. 50–53.) In the absence of any authority (controlling, persuasive, or

otherwise) or any elucidation of the concept itself, Paula and Mark assert that this proffered justification was not a "legitimate government interest" in 2003 or at any time thereafter and thus cannot support the validity of Iowa Code section 450.1(1)(e) in light of Iowa's Equal Protection Clause.

More fundamentally, the Court must acknowledge that the district court's explanation conflates several concepts in order to "bootstrap" one interest (child welfare) to its preferred rationale (close family relationships). Specifically, the district court reasoned that "the development of close legal relationships and stability within the family unit" are each "vital to proper child-rearing." (See App. 50.) The district court continued that "providing stable homes for children is undoubtedly a legitimate state interest." (See id.) However, this is a false equivocation of distinct concepts—a "legal relationship" is neither necessary nor sufficient for "proper child-rearing" or "stable homes." These are different ideas.

To explain, this justification requires the Legislature to rationally believe that the inheritance tax code meaningfully affects the legitimate governmental interest of child development and well-being. It is doubtful that the factors commonly associated with child welfare—safety, education,

physical and mental healthcare, etc.—could also be credibly expanded to include inheritance tax status.

The relationship between (a) tax exemptions at the time of the parent's death and (b) child rearing, day-to-day caretaking, or family stability is extremely tenuous. For example, an inheritance by a child or stepchild is typically received at the close of the life expectancy of the stepparent, when the children are themselves adults. The mortality tables used by the Department in computing, for example, the value of a life beneficiary's interest in a testamentary trust support this general notion. See, e.g., Iowa Code § 450.51. Adult children and stepchildren are no longer being "rais[ed]" at that point, nor are they in need of the type of "child-rear[ing]" suggested by the Department. (See Department's DIA Brief at 17; see also App. 50.) In short, they do not present the same need for family stability and are therefore not served by Iowa Code section 450.1(1)(e) in this way. Although child development and welfare is certainly important, the narrowing of an inheritance tax statute—with the consequences of the statute often taking effect long after the "child" is reared—cannot meaningfully advance that interest.

If anything, the most credible logical link between "proper child-rearing" and inheritance tax status is the notion of "permanency"—that a caretaker will be a source of support for the child throughout the child's life and even beyond the caretaker's own life. The Iowa Department of Human Services frequently extolls the role of "permanency" in healthy child development. See, e.g., Iowa Dep't of Human Servs., Child and Family Servs. Div., Permanency for Children, Practice Bulletin (Jan. 2009) at 1, 3–4, available at http://dhs.iowa.gov/sites/default/files/0109%20PB.pdf; see also generally Iowa Code ch. 232 (requiring permanency plans and permanency hearings in certain cases). Importantly, the concept of "permanency" encompasses an enduring, lifelong relationship between child and adult that transcends strict, familial definitions like the "stepchild" statute.

Thus, if "proper child-rearing" is the relevant interest in this case, then Paula and Mark's position is the better means to achieve the government's end. The common law understanding of "Once a stepchild, always a stepchild" embraces the notion of "permanency" regardless of marital status; the exclusion of certain stepchildren by section 450.1(1)(e) undermines it. (Cf. App. 140 at 56:5–7 (describing Donald's perspective as follows: "You're still

my son and daughter, and I will take care of you as I always have and always will.").)

Finally, while this proposed justification appears to support expanding the section 450.9 exception to include stepchildren (as the Legislature did in 1997), it is unclear how the "family closeness" interest is served by excluding some, but not all, stepchildren, as the 2003 statute does. See 1997 Iowa Acts (77th G.A.), ch. 1, § 2. (moving stepchildren from a taxed to an untaxed category). The Department's explanation more aptly describes the Legislature's rationale in 1997—recognizing that, in the face of increasing divorce rates and increasingly "blended" families, stepchildren have many of the same mantles and rights as biological or adopted children. Because the distinction created by Iowa Code section 450.1(1)(e) does not advance this purported legislative goal, it is beyond imprecise—it is purely arbitrary. See Racing Ass'n of Cent. Iowa, 675 N.W.2d at 15 and examples cited therein. For these reasons, the Court should find that the definition of "stepchild" in Iowa Code chapter 450 offends Iowa's Equal Protection Clause.

C. In the Absence of Iowa Code Section 450.1(1)(e), Paula and Mark are Entitled to a Tax Refund.

Because the current definition of "stepchild" under Iowa's law of inheritance tax fails to satisfy the requirements of the Equal Protection Clause,

Paula and Mark qualify as exempt stepchildren under Iowa Code section 450.9 in the absence of a controlling statute. Briefly, when Donald married Constance, he became the stepfather of his wife's children, Mark and Paula. The marriage created the relationship of affinity between Donald and his wife's children that Constance had with her own children by consanguinity.

Iowa courts recognize that the affinal relationship between a stepfather with his wife's children continues after the death of the wife. See Farnsworth, 132 N.W.2d at 480; see Simcoke, 51 N.W. at 8–9 ("A stepfather is a relative by affinity, and the relationship continues after the death of the wife, on whom the relationship depends."). The Department's own practices prior to the Legislature's adoption of section 450.1(1)(e) also require this result. Revenue Examiner Joel Bohnenkamp testified that the Department previously extended the section 450.9 exemption to individuals like Paula and Mark prior the adoption of the challenged "stepchild" statute in 2003. (See App. 151 at 98:17–99:23.) This is confirmed by the Department's policy memorandum of December 15, 199. See Internal Memo.

D. Paula and Mark are "Similarly Situated."

The court must also give some consideration to whether Paula and Mark are similarly situated to other, tax exempt individuals. Grovijohn v. Virjon,

Inc., 643 N.W.2d 200, 204 (Iowa 2002). In this case, Paula and Mark's relationship with Donald was functionally identical to that of a parent-child relationship, and regardless of Iowa Code section 450.1(1)(e), they were "similarly situated" to other, tax-exempt families both as a matter of fact and as a matter of common law. (See App. 128–30 at 7:22–14:25.) Paula and Mark have demonstrated that they are similarly situated based on their relationship with Donald[4] and based on the common law principle that neither death nor divorce severs the relationship between stepparent and stepchild. The Court should therefore find that the Protestors are "similarly situated" to other, tax-exempt stepchildren.

Most notably, because the "similarly situated" inquiry is of limited analytical value, Iowa courts are reluctant to decide equal protection claims on this basis alone. The Department previously and correctly identified that the Iowa Supreme Court has "de-emphasize[d]" the "similarly situated" inquiry for equal protection claims. (See Department's DIA Brief at 6.) In

[4] Simply put, Paula and Mark are Donald's children. (See App. 132, 139, 143 at 25:4–19, 51:17–52:13, 66:17–19.) The record is replete with examples of how Paula, Mark, and Donald acted as "parent" and "children"; they are too numerous to cite exhaustively and are not in dispute. (See, e.g., App. 131–38 at 21:21–46:17.)

Varnum v. Brien, the Iowa Supreme Court cautioned against heavy reliance on the "similarly situated" analysis because it has limited usefulness in equal protection claims, and this sentiment that has been repeated in subsequent Iowa Supreme Court cases, in other jurisdictions, and in legal commentary. See 763 N.W.2d at 884 n.9 and authorities cited therein; see Qwest Corp. v. Iowa State Bd. of Tax Review, 829 N.W.2d 550, 561 (Iowa 2013) see LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846, 860 (Iowa 2015); see also Giovanna Shay, Similarly Situated, 18 Geo. Mason L. Rev. 581, 583–85, 587–88 , 624 (2011) (examining the history of "similarly situated," which "developed in doctrinal contexts other than equal protection," observing that courts struggle to reconcile the outmoded "similarly situated" requirement with current, tiered approach to equal protection, and concluding that the inquiry is both "redundant" and subject to abuse by litigants attempting to "circumvent the full rigor of equal protection analysis").

This is because the "similarly situated" inquiry is merely a broad reiteration of the complete equal protection analysis—not an independent test. Professor Shay describes the issue as follows:

> In cases regarding express categories, no matter the level of equal protection scrutiny applied, the focus of the "similarly situated" analysis is substantially the same as the key inquiry of equal protection review: Does the legislative classification bear a close

> enough relationship to the purpose of the statute? While courts and litigants may disagree about whether individuals really are "similarly situated" with respect to a statutory purpose, the analysis, properly understood, is another way of describing the substantive equal protection inquiry.

Shay, 18 Geo. Mason L. Rev. at 588. In questioning the value of the inquiry, the Varnum court likewise observed that it has "directly or indirectly infused [the similarly situated] analysis with principles traditionally applied in the complete equal protection analysis." See 763 N.W.2d at 884 n.9 (citations omitted) (emphasis added). The court acknowledged that "[t]his approach is almost inevitable for the test to have any real value as an analytical tool." Id.; see also Shay, 18 Geo. Mason L. Rev. at 624 (describing the analysis as "redundant").

Thus, courts have appropriately de-emphasized the test. It is less a threshold inquiry and more a restatement of the core equal protection guarantee. See, e.g., Varnum, 763 N.W.2d at 878. Because Varnum and subsequent Iowa decisions seriously question the value of the "similarly situated" inquiry, this Court should likewise be reluctant to decide the instant case on this basis. Cf. Qwest Corp., 829 N.W.2d at 561 (assuming claimant was "similarly situated"); cf. LSCP, LLLP, 861 N.W.2d at 860 (assuming

claimant was "similarly situated"); cf. Baker, 867 N.W.2d at 56 (assuming claimants were "similarly situated").

Moreover, the Varnum court recognized that the test is also subject to abuse as a mere tautology, i.e., that a challenged law "applies equally to all to whom it applies." See Varnum, 763 N.W.2d at 882 (citing Joseph Tussman & Jacobus tenBroek, The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 345 (1949)); accord Qwest Corp., 829 N.W.2d at 561. "If that were true, 'a law applying to red-haired makers of margarine' would not violate equal protection." Shay, 18 Geo. Mason L. Rev. at 587 (citing Tussman & tenBroek, 37 Calif. L. Rev. at 345).

This criticism is especially pertinent here because the Department's "similarly situated" argument is precisely the type of tautological or circular reasoning that the Iowa Supreme Court and legal commentators have counseled against. In its Post-hearing Brief below, the Department essentially argues: Because the law distinguishes Paula and Mark from other stepchildren, Paula and Mark are distinct. (See Department's DIA Brief at 9, 11–12.) To put it another way, the Department's position is that Paula and Mark are not similarly situated because the inheritance tax code treats them differently.

The Court cannot accept this tautology as proof that the tax code is constitutional. This argument fails to address the substantive unfairness in the distinction itself. Cf. Qwest Corp., 829 N.W.2d at 561. Such an approach is merely a bid to "circumvent the full rigor of equal protection analysis." See Shay, 18 Geo. Mason L. Rev. at 624. Consistent with the caution evinced in the Varnum decision, this Court should only assess whether Paula and Mark are "similarly situated" by considering the their position in the absence of the challenged distinction, not in light of the distinction. Cf. 763 N.W.2d at 883–84.

In the absence of Iowa Code section 450.1(1)(e), the Department itself implicitly recognized that the Protestors were similarly situated. (See App. 151 at 98:17–99:23.) The Department acknowledged, prior to the challenged law, that individuals like Paula and Mark were entitled to exemption as "stepchildren" regardless of the decedent's marital status. Although Paula and Mark's mother, Constance, made the conscious decision to terminate her relationship with Donald, Donald did not choose to terminate his relationships with Paula and Mark. (See, e.g., App. 56–66 at Art. I.) Likewise, as demonstrated by Paula's and Mark's testimony, they did not disregard the enduring bond they formed as Donald's "children." (See id.; see App. 132,

139, 143 at 25:4–19, 51:7–52:13, 66:17–19.) Therefore, the Court should find that Mark and Paula are "similarly situated" in this matter.

CONCLUSION

For these reasons, Appellants, Paula J. Tyler and Mark J. Alcorn, respectfully request that the Court reverse the decisions of the lower courts, find that the definition of "stepchild" in Iowa Code section 450.1(1)(e) violates the Equal Protection Clause of the Iowa Constitution, and award Appellants their due refund in the amount of $202,755 plus interest and the costs of this action pursuant to 701 Iowa Administrative Code 7.17(12).

REQUEST FOR ORAL ARGUMENT

Appellants request oral argument on the issues appealed in this case. Notice of this request is hereby given to Hristo Chaprazov and Donald Stanley, attorneys for Appellee.

CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains 9,452 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. 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 Word in Times New Roman size 14 font.

Respectfully submitted,

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CERTIFICATE OF FILING

The undersigned certifies that on the 20th day of March, 2017, the undersigned electronically filed this document using the Electronic Document Management System.

/s/ Erich Priebe

CERTIFICATE OF COST

The undersigned certifies that the cost for printing or duplicating necessary copies of this brief in final form was **$0.00**.

/s/ Erich Priebe

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the Clerk of the Supreme Court and upon all parties to the above cause, to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on the 20th day of March, 2017.

By:
____ U.S. Mail ____ FAX
____ Hand Delivered ____ UPS
____ Federal Express ____ E-mail
__X__ EDMS Participant (Electronic Service)

Signature __/s/ *Erich D. Priebe*_____