IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-0599

JASON RETTERATH and
ANALIA RETTERATH,

Petitioners/Appellants,

v.

WELLS FARGO EQUIPMENT FINANCE, INC.,

Respondent/Appellee.

APPEAL FROM THE IOWA
DISTRICT COURT FOR CHICKASAW COUNTY
THE HONORABLE RICHARD D. STOCHL

APPELLANTS' FINAL BRIEF

Jason W. Miller
PATTERSON LAW FIRM L.L.P.
505 5th Avenue, Suite 729
Des Moines, IA 50309
Phone: 515-283-2147
FAX: 515-283-1002
E-mail: jmiller@pattersonfirm.com
ATTORNEY FOR PETITIONERS/APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITES

Case Law **Page(s)**

Statutes & Rules **Page(s)**

Constitutions

Iowa Statutes

Iowa Rules

Foreign Statutes

STATEMENT OF THE ISSUES

I. The District Court Erred in Dismissing Jason and Analia Retteraths' Petition to Vacate the Charging Order Granted to Wells Fargo Equipment Finance, Inc.

Standard and Scope of Review

Matter of Trust of Killian for Benefit of Killian, 494 N.W.2d 672, 675 (Iowa 1993)

Preservation of Error

Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002)

Argument

A. The District Court Erred in Concluding the Unity of Time was not Satisfied under Florida Law.

1. In Applying Florida Law, the District Court Ignored the Presumption of Ownership by the Entireties, and Impermissibly Placed the Burden of Proof on the Retteraths.

Beal Bank, SSV v. Almand and Associates, 780 So.2d 45, 58 (Fla. 2001)

Cacciatore v. Fisherman's Wharf Realty Ltd., 821 So.2d 1251, 1254 (Fla. Dist. Ct. App. 2002)

In re Daniels, 309 B.R. 54, 59 (Bankr. M.D. Fla. 2004)

2. Error in Concluding Unity of Time was not Satisfied.

Miller v. Riegler, 419 S.W.2d 599, 603 (Ark. 1967)

In re Klatzl, 110 N.E. 181, 185 (N.Y. 1915)

Colson v. Baker, 87 N.Y.S. 238, 239 (N.Y.D.C. 1904)

Ebrite v. Brookhyser, 244 S.W.2d 625 (Ark. 1951)

Johnson v. Landefeld, 189 So. 666, 666 (Fla. 1939)

Boehringer v. Schmid, 173 N.E. 220, 220 (N.Y. 1930)

Coon v. Campbell, 240 N.Y.S. 772, 774 (N.Y.D.C. 1930)

Sackett v. Shahid, 722 So.2d 273, 274 (Fla. Ct. App. 1998)

Schuler v. Claughton, 248 F.2d 528, 530 (5th Cir. 1957)

In re Kossow, 325 B.R. 478, 488 (Bankr. S.D. Fla. 2005)

In re Aranda, 2011 WL 87237 (Bankr. S.D. Fla., Jan. 10, 2011)

Petri v. Rhein, 257 F.2d 268 (7th Cir. 1958)

Hood v. Commonwealth Trust & Savings Bank, 1941, 376 Ill. 413, 423, 424, 34 N.E.2d 414, 420

B. The District Court Erred in Concluding Iowa Law Applied to the Parties' Dispute

1. The District Court Erred in Applying General Choice of Law Principals as Iowa Law Requires Application of Law of the Situs of the Retteraths' Personal Property.

Lincoln's Estate v. Briggs, 199 N.W.2d 337, 338-39 (Iowa 1972)

Cook v. Todd's Estate, 90 N.W.2d 23, 25 (Iowa 1958)

Enfield v. Butler, 221 Iowa 615, 264 N.W. 546 (1935)

In re Colburn's Estate, 186 Iowa 590, 173 N.W. 35, 38 (1919)

Judy v. Beckwith, 137 Iowa 24, 114 N.W. 565, 567 (1908)

City of Dubuque v. Illinois Cent. R. Co., 39 Iowa 56, 84 (1874)

DuTrac Cmty. Credit Union v. Hefel, No. 15-1379, 2017 WL 461211, at *7 (Iowa Feb. 3, 2017)

State v. Iowa Dist. Court for Jones Cty., 902 N.W.2d 811, 818 (Iowa 2017)
Ackelson v. Manley Toy Direct, L.L.C., 832 N.W.2d 678, 688 (Iowa 2013)

In re Plasterer's Estate, 301 P.2d 539, 540 (Wash. 1956)

2. The District Court Erred in Relying on the Choice of Law Clause in the HES Operating Agreement.

Whalen v. Connelly (Whalen III), 621 N.W.2d 681 (Iowa 2000)

1 Anderson U.C.C. § 1-105:70 (3d. ed.)

Williams v. Hair Stadium, Inc., 334 N.W.2d 354, 355 (Iowa Ct. App. 1983)

Casey v. Jesup Creamery Co., 278 N.W. 214, 215 (Iowa 1938)

Torres v. Simpatico, Inc., 781 F.3d 963, 971 (8th Cir. 2015)

Retro Television Network, Inc. v. Luken Commc'ns, LLC, 696 F.3d 766, 769 (8th Cir. 2012)

Midwest Dredging Co. v. McAninch Corp., 424 N.W.2d 216, 224

RPC Liquidation v. Iowa Dep't. of Transp., 717 N.W.2d 317, 320 (Iowa 2006)

3. The District Court Erred in Concluding Iowa had the "Most Significant Contacts with the Dispute."

First Midwest Corp. v. Corp. Fin. Assocs., 663 N.W.2d 888, 893 (Iowa 2003)

Lincoln's Estate v. Briggs, 199 N.W.2d 337, 338 (Iowa 1972)

C. The District Court Erred in Concluding the Foreign Judgments were Properly Registered and the Charging Order Properly Issued.

Johnson v. Mitchell, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992)

L.F. Noll Inc. v. Eviglo, 816 N.W.2d 391, 393–94 (Iowa 2012)

Buena Vista Manor v. Century Mfg. Co., 221 N.W.2d 286, 288 (Iowa 1974)
Matney v. Currier, 203 N.W.2d 589, 593 (Iowa 1973)

Emery Transp. Co. v. Baker, 119 N.W.2d 272, 276 (Iowa 1963)

Esterdahl v. Wilson, 110 N.W.2d 241 (Iowa 1961)

Johnson v. Brooks, 117 N.W.2d 457 (Iowa 1962)

Bentley v. Allen-Sherman-Hoff Pump Company, 203 N.W.2d 312, 313 (Iowa 1972)

Escher v. Morrison, 278 N.W.2d 9, 11 (Iowa 1979)

Butler v. Nalvanko, No. 10-984, 2011 WL 441483, at * 1 (Iowa Ct. App. Feb. 9, 2011)

D. The District Court Erred in Concluding there was no Due Process Ground for Vacating the Charging Order

War Eagle Vill. Apartments v. Plummer, 775 N.W.2d 714, 719 (Iowa 2009)

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)

1. The Statutory Scheme of Iowa Code chapter 626A Violates the Retterath's Right to Procedural Due Process

War Eagle Vill. Apartments v. Plummer, 775 N.W.2d 714, 715-16 (Iowa 2009)

F.K. v. Iowa Dist. Ct., 630 N.W.2d 801, 808 (Iowa 2001)

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)

Fuentes v. Shevin, 407 U.S. 67, 96–97 (1972)

Thorpe Credit, Inc. v. Barr, 200 N.W.2d 535, 537 (Iowa 1972)

Forst v. Sioux City, 209 N.W.2d 5, 8 (Iowa 1973)

2. The District Court Erred in Concluding Analia Retterath's Right to Due Process was not Violated.

Adamson v. Rice, 478 N.W.2d 414, 415 (Iowa Ct. App. 1991)

Conover v. Earl, 26 Iowa 167, 169 (1868)

Merchants Mut. Bonding Co. v. Underburg, 291 N.W.2d 19, 21 (Iowa 1980)

In re Carstens, 8 B.R. 524, 526–27 (Bankr. N.D. Iowa 1981)

ROUTING STATEMENT

The Iowa Supreme Court should retain this case as it presents substantial constitutional questions regarding whether the statutory scheme of Iowa Code chapter 626A violates procedural due process protections. *See* Iowa R. App. P. 6.1101(2) (noting cases presenting substantial questions as to the validity of a statute should ordinarily be retained by the Iowa Supreme Court). Further, this case should be retained because it involves substantial issues of enunciating legal principals as it requires this Court to determine (1) what State's law should apply to a creditor's attempt to levy on Florida citizens' membership units in an Iowa limited liability company; and (2) whether the "unity of time," as required for ownership in tenancy by the entireties under Florida law, and ownership as joint tenants with rights of survivorship under Iowa law, is satisfied when a husband conveys membership units owned by him personally to the husband and his wife. *See* Iowa R. App. P. 6.1102(2) (noting cases presenting substantial questions of enunciating legal principles are ordinarily retained).

STATEMENT OF THE CASE

Nature of the Case. This is an appeal by Jason and Analia Retterath, citizens of the State of Florida, from the Iowa District Court for Chickasaw County's February 9, 2018, Ruling on Motions for Summary Judgment, as

amended by the court's March 7, 2018, Addendum to Ruling on Motions for Summary Judgment, dismissing their Petition to Vacate a January 12, 2016, charging order previously granted to Wells Fargo Equipment Finance, Inc. ("WFEFI"). (Appx. pp. 540-547, 555-557). The Retteraths assert the charging order was obtained by WFEFI in contravention of the Retteraths' ownership rights in their personal property and in violation of the Retteraths' right to due process. (Appx. pp. 27-40).

Prior proceedings. On January 6, 2016, WFEFI applied to the district court for a charging order under Iowa Code section 489.503. (Appx. pp. 19-20). On January 12, 2016, the district court entered the following order in the above captioned action:

> IT IS, THEREFORE, ORDERED that WFEFI is hereby granted a charging order against the entire membership of [Jason] Retterath in Homeland pursuant to Iowa Code § 489.503. Any amount to be distributed to [Jason] Retterath up to and including the amount to fully satisfy WFEFI shall be remitted payable to Wells Fargo Equipment Finance, Inc. . . . Any amount so received by WFEFI shall be satisfied, and WFEFI shall submit a partial or full satisfaction as appropriate to indicate the status of the Charging Order. In the event of full satisfaction, any surplus shall be paid to Retterath.

(Appx. pp. 24-26).

On September 27, 2016, pursuant to Iowa Rule of Civil Procedure 1.1013, Jason and Analia Retterath filed a Petition to Vacate the charging order alleging that the Jason and Analia's Retteraths' interest in distributions

from HES are exempt from collection because they jointly hold these Units as tenants in the entirety. (Appx. p. 31). In addition, Jason and Analia asserted the charging order was void because jurisdiction over Jason and Analia Retterath had not been obtained, and because the charging order was otherwise entered without due process. (Appx. pp. 31-33).

On March 3, 2017, both WFEFI and the Retteraths filed motions for summary judgment. (Appx. pp. 50-51, 214-215). On February 9, 2018, the district court entered its Ruling on Motions for Summary Judgment concluding there were no factual issues in dispute, granting WFEFI's motion for summary judgment and denying the Retteraths' motion for summary judgment and thereby refusing to vacate the charging order. (Appx. pp. 540-547). On February 23, 2018, the Retteraths filed a motion pursuant to Iowa R. Civ. P. 1.904(2) specifically asking the district court to rule on their arguments that the charging order was void as being without jurisdiction and in violation of due process. (Appx. pp. 548-551). On March 7, 2018, the district court filed its "Addendum to Ruling on Motions for Summary Judgment" addressing the jurisdiction and due process arguments of the Retteraths and denying the petition to set aside the charging order. (Appx. pp. 555-556). The Retteraths filed their Notice of Appeal on April 2, 2018. (Appx. pp. 558-559).

STATEMENT OF THE FACTS

Jason and Analia Retterath are citizens of the state of Florida. (Appx. pp. 268-269; 376-377). On December 22, 2015, Wells Fargo Equipment Finance, Inc. ("WFEFI"), caused to be filed in the Iowa District Court for Chickasaw County two foreign judgments it had obtained against Jason Retterath, entered in Broward County, Florida on August 22, 2011, and January 23, 2012, respectively. (Appx. pp. 8-16). On the same day, counsel for WFEFI filed an affidavit in support of the foreign judgments listing the name and last known address of Jason Retterath. (Appx. pp. 17-18). The Clerk of Court did not make a note of mailing notice of the filing of WFEFI's foreign judgments to Jason Retterath in the docket. *See Docket, Chickasaw Count Case No. CVCV003569*.

On January 6, 2016, WFEFI applied for a charging order under Iowa Code section 489.503 seeking to execute the above judgment against a membership interest in Homeland Energy Solutions, LLC ("HES"), an Iowa limited liability company. (Appx. pp. 19-20). The Application for a charging order lists only Jason Retterath as the judgment debtor of WFEFI and only Jason Retterath as the owner of the membership interest in HES. *See Court File*. On January 12, 2016, the district court entered a charging order against "the entire membership interest of Retterath in [HES]." (Appx. pp. 24-26).

Jason Retterath never received notice of the filing of the foreign judgments prior to WFEFI obtaining a charging order executing on the foreign judgments. (Appx. p. 377).

The HES membership interest executed on by WFEFI are "Class A Membership Units" owned by "Jason and Analia Retterath." (Appx. pp. 303-304, 305-306). WFEFI holds no judgments against Analia Retterath. (Appx. pp. 269). At no time before the district court entered the charging order did Analia Retterath receive service of process or otherwise receive notice of the proceedings for enforcement of a foreign judgment against her husband that resulted in a charging order being placed on property she jointly owned. (Appx. pp. 269).

HES is an Iowa limited liability company with its principal place of business in the city of Lawler, Chickasaw County, Iowa. (Appx. pp. 242, 245-248). Under the provisions of Chapter 517, Florida Statutes, the Office of Financial Regulation issues all permits to do business in the State of Florida pursuant to the Securities & Investor Protection Act. (Appx. pp. 270-287). Chapter 517, Florida Statutes, provides, in pertinent part,

> No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the [Florida Office of Financial Regulation] pursuant to the provisions of this section.

Ex. 7, Fla. Stat. § 517.12(1) (emphasis added).

On or about November 6, 2006, HES applied to the Florida Office of Financial Regulation ("FOFR") for a permit to do business in the State of Florida as a broker-dealer of securities by filing a Form BD with the FOFR. (Appx. pp. 270-278). On December 26, 2006, the FOFR requested additional information pertaining to HES's issuer-dealer application. (Appx. pp. 300-301). HES, in responding to this request for information, indicated that it had registered the securities it wished to sell in Florida with the State of Florida under File No. 49734-001/ERS. *Id.* On or about April 4, 2007, HES filed an amended Form BD to change HES's address. (Appx. pp. 279-286, 302).

On December 7, 2006, Jason Retterath applied for the purchase of 2000 HES membership units. (Appx. p. 393). This application was accepted by HES on January 15, 2007. (Appx. p. 398). A membership certificate establishing Jason Retterath owned 2000 membership units in HES was issued on October 29, 2007. (Appx. pp. 499).

On May 14, 2010, Jason Retterath applied for the transfer of 250 HES membership units to himself from Jim Robertsen. (Appx. p. 401). This transfer was approved by HES on July 21, 2010. (Appx. p. 409). A membership certificate establishing Jason Retterath owned these 250 membership units was issued on August 1, 2010. (Appx. p. 409).

Jason and Analia Retterath were married on February 13, 1999 and have remained continuously married at all material times. (Appx. pp. 243, 247, 253, 265). On December 15, 2010, Jason and Analia Retterath applied to have Jason Retterath's 2000 membership units transferred to "Jason and Analia Retterath". (Appx. pp. 419, 425). On the same day, Jason and Analia applied to have Jason's 250 membership units transferred to "Jason and Analia Retterath." (Appx. p. 430).

In both applications, Jason and Analia indicated the transfer was to "member and spouse." (Appx. p. 420, 431). The transfer applications contained a "form of ownership" section. (Appx. pp. 420, 432). In both applications Jason and Analia selected "joint tenants with right of survivorship" as their form of ownership from the limited options provided on the form applications. (Appx. pp. 421, 432) . The transfer forms did not list "tenancy by the entireties" as a form of ownership. (Appx. pp. 421, 432) However, Florida "recognize[s] the tenancy by the entireties form of ownership in both real property and personal property . . . ." (Appx. 309-328), *Beal Bank, SSB v. Almand & Assocs.*, 780 So. 2d 45, 53 (Fla. 2001).

The transfer of 2,250 membership units from Jason Retterath to Jason and Analia Retterath was acknowledged by HES on December 22, 2010. (Appx. pp. 427, 438). As part of the transfer, HES Certificates of Membership

Units Nos. 823 and 1367, evidencing Jason Retterath's ownership of 2000 membership units and 250 membership units, respectfully, were cancelled. (Appx. pp. 499-500). Importantly, on January 1, 2011, two new HES Certificates of Membership Units, Nos. 1397 and 1398, were issued to "Jason and Analia Retterath" for the ownership of 2000 and 250 membership units, respectfully. (Appx. pp. 501-502).

According to HES "Jason Retterath jointly owns 2,250 membership units with his wife, Analia Retterath." (Appx. pp. 307-308). Jason and Analia Retterath at all material times were and are Florida citizens and residents of Florida, Palm Beach County. (Appx. pp. 243, 247, 253-254, 265, 269). The originals of the HES Certificates Nos. 1392 and 1398 are in Florida. (Appx. pp. 269). The Florida Supreme Court has held as follows:

> [W]e hold that as between the debtor and a third-party creditor (other than the financial institution into which the deposits have been made), if the signature card of the account does not expressly disclaim the tenancy by the entireties form of ownership, a presumption arises that a bank account titled in the names of both spouses is held as a tenancy by the entireties as long as the account is established by husband and wife in accordance with the unities of possession, interest, title, and time and with right of survivorship

(Appx. 309-328). *See also Beal Bank*, 780 So. 2d at 58. Florida law further recognizes:

> We think it clear that the holding in *Beal Bank* does not require, in order for the presumption to arise, the presence of the words

> "with right of survivorship," any more than it requires the presence of words describing each of the other unities characteristic of a tenancy by the entireties. Rather, the presumption arises from taking title in the spouses' joint names. The creditor then has the burden to prove by the preponderance of the evidence that one of the necessary unities (including, if such be the case, the right of survivorship) did not exist at the time the certificate was acquired.

(Appx. 329-332), *Cacciatore v. Fisherman's Wharf Realty Ltd.,* 821 So.2d 1251, 1254 (Fla. Dist. Ct. App. 2002) (applying tenancy of the entirety law to stock certificates). Under Florida law, when property is held as a tenancy by the entireties, only the creditors of both the husband and wife, jointly, may attach the tenancy by the entireties property; the property is not divisible on behalf of one spouse alone, and therefore it cannot be reached to satisfy the obligation of only one spouse." (Appx 309-328); *See also Beal Bank, SSB*, 780 So. 2d at 53.

ARGUMENT

I. The District Court Erred in Dismissing Jason and Analia Retterath's Petition to Vacate the Charging Order.

Standard and Scope of Review. Review of a ruling on a motion to vacate a judgment pursuant to Iowa R. Civ. P. 1.1012 is "on assigned errors…not de novo." *Matter of Trust of Killian for Benefit of Killian*, 494 N.W.2d 672, 675 (Iowa 1993). The trial court's findings of fact have the effect of a jury verdict, and those findings are binding on us if there is substantial

evidence to support them." *Matter of Tr. of Killian for Benefit of Killian*, 494 N.W.2d 672, 675 (Iowa 1993).

Preservation of Error. The issues raised the Retteraths on this appeal, i.e., the manner that they legally owned their HES membership units and whether the notice preceding the entering of a charging order against them was sufficient to confer jurisdiction and consistent with due process were presented to and ruled upon by the district court. (Appx. pp. 540-547, 555-557). Error has been preserved. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Argument. The district court made four errors in its two rulings on the parties' motions for summary judgment. First, in its Ruling on Motions for Summary Judgment, the district court erred in concluding the "unity of time" necessary for establishing ownership under Florida law was not satisfied by the December 15, 2010 transfer of ownership from Jason Retterath to Jason and Analia Retterath. (Appx. pp. 543-544). Second, the district court erred in concluding in the same ruling that Iowa law applied to the parties' dispute. (Appx. p. 545). Third, the district court erred in its Addendum to Ruling on Motions for Summary Judgment in concluding the foreign judgments were "properly registered and the [charging] order was properly issued" as required for the acquisition of jurisdiction over the Retteraths. (Appx. p. 556). Finally,

the district court erred in denying the Retteraths' due process challenge to the charging order and concluding there was no legal basis to set it aside. *Id*. Each of these errors will be addressed below.

A. The District Court Erred in Concluding the Unity of Time was not Satisfied under Florida Law.

As detailed above, the Retteraths' Petition to Vacate was founded, in part, on the fact they owned their HES membership units as tenants by the entirety ("TBE") under Florida law. As noted by the district court, WFEFI's initial argument was that Iowa did not recognize this form of ownership, and that Iowa law applied to the parties' dispute. As recognized by the district court in its ruling, both parties believed "resolution revolved around whether Iowa or Florida law applied." (Appx. pp. 543). The district court then made its first error, in concluding "[u]pon careful analysis, this court finds it unnecessary to determine which State's law applies. Even if Florida law applies, the charging order in Iowa is valid." *Id*.

1. In Applying Florida Law, the District Court Ignored the Presumption of Ownership by the Entireties, and Impermissibly Placed the Burden of Proof on the Retteraths.

In *Beal Bank, SSV v. Almand and Associates*, the Florida Supreme Court held as follows:

> [A]s between the debtor and a third-party creditor (other than the financial institution into which the deposits have been made), if the signature card of the account does not expressly disclaim the

> tenancy by the entireties form of ownership, a presumption arises that a bank account titled in the names of both spouses is held as a tenancy by the entireties as long as the account is established by husband and wife in accordance with the unities of possession, interest, title, and time and with right of survivorship.

780 So.2d 45, 58 (Fla. 2001) (emphasis added). This presumption of TBE ownership has been extended to all types of personal property, including securities such as stock. *Id*. (holding the presumption formerly available only to ownership of real property should be extended to "personal property"); *see also Cacciatore v. Fisherman's Wharf Realty Ltd.*, 821 So.2d 1251, 1254 (Fla. Dist. Ct. App. 2002) (applying the presumption of TBE ownership to stock certificates); *In re Daniels*, 309 B.R. 54, 59 (Bankr. M.D. Fla. 2004) (concluding "*Beal Bank's* presumption can and should be extended to include all marital personal property, not just financial accounts").

Importantly, the *Beal Bank* court noted "[t]he presumption we adopt is a presumption affecting the burden of proof pursuant to section 90.304, Florida Statutes (2000), thus shifting the burden to the creditor to prove by a preponderance of evidence that a tenancy by the entireties was not created." *Beal Bank,* 780 So.2d at 58–59 (footnote omitted). As it pertains to "expressly disclaim[ing] the tenancy by the entireties form of ownership" the court stated, "an express designation on the signature card that the account is held

as a tenancy by the entireties ends the inquiry as to the form of ownership." *Id*. at 60. The court further explained:

> [J]ust as a signature card can contain an express statement that a tenancy by the entireties was intended, so too can a signature card contain an express disclaimer that a tenancy by the entireties was not intended. An express disclaimer can take the form of an express statement signed by the depositor that a tenancy by the entireties was not intended, coupled with an express designation of another form of legal ownership. Alternatively, an express disclaimer of an intent not to hold the account as a tenancy by the entireties arises if the financial institution affirmatively provides the depositors with the option on the signature card to select a tenancy by the entireties among other options, and the depositors expressly select another form of ownership option of either a joint tenancy with right of survivorship or a tenancy in common.

Id. (emphasis added).

In the case *sub judice*, the Retteraths did not expressly state that they were disclaiming TBE ownership. Further, the HES Unit Transfer documents did not affirmatively list TBE as a form of ownership. (Appx. pp. 477, 488). Rather, the Unit Transfer Application section titled "Form of Ownership" subsection omitted TBE, but included "Joint Tenants with Right of Survivorship," which was checked by the Retteraths. *Id.* Importantly, the Florida Supreme Court held in *Beal Bank*, that "a statement on the signature card that the bank account titled in the name of the husband and wife is held as a joint tenancy with right of survivorship does not alone constitute an express disclaimer that the account is *not* held as a tenancy by the entireties."

Beal Bank, 780 So.2d at 61 (emphasis added). The court reasoned, "This is because a tenancy by the entireties is 'essentially a joint tenancy, modified by the common-law doctrine that the husband and wife are one person.'" *Id*. (citation omitted).

Thus, TBE ownership was never "expressly disclaimed" by the Retteraths. Therefore, a presumption of TBE ownership by the Retteraths exists. *Id*. at 62 (concluding that presumption in favor of TBE was not eliminated by signature cards at banks listing ownership as tenants with right of survivorship). Consequently, WFEFI had the burden of establishing the December 15, 2010, transfer of the HES units did not create TBE ownership by Jason and Analia. *See In re Caliri*, 347 B.R. 788, 798 (Bankr. M.D. Fla. 2006) ("A party contending marital property is held in another form of ownership carries the burden of proof by a preponderance of evidence to establish a tenancy by the entireties was not created.").

In initially discussing tenants by the entirety ownership under Florida law, the district court recognized that where the signature card of the account does not expressly disclaim TBE ownership, a presumption arises in favor of this form of ownership. (Appx. p. 542). The district court further correctly recited Florida law providing the creditor has the burden of proof in demonstrating the unities for TBE ownership did not exist. *Id.*

Yet, in analyzing whether the Retteraths owned their HES membership units TBE, the district court makes no reference to the presumption of TBE ownership and the placement of the burden of proof on WFEFI to prove a TBE unity had not been satisfied. Rather, the district court appears to impermissibly place the burden on the Retteraths' to prove the unities had been satisfied. (Appx. p. 543). To wit, in discussing case law purportedly supporting its conclusion, the district court references a rejection of a "debtor's argument that he held a bank account in tenancy by the entirety." *Id.*

2. Error in Concluding Unity of Time was not Satisfied.

The unities required for TBE ownership under Florida law are: "possession, interest, title and time and with right of survivorship." *Beal Bank*, 780 So.2d at 58. The district court ultimately concluded, "even if Florida law were to apply to this situation, Retterath's December 15, 2010, transfer of those units from him personally to he and his wife did not establish or create a tenancy by the entirety ownership." (Appx. p. 544). Thus, while not expressly stated, the district court determined the Retteraths' ownership was not TBE because the "unity of time" was not satisfied. The district court's conclusion runs afoul of Florida and national law addressing the unity of time.

Specifically, a seminal case on the issue of transfers between spouses and the unity of time is the 1915 decision of the Court of Appeals of New York in which a majority of judges, including Judge Cardozo, agreed that "a husband may create a tenancy of the entirety by a conveyance to himself and his wife." *See Miller v. Riegler*, 419 S.W.2d 599, 603 (Ark. 1967) (discussing *In re Klatzl*, 110 N.E. 181, 185 (N.Y. 1915)). Importantly, in *Klatzl*, the court reasoned as follows: "The husband did not convey to himself but to a legal entity which was the consolidation of himself and another." *Klatzl*, 110 N.E. at 185 (Collin, J., dissenting) ; *see also Miller*, 419 S.W.2d 603 (Commenting on the use of "strawman" to create TBE and stating "there can be no logic in preventing a spouse from directly giving to his or her marriage partner equal rights in property that is owned, when the same result was permitted by creating the estate through a third party who really held no interest in the property at all"); *see also Colson v. Baker*, 87 N.Y.S. 238, 239 (N.Y.D.C. 1904).

Importantly, the sound logic espoused by the "New York decisions" has been adopted and applied by Florida courts. *Ebrite v. Brookhyser*, 244 S.W.2d 625 (Ark. 1951) (noting the "modern view taken by the New York cases has spread rapidly"). Specifically, in 1939 the Florida Supreme Court addressed the legal effect of a conveyance of real estate by the husband to

himself and his wife as TBE. *See also Johnson v. Landefeld*, 189 So. 666, 666 (Fla. 1939); (Appx. 528-532). In so doing, the Florida Supreme Court cited three New York decisions for the following holding:

> A man having title to real estate not his homestead may by appropriate deed convey it to his wife and to himself as tenants by entireties so that such property will not pass to a son under a subsequent will of the grantor husband. . . . The deed executed by the husband and wife in legal effect conveys to the wife and reserves to the husband. It affords the five requisites of unity of interest, of title, **of time**, of possession and of husband and wife.

Id. (emphasis added) (citing *Klatzl*, 110 N.E. at 185; *Boehringer v. Schmid*, 173 N.E. 220, 220 (N.Y. 1930); *Coon v. Campbell*, 240 N.Y.S. 772, 774 (N.Y.D.C. 1930)); *see also Schuler v. Claughton*, 248 F.2d 528, 530 (5th Cir. 1957) ("The recognized method under the existing law of Florida . . . for the creation of an estate by the entireties in a deed by outside parties was by simple warranty deed running to the named husband and wife. We can think of no better way to satisfy the requirement that the purpose be stated in a deed between spouses then to use the same form . . ."); [1] *see also Sackett v. Shahid*, 722 So.2d 273, 274 (Fla. Ct. App. 1998) (implying that had documentation

[1] This Florida law has since been codified. (Appx. 533). See also Fla. Stat § 689.11(1)(b) ("A conveyance of real estate, including homestead, made by one spouse to the other shall convey the legal title to the grantee spouse . . . . An estate by the entirety may be created by the action of the spouse holding title. . . conveying to both spouses."

existed of transfer from husband to husband and wife as TBE, said TBE ownership would be recognized).

Significantly, the only case cited by the district court for its departure from the above cited Florida case law is not even a Florida decision, but rather, a highly distinguishable decision from a federal bankruptcy court located in Florida. (Appx. p. 543). To wit, the district court relies solely on *In re Caliri*, 347 B.R. at 798 for the proposition that the December 15, 2010, conveyance "by [Jason] to [Jason] and [Analia] did not create an entirety ownership." Significantly, the circumstances of the *Caliri* decision demonstrate the court was distinguishing between accounts opened before and after a marriage. *Id*. Importantly, the court recognized in the same discussion "A property interest acquired prior to marriage can be converted to an interest held as tenants by the entireties through an assignment executed subsequent to the marriage." *Caliri*, 347 B.R. at 798 (emphasis added); *see also In re Kossow*, 325 B.R. 478, 488 (Bankr. S.D. Fla. 2005) (recognizing an individual's right to create a tenancy by the entireties in personal property that was individually owned prior to marriage). Put simply, the *Caliri* case does not stand for the proposition that the December 2010 unit transfer to Jason and Analia Retterath was lacking in the unity of time simply because Jason Retterath previously owned the units.

Moreover, while not cited by the district court, in past briefing, WFEFI has relied on the he unpublished decision of *In re Aranda*, 2011 WL 87237 (Bankr. S.D. Fla., Jan. 10, 2011) for the proposition that the subsequent addition of a wife to a back account opened as a single party account by the husband does not convert ownership to TBE. (WFEFI Supp. Memorandum, p. 4). Again, WFEFI's reliance on this bankruptcy case to impugn the Retterath's TBE ownership is misplaced, as it is factually distinguishable.

Specifically, as emphasized above, WFEFI simply glosses over a major distinction between *Aranda* and the case *sub judice*—in *Aranda* the husband simply added his wife's name to an account he had previously opened as a single party account. *Aranda*, 2011 WL 87237, at *1. To wit, as detailed in *Aranda*, the husband initially opened "Account 1" and checked the signature card indicating "Single—Party Account." *Id.* Later, the husband and his wife executed a new signature card "adding [the wife] to Account 1" and checking the signature box for "Multiple-Party Account." *Id*. (emphasis added). The bankruptcy court in *Aranda* concluded the addition of the wife as co-owner "was not sufficient to create a tenancy by the entirety." *Id*. at *3.

In the case *sub judice*, Jason Retterath did not simply add Analia Retterath to a signature card. Rather, Jason Retterath transferred ownership of the HES Units from himself to Analia and himself. Importantly, when

Jason Retterath transferred ownership to Analia and himself as TBE he surrendered the first Unit certificates and caused new ones to issue to he and Analia. (Appx. pp. 497-502). Further HES acknowledged the transfer of Units as a binding agreement.[2] (Appx. pp. 481-483, 492-494).

The importance of the distinction between simply adding someone to a signature card, and actually transferring ownership, was detailed by the United States Court of Appeals for the Seventh Circuit, in *Petri v. Rhein*, 257 F.2d 268 (7th Cir. 1958). Specifically, the court in *Petri* relied on this distinction in assessing and rejecting a unity of time argument nearly identical to that advocated by WFEFI. *Id*. at 270. To wit, while dealing with the creation of a joint tenancy with rights of survivorship, rather than TBE, the challenge to ownership was based on the fact the unity of time was lacking because a sole owner transferred to himself and another as tenants with rights of survivorship. *Id*. at 269. In addressing the argument, the Court stated as follows:

> The estates in joint tenancy were created by a transfer of the stock certificate, each time, from [the original owner] as owner to himself and [another]. While plaintiff contends this does violence to the common law principle of the four unities we think what was said in *Hood v. Commonwealth Trust & Savings Bank*, 1941, 376 Ill. 413, 423, 424, 34 N.E.2d 414, 420 governs here:

[2] Florida recognizes the principle that "corporate records provide *prima facie* evidentiary basis for determining ownership of corporate stock." *Sackett*, 722 So.2d at 275.

> 'To create an estate in joint tenancy it is necessary that there be unity of interest, unity of title, unity of time and unity of possession. To meet these essentials the several tenants must have one and the same interest accruing by one and the same conveyance commencing at one and the same time and held by one and the same undivided possession. . . . [B]ut when [the original owner] surrendered the first certificate and caused the second to issue to him and his wife as joint tenants, he thereby terminated all title in the stock evidenced by the first certificate and thereafter held as a joint tenant with his wife.

Petri, 257 F.2d at 270 (emphasis added) (quoting *Hood v. Commonwealth Trust & Savings Bank*, 34 N.E.2d 414, 420-21 (Ill. 1941)). The *Petri* court further explained that from the date the original owner acquired the stock, to the date he surrendered the certificate was one period of ownership, and the date new certificates were issued as joint tenants began a new period of ownership. *See Petri*, 257 F.2d at 270.

In sum, courts across the country,[3] including those of Florida, recognize that a conveyance from a grantor spouse, to the grantor spouse and his/her grantee spouse as TBE is valid and satisfies the four unities, including the unity of time. The documents obtained from HES clearly establish Jason Retterath transferred his ownership to himself and Analia in December of 2010. Thus, as noted in *Petri*, "[f]rom the date [Jason Retterath] acquired his

[3] Iowa recognizes the unity of time is satisfied when a spouse conveys to him or herself and his or her spouse. *Switzer v. Pratt*, 23 N.W.2d 837 (Iowa 1946).

[Units] . . . to the date of the surrender of the certificate. . . constituted one period of ownership and from the date of the establishment of the joint tenancy. . . to the [current] date" constitutes another period of ownership. *Id*.

Stated otherwise, contrary to the district court's conclusion, the legal entity of Jason and Analia Retterath came into joint possession of their HES units, at the same time, when those Units were transferred on December 15, 2010. Thus, WFEFI cannot, as a matter of law, refute the presumption that the Retteraths own the HES units TBE. Therefore, WFEFI cannot attach to HES Units or the distributions therefrom, as WFEFI is the creditor of only Jason Retterath. *Beal Bank*, 780 So.2d at 53 (noting only the creditors of both the husband and wife, jointly, may attach to TBE property). Consequently, the district court decision is in error. This Court should accordingly reverse the district court ruling and remand with direction to the district court to grant the Retteraths' motion for summary judgment and thereby vacate the WFEFI charging order.

B. The District Court Erred in Concluding Iowa Law Applied to the Parties' Dispute

Despite its belief that it did not matter whether Florida or Iowa law applied to the parties' dispute, the district court nonetheless addressed the issue. (Appx. p. 544). The district court applied general choice of law principles to conclude Iowa has the most significant contacts with the dispute.

(Appx pp. 544-545). As is detailed below, both the district court's analysis and conclusion are in error.

1. The District Court Erred in Applying General Choice of Law Principals as Iowa Law Requires Application of Law of the Situs of the Retteraths' Personal Property.

The district court cites the Restatement (Second) of Conflict of Laws § 222 as support for its conflict of laws analysis. Notably absent from the district court's ruling is a citation to any Iowa case applying § 222 of the Restatement (Second) of Conflict of Law. A search of Iowa law reveals no cases exist applying § 222. This result is not surprising because, as detailed below, Iowa has established precedent regarding what law applies to the dispute *sub judice*. *See Lincoln's Estate v. Briggs,* 199 N.W.2d 337, 338-39 (Iowa 1972)*; Cook v. Todd's Estate,* 90 N.W.2d 23, 25 (Iowa 1958)*; Enfield v. Butler,* 221 Iowa 615, 264 N.W. 546 (1935)*; In re Colburn's Estate,* 186 Iowa 590, 173 N.W. 35, 38 (1919)*; Judy v. Beckwith,* 137 Iowa 24, 114 N.W. 565, 567 (1908)*; City of Dubuque v. Illinois Cent. R. Co.,* 39 Iowa 56, 84 (1874).

Moreover, even if section 222 could be applied to the parties' dispute, the district court ignored the very first directive in this Restatement. To wit, § 222 begins with the following: "A court…will follow a statutory directive of its own state on choice of law." (Appx. 544). See *also* Restatement

(Second) of Conflicts of Laws Section 222 (1971). Here, while not expressly stated, the General Assembly directed what law to apply.

Specifically, WFEFI's charging order was obtained under Article 5 of the Revised Uniform Limited Liability Act, and according to this Act, "constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor." *See* Iowa Code § 489.503(1) (emphasis added). Importantly, the very first provision of Article 5 expressly provides "A transferable interest is personal property." *See* Iowa Code § 489.501 (emphasis added)[4]. As detailed below, the General Assembly's decision to statutorily mandate that the Retteraths' transferrable interest, "is personal property" is dispositive of the issue of what state's law applies to WFEFI's attempt to levy on this interest. *See* Iowa Code § 489.501 (emphasis added); *see also DuTrac Cmty. Credit Union v. Hefel*, No. 15-1379, 2017 WL 461211, at *7 (Iowa Feb. 3, 2017).

[4] Distribution is defined as "a transfer of money or other property from a limited liability company to another person on account of a transferable interest." *Id*. § 489.102(5). A "transferable interest" is defined as "the right . . . to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right." *Id.* § 489.102(24).

To wit, it is well recognized that, "[t]he legislature is presumed to know the state of the law, including case law, at the time it enacts a statute." *State v. Jones*, 298 N.W.2d 296, 298 (Iowa 1980). Further, under the doctrine of legislative acquiescence, this Court presumes the legislature is aware of cases that interpret its statutes, and "[w]hen many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation." *State v. Iowa Dist. Court for Jones Cty.*, 902 N.W.2d 811, 818 (Iowa 2017) (citing *Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 688 (Iowa 2013)). Thus, by specifying in the first provision of Article 5 of the Revised Uniform Limited Liability Act, which governs the rights of transferees and creditors, that the subject of a charging order, i.e., a transferrable interest, is personal property, the General Assembly confirmed application of longstanding Iowa case law regarding what law to apply to personal property.

Importantly, since at least 1874, the law of Iowa regarding personal property has been as follows: "[a]s a rule of law, the *situs* of personal property is determined by the domicile of the owner. This is true as to questions affecting the sale, distribution, and right of possession thereof. *City of Dubuque v. Illinois Cent. R. Co.*, 39 Iowa 56, 84 (1874) (emphasis added). Notably, in 1908, the court applied this rule of law to circumstances mirroring

those now before this Court. *See Judy v. Beckwith*, 114 N.W.2d 565, 567 (Iowa 1908).

To wit, in *Judy*, the court was tasked with determining what state's law should apply to corporate stock; the law of the state where the corporation was domiciled (Illinois), or the law of the state where the owner was domiciled (Iowa). *Id.* In so doing, the court began by noting the corporate stock "is a property which is somewhat intangible in character, but scarcely more so than those other items of property embraced in the familiar general term 'money and credits.'" *Id*. Thereafter, the court noted the stock is personal property. Pertinent to the case *sub judice*, the court then concluded as follows:

> Whether the owner resides where the corporation is organized or takes them to another state, all of the essential incidents of personal property attached to them in his hands. If he is wrongfully deprived of them, he may maintain an action for their conversion, as he would for the conversion of a horse or promissory note. If he dies intestate, their distribution to his heirs **is governed by the law of his domicile, and not by the law of the corporate domicile.**

Id. at 567 (emphasis added). Moreover, in 1919, the Iowa Supreme Court noted that this rule applies to disposition of personal property during the lifetime of the owner. *In re Colburn's Estate*, 173 N.W. 35, 36 (Iowa 1919) ("Only personalty remains . . . it is subject to the law of the owner's domicile with respect to disposition inter vivos." (emphasis added)).

Significantly, the Iowa Supreme Court has consistently applied the above recited rule of law during the ensuing decades. For instance, in 1935, in assessing what state law should govern the issue of ownership of a car, the Iowa Supreme Court reaffirmed this rule by stating as follows:

> It is the contention of plaintiff-appellee that the question of ownership of this car must be determined by the law of the domicile of the owner. Justice Story of the United States Supreme Court, as early as 1845, announced the universal rule as to personal property to be that 'the law of the owner's domicil is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary.'

Enfield v. Butler, 264 N.W. 546, 554–55 (Iowa 1935) (emphasis added) (citations omitted).

Similarly, in *Cook v. Todd's Estate*, the Iowa Supreme Court was tasked with determining what state's law applied to the right to inherit $18,056.50 deposited in a Mount Ayr, Iowa bank, which constituted the only asset of a decedent who died, intestate, in California. 90 NW.2d 23, 24 (Iowa 1954). The $18,056.50 in question was the proceeds from the sale of the decedent's interest in Iowa real estate. *Id*. The specific dispute surrounded whether the adopted daughter of the decedent's deceased son could inherit the property in question; under California law an adopted child could not inherit through an adoptive parent, but under Iowa law, the adopted child would inherit the property in question. *Id*. The district court ruled "the only property

in the estate was personal property, the situs of which was in California, the domicile of the intestate, and which would be distributed according to the law of California." *Id.* at 24-25.

On appeal, the adopted child argued that because the cash resulted from the sale of real property, it remained real property, and should be distributed pursuant to the law of Iowa, the state where the real property was situated. *Id*. at 25-26. The Iowa Supreme Court rejected this argument, concluding instead that the money in question was personal property. *Id*. at 28. The Iowa Supreme Court had previously noted "the distribution of personal property is governed by the law of the domicile of the intestate owner." *Id*. at 25. The Court then held, "[t]he laws of the state of California in effect at the time of death of [the decedent] govern distribution of her property . . . [u]nder those laws [the adopted child] may not inherit." *Id.* at 28.

More recently, in 1972, in *Lincoln's Estate v. Briggs*, 199 N.W.2d 337, 339 (Iowa 1972), the Iowa Supreme Court reaffirmed that this law applied to intangible personal property. To wit, in *Lincoln's Estate,* the court assessed whether the interest of a decedent in foreign real estate is included in his estate for inheritance tax purposes. *Id*. at 338. The court noted the interest in question was "intangible personal property consisting of the right to receive payments under the contract for the sale of real estate located in Illinois." *Id*.

In determining what law applied to this property, the Iowa Supreme Court subscribed to the following:

> The right to receive payments due under a contract for the sale of land is intangible, personal property. Intangible personal property has its situs at the domicile of the owner at the time of his death, regardless of the actual location of the evidence of ownership, and is within the jurisdiction and subject to the inheritance tax by the state of the owner's domicile at the time of his death.

Id. (emphasis added) (quoting *In re Plasterer's Estate*, 301 P.2d 539, 540 (Wash. 1956).

In sum, the district court, through its charging order, has allowed WFEFI to place a lien on Jason and Analia's transferrable interest in HES. This interest is "personal property." Iowa Code § 489.501. Pursuant to Iowa law, as detailed above, the situs of this persona property is Jason's and Analia's domicile, and their right to this transferrable interest must be decided under the law of their domicile. Jason and Analia Retterath were residents of the state of Florida when they purchased their transferrable interest in HES and continue to be residents of Florida. Their domicile is Florida. Consequently, Jason and Analia's transferrable interest in HES has its situs in Florida and Florida law governs the transferrable interest. The district court erred in concluding otherwise.

2. The District Court Erred in Relying on the Choice of Law Clause in the HES Operating Agreement.

In determining Iowa had the "most significant contacts" with the parties' dispute, the district court made the following conclusions: "The operating agreement of HES provides that Iowa law applies to the companies [sic] operations. Iowa Code section 689.106 provides that Iowa Law governs membership rights and interest in an Iowa LLC." (Appx. p. 544). As detailed below, the district court erred in the following manner: (1) applying the HES choice of law provision beyond its factual and legal scope; (2) allowing a non-party to the agreement to enforce the choice of law provision;

For instance, the choice of law provision in the HES operating agreement does not "provide that Iowa law applies to the company[y's] operations." Rather, the breadth of this choice of law provision does not reach the parties' dispute. To wit, the choice-of-law provision expressly provides it applies only to the following three issues: "[1] validity of this Agreement, [2] the construction of its terms, and [3] the interpretation of the rights and duties arising thereunder." (Appx. p. 159). Clearly, the dispute at issue does not involve questions of the validity of the HES Operating Agreement.

As it pertains to the second and third categories, "construction of its terms, and interpretation of rights and duties arising thereunder," guidance is found in the *Whalen v. Connelly (Whalen III)*, 621 N.W.2d 681 (Iowa 2000),

decision. Specifically, in *Whalen*, the defendant was being sued for conversion of the plaintiff's shares in a riverboat gambling partnership allegedly resulting from the defendant's failure to follow the Iowa tender law regarding these shares. *Id*. at 683–84. On appeal, the defendant argued the Iowa tender law did not apply to the plaintiff's claim because the partnership agreements in question contained a choice of law provision selecting the law of Delaware. *Id*. at 686.

In addressing this argument, the court first noted, "A *partnership agreement* may contain an effective choice-of-law provision designating the governing law under which *its* terms must be applied and construed." *Id*. (quoting 59A Am.Jur.2d *Partnership* § 32, at 251 (1987). The court noted that in the first two appeals (*Whalen I* and *Whalen II*) it applied the choice-of-law selection of Delaware law because "we were interpreting the actual partnership agreement and determining liability based on the internal workings of the partnership." *Whalen*, 621 N.W.2d at 686. The court then noted, "[h]owever, the present disputed has nothing to do with the agreement themselves, but rather, the procedure utilized in Iowa for collecting a judicially enforceable debt while an appeal is pending." *Id*. The court then concluded as follows: "Accordingly, we do not perceive any circumstance that would have us pass judgment on the partnership agreements or the internal

organization of the partnership in the present suit." *Id*. The Iowa Supreme Court held that the choice-of-law provision selecting Delaware law did not apply. *Id*.

Similarly, the present dispute does not require this a court to pass judgment on the HES Operating Agreement or the internal workings of HES. Rather, the present dispute, like the dispute in *Whalen III*, involves the procedure utilized to collect a debt. Specifically, the issue before this Court is whether WFEFI can, under Iowa Code § 489.503(1), place a lien on personal property owned by the Retteraths as tenants in the entirety under the law of their *locale*, Florida, to satisfy a debt owed solely by Jason Retterath. As such, the choice of law provision in the HES Operating Agreement is inapplicable.

Additionally, the district court's citation to Iowa Code section 489.106 for the proposition that "Iowa law governs the membership rights and interest in an Iowa LLC" is overbroad and incorrect. To wit, Iowa Code § 489.106 provides as follows:

> The law of this state shall govern the following:
>
> 1. The internal affairs of a limited liability company.
> 2. The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Iowa Code § 489.106 (emphasis added). As emphasized, the legislative mandate is clearly limited to the internal affairs of the limited liability company and the issue of member liability for the debts of the limited liability company. This statute simply does not reach the parties' dispute.

Moreover, even if the choice of law clause in the HES Operating Agreement were applicable to the parties' dispute, WFEFI simply is not a party to this agreement. No Iowa case could be located allowing a non-party to an agreement to enforce a choice-of-law provision. Significantly, the general principal of law is that non-parties to a contract containing a choice-of-law designation may only enforce the provision if they are a third-party beneficiary of the contract, or a successor in interest to a party in the contract. *See 1 Anderson U.C.C. § 1-105:70 (3d. ed.)*. Importantly, this general principal of law is consistent with Iowa law regarding who may enforce a contract.

Specifically, our Iowa courts have concluded "the general rule is that one who is not a party to a contract cannot recover for its breach, unless he is a party to the consideration." *Williams v. Hair Stadium, Inc.*, 334 N.W.2d 354, 355 (Iowa Ct. App. 1983) (citing *Casey v. Jesup Creamery Co.*, 278 N.W. 214, 215 (Iowa 1938)). More recently, the United States Court of Appeals for the Eighth Circuit aptly summarized this rule of law as follows: "Only

parties to a contract and any third-party beneficiaries of a contract have standing to enforce that contract." *Torres v. Simpatico, Inc*., 781 F.3d 963, 971 (8th Cir. 2015) (citing a Missouri case); *see also Retro Television Network, Inc. v. Luken Commc'ns, LLC*, 696 F.3d 766, 769 (8th Cir. 2012) ("As a general rule, a contract's obligations do not extend to nonparties to the contract." (citation omitted))

The district court did not find WFEFI was a third-party beneficiary to the HES Operating Agreement, and WFEFI has never claims such status. Further, any such claim would be legally untenable. *See generally Midwest Dredging Co. v. McAninch Corp.*, 424 N.W.2d 216, 224 (Iowa 1988) (adopting the Second Restatement to recognize rights of third-party beneficiaries); *see also RPC Liquidation v. Iowa Dep't. of Transp.,* 717 N.W.2d 317, 320 (Iowa 2006). Therefore, even if the choice of law provision in the HES Operating Agreement reached the parties' dispute, WFEFI cannot enforce this choice-of-law provision.

3. The District Court Erred in Concluding Iowa had the "Most Significant Contacts with the Dispute."

Given the above detailed Iowa precedent specifically addressing what law governs personal property, a general conflict of law analysis is not applicable to the dispute at issue. However, even assuming *arguendo* that such an analysis were applicable, these general conflict of law principals favor

application of Florida law to their ownership of HES Units. Specifically, as noted by the Iowa Supreme Court,

> Under well-recognized conflict of laws principles, "[t]he rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties." Restatement (Second) of Conflict of Laws § 188 (1971)[5]. "Significant relationship" is determined by reference to the place of contracting, place of performance, location of the contract's subject matter and the domiciles of the parties.

First Midwest Corp. v. Corp. Fin. Assocs., 663 N.W.2d 888, 893 (Iowa 2003)

Importantly, the place of contracting is indisputably Florida as the sale of the HES Units occurred in Florida as a matter of law. To wit, Chapter 517, Florida Statutes, provides, in pertinent part,

> No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the [Florida Office of Financial Regulation] pursuant to the provisions of this section.

Fla. Stat. § 517.12(1) (emphasis added). No dispute exists that HES did, in fact, register with the Florida Office of Financial Regulation to sell its Units in the state of Florida to the Retteraths, among others. Further, the location of the subject matter of the sale, i.e., the Retteraths' transferrable interest, is,

[5] As detailed above, the district court inexplicably relied on Section 222 of the Restatement (Second) of Conflict of Laws (1971) which has not been applied by any Iowa appellate court.

as established by the above law, in Florida. *See Briggs*, 199 N.W.2d at 338 ("Intangible personal property has its situs at the domicile of the owner."). Finally, the judgments WFEFI seeks to levy on through its charging order are Florida judgments. Consequently, Florida, not Iowa, has the most significant relationship to the parties' dispute.

C. The District Court Erred in Concluding the Foreign Judgments were Properly Registered and the Charging Order Properly Issued.

In its initial Ruling on Motions for Summary Judgment the district court failed to address the Retteraths argument that the district court acted in excess of its jurisdiction by issuing the charging order. Following the filing of a Rule 1.904(2) motion by the Retteraths, the district court ultimately ruled "the foreign judgment was properly registered and the order was properly issued." (Appx. p. 556). This conclusion is both factually and legally erroneous.

Factually, the foreign judgments simply were not properly registered. To wit, Iowa Code § 626A.3 titled, "Notice of filing" provides the extraordinary service procedure for enforcing foreign judgments. This chapter requires that at the time of the filing of a foreign judgment, the judgment creditor "shall make and file with the clerk of court an affidavit setting forth the name and last known address of the judgment debtor, and judgment creditor." Iowa Code § 626A.3(1). Importantly, section 626A.3

further provides that "[p]romptly upon the filing of the foreign judgment and the affidavit . . . the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket." Iowa Code § 626A.3(2) (emphasis added). No such "note of the mailing" exists in the Court docket.[6] Thus, the foreign judgment was not "properly registered."[7]

Legally, the failure of the district court to follow, and then later recognize, the extraordinary method of notice of service to be provided the Retteraths is no minor oversight. To wit, "a judgment may be considered void where the Court acted without or in excess of its jurisdiction." *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992). The Iowa Supreme Court recognizes "a strongly held and frequently repeated principle that we strictly construe statutes providing extraordinary methods of securing jurisdiction over nonresidents." *See L.F. Noll Inc. v. Eviglo*, 816 N.W.2d 391, 393–94 (Iowa 2012) (citing *Buena Vista Manor v. Century Mfg. Co.*, 221 N.W.2d 286, 288 (Iowa 1974); *Matney v. Currier*, 203 N.W.2d 589, 593 (Iowa

[6] This omission by the Clerk is itself a ground for vacating the Charging Order at issue. *See* Iowa R. Civ. P. 1.1012(1) (noting an order may be vacated on the ground of "mistake, neglect or omission of the clerk").

[7] The district court also found Jason Retterath "was provided notice" of the filing of the foreign judgment. (Appx. p. 556). This is also factually incorrect. As discussed further below, Jason Retterath was unaware of the proceeding against him until after the Charging Order was issued.

1973)). Otherwise stated, "extraordinary service of process must be carefully circumscribed by the courts." *Id.*; *see also Emery Transp. Co. v. Baker*, 119 N.W.2d 272, 276 (Iowa 1963) (noting and approving the holdings of *Esterdahl v. Wilson*, 110 N.W.2d 241 (Iowa 1961) and *Johnson v. Brooks*, 117 N.W.2d 457 (Iowa 1962) that where the "method of service provided is extraordinary in character and is allowed only because specially authorized and is valid as a means of obtaining jurisdiction, the statutory procedure must be *strictly* followed"). Examples of the necessity for strictly following the statutory procedure for substituted and extraordinary service are replete in Iowa case law.

For instance, in *Bentley v. Allen-Sherman-Hoff Pump Company*, notice of a lawsuit was sent to the wrong address for the foreign corporate defendant, but was then forwarded to and received by the correct corporate defendant. 203 N.W.2d 312, 313 (Iowa 1972). The Iowa Supreme Court noted, thus, actual notice was achieved, albeit not by service "at the address of the defendant corporation's principal address" as required by the statute authorizing substitute service, Iowa's long arm statute found at Iowa Code 617.3. *Id.* The Iowa Supreme Court concluded that the service was invalid, reasoning that if it took a contrary approach "would approve service of notice

by ordinary mail, by telegram, word of mouth or by reading of the suit in a newspaper." *Id*. (emphasis added).

Similarly, in *Emery Transportation Co. v. Baker*, the applicable statute, Iowa's nonresident motor vehicle statute codified at Iowa Code section 321.501, required service by "restricted certified mail." 119 N.W.2d 272, 275 (Iowa 1963). The *Emery* notice was sent in this manner, but the letter was "unclaimed." *Id*. at 274. The statute required that proof of the mailing, "including the return registry receipt" must be filed in the district court. *Id*. at 275. The court concluded that the service at issue was invalid because there was no proof of actual or offered delivery. *Id*. at 277. The Iowa Supreme Court emphasized that the act of timely mailing notification, properly addressed by restricted registered mail, does not end the obligation under the statute. *Id.* ("[T]he act of timely *mailing* a notification, properly addressed, by restricted registered mail, does not end plaintiff's obligation. A receipt showing it has been delivered is required."); *see also Escher v. Morrison*, 278 N.W.2d 9, 11 (Iowa 1979) (concluding notice mailed by restricted certified mail under the farm tenancy statute was ineffective where it was returned "unclaimed'); *Esterdahl*, 110 N.W.2d at 243–44 ("It will not do to say it is sufficient if it appears [the nonresident] did in fact acquire notice of the action, although by some other method. This argument would support a notice by

ordinary mail, or by telegram, or word of mouth, or by reading of the suit in the newspaper. Jurisdiction must be acquired in the manner prescribed by law." (emphasis added)).

More recently, the Iowa Court of Appeals strictly applied the extraordinary service procedures of the nonresident motor vehicle statute in *Butler v. Nalvanko*, No. 10-984, 2011 WL 441483, at * 1 (Iowa Ct. App. Feb. 9, 2011). In *Butler*, the plaintiff sent the notice by certified mail rather than the mandated "restricted certified mail." *Id.* Subsequently, the notice was returned marked "returned to sender, attempted—not known." *Id.* After the ninety-day deadline to serve the original notice expired, the defendant's attorney filed a pre-answer motion to dismiss claiming the plaintiff "failed to send the notice via restricted certified mail as required by section 321.501(2), and 'even if the mailing had been properly restricted, [the plaintiff] cannot show that the notification was ever received or rejected by [the defendant], as required to effect service under Iowa law.'" *Id.* (emphasis added).

The plaintiff filed a resistance admitting her mistaken use of certified mail, in compliance with Iowa Code section 617.3 but not section 321.501, and claiming the method of service was moot since it was returned to sender. *Id.* at *2. The plaintiff also requested an extension of time to serve the defendant—filed a month after the ninety-day deadline. *Id.* The district court

granted the extension and the defendant filed an application for interlocutory appeal, which was granted. *Id.*

In reviewing the district court's order, the court of appeals found the district court had erred in denying the motion to dismiss as there was no "good cause" to justify the delay. *Id.* at *3. The court reasoned: [The plaintiff's] attempt in serving [the defendant] by certified mail was in clear contravention of section 321.501. As such, it constituted a legally insignificant attempt to serve that failed to provide adequate justification for the delay in service. *Id.* at *4.

There is no dispute that the extraordinary method of service for obtaining jurisdiction over the Retteraths required the Clerk of Court to mail notice to the Retteraths and then to "make a note of the mailing in the docket." Iowa Code § 626A.3(2). There is no note of the mailing in the docket. Jurisdiction over the Retteraths was not acquired "in the manner prescribed by law." *See Esterdahl*, 110 N.W.2d at 243–44. Therefore, the charging order is void for lack of personal jurisdiction over the Retteraths. *See L.F. Noll Inv.*, 816 N.W.2d at 398 (holding default judgment was void for lack of personal jurisdiction where the plaintiff failed to comply with the extraordinary notice procedure of Iowa Code 617.3).

D. The District Court Erred in Concluding there was no Due Process Ground for Vacating the Charging Order

The district court did not address the Retteraths' due process arguments in its initial ruling. Following the filing of the Retteraths' Rule 1.904(2) motion the district court, with little analysis[8], determined there was no due process ground to vacate the charging order. (Appx. p. 556). Again, this conclusion is in error.

The Due Process Clause of the Iowa Constitution provides, "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9. Similarly, the Fourteenth Amendment to the United States Constitution provides, "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Iowa Supreme Court has stated that it considers the Federal and Iowa Due Process Clauses "identical in scope, import and purpose." *War Eagle Vill. Apartments v. Plummer*, 775 N.W.2d 714, 719 (Iowa 2009). Due process protection "require[s] that deprivation by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As the Court noted in *Mullane*, "[t]his right to be heard has little reality or worth

[8] Most of the analysis was directed toward solely to Analia's claim she was denied due process.

unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 313.

1. The Statutory Scheme of Iowa Code chapter 626A Violates the Retterath's Right to Procedural Due Process

In *War Eagle*, the Iowa Supreme Court examined the statutory scheme for providing notice to a tenant in a forcible entry and detainer (FED) action to determine whether it was calculated to provide the tenant notice of the hearing where her eviction was to be determined. *War Eagle Vill. Apartments v. Plummer*, 775 N.W.2d 714, 715-16 (Iowa 2009). The Court summarized this statutory scheme as follows:

> To summarize, in a residential landlord-tenant situation, a hearing must be set not later than seven days from the date of the order scheduling the hearing. Iowa Code § 648.5. Service is required to be made upon the defendant not less than three days prior to the hearing. *Id.* Service may be made by certified mail as opposed to personal service, and a signed receipt verifying delivery is not required. *Id.* § 562A.29A(2). Finally, notice is deemed received by the tenant when it is mailed, whether or not the tenant receives the notice or signs a receipt for the notice. *Id.* § 562A.8.

War Eagle, 775 N.W.2d at 718 (emphasis added). The court noted that in determining whether a person is entitled to due process protections, the court applies the following two-step analysis: "First, the court must determine if the individual has been deprived of a protected liberty or property interest. If so,

the court must decide what process is due for that specific interest." *Id.* at 719 (citing *F.K. v. Iowa Dist. Ct.*, 630 N.W.2d 801, 808 (Iowa 2001)).

Accordingly, the court first concluded FED actions deprive tenants of a significant property interest. *See War Eagle*, 775 N.W.2d at 719–20. The court next determined that due process requires the following protection:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. . . .
>
> But when notice is a person's due, **process which is a mere gesture is not due process**. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

Id. at 720 (emphasis added) (quoting *Mullane*, 339 U.S. at 314–15 (citations omitted)).

The Iowa Supreme Court next examined the procedure provided for in the FED statutes in question. The Iowa Supreme Court then concluded as follows:

> Reading Iowa Code section 562A.29A(2) in conjunction with section 562A.8, which provides that service is complete upon mailing, we conclude this statutory scheme authorizes a process that is not reasonably calculated to give tenants adequate notice of hearings at which their continued occupancy of the premises

> will be determined. This scheme gives the illusion, but not the reality, of due process.
>
> There are two major factors that support our conclusion. First, the FED statutory scheme deems notice complete upon mailing. Under Iowa Code section 562A.8, service is deemed received when mailed. **Dropping a letter in a mailbox is not notice, yet is deemed sufficient notice. It is mere lip service to meaningful notice.**
>
> Second,[9] given the seven-day time frame between the order setting the hearing and the hearing as provided by Iowa Code section 648.5, the use of certified mail under Iowa Code section 562A.29A(2) makes it less likely that timely notice will be received.

War Eagle, 775 N.W.2d at 720–21 (citations omitted).

In applying the above analysis and holding to the facts at issue, we begin with the determination that the Retterath's have been deprived of a protected property interest. To wit, the Retteraths have been deprived of their transferrable interest in HES, which, is their personal property. *See Fuentes v. Shevin*, 407 U.S. 67, 96–97 (1972) (applying due process protection to personal property by striking down state statutes that allowed prejudgment replevin without notice and a right to contest prior to the seizure of the chattels); *Thorpe Credit, Inc. v. Barr*, 200 N.W.2d 535, 537 (Iowa 1972) (determining replevin statutes were defective because of due process

[9] As detailed below, the statutory scheme of Iowa Code chapter 626A does not even contain protections accompanying certified mail found to be illusory under the facts of *War Eagle*.

infirmities); *see also Forst v. Sioux City*, 209 N.W.2d 5, 8 (Iowa 1973) ("Due process requires no less as to those holding liens or encumbrances of record on personal property which may be damaged, destroyed or reduced in value by condemnation proceedings.").

Regarding the statutory scheme itself, Iowa Code 626A.2 notes that a foreign judgment "is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the district court of this state." The statutory scheme further provides a judgment creditor may execute or engage in the process of enforcing the judgment after the expiration of only "twenty days after the judgment is filed." Iowa Code § 626A.3(3). Yet, when it comes to notice of the filing of this judgment, the only protection provided the judgment debtor is that "[p]romptly upon filing of the foreign judgment[10] . . . the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given [by the creditor] and shall make note of the mailing in the docket." *See* Iowa Code § 626A.3(2). Thus, unlike the extraordinary methods for providing notice to non-residents discussed *supra*, Iowa Code chapter 626A provides for only service by regular mail. Further, like the impermissible scheme examined in

[10] In the case *sub judice* we have no way of knowing whether the mailing in question was done "promptly" as the Clerk failed to docket the mailing.

War Eagle, while not expressly so providing, the statutory scheme of chapter 626A clearly mandates that service is complete upon mailing and entry of the mailing in the docket, as it requires no certification of return receipt evidencing where the mailing went.

As emphasized above, our Iowa Supreme Court has clearly determined, "[d]ropping a letter in a mailbox is not notice, yet is deemed sufficient notice. It is mere lip service to meaningful notice." *War Eagle*, 775 N.W.2d at 720. Later, the court reiterated this point by stating, "the fact the notice is deemed received upon mailing compels a finding that there is no real desire to inform a tenant of a pending FED. *Id.* at 721. Thus, under Iowa precedent, the regular mail notice provided for in chapter 626A is not "reasonably calculated to give notice" of the filing of the foreign judgment in advance of enforcement proceedings; it simply was "not what someone who desired to actually inform [the Retteraths] would do." *Id*. at 721. Moreover, in the case *sub judice*, the procedural insufficiencies of the statutory scheme manifested, as neither Jason Retterath or Analia Retterath received notice of the filing of the foreign judgment prior to imposition of enforcement proceedings. Consequently, as in *War Eagle*, the means chosen to provide notice to the Retteraths violate the due process clauses of the Iowa Constitution and U.S. Constitution.

Having determined the statutory scheme of chapter 626A is unconstitutional as applied to the Retteraths, this Court should further conclude the statutory notice scheme is unconstitutional on its face. *War Eagle*, 775 N.W.2d at 722 n.3 ("A facial challenge asserts that the statute is void for every purpose and cannot be constitutionally applied to any set of facts." (citation omitted)). Put simply there are no set of facts under which the statutory scheme of Iowa Code chapter 626A, providing regular mail notice is complete upon mailing and contemporaneous docket entry, can be found to provide adequate notice to debtors of foreign judgments.

2. The District Court Erred in Concluding Analia Retterath's Right to Due Process was not Violated.

Even if the Court does not conclude the statutory scheme of chapter 626A violated the Retteraths' right to due process, Analia Retterath nonetheless received no due process in the subject action. Specifically, the mailing in question was not directed to Analia Retterath despite the fact Analia owned the transferrable interest made subject of the charging order. Importantly, as demonstrated by Exhibit 12, a simple letter to HES by WFEFI would have apprised WFEFI that "Jason Retterath jointly owns 2,250 membership units with his wife, Analia Retterath." (Appx. 307-308 (emphasis added)). Further, Analia was not made aware of WFEFI's attempts to enforce their foreign judgment until after the charging order was entered.

Analia Retterath never had an opportunity to contest WFEFI's placement of a lien on her property.

Interestingly, in its Addendum to Ruling on Motions for Summary Judgment, the district court states, "Analia offers no statutory provision or case law that requires WFEFI to serve her with notice of the application for the charging order or the notice of filing of foreign judgment." In stating, the district court either ignored or overlooked the Retteraths' citation to *Adamson v. Rice*, 478 N.W.2d 414, 415 (Iowa Ct. App. 1991). To wit, the issue before the court in *Adamson* was whether a father's homestead was exempt from execution for child support where he had remarried, and his current wife received no notice of the execution. *Id*. In assessing this issue, the court noted that while the public policy underlying child support recovery rises higher than homestead rights, "fundamental principle also must apply." *Id.* The court then acknowledged the wife was not party to the execution proceeding and received no notice of the sale of her homestead. *Id*. The court accordingly concluded, "the sheriff's execution is valid against [the husband] but not against [the wife]." *Id*.; *see also Conover v. Earl*, 26 Iowa 167, 169 (1868) ("The owner of a note may sell distinct shares thereof to different persons, who thus become co-owners; and the interest thus acquired by one co-owner is such as to enable him to protect it by an action . . ." (emphasis added)).

Significantly, as in the case at bar, the interest of the husband and wife could not be could not be split, e.g., "A creditor who seeks to satisfy [a] debt out of a homestead must be certain to have a right against the *whole* property, not just part of it." *See Adamson*, 478 N.W.2d at 416 (citing *Merchants Mut. Bonding Co. v. Underburg*, 291 N.W.2d 19, 21 (Iowa 1980). The court accordingly concluded the sheriff's sale "has not affected [the wife's] property interest in the homestead." Importantly, the court then held, "the fact that [the wife's] homestead interest is not subject to execution prevents execution on [the husband's] homestead interest." *Adamson*, 478 N.W.2d at 416; *In re Carstens*, 8 B.R. 524, 526–27 (Bankr. N.D. Iowa 1981) (stating that if one tenant's homestead interest is not subject to execution, entire homestead is exempt; creditors may not sell or execute to satisfy obligations of other joint tenant).

As in *Adamson*, Analia Retterath did not receive notice of filing of the foreign judgment or the proceeding executing on her property rights. As in *Adamson*, the levy by WFEFI on her transferrable interest in HES is invalid. Further, because Analia's interest in HES is owned in the entirety with Jason, and cannot be split, WFEFI is "prevent[ed] from execution" on this transferrable interest to satisfy the obligations of Jason alone. *See Adamson*, 478 N.W.2d at 416

CONCLUSION

Florida law applies to the Retteraths' ownership of their HES membership units and WFEFI's attempt to levy thereon. Under Florida law the Retteraths own these membership units as tenants by the entirety. Accordingly, WFEFI cannot levy against them to satisfy the debt owed by Jason Retterath only. The district court orders concluding otherwise should be reversed and remanded with direction to enter judgment sustaining the Retteraths' motion for summary judgment and thereby vacating the charging order.

In the alternative, the charging order is void as being issued without jurisdiction. The district court order concluding otherwise should be reversed and remanded with direction to enter judgment sustaining the Retterath's motion for summary judgment and thereby vacating the charging order. As a final alternative, the charging order is void as having been entered in violation of the Due Process Clauses of the Iowa Constitution and U.S. Constitution. The district court order concluding otherwise should be reversed and the case remanded with direction to enter judgment in favor of the Retteraths thereby vacating the charging order.

REQUEST FOR ORAL SUBMISSION

Counsel for Appellant respectfully requests oral submission of this case.

Respectfully submitted,

/s/ Jason W. Miller
Jason W. Miller
PATTERSON LAW FIRM L.L.P.
505 5th Avenue, Suite 729
Des Moines, IA 50309
Phone: 515-283-2147
FAX: 515-283-1002
E-mail: jmiller@pattersonfirm.com

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies he electronically filed the foregoing Appellants' Final Brief on September 11, 2018 via EDMS.

The undersigned hereby certifies on September 11, 2018, the foregoing Appellants' Final Brief was served by e-mail via EDMS on all parties of record.

/s/ *Jason W. Miller* September 11, 2018
Signature Date

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

[X] this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 12,317 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

[ ] this brief has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2)

/s/ *Jason W. Miller* September 11, 2018
Signature Date

ATTORNEY COST CERTIFICATE

I hereby certify the cost of printing the foregoing Appellants' Final Brief was the sum of $0 .00 .

/s/ *Jason W. Miller* September 11, 2018
Signature Date