

Forced Financial Aid: Two Arguments as to Why Iowa's Law Authorizing Courts to Order Divorced Parents to Pay Postsecondary-Education Subsidies Is Unconstitutional

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ABSTRACT: This Note analyzes the constitutionality of Iowa Code section 598.21F, which authorizes Iowa courts to order either parent party to a divorce to pay a postsecondary-education subsidy for his or her children between the ages of eighteen and twenty-two. Due to the location of the statute in the Iowa Code, the Iowa Supreme Court has held that this statute may create a mandatory obligation only for divorced parents to support their children's postsecondary educations. It cannot apply to married parents or parents who never married. This Note argues this varied application creates two classifications that violate the Equal Protection Clause of the U.S. Constitution. The first classification is between divorced and "nondivorced" parents. While this Note acknowledges section 598.21F probably does not discriminate unconstitutionally against divorced parents as a class, it nevertheless argues that it unconstitutionally discriminates against divorced parents as to the exercise of their "fundamental right to parent," which the U.S. Supreme Court first recognized in Meyer v. Nebraska and Pierce v. Society of Sisters, and recently reaffirmed in Troxel v. Granville. The second classification this Note examines is section 598.21F's discrimination between children of divorced parents who can receive postsecondary-education subsidies and nonmarital or "illegitimate" children who cannot. This Note argues that this distinction also violates the Equal Protection Clause and that the Iowa Supreme Court erred in rejecting such a claim in Johnson v. Louis.

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I. INTRODUCTION

Today, a postsecondary education is exceedingly important for occupational and financial success.¹ In 2007, the U.S. Department of Labor reported that “90 percent of the fastest-growing jobs of the future will require some postsecondary education or training.”² Additionally, recent statistics have shown that in one year, the average college graduate will earn almost double the salary of her peers who only have high-school diplomas.³ Over the course of an individual’s career, that difference calculates to nearly one million dollars.⁴ Given this data, it is unsurprising that college enrollments are increasing.⁵ In the fall of 2005, a record estimate of 17.4 million people enrolled in America’s colleges and universities.⁶ The National Center for Education Statistics estimates this number will increase twelve percent by 2014.⁷

This growth in postsecondary enrollment coincides with increased costs for higher education.⁸ For the 2004–2005 academic year, the average annual cost of attending a college or university was \$13,743.⁹ Compared to the previous ten years, this number represents a nearly thirty-percent increase in costs after adjustments for inflation.¹⁰ As a result, many American students

1. See generally U.S. DEP’T OF EDUC., HIGHER EDUCATION FOR A HIGHLY COMPETITIVE WORLD (2007) [hereinafter HIGHER EDUCATION], available at <http://www.ed.gov/teachers/how/prep/higher/higher-ed.pdf> (outlining the importance of today’s students attaining higher educations and highlighting the need for the federal government to support higher-education programs).

2. *Id.* (citing the U.S. Department of Labor).

3. 1 U.S. DEP’T OF EDUC., WHY GO TO COLLEGE? (2004–2005), available at <http://studentaid.ed.gov/students/attachments/siteresources/GotoCollege.pdf> (showing that in 2001, the average earnings of a college graduate were \$54,704 per year compared to \$30,056 for high-school graduates).

4. JENNIFER CHEESEMAN DAY & ERIC C. NEWBURGER, THE BIG PAYOFF: EDUCATIONAL ATTAINMENT AND SYNTHETIC ESTIMATES OF WORK-LIFE EARNINGS 3–4 (2002), available at <http://www.census.gov/prod/2002pubs/p23-210.pdf>.

5. See NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., DIGEST OF EDUCATION STATISTICS, 2005, at 1 (2006) [hereinafter DIGEST 2005], available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2006030> (analyzing the U.S. education system and providing statistics that show an increase in college enrollment); see also DAY & NEWBURGER, *supra* note 4, at 1–2 (reporting that in 2000, an “all-time high[]” number of people over the age of twenty-five had obtained “a bachelor’s degree or higher”).

6. DIGEST 2005, *supra* note 5, at 1.

7. *Id.*

8. DIGEST 2005, *supra* note 5, at 510–12 tbl.312.

9. *Id.* (calculating costs from both four-year private-school and four-year public-school tuition, room, and board). In 2004–2005, the average annual total cost of tuition, room, and board at a private institution was \$26,025. *Id.* For a public institution, the average total cost was \$9877. *Id.*

10. DIGEST 2005, *supra* note 5, at 279 (stating that the cost of attending a public institution rose by thirty percent, while the cost for a private institution rose by twenty-six percent).

struggle to meet the financial burden of paying for their educations and, upon graduation, face unprecedented amounts of debt.¹¹

Fortunately, many students receive financial aid in the form of loans, grants, and scholarships from the government and academic institutions themselves.¹² Nevertheless, this aid remains limited because the federal government, colleges, and universities still “consider it primarily the family’s responsibility to pay for school.”¹³ Therefore, they limit students’ financial-aid packages to the amount their families—not the students themselves—are unable to pay.¹⁴ Importantly, this limit applies regardless of whether the students’ families actually contribute to their college expenses.¹⁵

Although the parents of a number of American students help them cover their postsecondary-education costs,¹⁶ many students are not as fortunate and face this financial burden on their own.¹⁷ Statistically, many of these students are likely to come from divorced families.¹⁸ In fact, one study

11. See Matthew Hansen, *Higher Cost of Higher Education: College Grads In '05 Owed Twice as Much as Those a Decade Earlier, and Iowa's Average Debt Was Second-Highest: \$22,727*, OMAHA WORLD HERALD, Aug. 31, 2006, at 1B. The article states:

Rising tuition costs, waning support from state and federal governments, and changes in borrowing and spending habits caused last year’s U.S. college graduates to borrow twice as much as a decade earlier And low-income students, including those poor enough to qualify for federal Pell Grants, often are deepest in debt.

Id.

12. See FinAid, *What Can You Do If Your Parents Refuse to Help?*, <http://www.finaid.org/otheraid/parentsrefuse.phtml> (last visited Mar. 29, 2008) (discussing financial-aid options for students who do not have financial support from their parents); see also *Nontraditional Students and Circumstances: Special Considerations that Could Affect Your Route to Financial Aid*, U.S. NEWS & WORLD REP., Feb. 22, 2005 [hereinafter *Nontraditional Students*], available at http://www.usnews.com/usnews/edu/articles/040819/19sb_nontraditional.htm (“In the 1990s, the federal government decided that it was giving too much aid to families that had the means to pay college expenses.”).

13. FinAid, *supra* note 12.

14. See *Nontraditional Students*, *supra* note 12 (describing the requirements to be an “independent” student).

15. See *id.* (“Even if you live on your own, schools will expect your parents to fill out the Free Application for Federal Student Aid (FAFSA) and any other required forms and will compute your expected family contribution (EFC) based on their resources.”).

16. See FinAid, *supra* note 12 (giving statistics of parents who support their children’s college expenses).

17. See Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Minority Educational Expenses in Court-Ordered Child Support*, 34 IND. L. REV. 343, 343 (2001) (“Post-high school education is unattainable for many students without help from their parents, scholarships, loans, or all three.”); see also *Nontraditional Students*, *supra* note 12 (describing how students are in a “tough spot if [they are] officially ‘dependent,’ but [their] parents can’t or won’t contribute to college expenses”).

18. FinAid, *supra* note 12 (“29 percent of children with divorced parents get parental support for college expenses, compared with 88 percent of children from intact families.” (citing JUDITH S. WALLERSTEIN, JULIA M. LEWIS & SANDRA BLAKESLEE, *THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY* (2000))).

has shown that students whose parents are divorced are substantially less likely than their peers from intact families to receive financial support for postsecondary education from their parents.¹⁹ As the divorced population in the United States continues to climb,²⁰ the number of college students from divorced families who need financial assistance will almost certainly increase as well.

Some state legislatures have responded to this problem by authorizing state courts to order financially able divorced parents to support their children's pursuits of higher education.²¹ This Note examines the constitutionality of Iowa's version of such a statute, Iowa Code section 598.21F (the "Postsecondary-Support Statute"),²² which authorizes Iowa courts to order divorced parents to pay postsecondary-education subsidies for their children.²³ Specifically, it evaluates the constitutionality of that statute under the Equal Protection Clause of the U.S. Constitution.²⁴

II. THE HISTORY OF POSTSECONDARY-SUPPORT OBLIGATIONS IN IOWA

The existence of postsecondary-support obligations in Iowa arises from the concept of child support. In Iowa, noncustodial parents who are either divorced or unmarried have a legal duty to pay child support during their

19. *Id.* There are a number of possible reasons for this disparity. *Id.* Some divorced parents may harbor bitter feelings and deny support as a means of financially or emotionally hurting the other parent. *Id.* Others may have remarried and are more inclined to help children from current marriages than past marriages. *Id.* Some noncustodial divorced parents believe their duty to pay child support ends when their child reaches the age of majority. *Id.*; see *infra* Part II (discussing the age of majority). Still others, like some married parents, may simply feel that it is not their responsibility to pay for their children's college educations. FinAid, *supra* note 12.

20. See ARLENE F. SALUTER & TERRY A. LUGAILA, U.S. DEP'T OF COMMERCE, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1996 (1998), available at <http://www.census.gov/prod/3/98pubs/p20-496.pdf> (examining the changing marital trends of U.S. citizens from 1970 to 1996 and reporting that within that period, the population of divorced people in the United States more than quadrupled); see also Maxim Kniazkov, *For First Time, Unmarried Households Reign in U.S.*, USA TODAY, Oct. 15, 2006, available at http://www.usatoday.com/news/washington/2006-10-15-unmarried-households_x.htm (reporting that in 2006, married households in the United States became a minority for the first time in history).

21. Laura Johnson, *Child Support & College Support*, SMARTDIVORCE.COM, <http://www.smartdivorce.com/articles/college.shtml> (last visited Mar. 29, 2008). Johnson states:

The following states have specific statutes or case law that give courts the authority to order college support in some form: Alabama, the District of Columbia, Georgia, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Michigan, Missouri, Mississippi, Montana, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Carolina, Utah, West Virginia and Washington.

Id.

22. IOWA CODE § 598.21F (2007).

23. *Id.* § 598.21F(1).

24. U.S. CONST. amend. XIV, § 1.

children's minority.²⁵ In 1949, the Iowa Supreme Court characterized this duty by stating that parents are "morally and legally obligated, aside from any statute, to support [their children] during minority."²⁶ Following common-law tradition, however, unless the child is "physically or mentally unable to care for itself," an Iowa parent's obligation to support his or her child usually ends when the child reaches the age of majority.²⁷ But when does a child reach majority?

Before 1972, most states followed the common-law rule that an individual reached majority at the age of twenty-one.²⁸ Under this approach, courts were able to require parents to pay costs for their children's postsecondary educations when establishing or modifying regular child-support duties.²⁹ As a result, little controversy appeared to arise over educational-support issues from divorce proceedings because qualifying students were able to seek support from their divorced parents up until the age of twenty-one.³⁰ The issue became contentious, however, when states began to reconsider the age of majority in the 1960s.

In the late 1960s, in the wake of the Vietnam War, a sentiment arose in the United States that eighteen-year-olds ought to be able to participate and vote in the democratic process if the government could draft them for war.³¹ This sentiment led to the 1971 ratification of the Twenty-Sixth Amendment

25. IOWA CODE § 600B.1 (2007); *see also* IOWA CODE § 598.21B (2007) (authorizing the Iowa Supreme Court to maintain child-support guidelines). The Iowa Judicial Branch, pursuant to its statutory mandate, has stated:

Parents have a legal obligation to support their minor children. This obligation shall continue for a child who is between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of requirements prior to the person reaching nineteen years of age; and may include support for a child of any age who is dependent on the parties because of physical or mental disability.

Iowa Judicial Branch, Child Support, http://www.judicial.state.ia.us/Self_Help/Family_Law/Child_Support (last visited Mar. 29, 2008).

26. *Addy v. Addy*, 36 N.W.2d 352, 354 (Iowa 1949); *see also* *Porter v. Powell*, 44 N.W. 295, 296 (Iowa 1890) ("[I]t is the legal as well as moral duty of parents to furnish necessary support to their children during minority . . .").

27. *Johnson v. Lewis*, 654 N.W.2d 886, 887 (Iowa 2002) (citing *Davis v. Davis*, 67 N.W.2d 566, 568 (Iowa 1954); *Addy*, 36 N.W.2d at 354; *Blachley v. Laba*, 18 N.W. 658, 658 (Iowa 1884)).

28. *See id.* ("At common law the time one became of age was twenty-one." (citing 42 AM. JUR. 2D *Infants* § 5, at 16 (2000))); Kathleen Conrey Horan, *Post-Minority Support for College Education—A Legally Enforceable Obligation in Divorce Proceedings?*, 18 N.M. L. REV. 153, 155 (1988).

29. *See* Charles F. Willson, Note, *But Daddy, Why Can't I Go to College? The Frightening Decline of Support for Children's Post-Secondary Education*, 37 B.C. L. REV. 1099, 1103 (1996) ("Before the 26th Amendment and the subsequent state statutes, the issue of post-secondary education support raised only a few questions.").

30. Horan, *supra* note 28, at 155.

31. *Id.* at 153.

to the U.S. Constitution, which lowered the minimum voting age to eighteen.³² This change resulted in a number of states, including Iowa, reducing their definitions of the age of majority.³³ In 1972, Iowa lowered the age of majority from twenty-one to nineteen.³⁴ In 1973, Iowa lowered the age again to eighteen.³⁵ Today, most states impose child-support obligations until the age of eighteen with some, including Iowa, extending the obligation to nineteen if the child is still a full-time high school student.³⁶

Since lowering the age of majority, state legislatures and courts have struggled to identify when to require divorced or divorcing parents to pay for their children's postsecondary educations. Today, states typically follow one of three approaches.³⁷ First, some states reject any requirement of support obligations of a divorced or divorcing parent after a child reaches the age of majority.³⁸ Second, some states authorize courts to order postsecondary-education support if that support is part of an agreed upon settlement between the divorced or divorcing parents.³⁹ In these states, however, if divorced or divorcing parents do not have an agreement to contribute to their children's postsecondary educations, then courts cannot independently order them to provide it.⁴⁰ Finally, some states authorize courts to either enforce agreements or independently order divorced or divorcing parents to pay postsecondary-education support when such agreements do not exist.⁴¹ Iowa follows this last approach.⁴²

32. *Id.*; see also U.S. CONST. amend. XXVI (lowering the voting age to eighteen).

33. Horan, *supra* note 28, at 155.

34. Johnson v. Louis, 654 N.W.2d 886, 887–88 (Iowa 2002) (citing Act of Apr. 19, 1972, ch. 1027, § 49, 1972 Iowa Acts 83, 94 (codified as amended at IOWA CODE § 599.1 (2007))).

35. *Id.* at 888 (citing Act of Mar. 7, 1973, ch. 140, § 49, 1973 Iowa Acts 311, 321 (codified as amended at IOWA CODE § 599.1 (2007))).

36. McMullen, *supra* note 17, at 343; see also Iowa Judicial Branch, *supra* note 25 (discussing child-support obligations). The Iowa Judicial Branch stated:

[The child-support] obligation [in Iowa] shall continue for a child who is between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of requirements prior to the person reaching nineteen years of age

Id.

37. See Willson, *supra* note 29, at 1103 (noting these “three responses to the change in majority age” and surveying the state of the law in 1996); see also Horan, *supra* note 28, at 155–57 (categorizing the states’ approaches to the change in 1988).

38. See LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION § 4.05(d) (Supp. 2007) (surveying U.S. state laws regarding postsecondary-education responsibilities for child support and listing states where parents have no obligation to support their children after they reach the age of majority).

39. *Id.* (listing states where parents have no duty to support their children’s pursuits of higher educations “in the absence of an agreement”).

40. Willson, *supra* note 29, at 1103.

41. See MORGAN, *supra* note 38, § 4.05(d) (surveying state laws and listing states that allow courts to order post-secondary support in divorce proceedings).

Traditionally, Iowa has required divorced or divorcing parents to pay some form of support for their children's pursuits of higher education. Prior to 1997, the Iowa Code defined "support" in its child-support statutes to require noncustodial parents to support any children between eighteen and twenty-two years old who were attending high school or pursuing approved postsecondary education full-time.⁴³ This definition effectively gave Iowa courts the authority to conceive the age of majority broadly if the "child pursued a postsecondary education as a fulltime student."⁴⁴ In 1997, however, the Iowa legislature "remove[d] the postsecondary-support clause from the definition of support" and "redefined support to terminate at age nineteen."⁴⁵ The legislature then enacted a new statute—formerly codified at Iowa Code section 598.21(5A) and now codified at section 598.21F—authorizing courts to order either parent or both parents party to a divorce to pay a postsecondary-education subsidy.⁴⁶

Under this statute, Iowa courts can order postsecondary-education subsidies for children who are (1) eighteen to twenty-two years of age; (2) unmarried; and (3) enrolled full-time in a college, regularly attending vocational or technical training, or "accepted for admission to a college" for the next regular term.⁴⁷ Additionally, a qualifying child cannot have repudiated his or her parent "by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner."⁴⁸ If a child meets these qualifications, Iowa courts have the discretion to order one or both of the divorced parents to pay a postsecondary-education subsidy "if good cause is shown."⁴⁹ To determine good cause, courts consider "the age of the child, the ability of the child relative to postsecondary education, the child's

42. See IOWA CODE § 598.21F (2007).

43. *In re Marriage of Pals*, 714 N.W.2d 644, 647 (Iowa 2006) ("Prior to July 1, 1997 . . . [o]ur legislature defined child 'support' under section 598.1(6) to generally include support of a child between the ages of eighteen and twenty-two who was a fulltime college student." (citing IOWA CODE §§ 598.1(6), 598.21 (1995))); see also *In re Marriage of Vannausdle*, 668 N.W.2d 885, 888 (Iowa 2003) ("Prior to [1997], the parental obligation of 'support' was statutorily defined to include children who attend vocational training after high school or attend college." (citing IOWA CODE § 598.1(6) (1995))).

44. *Pals*, 714 N.W.2d at 647.

45. *Id.* (citing Act of May 21, 1997, ch. 175, §§ 185, 190, 1997 Iowa Acts 399, 456–58 (codified as amended at IOWA CODE §§ 598.1, 598.21F (2007)) and *In re Marriage of Mullen-Funderburk*, 696 N.W.2d 607, 609 (Iowa 2005)).

46. *Id.* In 2005, the legislature recodified the statute without change as Iowa Code section 598.21F. See Act of Apr. 28, 2005, ch. 69, § 44, 2005 Iowa Acts 185, 200–01 (codified as amended at IOWA CODE § 598.21F (2007)).

47. IOWA CODE § 598.21F (2007); see also *In re Marriage of Neff*, 675 N.W.2d 573, 581 (Iowa 2004) (limiting the age range in which children qualify for a postsecondary-education subsidies to "older than seventeen but less than twenty-three"). Thus, under *Neff*, support does not end on a child's twenty-second birthday, but instead ends on his or her twenty-third birthday. See *id.*

48. IOWA CODE § 598.21F(4) (2007).

49. *Id.* § 598.21F(1).

financial resources, whether the child is self-sustaining, and the financial condition of each parent.”⁵⁰ If good cause is not present, the statute does not require courts to order a postsecondary-education subsidy.⁵¹ If good cause is present, however, courts can order one or both parents to pay up to one-third of “the cost of attending an in-state public institution.”⁵² Under the statute, courts are to base this amount on “the reasonable costs for only necessary postsecondary education expenses.”⁵³ Thereafter, courts may terminate the subsidy “if the child fails to maintain a cumulative grade point average in the median range or above during the first calendar year [of his or her postsecondary education].”⁵⁴

These statutory requirements create a number of explicit classifications that determine both who may be obligated to pay and who may be qualified to receive court-ordered postsecondary-education subsidies.⁵⁵ This Note, however, focuses on the additional classifications implicitly created by the statute’s location within the Iowa Code. The Postsecondary-Support Statute is located in chapter 598 of the Iowa Code, which governs “Dissolution of Marriage and Domestic Relations.”⁵⁶ Therefore, according to Iowa courts, the statute only applies in situations involving divorce and does not apply to familial situations involving married parents or parents who never married.⁵⁷ Such an application of the statute creates two unconstitutional classifications.

The first classification is between different types of parents. Under Iowa law, courts may only order divorced parents to pay postsecondary-education subsidies.⁵⁸ They may not order married parents or parents who never married to do the same. As a result, Part IV of this Note argues this distinction among parents is unconstitutional.⁵⁹ The second classification is between different types of children. Specifically, the location of the Postsecondary-Support Statute only allows children of divorced parents to

50. *Id.* § 598.21F(2).

51. *In re Marriage of Sullins*, 715 N.W.2d 242, 253 (Iowa 2006).

52. IOWA CODE § 598.21F(2)(a) (2007).

53. *Id.*

54. *Id.* § 598.21F(5); *see also In re Marriage of Moore*, 702 N.W.2d 519, 520–21 (Iowa Ct. App. 2005) (denying a postsecondary-education subsidy when a student’s grade point average of 1.48 was well below the median).

55. For example, the statute explicitly excludes people based on wealth, ability, age, and behavior. *See* IOWA CODE § 598.21F(2), (4), (5) (2007).

56. IOWA CODE § 598 (2007).

57. *See Moore*, 702 N.W.2d at 519 (“[Section 598.21(5A)] does not apply to parents who are still married to each other or those who never married.” (citing *Johnson v. Louis*, 654 N.W.2d 886, 891 (Iowa 2002))).

58. *See id.*

59. *See infra* Part IV.

receive postsecondary-education subsidies.⁶⁰ Children of married parents and, perhaps most troubling, nonmarital, or “illegitimate,” children cannot receive the same court-ordered support.⁶¹ Part V of this Note argues this classification is also unconstitutional under the Equal Protection Clause of the U.S. Constitution.⁶²

III. THE EQUAL PROTECTION CLAUSE

Both the U.S. Constitution and the Iowa Constitution contain Equal Protection Clauses.⁶³ The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁶⁴ In comparison, the Equal Protection Clause of the Iowa Constitution states that “[a]ll 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.”⁶⁵ Despite the difference in language, the Iowa Supreme Court “usually deem[s] the federal and state Equal Protection Clauses to be identical in scope, import, and purpose.”⁶⁶ Thus, Iowa courts usually analyze challenges to both Clauses identically and simultaneously.⁶⁷ As a result, this Note limits its analysis to federal law and federal interpretation of the Equal Protection Clause of the U.S. Constitution.

Since the 1954 decision *Brown v. Board of Education*,⁶⁸ “the Supreme Court has relied on the equal protection clause as a key provision for combating invidious discrimination and for safeguarding fundamental

60. See *Johnson*, 654 N.W.2d at 888–89 (holding that the Iowa Postsecondary-Support Statute does apply to nonmarital children).

61. *Id.*

62. See *infra* Part V.

63. See U.S. CONST. amend. XIV, § 1; IOWA CONST. art. I, § 6.

64. U.S. CONST. amend. XIV, § 1.

65. IOWA CONST. art. I, § 6.

66. *Johnson*, 654 N.W.2d at 890.

67. *Id.* But see *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 3–4 (Iowa 2004) (striking down a “statute taxing gross gambling receipts generated at racetracks at a rate nearly twice the rate imposed on gross gambling receipts generated on riverboats” under the Iowa Equal Protection Clause, despite the fact that the U.S. Supreme Court ruled that the statute did not violate the U.S. Constitution’s Equal Protection Clause (citing *Fitzgerald v. Racing Ass’n of Cent. Iowa*, 539 U.S. 103, 110 (2003) (holding that the “State’s differential tax rate does not violate the Federal Equal Protection Clause”))). However, while a law can be valid under the U.S. Constitution and invalid under a state constitution, the inverse is not true because the U.S. Constitution is “the supreme Law of the Land.” U.S. CONST. art. VI. Thus, a law that violates the U.S. Constitution is invalid regardless of the result of state constitutional analysis. *Id.*

68. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (striking down school segregation under the Equal Protection Clause).

rights.”⁶⁹ Laws implicate the Equal Protection Clause when they create classifications among people.⁷⁰ Generally, laws classify people in two ways.⁷¹ First, laws classify people when they explicitly limit certain types of people from doing certain things.⁷² Examples include laws that limit which races or genders can attend particular schools,⁷³ where people with disabilities can live,⁷⁴ or at what age people can drive.⁷⁵ Second, laws classify people when they effectively limit certain types of people from doing certain things.⁷⁶ That is, a law may be neutral in its language, but its application may discriminate against certain groups of people in favor of others.⁷⁷ For example, if a law “requires that all police officers be at least 5’10” tall and [weigh] 150 pounds,” it would discriminate against women because, even though the law appears to be gender neutral, statistically fewer women than men meet the requirement.⁷⁸

Not all laws that discriminate, however, violate the Equal Protection Clause. It is constitutional for governments to limit the driving age to sixteen or establish communication requirements for police officers.⁷⁹ Such classifications are permissible because governments have sufficient justifications for creating those distinctions.⁸⁰ Some classifications, however, require more justification than others.

Courts subject different classifications to one of three levels of scrutiny.⁸¹ First, courts give strict scrutiny to laws that classify suspect groups or limit how certain groups may exercise fundamental rights.⁸² In these

69. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 9.1.1 (3d ed. 2006).

70. *Id.* § 9.1.2.

71. *Id.*

72. *Id.*

73. *See generally Brown*, 347 U.S. 483 (1954) (striking down school segregation).

74. *See generally City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (striking down zoning laws that limited where people with disabilities could live).

75. CHEMERINSKY, *supra* note 69, § 9.1.2.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*; *see also Washington v. Davis*, 426 U.S. 229, 232 (1976) (upholding a “qualifying test administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department” despite the fact that more African-American applicants failed the test than Caucasians).

80. *See Washington*, 426 U.S. at 250 (upholding qualifying tests for police officers because it was “apparent to [the Court] . . . that some minimum verbal and communicative skill would be very useful, if not essential, to satisfactory progress in the training regimen”); *see also CHEMERINSKY, supra* note 69, § 9.1.2 (explaining that the type of discrimination determines whether a justification is sufficient).

81. *See United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 & n.4 (1938) (discussing different levels of scrutiny under the Equal Protection Clause of the U.S. Constitution).

82. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (citing *Graham v. Richardson*, 403 U.S. 365 (1971); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969);

cases, governments may justify their discriminating practices only by showing that the laws in question “are narrowly tailored measures that further compelling governmental interests.”⁸³ Second, courts give intermediate scrutiny to laws that classify “quasi-suspect” groups.⁸⁴ Here, in order for a classifying law to be constitutional, governments must justify their discriminating practices by showing that the laws at issue “serve important governmental objectives and [are] substantially related to achievement of those objectives.”⁸⁵ Finally, the remaining classifications only require courts to apply minimal scrutiny.⁸⁶ In these situations, courts employ a rational-basis review of the law and give deference to legislative decisions.⁸⁷ Under a rational-basis review, “[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.”⁸⁸

Not surprisingly, courts applying higher levels of scrutiny are more likely to find that a challenged law violates the Equal Protection Clause.⁸⁹ Thus, it is imperative for courts to identify correctly the type of classification at issue so that they may apply the proper level of scrutiny. If the challenged law does not withstand judicial scrutiny, a court must strike it down as unconstitutional.⁹⁰

IV. THE CLASSIFICATION OF PARENTS

The first classification of the Postsecondary-Support Statute that this Note evaluates is the Statute’s distinction between divorced and nondivorced parents. For the purpose of this Note, nondivorced parents include both married parents and parents of nonmarital children. As noted above, the Postsecondary-Support Statute is located in Iowa Code chapter 598, which

Shapiro v. Thompson, 394 U.S. 618 (1969); McLaughlin v. Florida, 379 U.S. 184 (1964); Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535 (1942)). An example of a suspect classification is a race classification. *See* Loving v. Virginia, 388 U.S. 1, 11 (1967) (applying strict scrutiny to a race classification because racial classifications are suspect). Other examples of suspect classifications include national origin and alienage. CHEMERINSKY, *supra* note 69, § 9.1.2.

83. Johnson v. California, 543 U.S. 499, 505 (2005) (quoting Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995)).

84. CHEMERINSKY, *supra* note 69, § 9.1.2. Examples of quasi-suspect classifications include child legitimacy or gender classifications. *See* Clark v. Jeter, 486 U.S. 456, 461 (1988) (stating that “illegitimate children” are a quasi-suspect class); Craig v. Boren, 429 U.S. 190, 197 (1976) (stating that gender is a quasi-suspect class).

85. *Craig*, 429 U.S. at 197.

86. CHEMERINSKY, *supra* note 69, § 9.1.2.

87. United States v. Carolene Prods. Co., 304 U.S. 144, 152 & n.4 (1938).

88. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985) (citing Schweiker v. Wilson, 450 U.S. 221, 230 (1981); U.S. R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 174–75 (1980); Vance v. Bradley, 440 U.S. 93, 97 (1979); New Orleans v. Duke, 427 U.S. 297, 303 (1976)).

89. CHEMERINSKY, *supra* note 69, § 9.1.2.

90. *Id.*

governs “Dissolution of Marriage and Domestic Relations.”⁹¹ This location limits the statute’s application and creates a statewide classification whereby courts may order only divorced parents to pay postsecondary-education subsidies.⁹²

This Part evaluates two potential ways this discrimination among parents may be unconstitutional under the Equal Protection Clause of the U.S. Constitution.⁹³ First, it examines whether the law unconstitutionally discriminates against divorced parents as a class. Second, it examines whether the law unconstitutionally discriminates against divorced parents in the exercise of their rights.

A. *WHETHER THE IOWA POSTSECONDARY-SUPPORT STATUTE UNCONSTITUTIONALLY DISCRIMINATES AGAINST DIVORCED PARENTS AS A CLASS*

As noted above, courts evaluating whether a challenged law violates the Equal Protection Clause must determine the proper level of scrutiny they should use for review.⁹⁴ Courts apply different levels of scrutiny based on the types of classifications made by the laws in question.⁹⁵ For purposes of equal-protection analysis, courts have said that laws make suspect, quasi-suspect, or nonsuspect classifications.⁹⁶ Suspect classifications receive strict scrutiny, quasi-suspect classifications receive intermediate scrutiny, and nonsuspect classifications receive minimal scrutiny.⁹⁷ After a court determines the proper classification, it applies the appropriate level of scrutiny to determine whether the government is justified in making its classifications.⁹⁸

1. The Proper Level of Scrutiny for Divorced Parents as a Class

To determine whether the Postsecondary-Support Statute unconstitutionally discriminates against divorced parents as a class, a court must first determine whether divorced parents represent a suspect, quasi-suspect, or nonsuspect class. The U.S. Supreme Court has never determined if a classification based on marital status is worthy of heightened scrutiny under the Equal Protection Clause. However, “[the Court] has previously suggested that distinctions based on marital status are not suspect.”⁹⁹

91. *See supra* notes 56–57 and accompanying text (discussing the location of the Postsecondary-Support Statute).

92. *See supra* notes 56–57 and accompanying text (same).

93. U.S. CONST. amend. XIV, § 1.

94. *See supra* notes 79–89 and accompanying text (discussing the equal-protection analysis).

95. *See supra* notes 79–89 and accompanying text (same).

96. *See supra* notes 79–89 and accompanying text (same).

97. *See supra* notes 79–89 and accompanying text (same).

98. *See supra* notes 79–89 and accompanying text (same).

99. *In re Marriage of McGinley*, 19 P.3d 954, 962 & n.13 (Or. Ct. App. 2001) (citing *Califano v. Jobst*, 434 U.S. 47, 53 (1977)). The U.S. Supreme Court in *Califano* stated:

Courts typically reserve suspect or quasi-suspect classification for only those groups that meet certain characteristics.¹⁰⁰ Such groups include those that have a history of being discriminated against, are classified by an immutable trait, and are politically underrepresented or weak.¹⁰¹ Courts also consider the likelihood that the classification reflects prejudice and whether the classifying trait affects a group's ability "to participate in and contribute to society."¹⁰² If the classification likely reflects prejudice or the classifying trait has little bearing on a person's ability to contribute to society, courts are likely to be more suspicious of the discrimination and are more apt to apply heightened scrutiny to the law.¹⁰³ Divorced parents as a class meet few, if any, of these characteristics.

While divorced parents might be able to point to some history of negative stigma in the United States, this stigma certainly does not compare to the nation's history of race or gender discrimination.¹⁰⁴ Divorce is also not an immutable characteristic; it is a choice or the result of a choice.¹⁰⁵ Further, the growing population of divorced people in the United States reflects that they are politically represented, possess political power, and are probably not commonly victims of prejudice.¹⁰⁶

Perhaps the only claim that divorced parents have to status as a suspect or quasi-suspect class is that their classifying trait has little bearing on their

Differences in race, religion, or political affiliation could not rationally justify a difference in eligibility for social security benefits, for such differences are totally irrelevant to the question [of] whether one person is economically dependent on another. But a distinction between married persons and unmarried persons is of a different character.

Califano, 434 U.S. at 53.

100. CHEMERINSKY, *supra* note 69, § 9.1.2.

101. *Id.*; see *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439–44 (1985) (applying these characteristics to determine whether Americans with disabilities constitute a suspect or quasi-suspect class).

102. CHEMERINSKY, *supra* note 69, § 9.6, at 777 (quoting *Mathews v. Lucas*, 427 U.S. 495, 505 (1976)); see also *id.* § 9.1.2.

103. See *id.* §§ 9.1.2, 9.6.

104. See *McGinley*, 19 P.3d at 960 (deciding that "[a]lthough the issue is not beyond dispute, . . . divorced parents have not been the subject of stereotyping or prejudice to an extent that would render them a suspect class"). The Oregon Court of Appeals also recognized that it was not apparent that divorced parents suffered similar social or political obstacles as groups discriminated against on the basis of race, gender, or alienage. *Id.*

105. See IOWA CODE ANN. § 598 (West 2007) (discussing the petition requirements and procedures to attain a dissolution of marriage or divorce); see also Judicial Branch of Iowa, Iowa Divorce Law Overview, http://www.judicial.state.ia.us/self_help/Family_Law/Divorce/ (last visited Mar. 29, 2008) ("A person seeking a divorce must file a written *Petition for Dissolution of Marriage* with the clerk of court office and pay a filing fee."); Oregon Counseling, Understanding and Dealing with Children During Divorce, <http://www.oregoncounseling.org/Handouts/DivorceChildren.htm> (last visited Mar. 29, 2008) ("Divorce is a failure of a couple's commitment to their marital and family roles.").

106. See *supra* note 20 (discussing the growing population of divorced people).

potential to contribute to society.¹⁰⁷ This fact, however, is probably not enough for a reasonable court to view divorced parents as a suspect or quasi-suspect class, especially because “the [U.S. Supreme] Court has shown little willingness in the past three decades to subject additional classifications to strict or intermediate scrutiny.”¹⁰⁸ State courts that have examined the issue, including the Iowa Supreme Court, agree.

In 1980, when Iowa law still defined “support” to include postsecondary-education costs,¹⁰⁹ the Iowa Supreme Court heard *In re Marriage of Vrban*, a case in which a divorced father challenged the constitutionality of his obligation to support his child through college.¹¹⁰ The father in *Vrban* argued that the law violated the Equal Protection Clauses of the U.S. and Iowa Constitutions because “there [was] no similar obligation [to support children] for those parents who remain[ed] married.”¹¹¹ The Iowa Supreme Court evaluated this claim and held that divorced parents were not a suspect class worthy of heightened scrutiny.¹¹² The New Hampshire Supreme Court,¹¹³ the Oregon Court of Appeals,¹¹⁴ and the Pennsylvania Supreme Court¹¹⁵ have heard similar challenges to their respective states’

107. This Note does recognize that in some cases, divorces may have devastating effects on the actual parties involved. Nevertheless, logically, a person’s status as a divorcee probably does not inherently change his or her overall ability or potential.

108. CHEMERINSKY, *supra* note 69, § 9.1.2.

109. See *supra* notes 43–44 and accompanying text (discussing Iowa’s previous laws that included postsecondary support in the definition of “support”).

110. *In re Marriage of Vrban*, 293 N.W.2d 198, 200 (Iowa 1980). The postsecondary-support statute in question in *Vrban* was Iowa Code section 598.1(2). *Id.* at 201 (citing IOWA CODE § 598.1(2) (1977)). That statute provided:

“Support” or “support payments” means any amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include . . . child support . . . and any other term used to describe such obligations. Such obligations may include support for a child who is between the ages of eighteen and twenty-two years who is regularly attending an approved school . . . , or is, in good faith, a full-time student in a college, university, or area school; or has been accepted for admission to a college . . . ; or a child of any age who is dependent on the parties to the dissolution proceeding because of physical or mental disability.

Id. (quoting IOWA CODE § 598.1(2) (1977)).

111. *Id.* at 201.

112. *Id.*

113. See *LeClair v. LeClair*, 624 A.2d 1350, 1356–57 (N.H. 1993) (using a rational-basis test to uphold a statute that allowed courts to require divorced parents, but not nondivorced parents, to pay postsecondary-education subsidies). The New Hampshire Supreme Court notably relied on *Vrban* to reach its decision. See *id.* at 1357.

114. See *In re Marriage of McGinley*, 19 P.3d 954, 959–62 (Or. Ct. App. 2001) (holding that Oregon’s postsecondary-support statute’s classification between married parents and nonmarried parents was not a suspect classification and applying a rational-basis test to uphold the law).

115. See *Curtis v. Kline*, 666 A.2d 265, 268–70 (Pa. 1995) (applying a rational-basis review and striking down Pennsylvania’s postsecondary-support law).

postsecondary-support statutes and agreed that divorced parents are not a suspect or quasi-suspect class. Thus, if divorced parents in Iowa challenged the current Postsecondary-Support Statute by claiming that the law unconstitutionally classified them as a group, it is unlikely a court would consider the law's classification suspect. Therefore, the court would only apply a rational-basis review of the law.

2. Whether the Iowa Postsecondary-Support Statute Is Constitutional Under a Rational-Basis Review

A divorced parent would probably lose an Equal Protection challenge to Iowa's current Postsecondary-Support Statute if the court reviewing the law applied a rational-basis review. Under this standard of review, courts give deference to the intent of the legislators when considering the constitutionality of a law in question.¹¹⁶ Courts will uphold challenged laws if they are able to find a logical nexus between the laws in question and a legitimate government purpose.¹¹⁷ Courts rarely strike down laws under a rational-basis review; a court applying this test might even consider ad hoc rationales as legitimate reasons to uphold challenged statutes.¹¹⁸

In *Vrban*, the Iowa Supreme Court applied a rational-basis review and upheld a divorced parent's challenge to Iowa's previous law on postsecondary-support obligations.¹¹⁹ The court held that higher education was "[c]learly . . . a matter of legitimate state interest" and that the state legislature did not act arbitrarily or unreasonably by limiting the obligation to divorced parents.¹²⁰ The court reasoned that discriminating against divorced parents under the statute was justified because divorced parents were less likely than married parents to support their children in college.¹²¹ As a result, the court held that the law was constitutional.¹²² The New Hampshire Supreme Court¹²³ and the Oregon Court of Appeals¹²⁴ reached

116. CHEMERINSKY, *supra* note 69, § 9.1.2.

117. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152–54 (1938) (discussing rational-basis review).

118. *Id.*

119. *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980) (“[W]e find the state has a legitimate interest in promoting higher education for its citizens. Section 598.1(2) is rationally related to protecting that interest and does so in a manner that is neither arbitrary nor unreasonable.”).

120. *Id.* In support of this conclusion, the Iowa Supreme Court cited its decision in *Gerik v. Gerik*, 144 N.W.2d 104, 109 (Iowa 1966), where it “recognized the increasing importance which society places on education.” *Vrban*, 293 N.W.2d at 202. It also argued that the importance of education to the state was evidenced by the state's maintenance of three state universities and “by the ever-increasing appropriations for educational purposes.” *Id.*

121. *Vrban*, 293 N.W.2d at 202.

122. *Id.*

123. See *LeClair v. LeClair*, 624 A.2d 1350, 1356–57 (N.H. 1993) (using a rational-basis test to uphold a statute that allowed courts to require divorced parents, but not nondivorced parents, to pay postsecondary-education subsidies).

similar conclusions to challenges by divorced parents to each state's postsecondary-support laws.

The Pennsylvania Supreme Court, however, held in *Curtis v. Kline* that Pennsylvania's postsecondary-support statute was unconstitutional under a rational-basis review.¹²⁵ In *Curtis*, a divorced father challenged the constitutionality of Pennsylvania's postsecondary-support law.¹²⁶ He claimed the law violated the Equal Protection Clause of the Fourteenth Amendment because the law did not impose a similar obligation on married parents.¹²⁷ The Pennsylvania Supreme Court agreed, but focused its analysis on how the law created classifications of children based on the status of their parents.¹²⁸ Specifically, the Pennsylvania Supreme Court held that the Pennsylvania law unconstitutionally discriminated among children in college who needed financial assistance from their parents.¹²⁹ The court reasoned that there was not "a legitimate interest in treating children of . . . divorced . . . parents differently than children of married parents with respect to the costs of postsecondary education."¹³⁰ The court also declared that the state could not selectively apply its authority "to empower only those from non-intact families to compel" financial assistance from their parents.¹³¹ As a result, it ruled in favor of the father.¹³²

Although a divorced parent challenging Iowa's Postsecondary-Support Statute might be able to convince a court to follow the *Curtis* decision, the law should probably withstand a rational-basis review. States have a legitimate interest in the education and training of their populace, and data suggest that children of divorced parents are much less likely than their peers from married families to receive postsecondary support from their parents.¹³³ This may impede children whose parents are divorced from going to college. A rational legislator might think that a proper remedy to this problem would be to grant courts the power to order divorced parents to pay postsecondary-education subsidies when they are financially capable of doing so. Given the judicial deference owed to the legislature under a

124. See *In re Marriage of McGinley*, 19 P.3d 954, 959–62 (Or. Ct. App. 2001) (holding that Oregon's postsecondary-support statute's classification between married parents and nonmarried parents was not a suspect classification and applying a rational-basis test to uphold the law).

125. *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995).

126. *Id.* at 267.

127. *Id.* at 269.

128. *Id.* at 267–68.

129. *Id.* at 269.

130. *Curtis*, 666 A.2d at 269.

131. *Id.*

132. *Id.*

133. See *supra* notes 19, 119–21 and accompanying text (discussing statistics showing that divorced parents are less likely than married parents to contribute to their children's higher educations and discussing the state's interest in higher education).

rational-basis review, it is likely that a court in Iowa would find the Postsecondary-Support Statute reasonable. Thus, despite the Pennsylvania Supreme Court's ruling in *Curtis*, Iowa's Postsecondary-Support Statute probably would withstand a constitutional challenge from a divorced parent claiming that the law discriminates against divorced parents as a class.

B. WHETHER THE IOWA POSTSECONDARY-SUPPORT STATUTE UNCONSTITUTIONALLY DISCRIMINATES AGAINST DIVORCED PARENTS AS TO THE EXERCISE OF THEIR RIGHTS

As seen in the previous section, a court would likely apply a rational-basis review and uphold the Postsecondary-Support Statute if divorced parents challenged it and only argued it discriminated against them as a class. Iowa's Postsecondary-Support Statute, however, implicates another prong of equal-protection analysis. Courts also review laws under the Equal Protection Clause when laws discriminate among people as to the exercise of their rights.¹³⁴ When a law discriminates "among people as to the exercise of a fundamental right," courts apply strict scrutiny regardless of the characteristics of a given class.¹³⁵ When a law discriminates among people for their exercise of nonfundamental rights, courts only give the law minimal scrutiny.¹³⁶ Therefore, when a law limits certain people in the exercise of their rights, a court must first determine whether the limited right is fundamental in order to determine which level of scrutiny to apply.¹³⁷

1. Whether the Iowa Postsecondary-Support Statute Interferes with Divorced Parents' Fundamental Right to Parent

The Postsecondary-Support Statute discriminates against divorced parents as to what this Note will refer to as the "fundamental right to parent." The U.S. Supreme Court recognized the fundamental right to parent in 1923 when the Court held that people have a fundamental right, under the Due Process Clause of the Fourteenth Amendment, "to establish a home and bring up children . . ."¹³⁸ Two years later, in 1925, the Court held that this right includes the right "to direct the upbringing and education of children under their control."¹³⁹ In 2000, the Court characterized this

134. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (stating that courts will give deference to the legislature unless a law "appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth" (citing *Lovell v. Griffin*, 303 U.S. 444 (1938); *Stromberg v. California*, 283 U.S. 359, 369, 370 (1931))).

135. CHEMERINSKY, *supra* note 69, § 9.1, at 675.

136. *Id.* See generally *Washington v. Glucksberg*, 521 U.S. 702 (1997) (using a rational-basis analysis to uphold laws prohibiting physician-assisted suicide because the Court held that the Constitution did not create a fundamental right to physician-assisted suicide); *Vacco v. Quill*, 521 U.S. 793 (1997) (same).

137. CHEMERINSKY, *supra* note 69, § 10.1.2.

138. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

139. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925).

parental right “in the care, custody, and control of their children . . . [as] perhaps the oldest of the fundamental liberty interests recognized by this Court.”¹⁴⁰

Forcing divorced parents to pay for higher education interferes with this right. When a child goes to college, financial support may be the most important, if not the only, influence parents can exert on their children. The Iowa statute strips this influence only from divorced parents. Consider the following scenarios:

Scenario 1: A minor child graduates from high school and has a number of college alternatives from which to choose. The child is leaning toward a decision that his or her parents know to be a financial, academic, professional, or personal mistake. Nondivorced parents may use financial support to influence the child to make a better decision. Under the Iowa statute, however, divorced parents may be obligated to support their child no matter what.

Scenario 2: Police arrest a child in college for underage drinking or possession of marijuana. Nondivorced parents may withdraw financial support to influence their child’s behavior. Divorced parents ordered to pay postsecondary-education subsidies, however, cannot withdraw support under the Iowa statute.

Scenario 3: A child is passing his or her college classes but performing well below his or her potential. Nondivorced parents may end financial support to influence their child’s work ethic. However, divorced parents obligated to pay under Iowa law cannot withdraw support so long as the student is meeting minimum academic requirements.¹⁴¹

These are only three of many potential examples of how the Postsecondary-Support Statute interferes with divorced parents’ abilities to raise and influence their children. Because the statute does not similarly limit the influence of nondivorced parents over their children, the statute discriminates against divorced parents as to the exercise of their fundamental rights.

One could argue, however, that the Postsecondary-Support Statute does not implicate the fundamental right to parent because college-aged student are not under their parents’ control, regardless of their marital status. A typical college student qualifying for a postsecondary-education subsidy in Iowa is old enough to vote, does not live at home, and is legally free to make nearly any choice he or she desires.¹⁴² However, to argue that the

140. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

141. See IOWA CODE § 598.21F(5) (2007) (listing academic requirements that must be met when students receive postsecondary-education subsidies); see also *In re Marriage of Moore*, 702 N.W.2d 517, 520–21 (Iowa Ct. App. 2005) (denying a postsecondary-education subsidy when a student’s grade point average of 1.48 was well below the median).

142. See THE UNIV. OF IOWA, COMMON DATA SET 2002-2003, available at http://provost.uiowa.edu/docs/data/cds/cds_0203.htm (reporting that the average age of first-time first-year

fundamental right to parent does not extend to college-age children implies that the government should not order postsecondary support at all. To say that parents have no right to continue “raising” and exerting influence over their children once they go to college is to say that parents should not be forced to contribute to their children’s educations in any way. To argue otherwise creates a double standard. A more reasonable position would oblige parents to support their children as a part of their fundamental right to parent. If the fundamental right does not extend past majority, then there should be no legally obligated support beyond that point.

Further, the Postsecondary-Support Statute implicates the fundamental right to parent because it has potential ramifications for divorced parents of minor children as well. Today, prospects of higher education and related costs affect how parents support and raise their children. Many parents must now save and financially plan throughout their children’s lives to be able to contribute to their children’s higher educations.¹⁴³ Additionally, costs aside, parents are continually making decisions with higher education in mind earlier and earlier in their children’s lives.¹⁴⁴ Indeed a child’s pursuit of higher education may affect parental decisions of where to live, in which schools to enroll their children, what classes to encourage their children to take, and in what activities to encourage their children to be involved. Thus, any statute that implicates what parents must do when their children go to college affects parents of minors as well.

For these reasons, a court examining a divorced parent’s challenge to the Postsecondary-Support Statute should hold that the statute implicates and interferes with his or her fundamental right to parent. The court, therefore, would need to apply strict scrutiny to review the statute.

2. Whether the Iowa Postsecondary-Support Statute Is Constitutional Under Strict Scrutiny

The Iowa Postsecondary-Support Statute would probably not pass a strict-scrutiny review. When a court applies the strict-scrutiny standard in assessing a constitutional challenge to a statute, the government has the burden of showing that a law is narrowly tailored to achieve a compelling

undergraduate students at The University of Iowa was 18 and that the average undergraduate student was 21.1 years old). The study also reported that ninety percent of freshmen students lived in college housing. *Id.*

143. See generally Paul J. Lim, *The New Appeal of Savings Plans*, U.S. NEWS & WORLD REP., Sept. 13, 2002, at 71 (discussing tax implications of 529 college-savings plans and advising parents on how to use them effectively); U.S. Dep’t of Educ., *How Can I Afford to Send My Child to College?*, <http://www.ed.gov/pubs/Prepare/pt4.html#afford> (last visited Mar. 29, 2008) (encouraging parents to begin saving college money for their children at the youngest age possible).

144. See Lim, *supra* note 143 (reporting that a grandparent of a nine-year-old started a college savings account).

government purpose.¹⁴⁵ To pass strict scrutiny, the government must show that it cannot achieve its compelling purpose through a less discriminatory alternative.¹⁴⁶ Because of these high standards, a law nearly always fails under strict scrutiny.¹⁴⁷ The Postsecondary-Support Statute would probably not be an exception.

As noted above, a state has an arguably compelling interest in the education of its children.¹⁴⁸ The U.S. Supreme Court, however, in *Pierce v. Society of Sisters*, held that a state's interest in educating its populace is not more compelling than a parent's fundamental right to raise his or her children.¹⁴⁹

Additionally, the Postsecondary-Support Statute is not narrowly tailored to achieve compelling state interests. If the state is interested in having an educated populace, then forcing only divorced parents to contribute to their children's higher educations is an underinclusive method of accomplishing the goal. A more inclusive method would be to require all parents, regardless of marital history, to contribute to their children's higher educations. If the state's goal is to help students who are not getting financial support from their parents, then the state is leaving out students from nondivorced families who are not getting parental help. There are almost certainly students in Iowa from nondivorced families who are not getting financial help from their parents. It is also likely that some of these students meet the same qualifications as their peers from divorced families who qualify for postsecondary-education subsidies.¹⁵⁰ These students, however, do not qualify under Iowa law to receive the same court-ordered postsecondary support. As a result, the Postsecondary-Support Statute is almost certainly underinclusive.

Finally, the Postsecondary-Support Statute would likely fail strict scrutiny because the state can accomplish its goals by less-intrusive means. If Iowa is interested in helping children from divorced families go to college, the state can establish more scholarship funds, give more grants, forgive loans, or enact other programs to accomplish this goal. Also, the state could create more incentives for parents to contribute to their children's educations. These programs could include tax breaks, tuition credits, or

145. CHEMERINSKY, *supra* note 69, § 9.1.2.

146. *Id.*

147. *Id.*

148. *See supra* notes 119–20 and accompanying text (discussing the state's interest in postsecondary education).

149. *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (invalidating a state law requiring all children to attend public schools because it interfered with parents' fundamental rights to raise their children). *See generally* *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (allowing Amish parents to withdraw their children from school, despite state compulsory education laws).

150. *See supra* notes 47–54 and accompanying text (discussing the qualifications a child must meet before a court can order a postsecondary-education subsidy).

other benefits that might motivate parents to support their children in college. Such measures would not intrude on divorced parents' fundamental rights to parent. For these reasons, the Postsecondary-Support Statute should fail a strict-scrutiny review. Therefore, a court hearing a divorced parent's challenge to the law should hold that the Postsecondary-Support Statute violates the Equal Protection Clause of the U.S. Constitution because it unconstitutionally interferes with the parents' fundamental right to parent.

V. THE CLASSIFICATION OF CHILDREN

The Postsecondary-Support Statute's second, and perhaps most troubling, classification is its distinction between children of divorced parents and nonmarital children. Nonmarital, or "illegitimate," children are children born to parents who never married.¹⁵¹ Because the location of the Postsecondary-Support Statute limits its application to situations involving divorce, nonmarital children do not qualify for postsecondary-education subsidies from their parents.¹⁵² This is true even though nonmarital children in Iowa qualify for minority child support.¹⁵³ As a result, this Section evaluates whether this classification unconstitutionally discriminates against nonmarital children as a class.

A. THE PROPER LEVEL OF SCRUTINY FOR NONMARITAL CHILDREN AS A CLASS

As discussed above, courts evaluating an Equal Protection challenge by a group of people must classify the challenging class as suspect, quasi-suspect, or nonsuspect.¹⁵⁴ A court's decision on this issue determines the level of scrutiny it must apply when evaluating the constitutionality of the law.¹⁵⁵ As previously detailed, courts reserve suspect and quasi-suspect classifications for classes that meet certain characteristics.¹⁵⁶ Such groups receiving suspect classification treatment include those that have a history of

151. See CHEMERINSKY, *supra* note 69, § 9.6. Both the U.S. Supreme Court and Iowa Supreme Court refer to nonmarital children as "illegitimate children." See generally *Clark v. Jeter*, 486 U.S. 456 (1988) (declaring that Pennsylvania's six-year statute of limitations unconstitutionally limited nonmarital children's paternity actions and that such a law did not pass intermediate scrutiny under the Equal Protection Clause); *Johnson v. Louis*, 654 N.W.2d 886 (Iowa 2002) (upholding Iowa's Postsecondary-Support Statute even though it did not apply to nonmarital children).

152. See *supra* notes 56–57 and accompanying text (discussing the location of the Postsecondary-Support Statute and the limits placed on the statute by its location).

153. See *supra* notes 25–27 and accompanying text (discussing general child-support duties in Iowa).

154. See *supra* notes 79–90 and accompanying text (discussing classifications under the Equal Protection Clause).

155. See *supra* notes 79–90 and accompanying text (same).

156. See *supra* notes 100–03 and accompanying text (discussing the characteristics of classes that are suspect or quasi-suspect).

being discriminated against, are classified by an immutable trait, and are politically underrepresented or weak.¹⁵⁷ Courts also consider whether the law's classification likely reflects prejudice and whether the classifying trait creates a difference between people's ability to contribute to society.¹⁵⁸

Nonmarital children meet some, but not all, of the characteristics necessary for suspect or quasi-suspect classification. Their status is immutable, they have a long history of discrimination,¹⁵⁹ and their illegitimacy "bears no relation to the individual's ability to participate in and contribute to society."¹⁶⁰ However, the U.S. Supreme Court has recognized that, unlike race, "illegitimacy does not carry an obvious badge."¹⁶¹ From this conclusion, some have inferred that "[i]t is now clearly established that intermediate scrutiny applie[s] in evaluating laws that discriminate against nonmarital children."¹⁶²

Despite the U.S. Supreme Court's position on laws classifying nonmarital children, the Iowa Supreme Court did not classify nonmarital children as quasi-suspect when it evaluated this issue in *Johnson v. Louis*.¹⁶³ In *Johnson*, the mother of a seventeen-year-old child applied for a support modification, asking the court to order the father to pay a postsecondary-education subsidy.¹⁶⁴ Importantly, the parents in the case had never been married.¹⁶⁵ The district court denied the application for a postsecondary-education subsidy under chapter 598 of the Iowa Code because the child's parents had never married.¹⁶⁶ Instead, the court ruled that Iowa Code

157. See *supra* notes 100–03 and accompanying text (same).

158. See *supra* notes 100–03 and accompanying text (same).

159. CHEMERINSKY, *supra* note 69, § 9.6, at 777 (citing Harry D. Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477, 488–89 (1966)).

160. *Id.* § 9.6 (quoting *Mathews v. Lucas*, 427 U.S. 495, 505 (1976)). In 1972, the U.S. Supreme Court supported this rationale when it stated:

The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent.

Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 175 (1972), *quoted in* CHEMERINSKY, *supra* note 69, § 9.6.

161. *Mathews v. Lucas*, 427 U.S. 495, 505 (1976), *quoted in* CHEMERINSKY, *supra* note 69, § 9.6.

162. CHEMERINSKY, *supra* note 69, § 9.6.

163. *Johnson v. Louis*, 654 N.W.2d 886, 890 (Iowa 2002).

164. *Id.* at 887.

165. *Id.*

166. *Johnson v. Louis*, No. 01-0402, 2002 WL 663693, at *1 (Iowa Ct. App. Apr. 24, 2002).

section 600B.25(1) governed the issue.¹⁶⁷ Section 600B.25(1) limits child support to age eighteen, or nineteen if the child is finishing high school, and does not include a provision authorizing courts to order a postsecondary-education subsidy.¹⁶⁸

The Iowa Court of Appeals reversed the district court's ruling and held that "[r]estricting a child from receiving benefits to which other children are entitled, on the basis of illegitimacy, violates equal protection."¹⁶⁹ The court of appeals recognized that the legislature "'designed [the Postsecondary-Support Statute] to meet a specific and limited problem, one which exists only when a home is split by divorce."¹⁷⁰ The court, however, reasoned that "[t]he same 'specific and limited' problem also exists where biological parents were never married."¹⁷¹ Therefore, it ruled that the statute applied to situations involving illegitimate children.¹⁷² The court of appeals remanded the case and ordered the district court to award a postsecondary-education subsidy to the nonmarital child in accordance with chapter 598.¹⁷³

The Iowa Supreme Court vacated the court of appeals's decision and reaffirmed the district court.¹⁷⁴ It held that the Postsecondary-Support Statute only applies to situations governed by chapter 598.¹⁷⁵ Thus, it confirmed that only Iowa children with divorced parents may qualify for a postsecondary-education subsidy.¹⁷⁶ In reaching this conclusion, the Iowa Supreme Court rejected the court of appeals's determination that this limited application of the Postsecondary-Support Statute violated the Equal Protection Clauses of the U.S. and Iowa Constitutions.¹⁷⁷ Applying a rational-basis review of the law, the court stated that the distinction was rational

167. *Id.*

168. *See* IOWA CODE § 600B.25(1) (2007). For nonmarital children, the Code states:

The support obligation shall include support of the child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

Id.

169. *Johnson*, 2002 WL 663693, at *1 (citing *Levy v. Louisiana*, 391 U.S. 68, 71, 88 (1968)).

170. *Id.* (quoting *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980)).

171. *Id.*

172. *Id.* at *2.

173. *Id.* at *1.

174. *See Johnson v. Louis*, 654 N.W.2d 886, 891 (Iowa 2002).

175. *See id.* at 889–90.

176. *Id.* at 891 ("The class of children who do enjoy the right to seek a postsecondary educational subsidy, *i.e.*, children whose parents are or have been divorced . . .").

177. *Id.* at 890 ("Because the court of appeals decided the issue under the federal constitution, we consider it in the same manner. We note, however, that we usually deem the federal and state Equal Protection Clauses to be identical in scope, import, and purpose." (citing *Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 792–93 (Iowa 1994))).

because “children [of divorced parents] have had the attributes of a legally recognized parental relationship taken from them by court decree.”¹⁷⁸ It reasoned that the statute was thus a “quid pro quo [from the state to the children] for the loss of stability resulting from divorce.”¹⁷⁹ In the court’s eyes, this meant nonmarital children were not “similarly situated” with children of divorced parents and could not claim the same loss of stability to warrant equal treatment.¹⁸⁰

In *Johnson*, the Iowa Supreme Court failed to follow U.S. Supreme Court precedent and applied the wrong level of scrutiny. The Postsecondary-Support Statute is a law that discriminates against nonmarital children based on their parents’ marital history. Because their parents never married, nonmarital children cannot qualify for the same support benefits as children of divorced parents. Thus, based on U.S. Supreme Court precedent, a court hearing a nonmarital child’s challenge to the Postsecondary-Support Statute should classify nonmarital children as a quasi-suspect group and apply intermediate scrutiny to the law.

*B. WHETHER THE IOWA POSTSECONDARY-SUPPORT STATUTE IS
CONSTITUTIONAL UNDER INTERMEDIATE SCRUTINY*

The Iowa Postsecondary-Support Statute probably would not pass intermediate scrutiny if nonmarital children challenged the law as unconstitutional under the Equal Protection Clause of the U.S. Constitution. To withstand intermediate scrutiny, a classifying law must be substantially related to furthering an important government interest.¹⁸¹ Under this test, the Supreme Court has stated “the ‘burden of justification is demanding and . . . it rests entirely on the state.’”¹⁸²

As previously discussed, the state has a legitimate interest in the education of its populace.¹⁸³ This interest is likely important enough to pass the threshold for intermediate scrutiny. However, if the goal of the Postsecondary-Support Statute is to help children who lack support for higher education, the law is underinclusive because it leaves out a number of children who may need the same help as children of divorced families. This is especially true for nonmarital children.

178. *Id.* at 890–91 (“[W]e apply a rational-basis test in determining the validity of the statutory classifications that are assailed here. . . . [W]e deem the classification drawn by the legislature to be rational, not arbitrary, and thus not constitutionally infirm.”).

179. *Johnson*, 654 N.W.2d at 891.

180. *Id.*

181. CHEMERINSKY, *supra* note 69, § 9.1.2.

182. *Id.*, § 9.1.2, at 671 (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

183. *See supra* notes 119–20 and accompanying text (discussing the state’s interest in postsecondary education).

Nonmarital children face many of the same challenges that children of divorced families face.¹⁸⁴ These challenges include single-parent households, family instability, and financial insecurity.¹⁸⁵ In fact, one study shows that some of these problems may be more severe for nonmarital children than for children whose parents are divorced.¹⁸⁶ To its credit, the Iowa Supreme Court recognized the similarity between the two groups of children in *Johnson* when it stated that nonmarital children “may [like children of divorced parents] rightfully claim a similarly vulnerable status insofar as furthering their education.”¹⁸⁷ Nevertheless, the Iowa Supreme Court validated the law’s distinction between children of divorced parents and nonmarital children because the court blamed divorce on the state.¹⁸⁸ The court reasoned that, because the state legally terminates marriages, it is responsible for the loss of stability in divorced families.¹⁸⁹ Accordingly, the court stated that the postsecondary-education subsidy was a “quid pro quo” from the state to make up for its action and, therefore, the distinction was justified.¹⁹⁰

This rationale should not be enough to overcome intermediate scrutiny. First, in reality, the state is not responsible for divorce. Divorce is a choice or the result of a choice that parents make.¹⁹¹ States do not order divorces; they merely grant petitions to dissolve marriages.¹⁹² Thus, it is difficult to blame the state for the instability children face when parents divorce. Second, the court’s assumption that divorce increases instability or adds burden to children, while true in many situations, is overbroad.¹⁹³ Situations exist where parental separation may provide children with better

184. See ARIEL HALPERN, POVERTY AMONG CHILDREN BORN OUTSIDE OF MARRIAGE: PRELIMINARY FINDINGS FROM THE NATIONAL SURVEY OF AMERICA’S FAMILIES I (1999), available at http://www.urban.org/UploadedPDF/409295_discussion99-16.pdf (examining “whether the children of single mothers who were born outside of marriage are at greater risk of living in poverty than the children of single mothers who were born to married parents”). The study notes that both children of divorced families and nonmarital children live in single-parent households and that “extensive literature examining the well-being of children growing up with a single mother concludes that these children fare worse than children from two-parent families.” *Id.*

185. See generally *id.* (discussing children of divorced parents and nonmarital children in single-parent households).

186. *Id.* at 16 (“The children of single mothers who were not married at the time of their child’s birth are 1.7 times more likely to be poor than are the children of those who were married.”).

187. *Johnson v. Louis*, 654 N.W.2d 886, 891 (Iowa 2002).

188. See *id.* (“[C]hildren [of divorced parents] have had the attributes of a legally recognized parental relationship taken from them by court decree.”).

189. *Id.*

190. *Id.*

191. See *supra* note 105 and accompanying text (discussing parents’ roles in divorces).

192. See *supra* note 105 and accompanying text (same).

193. See Oregon Counseling, *supra* note 105 (recognizing that divorce “does not have a positive impact on a child’s life and development”).

stability.¹⁹⁴ Children with parents in strained marriages or marriages involving domestic abuse are arguably better off following a divorce.¹⁹⁵ Finally, as discussed above, even though children in divorced families often face instability, this instability is not necessarily worse than the instability nonmarital children face.¹⁹⁶

For these reasons, the Iowa Supreme Court's logic in *Johnson* should not be enough to overcome intermediate scrutiny. Therefore, an appropriate court should overrule *Johnson* and hold that the Postsecondary-Support Statute violates the Equal Protection Clause of the U.S. Constitution because it excludes nonmarital children.

VI. CONCLUSION

Forcing divorced parents to pay for portions of their children's college may be a popular idea and might provide an alternative to state financial aid. However, popularity and economy do not equate to constitutionality. This Note has argued that Iowa's law forcing divorced parents to contribute to their children's higher educations without requiring nondivorced parents to contribute to theirs is unconstitutional. Such a law violates the Equal Protection Clause because it discriminates against certain types of parents and children. It interferes with divorced parents' fundamental right to parent and unconstitutionally discriminates against nonmarital children. Because Iowa does not possess an adequate justification for these discriminations, courts should rule that the Postsecondary-Support Statute is unconstitutional and the state legislature should look for other alternatives to achieve its goals.

194. *See id.* (noting that “[o]ngoing abuse (e.g., child abuse, domestic violence) that cannot be stopped is more damaging to children than divorce itself” and that “[d]ivorce can be the right decision and can be handled responsibly”).

195. *Id.*

196. *See supra* notes 184–86 and accompanying text (discussing challenges that nonmarital children face).