A MID-LIFE CRISIS IN THE INTERPRETATION OF THE IOWA CIVIL RIGHTS ACT OF 1965: HOW SHOULD STATE COURTS INTERPRET ORIGINAL STATE ANTIDISCRIMINATION STATUTES AFTER FEDERAL COUNTERPART STATUTES ARE AMENDED?

ABSTRACT

In 2009 the Americans with Disabilities Act Amendments Act of 2008, which broadened the definition of disability, went into effect. In addition, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009, superseding the Supreme Court's interpretation of the continuing violation doctrine. One employment law scholar, Sandra F. Sperino, opined that these two laws would create a dilemma for state courts. How would state courts interpret state antidiscrimination statutes when so much state court jurisprudence surrounding their respective antidiscrimination statutes had adopted federal courts' interpretations of the federal counterparts? This Note addresses that dilemma as it pertains to Iowa.

This Note examines the development of Iowa antidiscrimination jurisprudence since the enactment of the Iowa Civil Rights Act of 1965 (ICRA), focusing on three recent Iowa Supreme Court cases: Goodpaster v. Schwan's Home Service, Inc. *(2014),* Pippen v. State *(2014), and* Dindinger v. Allsteel, Inc. *(2015). All three cases address how the Iowa Supreme Court should interpret the ICRA in light of amendments to the federal antidiscrimination statutes. This Note discusses the judicial review arguments posited by both sides. What is more important: broad construction and thus, the use of federal authority as persuasive wherever helpful, or uniformity and consistency in the development of Iowa case law?*

In 2015, the ICRA turned 50 years old, and the recent Iowa Supreme Court decisions interpreting the ICRA appear to indicate a "mid-life" crisis in its interpretation. This Note lays out how these decisions should impact employment law attorneys' arguments.

TABLE OF CONTENTS

I. INTRODUCTION

While it cannot be disputed that the motivation for passing civil rights statutes was to define and protect "suspect" classes,[1] it may be said that local

1. Jacqueline A. Berrien, *Statement on 50th Anniversary of the Civil Rights Act of 1964*, U.S. EEOC (July 2, 2014), https://www.eeoc.gov/eeoc/history/cra50th/.

civil rights statutes could better effectuate the mission of the national movement. Localizing efforts to expand rights is not a new concept;[2] however, it is the source of a current issue in statutory interpretation.[3]

Over the past 50 years, city governments, state governments, and the federal government have enacted laws aimed at ensuring individuals "will not be judged by the color of their skin[, sex, gender identity, sexual orientation, or physical or mental impairment] but by the content of their character"—a sentiment eloquently stated by Martin Luther King, Jr. in his "I Have a Dream" speech on August 28, 1963.[4] King was right when he said, "1963 is not an end but a beginning."[5] A beginning it was. Since 1963, the federal government has passed three major laws collectively known as the "Civil Rights Laws."[6] The laws not only banned discrimination based on "color" but also subsequently made laws prohibiting discrimination based

2. *See* William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535, 536 (1986) (explaining how the Fourteenth Amendment was a "vehicle for . . . dramatic development" in the "equalitarian revolution which has so transformed the contemporary American society"). Justice Brennan is famous for advocating that the state courts should take individual rights into their own hands through state constitutional interpretations. *Id.* at 550.

3. Most of this Note will discuss the legal arguments on both sides of the "interpretive upheaval as state and federal courts struggle to determine how the 2008 ADA Amendments and the Ledbetter Fair Pay Act affect state statutes that have not undergone subsequent amendment in response to this federal legislation." Sandra F. Sperino, *Diminishing Deference: Learning Lessons from Recent Congressional Rejection of the Supreme Court's Interpretation of Discrimination Statutes*, 33 RUTGERS L. REC. 40, 40–41 (2009) [hereinafter Sperino, *Diminishing Deference*], http://lawrecord.com/files/33_Rutgers_L_Rec_40.pdf. Now that state courts have built up case law of their own, the question that the Iowa Supreme Court faces, and likely many state supreme courts, is how much to rely on federal statutory and case law in interpreting state antidiscrimination statutes?

4. Martin Luther King, Jr., I Have a Dream . . . 5 (Aug. 28, 1963) (transcript available at https://www.archives.gov/press/exhibits/dream-speech.pdf); *see* Berrien, *supra* note 1.

5. I Have a Dream Speech, *supra* note 4, at 2.

6. Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621–634 (2012 & Supp. III 2015); ADA Amendments Act of 2008 (ADAAA), Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended in scattered sections of 29 U.S.C. & 42 U.S.C.); Civil Rights Act of 1991 (Title VII), Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C. (2012)). In this Note, the Author refers to "civil rights laws" as antidiscrimination statutes for consistency.

on sex,[7] religion, race, disability, and age.[8]

States have enacted antidiscrimination laws that mirror the federal statutes' language as well as contain additional suspect classes as defined by each state's legislature. Iowa is one of those states that has expanded its civil rights statute to include sexual orientation and gender identity.[9] In addition, contrary to the way federal lawmakers enacted antidiscrimination laws, Iowa included all suspect classes in one statute.[10] As states all across the nation joined in on the "massive national drive to right wrongs prevailing in our social and economic structures for more than a century,"[11] states' court dockets were flooded with a new wave of cases.

Statutes, broadly speaking, are the source of significant societal statements, but they are also a source of confusion for courts.[12] Some suggest the confusion and complexity of statutory interpretation is a result of "[c]ommon [l]aw [c]ourts [c]onstruing [s]tate [s]tatutes."[13] Furthermore, not much focus is given to state courts and their interpretations of state statutes; rather, more scholarship has been devoted to analyzing federal courts'

7. Much has been written on how sex made its way into Title VII. Many say the addition of the three-letter word was a ploy to kill the entire law. *Cf.* Jo Freeman, *How "Sex" Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 LAW & INEQ. 163, 182–83 (1991) ("Nor should one assume that the Southerners' only motive in voting to add 'sex' to Title VII was their antagonism toward civil rights. To judge from the sponsors, ERA sympathizers were largely Republican and Southern Democrats—i.e., people who had a distaste for government regulation and were not attuned to the concerns of organized labor. Rep. Smith spoke in favor of a 'sex' amendment in 1956 and had been an ERA sponsor since 1943; when he retired in 1966, the NWP lamented the loss of 'our Rock of Gibraltar.' Despite the humor that Smith injected into the 'Ladies Day' debate, what evidence there is, does not indicate that he had proposed his amendment as a joke." (footnotes omitted)).

8. ADEA, 29 U.S.C. § 623; Title VII, 42 U.S.C. § 2000e-2; ADAAA, 42 U.S.C. § 12102.

9. IOWA CODE § 216.6A (2015) ("It shall be an unfair or discriminatory practice for any . . . [person] to discriminate . . . because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee.").

10. *See id.* § 216.6.

11. Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 765 (Iowa 1971).

12. Judith S. Kaye, *State Courts at the Dawn of a New Century: Common Law Courts Reading Statutes and Constitutions*, 70 N.Y.U. L. REV. 1, 18–19 (1995) ("'[S]tatutorification' of the law has continued unabated so that today . . . statutory interpretation is likely the principal task engaged in by state courts." (quoting GUIDO CALABRESI, A COMMON LAW FOR THE AGE OF STATUTES 1 (1982)).

13. *See id.* at 18.

analyses of federal statutes[14] or state courts' analyses of federal statutes.[15] In addition, considerable scholarship exits in the realm of federal courts interpreting state statutes.[16]

This Note aims to analyze how state courts interpret state antidiscrimination statutes. More specifically, when the federal counterpart of a state antidiscrimination statute is amended and the state statute is not, how should state courts interpret the state statute when they have previously relied on federal interpretations of the federal counterpart statute?[17] Part II provides the important legislative and judicial history behind the state and federal antidiscrimination statutes. The focus of this Note is on the Iowa Civil Rights Act of 1965 (ICRA) and the aforementioned federal civil rights statutes—Civil Rights Act of 1991 (Title VII), Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act Amendments Act of 2008 (ADAAA)—and the subsequent parallel analysis Iowa courts have taken. The goal in dedicating an entire Part of this Note to a historical account of each law's passage, later amendments, and subsequent courts' interpretations is to provide a big-picture understanding of the numerous factors that went into the making of each law and thus, shadow current interpretations. Part III attempts to chronicle the development of Iowa state case law surrounding the ICRA. By describing the interpretation of the ICRA in human development terms, Part III builds to Part IV, in which three recent Iowa Supreme Court cases that have indirectly and directly confronted this issue are analyzed.[18] The Author opines that the development of the ICRA vis-à-vis the Iowa Supreme Court's interpretation in these cases went through a mid-life crisis. Part V addresses the practical application for employment law attorneys litigating and advising on both sides of this issue. Finally, Part VI attempts to reconcile two perspectives—

14. *Id.* at 19–20; *see, e.g.*, William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 670 (1990).

15. *See* Anthony J. Bellia Jr., *State Courts and the Interpretation of Federal Statutes*, 59 VAND. L. REV. 1501, 1503 (2006).

16. *See* Abbe R. Gluck, *The Federal Common Law of Statutory Interpretation:* Erie *for the Age of Statutes*, 54 WM. & MARY L. REV. 753, 758 (2013); Craig A. Hoover, Note, *Deference to Federal Circuit Court Interpretations of Unsettled State Law:* Factors, Etc., Inc. v. Pro Arts, Inc., 1982 DUKE L.J. 704, 704.

17. For purposes of simplicity, this Note will look exclusively at Iowa case law, but the application is universal to almost every state in the United States.

18. Dindinger v. Allsteel, Inc., 860 N.W.2d 557 (Iowa 2015); Pippen v. State, 854 N.W.2d 1 (Iowa 2014); Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1 (Iowa 2014).

following lockstep versus purely persuasive—on how state supreme courts should approach interpreting state antidiscrimination statutes when the federal counterpart is amended, and ultimately concludes this issue, like most statutory interpretation issues, can and should be resolved by state legislatures.

It should be noted that *Goodpaster v. Schwan's Home Service, Inc.*, a recent case concerning this issue, focused on an individual who had multiple sclerosis and claimed to have a disability under the ICRA.[19] In determining whether the individual was disabled, the court discussed in detail statutory interpretation when the state and federal statutes mirror each other.[20] This Note does not analyze the policy decisions of the legislatures in enacting or amending civil rights legislation; rather, the goal of this Note is to shed light on the intricacies of statutory interpretation when state judicial interpretations have relied on federal judicial interpretations of similarly constructed federal statutes.

II. HISTORY OF ANTIDISCRIMINATION STATUTES

The federal government enacted antidiscrimination laws through different pieces of legislation at different times, and thus the laws are found in different statutes.[21] This fact—that the federal antidiscrimination statutes are found in three different code sections—is crucial.[22] Statutory interpretation is complicated enough when there is one federal statute that mirrors one state statute and either is amended, but when a single state statute accomplishes what the federal government accomplished with three separate statutes, the statutory interpretation for a state court, which relies on federal courts' guidance, is even more complicated.[23]

A. *Title VII*

The Civil Rights Act of 1964 was a monumental piece of legislation.

19. *Goodpaster*, 849 N.W.2d 1.

20. *See id.* at 6–13.

21. ADEA, 29 U.S.C. § 623 (2012); Title VII, 42 U.S.C. § 2000e-2 (2012); ADAAA, 42 U.S.C. § 12102 (2012).

22. Sandra F. Sperino, *Revitalizing State Employment Discrimination Law*, 20 GEO. MASON L. REV. 545, 546–47 (2013) [hereinafter Sperino, *Revitalizing*] (stating that because the federal antidiscrimination laws were enacted in different pieces of legislation, the development of federal case law has been "fractured" and should not be strictly relied upon by state courts).

23. *See id.* at 545–56.

The events leading up to its passage first began in 1933 with the Unemployment Relief Act, which contained antidiscrimination language like many other New Deal pieces of legislation.[24] "Fair Employment Practices" legislation proposals were introduced over the next 30 years; however, only three made it to the floor for a vote, two of which were killed by a filibuster in 1946 and 1950, respectively.[25] The Civil Rights Act of 1964 was a culmination "of decades of resistance and opposition to the segregation and discrimination that restricted opportunities and access for countless men, women and children in the United States in many different aspects of their lives."[26] Title VII of the Civil Rights Act of 1964 (Title VII) addressed the issue of discriminatory employment practices based on an "individual's race, color, religion, sex, or national origin."[27] President Johnson finished what President Kennedy set out to do when he signed the Act into law on July 2, 1964.[28]

B. *Age Discrimination in Employment Act of 1967*

Congress considered including "age" in the Civil Rights Act of 1964, but "instead directed Secretary of Labor Willard Wirtz to report back to Congress on the causes and effects of age discrimination in the workplace and to propose remedial legislation."[29]

> There had been some attempt to deal with one problem identified as a cause of unemployment among older workers—that of difficulty in adapting to technological changes in industry—through the vehicle of training programs. Of more importance as a forerunner of the [Age Discrimination in Employment Act (ADEA)] was Executive Order 11141, promulgated by President Johnson in 1964, forbidding age discrimination by government contractors and subcontractors. The order declared it to be the policy of the Executive Branch that there

24. *See* Unemployment Relief Act of 1933, Pub. L. No. 73-5, 48 Stat. 22 (repealed 1966).

25. Freeman, *supra* note 7, at 169, 170.

26. Berrien, *supra* note 1.

27. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e-2). Throughout this Note, "Title VII" generally refers to 42 U.S.C. § 2000e-2, meaning the original Civil Rights Act of 1964, as amended; therefore, Title VII also is used to refer to the Civil Rights Act of 1991.

28. *The Civil Rights Act of 1964*, CONST. RTS. FOUND., http://www.crf-usa.org/black-history-month/the-civil-rights-act-of-1964 (last visited Sept. 11, 2016).

29. Sperino, *Revitalizing*, *supra* note 22, at 547.

> should be no discrimination based on age, by federal contractors or subcontractors, as to hiring, promotion, or discharge of employees or as to the terms, conditions, or privileges of their employment. The exceptions are significant, since counterparts reappear in the ADEA: bona fide occupational qualification, retirement plans, and statutory requirements. This Order, like the later ADEA, also addressed itself specifically to advertising. It stated that contractors and subcontractors, or those acting in their behalf, shall not specify a maximum age limit in their advertisements or solicitations, again with the same exceptions.[30]

Furthermore, and pertinent for the issue of this Note, the ADEA has received special treatment by the Supreme Court.[31] The potential for congressional action in light of the treatment, as was done with the Americans with Disabilities Act in 2008, could occur in the near future.[32]

C. *Americans with Disabilities Act of 1990 (and ADA Amendments Act of 2008)*

The Rehabilitation Act of 1973 was a major precursor to the passage of the Americans with Disabilities Act of 1990 (ADA).[33] The Rehabilitation

30. 8 ARTHUR LARSON & LEX K. LARSON, EMPLOYMENT DISCRIMINATION § 120.03 (2d ed. 2013) (citations omitted).

31. Confusion or complication exists in analyzing ADEA claims because of the Supreme Court's statutory interpretation—an unwillingness to interpret the ADEA along with the Title VII and ADAAA cases. *See* Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 177 (2009) ("[T]he plaintiff retains the burden of persuasion to establish that age was the 'but-for' cause of the employer's adverse action. Indeed, we have previously held that the burden is allocated in this manner in ADEA cases. And nothing in the statute's text indicates that Congress has carved out an exception to that rule for a subset of ADEA cases. Where the statutory text is silent on the allocation of the burden of persuasion, we begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims." (citations omitted) (internal quotations marks omitted)); Wards Cove Packing Co. v. Antonio, 490 U.S. 642, 658 (1989), *superseded by statute*, Title VII, Pub. L. No. 102-166, 105 Stat. 1074, *as recognized in Smith v. City of Jackson*, 544 U.S. 228 (2005) (holding a causal link between the employment practices and adverse effect must be shown by the plaintiff in the prima facie stage for adverse impact claims). The "but-for" causation standard and the "causal link" requirement for disparate impact claims remains for ADEA claims. *See Gross*, 557 U.S. at 177.

32. *See* Robert Weiner & Daniel Khan, *Iowa Case Shows Age Discrimination Persists, Despite Law*, DES MOINES REG. (May 11, 2016), http://www.desmoinesregister.com/story/opinion/columnists/2016/05/11/iowa-case-shows-age-discrimination-persists-despite-law/84225758/.

33. *See* Alex Long, *State Anti-Discrimination Law as a Model for Amending the Americans with Disabilities Act*, 65 U. PITT. L. REV. 597, 607–08 (2004) [hereinafter Long,

Act targeted "two categories of private employers: federal contractors under § 503 and recipients of federal financial assistance under § 504" yet still did not encompass enough employers according to some.[34] The ADA definitions and terms were based on Section 504.[35] "[T]he Americans with Disabilities Act was first introduced in Congress in 1988. . . . Following at least five hearings by the Senate Labor and Human Resources Committee, the bill was brought to the Senate floor in September 1989," where it passed with bipartisan support by a vote of 76 to 8 and narrowly in the House of Representatives by a vote of 191 to 187.[36] Subsequently, litigation battles ensued as to how broad of coverage the Act was to have, and employers—and their narrow interpretations—won most of the time.[37] The drama surrounding the ADA did not go away; three U.S. Supreme Court decisions called the "*Sutton* trilogy"[38] and the subsequent decision in *Toyota Manufacturing, Kentucky, Inc. v. Williams*[39] fueled the drama because in

State Anti-Discrimination Law].

34. 9 LARSON & LARSON, *supra* note 30, § 160.01.

35. Chai R. Feldblum et al., *The ADA Amendments Act of 2008*, 13 TEX. J. ON C.L. & C.R. 187, 187–88, 190 (2008) ("Senators Harkin and Kennedy chose to use the definition of handicap that governed Section 504 of the Rehabilitation Act at the time because a new definition seemed both politically infeasible and legally unnecessary.").

36. 9 LARSON & LARSON, *supra* note 30, § 151.03 (noting the bill passed as a result of the addition of the "Chapman Amendment" permitting discrimination based on AIDS but eventually compromise by both sides made the amendment just a "food-handling" amendment).

37. Lisa Eichhorn, *Major Litigation Activities Regarding Major Life Activities: The Failure of the "Disability" Definition in the Americans with Disabilities Act of 1990*, 77 N.C. L. REV. 1405, 1407–08, 1408 n.8 (1999). Shortly after the ADA took effect, "[s]tatistics soon began to pour in suggesting that not only had the ADA not been the windfall for plaintiffs that many business interests had feared, if anything, the Act had been a windfall for defendants." Long, *State Anti-Discrimination Law*, *supra* note 33, at 599 (citing Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 HARV. C.R.-C.L. L. REV. 99, 103 (1999)). Another scholar suggests the defense-friendly outcomes in the interpretation of ADA where courts have "trimmed its scope as a way of ferreting out some of the more extravagant claims," and, for that matter, all civil rights laws (race claims being the hardest to win), are a result of judicial biases that "inevitably influence courts' treatment of discrimination cases" and are "extremely difficult to overcome." Michael Selmi, *Why Are Employment Discrimination Cases So Hard to Win?*, 61 LA. L. REV. 555, 556–57 (2001) (noting further, while discrimination suits may be too easy to file, "these suits are far too difficult, rather than easy, to win").

38. Feldblum et al., *supra* note 35, at 192–93.

39. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 196–97 (2002) (interpreting "substantially limits a major life activity" narrowly by interpreting the words "substantially" and "major" strictly), *superseded by statute*, ADAAA, Pub. L. No.

each case the Court narrowly interpreted the language of the ADA.[40]

The passage of the ADA Amendments Act of 2008 (ADAAA) was Congress's statement of disapproval of the Court's narrow construction of the ADA; the ADAAA explicitly abrogated the *Sutton* trilogy and *Toyota*.[41] The ADAAA clarified the intent of Congress by adding to the section on "[d]efinition of disability" to define major life activities, explain what "regarded as having such an impairment" means, and emphasize "substantially limits" should be construed broadly.[42]

The three main antidiscrimination statutes explained above do not provide a comprehensive explanation for every form of discrimination

110-325, § 2(b)(4), 122 Stat. 3553, 3553 (codified at 42 U.S.C. § 12101 note (2012) (Findings and Purposes of Pub. L. 110-325)). The Court went on to say that "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long term." *Id.* at 198.

40. Sutton v. United Air Lines, Inc., 527 U.S. 471, 475 (1999) (holding "the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment, including, in this instance, eyeglasses and contact lenses"), *superseded by statute*, ADAAA § 2(b)(2), 122 Stat. at 3554; Albertson's Inc. v. Kirkingburg, 527 U.S. 555, 567 (1999), *superseded by statute*, ADAAA § 2(b)(2), 122 Stat. at 3554 (adopting a narrow reading and further restrictive interpretation of what constitutes a disability by requiring individuals to provide evidence to show that their condition, in this case monocular vision, is *substantial*); Murphy v. United Parcel Serv., Inc., 527 U.S. 516, 518–19 (1999), *superseded by statute*, ADAAA § 2(b)(2), 122 Stat. at 3554 (holding the determination of whether an individual is disabled should be considered when that individual is "in his medicated state"). *See generally* Feldblum et al., *supra* note 35, at 192–93 (explaining the *Sutton* trilogy).

41. ADAAA § 2, 122 Stat. at 3553–54. In the "Findings and Purposes" section of the Act, Congress said, "the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect; . . . the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA." *Id.* § 2(a)(4)–(5), 122 Stat. at 3553. After acknowledging its disagreement with Supreme Court's interpretations, Congress went on to reject explicitly the above-mentioned cases. *Id.* § 2(b)(2)–(5), 122 Stat. at 3554.

42. *Id.* § 3, 122 Stat. at 3554–55. Many scholars believe the ADAAA was enacted as a response to narrow decisions by the Supreme Court and an attempt by Congress to realign courts' interpretations with that of the original legislative intent from 1990. *See* Sperino, *Diminishing Deference*, *supra* note 3, at 42.

Congress has sought to ban.[43] The goal was to provide general background of what each was enacted to accomplish—ending discrimination based on "classifications" Congress defined.[44] Later in this Note, when the issue at hand is further unpacked through close examinations of Iowa case law, the pertinent federal antidiscrimination statutes are addressed more thoroughly.[45]

D. *State Antidiscrimination Statutes*

While the federal government had to enact three separate laws on three separate occasions, Iowa and many other states enacted one statute; however, other states' prohibitions on discrimination are found in numerous statutes like that of the federal government.[46] Regardless of the method,

43. *See* ADEA, 29 U.S.C. §§ 621–634 (2012 & Supp. III 2015); ADAAA, Pub. L. No. 110-325, 122 Stat. 3553; Title VII, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C. (2012)).

44. *See supra* notes 41–42 and accompanying text.

45. *See infra* Part IV.

46. ALA. CODE §§ 25-1-20 to 25-1-40 (West 2016); ALASKA STAT. ANN. § 18.80.220 (West 2016); ARIZ. REV. STAT. ANN. § 41-1463 (West 2016); ARK. CODE ANN. § 16-123-107 (West 2016); CAL GOV'T CODE § 12940 (West 2016); COLO. REV. STAT. ANN. § 24-34-402 (West 2016); CONN. GEN. STAT. ANN. § 46a-60 (West 2016); DEL. CODE ANN. tit. 19, § 711 (West 2016); D.C. Code Ann. § 2-1402.11 (West 2016); FLA. STAT. ANN. § 760.10 (West 2016); GA. CODE ANN. § 45-19-29 (West 2016); 22 GUAM CODE ANN. §§ 5201–5212 (West 2016); HAW. REV. STAT. ANN. § 378-2 (West 2016); IDAHO CODE ANN. § 67-5909 (West 2016); 775 ILL. COMP. STAT. ANN. 5/1-102 (West 2016); IND. CODE ANN. § 22-9-1-3 (West 2016); IOWA CODE § 216.6 (2015); KAN. STAT. ANN. § 44-1009 (West 2016); KY. REV. STAT. ANN. § 344.100 (West 2016); LA. STAT. ANN. §§ 23:312, 23:323, 23:331, 23:332, 23:342, 23:352, 23:368 (West 2016); ME. REV. STAT. ANN. tit. 5, § 4572 (West 2016); MD. CODE ANN., STATE GOV'T § 20-606 (West 2016); MASS. GEN. LAWS ANN. ch. 149, §§ 4, 24A, 151B (West 2016); MICH. COMP. LAWS ANN. §§ 37.1202, 37.2202 (West 2016); MINN. STAT. ANN. § 363A.08 (West 2016); MISS. CODE ANN. §§ 25-9-103, 25-9-149 (West 2016); MO. ANN. STAT. § 213.055 (West 2016); MONT. CODE ANN. § 49-2-303 (West 2016); NEB. REV. STAT. ANN. §§ 48-1001, 48-1104 (West 2016); NEV. REV. STAT. ANN. § 613.330 (West 2016); N.H. REV. STAT. ANN. § 354-A:7 (West 2016); N.J. STAT. ANN. § 10:5-12 (West 2016); N.M. STAT. ANN. § 28-1-7 (West 2016); N.Y. EXEC. LAW § 296 (McKinney 2016); N.C. GEN. STAT. ANN. § 143-422.2 (West 2016); N.D. CENT. CODE ANN. § 14-02.4-03 (West 2016); OHIO REV. CODE ANN. § 4112.02 (West 2016); OKLA. STAT. ANN. tit. 25, § 1302 (West 2016); OR. REV. STAT. ANN. §§ 659A.030, 659A.082, 659A.112 (West 2016); 43 PA. STAT. AND CONS. STAT. ANN. § 955 (West 2016); 28 R.I. GEN. LAWS ANN. § 28-5-7 (West 2016); S.C. CODE ANN. § 1-13-80 (West 2016); S.D. CODIFIED LAWS § 20-13-10 (West 2016); TENN. CODE ANN. § 4-21-401 (West 2016); TEX. LAB. CODE ANN. § 21.051 (West 2016); UTAH CODE ANN. § 34A-5-106 (West 2016); VT. STAT. ANN. tit. 21, § 495 (West 2016); VA. CODE ANN. § 2.2-3900 (West 2016); WASH. REV. CODE ANN.

each state is authorized under Title VII to pass laws prohibiting discrimination as long as they do not permit what is considered unlawful under 42 U.S.C. § 2000e.[47] In addressing how state courts should interpret state statutes after the parallel federal statute(s) is amended, this Note focuses on Iowa courts' attempts to synthesize and analogize interpretations of the ICRA with those of federal courts' interpretations of the federal antidiscrimination laws.

1. *Iowa Civil Rights Act of 1965*

The Iowa Civil Rights Act of 1965 (ICRA) states in pertinent part that it shall be "unfair or discriminatory practice for any [person] to discriminate . . . because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee."[48] The ICRA was amended in 2007 to add sexual orientation and gender identity as protected classes.[49] The ICRA was again amended in 2009 to prohibit wage discrimination,[50] adding to the list of "unfair employment

§ 49.60.180 (West 2016); W. VA. CODE ANN. § 5-11-2 (West 2016); WIS. STAT. ANN. § 111.321 (West 2016); WYO. STAT. ANN. § 27-9-105 (West 2016); *see also State Laws on Employment-Related Discrimination*, NAT'L CONF. ST. LEGISLATURES, http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx (last visited Sept. 2, 2016) (listing each state's suspect classes defined by its employment antidiscrimination statutes).

47. Civil Rights Act of 1964, 42 U.S.C. § 2000e-7 (2012) ("Nothing in this subchapter [42 U.S.C. §§ 2000e et. seq.] shall be deemed to exempt or relieve any person from any liability . . . by any . . . law of any State . . . ."); *see also* Sperino, *Revitalizing*, *supra* note 22, at 546 ("Interpreting state statutes in tandem with federal law creates state regimes that are unmoored from their statutory language and ignores key differences between federal and state protections. . . . [I]f courts would look at the way state statutes are constructed, they could discover a more elegant, unified way of considering discrimination claims, a way not marred by the recent disarray of federal law.").

48. IOWA CODE § 216.6A(2)(a); *see also* IOWA ADMIN. CODE r. 161-8.26 (2016) (defining disability discrimination in employment). From simply looking at the letter of the law, one should start to realize that statutory interpretation can be a tricky endeavor. Foremost, the ICRA prohibits the discrimination against the federally defined suspect classes in the same statute. IOWA CODE § 216.6. The federal statutes have not been written or interpreted the same, so presumably, leaning on the federal case law for help in interpreting the state statute may prove difficult in practice; and for better or for worse, state courts have heavily relied on federal antidiscrimination statute interpretations. *See infra* Part III.

49. Act of May 25, 2007, ch. 191, § 1, 2007 Iowa Acts 625, 625 (codified at IOWA CODE § 216.2 (2015)); S.F. 427, 82d Gen. Assemb., Reg. Sess. § 1 (Iowa 2007).

50. Act of Apr. 28, 2009, ch. 95, § 2, 2009 Iowa Acts 329, 329 (codified at IOWA CODE §§ 216.6A, 216.2 (2015)).

practices" already codified: "to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment. . . ."[51]

The ICRA and following interpretations by Iowa state courts provide insight for all states that face the "potential for divergent interpretations of parallel antidiscrimination statutes."[52] Early on, the Iowa Supreme Court made clear it would interpret the ICRA broadly to effectuate the legislature's intent.[53] The Iowa Supreme Court has further established that it is not bound by federal courts' interpretation of federal civil rights statutes when construing the ICRA.[54] The best examples of the difference in interpreting the ICRA and the federal counterpart statutes can be found in Iowa Supreme Court cases interpreting the ICRA that have cited to federal court decisions interpreting federal counterpart antidiscrimination statutes.[55] The Iowa cases discussed below do not represent a comprehensive list, but hopefully, the degree to which interpreting a state antidiscrimination statute is intertwined with interpretations of the federal counterpart antidiscrimination statutes is clearly expressed.

III. THE DEVELOPMENT OF ICRA CASE LAW

A. *The Early Years (1970s)*

In 1971, the Iowa Supreme Court decided *Iron Workers Local No. 67 v. Hart*—the first case under the Iowa Civil Rights Act of 1965 to reach the

51. IOWA CODE § 216.6(1)(a).

52. *See* Alex B. Long, *"If the Train Should Jump the Track . . .": Divergent Interpretations of State and Federal Employment Discrimination Statutes*, 40 GA. L. REV. 469, 505 (2006) [hereinafter Long, *Divergent Interpretations*] (arguing "state courts need to develop a coherent approach to situations where this possibility arises. . . . [Because] many state courts routinely adopt the settled constructions of parallel federal statutes with little or no explanation of their reasons for doing so"); *see also* Sperino, *Revitalizing*, *supra* note 22, at 545 ("When considering state claims, courts often construe state statutes to adhere to federal standards without any principled basis for doing so.").

53. Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 765–66 (Iowa 1971) ("The Iowa legislation is another manifestation of a massive national drive to right wrongs prevailing in our social and economic structures for more than a century. . . . Analogous language but differing procedure is incorporated in the federal legislation . . . In interpreting this legislation we also keep before us the admonition of the legislature that 'This chapter shall be construed broadly to effectuate its purposes.'" (citations omitted)).

54. Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1, 9 (Iowa 2014).

55. *See infra* Part III.

Iowa Supreme Court.[56] In *Hart*, the Iowa Supreme Court interpreted the ICRA, and "a detailed treatment of [the] law . . . [was] required" because the court knew the importance of setting the tone for future courts in interpreting, at the time, an only six-year-old law.[57] The court was confronted with a race discrimination claim and turned to the federal courts' interpretation of Title VII.[58] The court held the ICRA was constitutional, quoting the "admonition of the legislature that '[t]his chapter shall be construed broadly to effectuate its purposes.'"[59] The court's recognition that the ICRA is to be construed broadly aligns with the attention the court gives to Title VII as persuasive authority.[60] While Title VII has "[a]nalogous language but differing procedure" from the ICRA, the Iowa Supreme Court has looked to federal courts' interpretation of the analogous language and set the foundation for the court's use of federal case law in interpreting the ICRA.[61]

Seven years later, in *Franklin Manufacturing Co. v. Iowa Civil Rights Commission*, Franklin Manufacturing refused to pay disability payments pursuant to an insurance plan policy while an employee was away from work

56. *Hart*, 191 N.W.2d at 761.

57. *Id.* ("This is the first appeal to reach our court calling for an interpretation of chapter [216] (Iowa Civil Right Act of 1965).").

58. *Id.* at 768–69. The court cited to a Fifth Circuit decision and multiple other federal court decisions in addressing both parties' arguments on how to interpret the ICRA. *See id.*

59. *Id.* at 765–66; *see* Pippen v. State, 854 N.W.2d 1, 39–40 (Iowa 2014) (Waterman, J., concurring specially); *Goodpaster*, 849 N.W.2d at 9; Lynch v. City of Des Moines, 454 N.W.2d 827, 838 (Iowa 1990); Peoples Mem'l Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 92 (Iowa 1982) (en banc); Green v. Shama, 217 N.W.2d 547, 557 (Iowa 1974) (en banc).

60. The ultimate question the Iowa Supreme Court has to decide in cases to come is: What is the appropriate way to use federal authority to construe the ICRA broadly? In order to construe the statute broadly, courts can take one of two approaches: (1) When interpreting the ICRA, a court can look to federal statutes and federal courts' interpretation of those statutes and use their conclusions of law as to the federal antidiscrimination statutes as persuasive authority in construing the ICRA. *See Goodpaster*, 849 N.W.2d at 9. (2) If the court has already adopted a federal standard, analytical framework, definition, etc., the court must be cautious to "jump ship" and adopt a new federal standard even when that standard would further the legislature's intent to broadly construe the ICRA. *See* Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, 333 (Iowa 1998). *Compare Goodpaster*, 849 N.W.2d at 9–10, *with id.* at 20 (Waterman, J., dissenting).

61. *Hart*, 191 N.W.2d at 765–66.

because of pregnancy.[62] The Iowa Supreme Court held the plan's policy discriminated based on sex and, in doing so, the court addressed the issue of whether "Iowa courts [are] bound by federal decisions in interpreting its own Civil Rights Act."[63] The court refused to follow *General Electric Co. v. Gilbert* where the U.S. Supreme Court, interpreting a similar plan, concluded pregnancy was not a form of sex discrimination under Title VII.[64] In *Franklin*, the court acknowledged the interpretation of the federal statute but did not follow it, stating, "[W]e [are] not bound by *Gilbert* [i]n construing our own Civil Rights Act."[65] In addition, the court reiterated a list of statutory interpretation mechanisms it generally follows.[66]

The judicial review approach taken by the court often determines the outcome of the case.[67] If the court decides to use federal analysis of counterpart antidiscrimination statutes selectively, the judicial review theories of consistency and precedent are threatened.[68] At the same time, a strict lockstep approach may conflict with the true meaning and intent of the ICRA.[69] Fortunately, the development of ICRA case law did not stop in

62. Franklin Mfg. Co. v. Iowa Civil Rights Comm'n, 270 N.W.2d 829, 831 (Iowa 1978) (en banc).

63. *Id.* ("In *Gilbert* the United States Supreme Court held a company insurance plan which excluded disabilities arising out of pregnancy did not constitute sex discrimination in violation of Title VII of the Civil Rights Act of 1964. The case was one of statutory interpretation, limited to construing a federal statute.").

64. *Id.*; *see* Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 136 (1976), *superseded by statute as stated in* Young v. United Parcel Serv., Inc., 135 S. Ct. 1338, 1342 (2015).

65. *Franklin Mfg. Co.*, 270 N.W.2d at 831 (citing Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n, 268 N.W.2d 862, 866–67 (Iowa 1978) (en banc), *superseded by statute as stated in* Gray v. Kinseth Corp., 636 N.W.2d 100, 102–03 (2001)).

66. *Id.* at 832. The list of statutory interpretation principles included: "[give] usual and ordinary meaning [to the language]"; "[w]here language is clear and plain, there is no room for construction"; "look to the object to be accomplished and the evils and mischiefs sought to be remedied"; "[consider] [a]ll parts of the enactment"; and "give weight to the administrative interpretation[s] of statutes." *Id.* Note that "federal counterpart statutes interpretations" was not listed in the six rules that the Iowa Supreme Court follows in construing statutes. *See id.* This is not to say that the court does not give weight to federal counterpart regulations surrounding jurisprudence, the common goals of the federal ADA and the ICRA have encouraged us to look to the federal statutory and regulatory standards in applying our statute. Vincent v. Four M Paper Corp., 589 N.W.2d 55, 59–60 (Iowa 1999).

67. *See infra* Part IV.

68. *See* Pippen v. State, 854 N.W.2d 1, 40 (Iowa 2014) (Waterman, J., concurring specially).

69. *See* IOWA CODE § 216.6 (2015).

1978.[70]

One year later in *Loras College v. Iowa Civil Rights Commission*, the court distinguished the ADEA from the ICRA, specifically in regards to the retirement plan exemption included in each statute.[71] The court held that the retirement plan in question was not a "'mere subterfuge adopted for the purpose of evading the provisions of' the Iowa Civil Rights Act."[72] In reaching that decision, the court relied on Iowa case law and acknowledged, but did not rely on, federal case law interpreting federal statutes cited by both sides.[73] The court explicitly rejected the federal analysis argued by both sides and interpreted the ICRA by looking to "the clear and plain language of the statute" in determining that "its primary purpose . . . is to prevent age discrimination in hiring and discharging workers."[74] In this specific situation, the court did not rely on federal authority.[75]

70. *See* Loras Coll. v. Iowa Civil Rights Comm'n, 285 N.W.2d 143 (Iowa 1979) (en banc).

71. *Id.* at 147 ("[I]t is significant to note that the *Hodgson* case was interpreting the federal statute that exempts a 'bona fide employee benefit plan,' whereas our Iowa statute exempts '[*a*]*ny* retirement plan.' Thus, that federal district court was interpreting a federal statute that differed significantly from the exemption provisions of Iowa's Act."(emphasis added) (citations omitted)). The Iowa Civil Rights Commission cited *Hodgson v. American Hardware Mutual Insurance Co*., a federal case interpreting the ADEA's benefit plan exemption language, which the Iowa Supreme Court did not find persuasive because of differing language. *Id.* (citing Hodgson v. Am. Hardware Mut. Ins. Co., 329 F. Supp. 225, 229 (D. Minn. 1971)).

72. *Id.* at 149 ("Loras adopted its retirement plan in 1960, approximately five years prior to the date upon which the Iowa Civil Rights Act first became law, and approximately twelve years prior to the date age discrimination was made part of the Act. Although we need not hold today that a 'retirement plan or benefit system' within the meaning of section 601A.15, adopted prior to the effective date of the Act was per se adopted [*w*]*ithout* the purpose of evading the provisions of the Act, to show an intent in 1960 to evade the purpose of a statutory provision adopted in 1972 attributes, at the minimum, a tremendous amount of foresight to the employer." (emphasis added)); *id.* at 150 (citing United Air Lines, Inc. v. McMann, 434 U.S. 192, 203 (1977), *superseded by statute as stated in* Gen. Dynamics Land Sys. v. Cline, 540 U.S. 581, 594 n.7 (2004)).

73. *Id.* at 147 ("[W]e are not bound by federal cases construing a federal statute when we are called upon to construe our own Civil Rights Act. We decline to follow *Hodgson* and the other federal cases cited by the parties.").

74. *Id.* at 148.

75. Notably, the court focused on the language of the statute and made a clear distinction between the ADEA and the ICRA, which precluded the court from relying on the federal case law cited by both sides. *Id.* at 147.

B. *Adolescent Years—Development Through Disability Discrimination*[76] *(1980s–1990s)*

Ten years later in *Probasco v. Iowa Civil Rights Commission*, the Iowa Supreme Court held that an individual who suffered from chronic bronchitis was not disabled because "[her] *employability* [wa]s not curtailed to the extent which would qualify her as a 'disabled person' within the protection of the Iowa Civil Rights Act."[77] The court recognized, "In cases of statutory construction, the judicial task is to interpret the words of the relevant statute in the light of the purposes the legislative branch sought to serve by its enactment."[78] The court was fully aware of the remedial purpose of the ICRA and the intent for liberal construction.[79] Furthermore, in analyzing a disability case under the ICRA, the court said:

> On several occasions, our courts have looked to the federal system for guidance in construing our similar civil rights legislation. We employ this approach again today because, as demonstrated below, the civil rights legislation and implementing rules involved in this case mirror those adopted on the federal level.[80]

The court went on to cite Rehabilitation Act federal regulations defining "handicap" as well as U.S. court of appeals cases interpreting the language used in the federal regulations.[81] The court concluded the

76. Because the ICRA "only pronounces a general proscription against [disability] discrimination . . . we have looked to the corresponding federal statutes to help establish the framework to analyze claims and otherwise apply our statute." Casey's Gen. Stores, Inc. v. Blackford, 661 N.W.2d 515, 519 (Iowa 2003) (analyzing a disability discrimination claim filed under the ICRA and reiterating the use of federal authority used by Iowa courts in construing the ICRA).

77. Probasco v. Iowa Civil Rights Comm'n, 420 N.W.2d 432, 437 (Iowa 1988) (emphasis added).

78. *Id.* at 434–35 (citations omitted) ("To ascertain the legislative intent in construing a statute, a court may properly consider not only the language of the statute, but also its subject matter, object sought to be accomplished, purpose to be served, underlying policies, remedies provided, and consequences of various interpretation." (citations omitted)).

79. *Id.* at 435. It should be noted that the ADA was not passed until 1990, and *Probasco* was decided in 1988. *See generally* Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended in scattered sections of 42 U.S.C. & 47 U.S.C. (2012)); *Probasco*, 420 N.W.2d 432.

80. *Probasco*, 420 N.W.2d at 435 (internal citations omitted).

81. *Id.* at 436 (adopting factors for determining "[t]he degree to which an impairment substantially limits an individual" from federal courts: "the number and type

determination of whether an individual is protected under the "disability" prong of the ICRA depends on how the impairment affects the "employability" of the individual.[82]

Hollinrake v. Iowa Law Enforcement Academy was decided the same year the ADA was passed, and the court held the plaintiff, who had a visual impairment and was denied certification as a peace officer by the Iowa Law Enforcement Academy, was not substantially disabled because the impairment did not limit the plaintiff from "obtaining other satisfactory employment."[83] In *Hollinrake*, the court relied on the statutory analysis undertaken in *Probasco* and found that the ability to find "other satisfactory employment" proved a legitimate factor in determining whether an individual is qualified as "disabled" under the ICRA.[84] The development of case law interpreting disability discrimination under the ICRA continued from *Probasco*, which was decided using federal law other than the ADA.[85]

While the ADA was passed only two years after *Probasco* was decided, the Iowa Supreme Court ruled on another ICRA disability discrimination case in 1994 where the court relied on federal courts' interpretations of Section 504 of the Rehabilitation Act.[86] In *Boelman v. Manson State Bank*,

of jobs from which the impaired individual is disqualified, the geographical area to which the individual has reasonable access, and the individual's job training, experience and expectations"). The court held, "An impairment that interferes with an individual's ability to do a particular job but does not significantly decrease the individual's ability to obtain satisfactory employment otherwise is not substantially limiting within our statute." *Id.* at 436.

82. *Id.* at 437; *see also* Henkel Corp. v. Iowa Civil Rights Comm'n, 471 N.W.2d. 806, 810 (Iowa 1991) (per curiam) ("We reject the implication from *Probasco* that one must be almost unemployable because of one's impairment to be considered disabled."). The plaintiff in *Henkel* argued that *Probasco* should be extended to require an individual's impairment to be "almost unemployable" and the court disagreed. *Henkel Corp.*, 471 N.W.2d. at 810.

83. Hollinrake v. Iowa Law Enf't Acad., Monroe Cty., 452 N.W.2d 598, 599–600, 604 (Iowa 1990) ("In the present case, it is clear that Hollinrake does not fit into a category that can be defined as 'disabled.' He is not disqualified from a wide range of other available jobs. He would only be limited from jobs that require stringent visual acuity. Hollinrake is not limited to any geographical area, nor is his reasonable access hindered in any manner.").

84. *Id.* at 604.

85. *See id.*

86. Boelman v. Manson State Bank, 522 N.W.2d 73, 79 (Iowa 1994) ("The comparable federal statute for disability discrimination claims is section 504 of the Rehabilitation Act. We believe section 504 is sufficiently similar to our chapter 601A

the court addressed a disability discrimination claim filed by a bank president who had been diagnosed with multiple sclerosis and was subsequently terminated for, allegedly, "poor performance."[87] In relying on the federal analytical framework for disability discrimination claims, the court ruled the district court erred in ruling the bank did not fire the president because of a disability, but the error was not prejudicial because the president was not qualified for the job.[88] The maturation of ICRA interpretation continued through the 1990s.[89]

A few years later, in *Bearshield v. John Morrell & Co.*, the Iowa Supreme Court reviewed a complaint filed with the Iowa Civil Rights Commission alleging disability discrimination in violation of the ADA and the ICRA.[90] The plaintiff suffered from degenerative arthritis in her knee, and the court, before deciding whether she was legally disabled, noted, "The issue of whether an individual has a disability is a *factual question* to be decided on a case-by-case basis."[91] The court concluded that a fact question existed as to whether "she has a disability because her impairment substantially limits her ability to work without reasonable accommodation" but agreed with the employer that the plaintiff was not disabled "because her impairment substantially limits major life activities other than work[]."[92]

that federal cases interpreting section 504 are helpful in determining the appropriate analytical framework for state disability discrimination claims.").

87. *Id.* at 78 ("Here Boelman attempted to prove that his termination was based, at least in part, on the mere fact that he had MS, unrelated to its effect on his performance. The defendants claimed that he was fired because of poor performance. The district court found that Boelman's MS caused his performance problems. Consequently, no matter whose version of the facts we accept, *Boelman's disability clearly motivated his termination*." (emphasis added)).

88. *Id.* at 82.

89. The comparison of the development of the Iowa Supreme Court's case law with human biological development is useful in explaining the recent decisions and dicta issued in 2014 and 2015, which the Author argues amounts to a "mid-life" crisis of ICRA case law development. *See infra* Part IV.

90. Bearshield v. John Morrell & Co., 570 N.W.2d 915, 917 (Iowa 1997).

91. *Id.* at 917, 918 (emphasis added). The court further noted: "Given the identity of the applicable legal principles and analytical framework with respect to the question of whether one has a disability under the ADA and the ICRA, our subsequent discussion of whether Bearshield is disabled applies equally to her claims under both statutes." *Id.*

92. *Id.* at 924. The court undertook a detailed and narrow analysis as to whether the plaintiff was "disabled" as defined by the ADA, Rehabilitation Act, ICRA, and accompanying regulations to each. *See id.* at 918. First, the court concluded:

> Bearshield's impairment, although severe, has not altered her general quality

In construing the ICRA, Iowa courts continued to delineate proper analytical frameworks and definitions through close examinations of disability discrimination-related issues through the 1990s, frequently, if not always, relying on federal interpretations.[93]

In 1998, the Iowa Supreme Court adopted a narrow interpretation of disability in *Fuller v. Iowa Department of Human Services*.[94] Ms. Fuller fell behind at work and was diagnosed with depression, which eventually led to her hospitalization.[95] Her employer, the Department of Human Services (DHS), could not locate a number of files that had been assigned to Ms. Fuller and, over the course of the year while she was away from work, was unsuccessful in recovering all the missing files.[96] Ms. Fuller was fired in December of 1993 after her position had been nonproductive since September of 1992.[97] The case proceeded to trial, where the district court entered judgment in favor of DHS and "determined that plaintiff was not permanently disabled because her depression could be controlled with medication, and while on medication, her depression did not substantially impact any of her major life activities"; further, the court said having a family member present at work was not a reasonable accommodation.[98] On appeal, the Iowa Supreme Court, relying on the Tenth Circuit's interpretation of the ADA, agreed with the district court and narrowly interpreted disability discrimination under the ICRA:

> We thus hold that in a disability discrimination case, a fact

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> of life or ability to function. She can still walk, stand, sit, take care of herself, and perform manual tasks. It is true she has limitations on her ability to do these activities and on the duration of such activities, but we do not think a reasonable person could find these restrictions significant under the record before us.

Id. at 920. Second, in finding that the plaintiff was truly disabled, the court further developed the "employability" standard as considered in *Probasco* and later clarified in *Henkel* and *Hollinrake*. "[W]e think Bearshield has produced sufficient evidence to generate a fact question on the material issue of whether she has 'a physical or mental impairment that substantially limits' the major life activity of work." *Id.* at 922.

93. *See id.*; Henkel Corp. v. Iowa Civil Rights Comm'n, 417 N.W.2d 806, 809–10 (Iowa 1991) (per curiam); Hollinrake v. Iowa Law Enf't Acad., Monroe Cty., 452 N.W.2d 598, 604 (Iowa 1990); Probasco v. Iowa Civil Rights Comm'n, 420 N.W.2d 432, 435 (Iowa 1988).

94. *See* Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, 333 (Iowa 1998).

95. *Id.* at 325.

96. *Id.* at 325–26.

97. *Id.* at 327.

98. *Id.*

> finder *may not consider* the mitigating effects of medication or assistive devices in determining *the existence of an impairment*, but that the mitigating effects of medication or other assistive devices *may be considered* in determining whether *the impairment substantially limits a major life activity*.[99]

With its holding, the court explicitly rejected the Equal Employment Opportunity Commission's Interpretive Guidance as to whether the antidepressant medications mitigate the substantial impairment to a major life activity.[100] Furthermore, the court fell in "lockstep" with the federal courts in narrowly construing the state antidiscrimination statute prohibiting disability discrimination.[101]

A year later in *Vincent v. Four M Paper Corp.*, the Iowa Supreme Court noted its prior recognition of "the common purposes of the federal Americans with Disabilities Act . . . and the ICRA as well as the *similarity in terminology* of the statutes."[102] *Vincent* further developed ICRA case law and the use of federal authority as interpretative guidance, specifically in the realm of disability discrimination.[103] While the majority of the case law surrounding the ICRA and Iowa courts' use of federal authority in interpreting the ICRA was developed around disability discrimination law through the 1990s,[104] other forms of discrimination provided a platform for the Iowa Supreme Court to emphasize the use of federal authority, especially in the years leading up to the ICRA's 50th birthday.

99. *Id.* at 333 ("We believe that the reasoning of the court in *Sutton* reflects a common-sense approach to analyzing whether an impairment substantially limits a major life activity. To conclude otherwise would in effect allow plaintiffs to bypass the substantially limiting requirement. This result would also directly conflict with the ADA's statutory requirement that a disability-discrimination-plaintiff prove his or her impairment substantially limits a major life activity. Fuller cannot have it both ways.").

100. *Id.* at 332–33 ("[W]e conclude that it was proper for the district court to consider the mitigating effects that medication had on Fuller's mental impairment.").

101. *See id.*

102. Vincent v. Four M Paper Corp., 589 N.W.2d 55, 59–60 (Iowa 1999) (emphasis added) (noting further that the court has "looked to the ADA and federal regulations implementing that act in developing standards under the ICRA for disability discrimination claims").

103. *Id.* at 61–62 (repeating the "other satisfactory employment" standard found in previous cases: "An impairment that interferes with an individual's ability to do a particular job but does not significantly decrease that individual's ability to obtain satisfactory employment otherwise is not substantially limiting within our statute." (quoting Probasco v. Iowa Civil Rights Comm'n, 420 N.W.2d 432, 436 (Iowa 1988))).

104. *See supra* notes 83–102 and accompanying text.

C. *An Adult Law with Complex Issues*

The Iowa Supreme Court heavily relied on federal authority in *Pecenka v. Fareway Stores, Inc.*, in which it ruled on a sex discrimination claim challenging a grooming code at Fareway Stores, Inc.[105] The court held that the grooming code did not constitute sex discrimination,[106] and the court stated, "Because the ICRA is modeled after the federal legislation, Iowa courts have traditionally looked to federal law for guidance in interpreting it."[107] In a seemingly lockstep move, the court ruled in favor of Fareway and upheld the validity of the grooming code.[108]

> We agree with [the federal] decisions and their reasoning. The sex discrimination provisions of Title VII and the ICRA were enacted to stop the perpetuation of sexist or chauvinistic attitudes in employment which significantly affect employment opportunities. Title VII and the ICRA were not meant to prohibit employers from instituting personal grooming codes which have a de minimus [e]ffect on employment.[109]

More recently, the Iowa Supreme Court discussed federal authority in interpreting the ICRA in *Weddum v. Davenport Community School District*—this time in the context of age discrimination and thus, the ADEA.[110] Kathy Weddum was a math teacher who was not eligible for early retirement because she did not meet the district's June 30 cut-off date for the early retirement eligibility requirement of being 55 years of age by that date, as she did not turn 55 until September.[111] The court refused to decide the case based on Weddum's argument that such a plan was reverse age discrimination and such a cause of action was allowed under the ICRA because the ICRA is "age-neutral," unlike the ADEA.[112] Rather, the court decided the real issue was whether the voluntary early retirement plan was

105. Pecenka v. Fareway Stores, Inc., 672 N.W.2d 800, 802 (Iowa 2003).

106. *Id.* at 804.

107. *Id.* at 803 (citing Vivian v. Madison, 601 N.W.2d 872, 873 (Iowa 1999)).

108. *Id.* at 804 ("Several federal appellate courts have considered Title VII in the context of personal grooming codes regulating hair length. Every federal appellate court which has considered personal grooming codes prohibiting men but not women from wearing long hair has found the codes to be non-discriminatory within the meaning of Title VII.").

109. *Id.*

110. Weddum v. Davenport Cmty. Sch. Dist., 750 N.W.2d 114, 118 (Iowa 2008).

111. *Id.* at 116–17.

112. *Id.* at 118 (citing Hulme v. Barrett, 449 N.W.2d 629, 631–32 (Iowa 1989)).

valid under the "exception for retirement plans" found in Iowa Code section 216.13.[113] In ruling Davenport Community School District's voluntary early retirement incentive plan did not violate the ICRA, the court, further supporting its decision, laid out how its "conclusion is also supported by federal case law."[114]

The question remains: If down the road the ADEA is amended—for example, altering the "retirement plan" exception—and subsequently an individual brings an age discrimination claim under the ICRA, how persuasive should the portion of the *Weddum* opinion discussing federal case law under the pre-amendment ADEA be to Iowa courts?

While the Iowa Supreme Court has interpreted the ICRA adhering to the admonition of the legislature to construe the statute broadly, the judicial review approach has used federal authority differently as of late.[115] On the one hand, federal authority is merely persuasive authority for Iowa state statutes, but on the other hand, federal authority has been followed—in some cases in lockstep—by Iowa courts in ruling on disputes under the ICRA.[116] The more the Iowa Supreme Court has developed case law under the ICRA, the more confusing and complex the analysis and use of federal authority in Iowa case law has become. Furthermore, the complexity surrounding ICRA statutory interpretation blurs the line between giving precedential versus persuasive value to Iowa case law that has been substantially justified and decided based upon federal case law interpretations.

113. *Id.* at 118–19. Such an exception is also found in the ADEA. *See* ADEA, 29 U.S.C. § 623(f)(2)(A) (2012).

114. *Weddum*, 750 N.W.2d at 120. The court went on to cite two Eighth Circuit decisions. In Morgan v. A.G. Edwards & Sons, Inc., the Eighth Circuit upheld a similar voluntary retirement plan as the one in *Weddum* but under the ADEA. *See* Morgan v. A.G. Edwards & Sons, Inc., 486 F.3d 1034, 1042 (8th Cir. 2007); *Weddum*, 750 N.W.2d at 120. In doing so, the *Morgan* court distinguished the plan at issue with a plan that violated the ADEA in a previous case the Eighth Circuit had decided. *Compare Morgan*, 486 F.3d at 1042, *with* Jankovitz v. Des Moines Indep. Cmty. Sch. Dist., 421 F.3d 649, 655 (8th Cir. 2005) ("The basis for our conclusion that the amended [early retirement incentive plan] is inconsistent with a purpose of the ADEA is the fact that the amount of available early retirement benefits drops to zero upon an employee's attainment of the age of 65.").

115. *See supra* notes 105–114 and accompanying text.

116. *See supra* notes 105–114 and accompanying text.

IV. MID-LIFE CRISIS IN ICRA CASE LAW

One scholar referred to a change in interpretational direction of state antidiscrimination statutes as courts "jump[ing] the track"[117]—in human development terms, experiencing a "mid-life crisis." The ICRA's mid-life crisis started in the summer of 2014 when the state supreme court, in two opinions, confronted the issue of how to use federal authority in construing the statute.[118] The first, *Goodpaster v. Schwan's Home Service, Inc.*, addressed a disability discrimination claim, and the majority and dissent clearly articulated the competing schools of thought on how state courts should handle amendments to federal antidiscrimination statutes in the construction of their state antidiscrimination jurisprudence.[119] The second, *Pippen v. State*, which was decided less than a month after *Goodpaster*, was a class action lawsuit against the State of Iowa alleging the State's hiring practices disparately impacted African-Americans.[120] The part of the *Pippen* opinion pertinent to this Note is merely dicta but instructive nonetheless.[121] The interpretative dilemma did not end in 2014. In 2015, the Iowa Supreme Court was confronted with this issue again in *Dindenger v. Allsteel, Inc.*, when the U.S. District Court for the Southern District of Iowa asked it to answer two certified questions of law and to interpret pre-2009 wage discrimination under the ICRA.[122]

A. *A Crisis Surrounding Disability Discrimination Under the ICRA:* Goodpaster v. Schwan's Home Service, Inc.

In *Goodpaster v. Schwan's Home Service, Inc.*, the Iowa Supreme Court decided that "multiple sclerosis is a disability contemplated by the Iowa Civil Rights Act of 1965."[123] The main question of the case was "whether the occasional flare-ups experienced by Goodpaster constitute[d]

117. *See, e.g.*, Long, *Divergent Interpretations*, *supra* note 52, at 473. ("[A]s interpretational issues at the federal level became more complex and (in at least some instances) more controversial, state antidiscrimination law had more opportunities to 'jump the track' and take alternative courses.").

118. *See* Pippen v. State, 854 N.W.2d 1, 8–9, 10–17 (Iowa 2014); Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1, 7–13 (Iowa 2014).

119. *See Goodpaster*, 849 N.W.2d at 7–13; *id.* at 21 (Waterman, J., dissenting).

120. *Pippen*, 854 N.W.2d at 5.

121. *See id.* at 29–30.

122. Dindinger v. Allsteel, Inc., 860 N.W.2d 557, 559 (Iowa 2015).

123. *Goodpaster*, 849 N.W.2d at 4 (majority opinion).

a substantial limitation of a major life activity."[124] Consequently, the definition of "substantially limits" was the focus of the analysis.[125]

Goodpaster worked as a customer service manager for Schwan's Home Service, Inc. in which his main duty was to sell and deliver Schwan's company products.[126] He experienced loss of eyesight and chest pain and immediately consulted a doctor.[127] Disagreement by doctors as to whether he had multiple sclerosis (MS) existed, but two of three doctors diagnosed him with MS.[128] Goodpaster continued to work but saw a decline in sales as a result of Schwan's accommodating his request for an alternative route.[129] Goodpaster requested further accommodations for his medical problem, including asking for a second driver to take over when "flare-ups" occurred and asking for someone to pick him up so he could return back to the main office, both of which were denied.[130] Goodpaster was terminated for "his failure to meet company sales expectations."[131] The district court granted summary judgment in favor of Schwan's.[132]

1. *Majority: Broadly Construing the ICRA, Persuasively Using Federal Authority*

In determining that MS is a disability under the ICRA, the *Goodpaster* majority thoroughly reviewed the history of disability discrimination around the nation.[133] The court held that MS is a disability "on its face" under the ICRA.[134] In coming to that conclusion, the court distinguished *Nyrop v. Independent School District No. 11*, where the Eighth Circuit held that MS

124. *Id.* at 7.

125. *Id.* ("The phrase 'substantially limits' is not defined by statute or the Iowa Administrative Code. The underlying controversy—whether Goodpaster's multiple sclerosis is a disability under the ICRA—essentially centers on these words. Both parties rely to some extent on federal law.").

126. *Id.* at 4.

127. *Id.* at 5.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* at 6.

133. *See id.* at 7–13; *supra* Part II.C.

134. *Goodpaster*, 849 N.W.2d at 11 (citing Scott H. Nichols, *Iowa's Law Prohibiting Disability Discrimination in Employment: An Overview*, 32 Drake L. Rev. 273, 239 (1982–1983)).

does not substantially limit any major life activity.[135] The majority pointed out that the two major Supreme Court cases—*Sutton* and *Toyota*—relied on by the court in *Nyrop* were no longer good law.[136] Next, the court analyzed the legislative histories of both the ADA and the ADAAA.[137] Then, the court addressed Goodpaster's argument that because of the ADAAA, the ICRA should be interpreted to include MS.[138] The court made clear that its interpretation of the ICRA is not dependent on the ADA or its amendments,[139] but also recognized that it had looked to the federal courts' interpretations of federal statutes for guidance on how to interpret the ICRA.[140]

The majority briefly discussed a 2004 case in which the court ruled on an ADA question specifically.[141] In *Hansen v. Seabee Corp.*, the court relied on *Sutton* and *Toyota* to hold that "work" is not a "major life activity" contemplated by the ADA.[142] The court in *Goodpaster* was quick to point

135. Nyrop v. Indep. Sch. Dist. No. 11, 616 F.3d 728, 735 (8th Cir. 2010); *Goodpaster*, 849 N.W.2d at 7–8.

136. *Goodpaster*, 849 N.W.2d at 7–8 (pointing out both cases have been superseded by the ADA Amendments of 2008); *see supra* Part II.C.

137. *Goodpaster*, 849 N.W.2d at 8–10 (considering the legislative history dating back to the original passage of the ADA in 1990 and accepting the notion that the ADAAA restored the original meaning of the ADA which the courts had misinterpreted).

138. *Id.* at 9.

139. *Id.* ("Federal law does not necessarily control our interpretation of a state statute. Iowa employers must follow federal law, but it is axiomatic that an amendment to a federal statute does not simultaneously and automatically amend a parallel or even identical Iowa statute. Just as 'we are not bound by federal cases construing a federal statute when we are called upon to construe our own Civil Rights Act,' we are not bound by the language of federal statutes when interpreting language of the ICRA." (quoting Loras Coll. v. Iowa Civil Rights Comm'n, 285 N.W.2d 143, 147 (Iowa 1979) (en banc))); *see also* DeBoom v. Raining Rose, Inc., 772 N.W.2d 1, 7 (Iowa 2009) ("[W]e must be mindful not to substitute 'the language of the federal statutes for the clear words of the [ICRA].'" (quoting Hulme v. Barrett, 449 N.W.2d 629, 631 (Iowa 1989))).

140. *Goodpaster*, 849 N.W.2d at 9; Casey's Gen. Stores, Inc. v. Blackford, 661 N.W.2d 515, 519 (Iowa 2003) (The ICRA "only pronounces a general proscription against discrimination and we have looked to the corresponding federal statutes to help establish the framework to analyze claims and otherwise apply our statute.").

141. *Goodpaster*, 849 N.W.2d at 10–11; Hansen v. Seabee Corp., 688 N.W.2d 234, 244 (Iowa 2004).

142. *Hansen*, 688 N.W.2d at 239–40. The court made clear they were only interpreting the federal statute: "Because we are construing only the federal statute, and no federal court has specifically held that working *does not qualify* as a major life activity under the ADA, we will follow the lead of the Supreme Court and assume without deciding that it does." *Id.* at 240 (emphasis added).

out *Hansen* was not binding on the case at hand and would be decided differently because of the ADAAA.[143] The court then turned its focus to what it had not defined yet as a disability—"unlike federal law, [Iowa] has never contemplated that a disability could not be intermittent or episodic"—and pointed to the decision in *Consolidated Freightways, Inc. v. Cedar Rapids Civil Rights Commission*, where the court "held alcoholism was capable of being a disability."[144] Moreover, the court continued its analysis of sources of interpreting "disability" in the ICRA, finding the Rehabilitation Act persuasive, recognizing subsequent federal court decisions holding MS as a disability, and dismissing a number of pre-ADAAA cases Schwan's relied on, which "cast[ed] doubt on whether a substantial limitation can exist when the plaintiff experiences memory loss."[145] The majority attempted to separate the ADA (pre-ADAAA) and ICRA disability discrimination analysis and then used only portions of federal authority that supported a broad interpretation of the ICRA.[146]

Ultimately, the court decided that Goodpaster had raised a jury question as to whether his MS—an episodic condition—made him disabled and whether his subsequent termination was motivated in part by his "health issues."[147] In the vein of broad construction, the court used post-ADAAA authority as persuasive authority and held that MS is a disability under the ICRA.[148] The court implicitly justified the use of post-ADAAA regulations and court interpretations as persuasive authority applicable to construing the ICRA broadly because the ADAAA was an attempt by Congress to reject the Supreme Court's consistent, narrow reading of the ADA and clarify the original meaning.[149]

143. *Goodpaster*, 849 N.W.2d at 10–11 ("Accordingly, *Hansen* similarly has no bearing on our determination of whether multiple sclerosis is a disability under the ICRA.").

144. *Id.* at 12 (citing Consol. Freightways, Inc. v. Cedar Rapids Civil Rights Comm'n, 366 N.W.2d 522, 526–28 (Iowa 1985) (en banc)).

145. *Id.* at 13 (stating "these cases are ADA cases hailing from an era of federal law in which the ADA turned a blind eye to victims of episodic ailments").

146. *Compare id.* at 7–9, *with* Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, 333 (Iowa 1998).

147. *Goodpaster*, 849 N.W.2d at 13.

148. *Id.* ("Accordingly, we hold multiple sclerosis can constitute a disability under the Iowa Act if the plaintiff produces evidence that the condition substantially impaired one or more major life activities during episodes or flare-ups, even if it did not impair life activities at all when in remission.").

149. *See, e.g.*, Long, *Divergent Interpretations*, *supra* note 52, at 495 ("The Supreme Court's restrictive reading of the ADA's terms has provoked a large outcry from

2. *Dissent: Consistency and Uniformity*

In the dissent, Justice Waterman opined, "I would not postpone the day of reckoning on a case doomed to dismissal."[150] The dissent relied on three Iowa Supreme Court cases—and should have relied on one more[151]—in coming to the opinion that Goodpaster should not have been considered to be disabled under the ICRA.[152] The dissent argued the majority should have undertaken a more consistent analysis of the disability discrimination—relying on precedent and thus furthering uniformity and consistency in interpreting the ICRA.[153] The dissent focused on how Iowa courts have determined if an individual is "substantially disabled" by looking at the case law developed over the past few decades by the Iowa Supreme Court.[154] The dissent pointed out that the determination of whether an individual is "disabled" under the ICRA requires the court to analyze whether the individual could attain satisfactory employment with the impairment.[155] For this reason, the dissent weighed all the evidence surrounding the employment action:

> Goodpaster's physicians did not place any restrictions on him. He was able to complete his route upon returning to work, so long as he followed his doctor's advice to take breaks as needed. And, most importantly, he obtained other employment after his termination.[156]

academics and the original sponsors of the measure in Congress."); Sperino, *Diminishing Deference*, *supra* note 3, at 42 ("[T]he Supreme Court has often chosen narrow statutory interpretations that do not comport with the liberal reading to be given to employment discrimination statutes.").

150. *Goodpaster*, 849 N.W.2d at 19 (Waterman, J., dissenting). It seems appropriate to point out that part of the dissent's view on this issue is reviewed in light of the facts on the record: Goodpaster ran his own painting company after he left Schwan's. *Id.*

151. *See Fuller*, 576 N.W.2d at 333.

152. *Goodpaster*, 849 N.W.2d at 21 ("This case is even more clear-cut than *Probasco, Hollinrake*, or *Vincent*. It is undisputed that Goodpaster's condition only occasionally impairs his driving and that he has been able to obtain satisfactory employment elsewhere.").

153. *See id.*; *supra* Part III.B.

154. *Goodpaster*, 849 N.W.2d at 20 ("In several cases, we have applied the rule that a person is not substantially disabled if the person is able to obtain satisfactory employment.").

155. *Id.* at 19–20.

156. *Id.* at 21. The dissent did not buy Goodpaster's argument that he was disabled or that if he was impaired, he could perform the essential functions of the job. *See id.* at 19. Instead, the dissent suggested that the court could have further developed disability

Moreover, the dissent argued, even if Goodpaster were disabled, which prohibited him from driving, the essential nature of Goodpaster's job at Schwan's was driving; thus, he would not be qualified for the job.[157]

3. What Did Goodpaster *Do for the Development of the ICRA Case Law?*

The court indirectly synthesized the state of disability discrimination law in Iowa with that of the federal government, but it did so in a roundabout way that could produce trickier or more complicated litigation tactics in the future.[158] Taking a more textual or statutorily strict interpretational approach may have required the Iowa Legislature to address this issue and left the decision—whether MS is a disability and thus protected under the ICRA—out of the hands of the court.[159] The court contemplated whether MS was considered a disability under the ICRA but did so relying on federal authority that, to this point, the Iowa Legislature has neither acquiesced to nor rejected.[160]

On the one hand, the *Goodpaster* court expanded disability rights of individuals—a decision that fits with the command to construe the ICRA broadly.[161] Going forward, however, the implications of a decision to rely on regulations and language from an amended federal statute to interpret an

discrimination law under the ICRA by considering Mr. Goodpaster's multiple sclerosis in the context of "employability." *Id.*

157. *Id.* at 22; *see also* Boelman v. Manson State Bank, 522 N.W.2d 73, 80–81 (Iowa 1994) (holding that a bank president who had multiple sclerosis was not qualified for the job because he had emotional and personality problems stemming from his multiple sclerosis).

158. *See* Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 765–66 (Iowa 1971).

159. Other than those working in Senator Tom Harkin's campaign offices around the state in the early 2000s, it did not appear that broadening the scope of disability discrimination coverage was a major concern for Iowa voters. *Cf.* IOWA CODE § 216.6 (2015) (noting that no amendments have been enacted or regulations promulgated in concern to the defined suspect class of "disability"). *But see* Pippen v. State, 854 N.W.2d 1, 29–30 (Iowa 2014) ("The failure of the Iowa legislature to enact similar curative legislation, however, is of no particular moment when there has been no similar narrow judicial construction of the Iowa Civil Rights Act by this court. Federal cases are not binding on questions of state law and thus there is no need to override them through state legislative action. As noted by the Vermont Supreme Court, a state legislature is not required to 'react to every federal decision interpreting Title VII or risk that its inaction will be interpreted as an endorsement of the federal decision.'" (quoting Lavalley v. E.B. & A.C. Whiting Co., 692 A.2d 367, 370 (Vt. 1997))).

160. *See Goodpaster*, 849 N.W.2d at 9 (majority opinion).

161. *Id.*

un-amended state counterpart statute surely will result in more confusion for those bringing claims under the ICRA.[162]

B. *Developing Through Detailed Dicta:* Pippen v. State

In *Pippen v. State*, 14 African Americans brought a class action lawsuit alleging discrimination in the form of disparate impact against the State of Iowa in its hiring practices.[163] Before addressing the issue at hand, the court went into a long discussion of the development of the U.S. Supreme Court decisions addressing disparate impact claims under Title VII.[164] The court started by discussing *Griggs v. Duke Power Co.*,[165] *Watson v. Ft. Worth Bank & Trust*,[166] *Wards Cove Packing Co. v. Atonio*,[167] the Civil Rights Act of 1990, which was a failed attempt by Congress to overrule the *Wards Cove* decision but eventually led to the Civil Rights Act of 1991,[168] and finally, *Wal-Mart Stores, Inc. v. Dukes*[169]—all of which were federal authority interpreting Title

162. *Compare* ADAAA, Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended in scattered sections of 29 U.S.C. & 42 U.S.C. (2012 & Supp. III 2015), *with* IOWA CODE § 216.6A.

163. *Pippen*, 854 N.W.2d at 4, 5.

164. *Id.* at 10–17.

165. Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) ("[Title VII] proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."); *Pippen*, 854 N.W.2d at 10–11.

166. Watson v. Fort Worth Bank & Tr., 487 U.S. 977 (1988); *Pippen*, 854 N.W.2d at 11–13. "In *Watson*, all participating members of the Supreme Court held that a claim could be brought based upon the exercise of subjective discretion, but the court split sharply on the contours and scope of such a disparate impact claim." *Pippen*, 854 N.W.2d at 11 (comparing *Watson*, 854 N.W.2d at 991–99 (plurality opinion), with *id.* at 1000–11 (Blackmun, J., concurring in part and concurring in the judgment)).

167. Wards Cove Packing Co. v. Antonio, 490 U.S. 642 (1989), *superseded by statute*, Title VII, Pub. L. No. 102-166, 105 Stat. 1074, *as recognized in* Smith v. City of Jackson, 544 U.S. 228 (2005); *Pippen*, 854 N.W.2d at 13–15. With Justice Kennedy on the court, Justice O'Connor's plurality opinion in *Watson* was converted to precedent. *Pippen*, 854 N.W.2d at 13.

168. *Pippen*, 854 N.W.2d at 15–16 ("The language in the Civil Rights Act of 1991 did not include the specific language regarding record keeping that was present in the unsuccessful Civil Rights Act of 1990, but the general language used in the Civil Rights Act of 1991 to establish an exception to the identification of particular employment practices was stated in terms broad enough to cover situations where an employer fails to keep records.").

169. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 366–67 (2011) (overruling the decision by the district court to certify a class of 1.5 million current and past female

VII. The court found that, under the federal analysis, the district court concluded correctly in granting summary judgment for the defendants.[170] The court then turned to the ICRA disparate impact claim and laid out, in dicta, a compelling argument as to why the Iowa Supreme Court is not bound in interpreting the ICRA by federal courts' interpretations of Title VII; but the court recognized:

> [T]he plaintiffs structured the litigation and advanced arguments solely based upon federal law standards. Had the plaintiffs advanced an argument under state law departing from the federal precedent, for example, that a particular employment practice is not a requirement under the Iowa Civil Rights Act—a different factual record might have been developed at trial. Specifically, the State did not attempt to present a defense based upon business necessity, and the State's response to the plaintiffs' damage claim was quite limited. If, for example, the State knew the plaintiff was relying upon a different theory of law, it might have affected the factual development at trial. Under these circumstances, we decline to address arguments that were not advanced by the plaintiffs at trial.[171]

However, *Pippen* provides a thorough analysis of the topic of this Note, with an equally compelling response in the concurrence. Addressed below is the part of the opinion and concurring opinion pertinent to the overall issue: how the Iowa Supreme Court should interpret the ICRA after the federal counterpart has been amended.[172]

employees of Wal-Mart); *Pippen*, 854 N.W.2d at 16–17. The court in *Pippen* noted that this was a 5–4 decision. *Pippen*, 854 N.W.2d at 18.

170. *Pippen*, 854 N.W.2d at 27 ("The bottom line, on the record before us, is that while the plaintiffs demonstrated the recordkeeping was sometimes incomplete, the district court on the record before it could conclude that the plaintiffs failed to show the negative, namely, that employment practices could not be extracted from the underlying documents and analyzed in a statistically significant manner. On this issue, the district court got it right. As a result, under applicable federal law, the State was entitled to summary judgment on the record developed in the district court on the plaintiffs' claim under Title VII of the Civil Rights Act of 1964.").

171. *Id.* at 31–32. It appears Justice Appel really wanted to confront the issue of this Note head-on, like the court had done just a few weeks earlier in *Goodpaster*, but because the plaintiffs approached this case under the assumption that the Iowa Supreme Court would analyze the ICRA using the federal framework for Title VII, Justice Appel was left only to wax eloquent in dicta.

172. *See id.* at 27–30.

1. *Broad Construction and Persuasive Federal Authority*

In *Pippen*, the court chronicled those instances when the federal legislature enacted curative legislation in response to federal courts' narrow interpretation of federal antidiscrimination statutes.[173] In dicta, the court stated:

> The bottom line is that the Iowa Civil Rights Act is a source of law independent of the Federal Civil Rights Act. In construing the Act, we may look to federal and state court precedent, none of which are binding, but which may persuade us in the interpretation of the Iowa statute. In making choices under the Iowa Civil Rights Act, we must be mindful of the legislative direction that the Act be broadly interpreted to effectuate its purposes. *See* Iowa Code § 216.18(1).[174]

In coming to this conclusion, the court justified the use of federal statutes and regulations when they are persuasive in construing the ICRA broadly.[175] The court, consistent with *Goodpaster*, mentioned that had the plaintiffs argued for a different analysis of disparate impact claims under the ICRA than Title VII, the court would consider deviating from the U.S. Supreme Court cases discussed in the decision and previously discussed.[176]

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173. *Id.* at 29–30. The court noted:

> Recognition of the independent character of state civil rights statutes is particularly important when Congress passes legislation designed to overcome decisions of the United States Supreme Court narrowly interpreting civil rights statutes. For instance, when the United States Supreme Court held in *General Electric Co. v. Gilbert* that discrimination based on pregnancy was not sex discrimination, Congress overrode the decision. After the United States Supreme Court decided *Wards Cove*, Congress enacted legislation in response to the decision. Congress recently overrode the restrictive United States Supreme Court cases of *Sutton v. United Air Lines, Inc.* and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* through the ADA Amendments Act of 2008. Similarly, Congress acted in response to *Ledbetter v. Goodyear Tire & Rubber Co.* by enacting curative legislation.

Id. at 29 (citations omitted).

174. *Id.* at 30.

175. *Id.*

176. *Id.* The court explained:

> The plaintiffs in their brief, however, do not explicitly invite us to interpret the Iowa Civil Rights Act *in a fashion different than Title VII* of the Federal Civil Rights Act. The plaintiffs declare that "generally speaking," the same burden-shifting approach is applied under the Iowa Civil Rights Act as is applied under

2. *Predictability and Stability of the Law*

The special concurrence took exception to the portion of the opinion discussed above, stating, "[T]he majority opinion . . . misleads by omission and thereby unfairly disparages, *sub silentio*, our long-standing practice, followed in numerous decisions of this court, of relying on federal decisions to interpret equivalent provisions in the ICRA. The majority, in a discussion unrelated to its holding, distances itself from federal decisions."[177] The concurrence then discussed a number of Iowa Supreme Court decisions interpreting the ICRA, dating back to 1971 and *Iron Workers Local v. Hart*, pointing to how numerous decisions relied on federal authority in construing the ICRA.[178] No words were minced when the concurrence concluded:

> In the majority's view, if it does not like how federal decisions were decided, it can freely disregard them. The cost of this *new approach* is the stability and predictability of our law. After today, it is at best unclear what weight litigants and district court judges or the court of appeals should give federal cases when divining how our court will construe equivalent provisions in the ICRA. This is unfortunate. A more restrained majority would have deferred its pronouncements until a case in which they made a difference to the outcome.[179]

C. *Interpreting ICRA and Federal Wage Discrimination Provisions:* Dindinger v. Allsteel, Inc.

Most recently, the Iowa Supreme Court decided *Dindinger v. Allsteel, Inc.*, answering two certified questions of law: (1) "Is Iowa Code Section 216.6A Prospective or Retroactive?" and (2) "To What Extent May a Plaintiff Recover Damages for Wage Discrimination Under Iowa Code

> Title VII of the Federal Civil Rights Act. But the plaintiffs go even further. They seem to take the view that the criteria established in the Civil Rights Act of 1991 also apply under the Iowa Civil Rights Act even though there was no comparable statutory amendment. Plaintiffs simply state that under "the law," a plaintiff must identify a specific employment practice or show that the decision-making process is not capable of separate analysis. Thus, the plaintiffs do not appear to make the *substantive argument that Iowa law should embark on a different path* than reflected in *Wards Cove* and the subsequent amendments to Title VII adopted by Congress or from *Wal-Mart*.

Id. (emphasis added).

177. *Id.* at 38 (Waterman, J., concurring specially).

178. *Id.* at 38–39.

179. *Id.* at 40 (emphasis added).

Section 216.6?"[180] The court held (1) "section 216.6A applies on a prospective basis only to conduct occurring after its effective date of July 1, 2009," and (2) the intent of the ICRA was to treat each paycheck as a discrete discriminatory act, which means with each paycheck the 300-day statute of limitations to bring an ICRA discrimination claim restarts.[181]

In reaching these two conclusions, the court considered federal case law, other states' case law, and, of course, Iowa Supreme Court precedent.[182] Regarding the first certified question, the court noted that section 216.6A's "wording is similar to the Federal Equal Pay Act" and, in a footnote, discussed a federal district court's conclusion that the section applies only prospectively.[183]

The analysis and justification for the second certified question is the more pertinent portion of the decision and represents the takeaway from *Dindinger* for purposes of this Note. In brief, the court analyzed the language of the ICRA; chronicled the development of continuing violation case law under the ICRA and "its interplay with intervening decisions of the United States Supreme Court"; and summarized the state of the law in other states regarding the continuing violation doctrine, concluding that the language and intent of the ICRA support a finding that each discrete act—each paycheck issued—is actionable and starts the statute of limitations under the ICRA.[184]

1. *History of Wage Discrimination Case Law in Iowa*

The crux of the case law analysis centered around three Iowa Supreme Court cases (*Hy-Vee Food Stores Inc. v. Iowa Civil Rights Commission*; *Farmland Foods, Inc. v. Dubuque Human Rights Commission*; and *State ex rel. Claypool v. Evans*); two U.S. Supreme Court decisions (*National Railroad Passenger Corp. v. Morgan* and *Ledbetter v. Goodyear Tire &*

180. Dindinger v. Allsteel, Inc., 860 N.W.2d 557, 561, 566 (Iowa 2015).

181. *Id.* at 566, 568, 569.

182. *See id.* at 563–72.

183. *Id.* at 562 n.1, 564–65 ("Another federal district court in Iowa has ruled that Iowa Code section 216.6A applies prospectively only. The court there concluded that 'the statute created, defined, and regulated a new right.' That ruling, of course, is not binding on us." (first citing Forster v. Deere & Co., 925 F. Supp. 2d 1056, 1065–66 (N.D. Iowa 2013), and Lenius v. Deere & Co., 924 F. Supp. 2d 1005, 1015 (N.D. Iowa 2013); and then quoting *Forster*, 925 F. Supp. 2d at 1066, and *Lenius*, 924 F. Supp. 2d at 1015)).

184. *Dindinger*, 860 N.W.2d at 568 ("[We] conclude each paycheck is a discriminatory practice and a new 300-day limitations period applies to each check.").

Rubber Co.); and one Eighth Circuit decision (*Madison v. IBP, Inc*.).[185]

Looking first to the *Hy-Vee Food Stores* decision, the court noted the continuing violation doctrine under the ICRA was primarily influenced by federal courts of appeals cases, and thus two theories of continuing violation existed: (1) "series of acts" and (2) "maintenance of a system or policy that discriminates."[186] Regarding the *Hy-Vee Food Stores* decision, the *Dindinger* court further noted:

> We upheld the ICRC's findings that the employer's national origin discrimination was a continuing violation under the first theory, and its sex discrimination was a continuing violation under the second theory.
>
> Without further discussing the continuing violation doctrine, we then upheld the ICRC's decision to award back pay to the employee for the *entire* time period when the employer failed to promote her or give her full-time status.[187]

More than a decade later, the Supreme Court "clarified when the continuing violation doctrine applies in federal employment discrimination cases" in *Morgan*.[188] The *Dindinger* court noted that in *Morgan* the Supreme Court "rejected the idea that a series of related but separate acts constituted a continuing violation."[189]

Next, the court explained how before the Iowa Supreme Court "had the chance to address the continuing violation theory again in light of *Morgan,*" *Madison* was decided, in which the Eighth Circuit "concluded that *Morgan* did not affect the ICRA recovery."[190] The *Madison* court, relying on *Hy-Vee Food Stores*, held that "Iowa [has] followed a separate course" than *Morgan*.[191]

The *Dindinger* court explained, however, the Iowa Supreme Court "reexamined and clarified the scope of the continuing violation doctrine under the ICRA" six months after *Madison* in *Farmland Foods*, adopting

185. *Id.* at 568–72.

186. *Id.* at 568 (quoting Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm'n, 453 N.W.2d 512, 528 (Iowa 1990)).

187. *Id.* (emphasis in original) (citing *Hy-Vee Food Stores, Inc.*, 453 N.W.2d at 528–32).

188. *Id.* (citing Nat'l R.R. Passenger v. Morgan, 536 U.S. 101, 111 (2002)).

189. *Id.* at 569 (citing *Morgan*, 536 U.S. at 111).

190. *Id.* (citing Madison v. IBP, Inc., 330 F.3d 1051, 1057–58 (8th Cir. 2003)).

191. *Id.* (citing *Madison*, 330 F.3d at 1057–58).

"the 'discrete acts' approach that had won the Supreme Court's unanimous approval in *Morgan*."[192] According to *Dindinger*, *Farmland Foods* addresses two (of the three[193]) "classifications" of discriminatory practices prohibited under the ICRA regarding the continuing violation theory: (1) discrete acts of discrimination do not invoke continuing violation theory, but (2) "conduct . . . may become actionable based upon its 'cumulative impact' [and] may be pursued on a continuing violation theory if some of the conduct occurred within the limitations period."[194]

After *Farmland Foods*, the Supreme Court decided *Ledbetter*, rejecting the *Morgan* decision, holding that the pay-setting decision in the *Ledbetter* case was the "discriminatory act," not the issuance of each paycheck.[195]

The final case discussed in the *Dindinger* decision was a housing discrimination case, *Claypool*.[196] The *Dindinger* court noted that the plaintiff in *Claypool* tried "to surmount the developer's statute of limitations defense . . . , rel[ying] on the continuing violation theory," but the court rejected the theory because "the specific discriminatory practice was the sale of the housing unit. . . ."[197] The *Dindinger* court classified *Claypool* as standing for the following rule: "[I]f there is no discriminatory act but only an *effect* of a past discriminatory act within the limitations period, then the claim is time-barred."[198]

After the *Ledbetter* decision, Congress enacted the Ledbetter Fair Pay Act (FPA), abrogating the decision; and three months after the FPA was enacted, the Iowa Legislature amended the ICRA, allowing for up to two years of back pay if a discriminatory act occurs within the statute of limitations.[199]

192. *Id.* at 570 (citing Farmland Foods, Inc. v. Dubuque Civil Rights Comm'n, 672 N.W.2d 733, 741 (Iowa 2003)). It should be noted that the court in *Farmland Foods* stated a finding of continuing-violation-doctrine liability under *Hy-Vee Food Stores* requires claims "involv[ing] repeated conduct and . . . based on the cumulative impact of separate acts." *Farmland Foods, Inc.*, 672 N.W.2d at 741 (citing *Morgan*, 536 U.S. at 115).

193. The other classification is addressed in *Claypool*. *See infra* notes 196–97 and accompanying text.

194. *Dindinger*, 860 N.W.2d at 570–72.

195. *Id.* at 570–71.

196. *Id.* at 571 (citing State *ex rel.* Claypool v. Evans, 757 N.W.2d 166, 171–72 (Iowa 2008)).

197. *Id.* (citing and quoting *Claypool*, 757 N.W.2d at 171, 172).

198. *Id.* at 572 (emphasis added).

199. *Id.* at 571.

2. *Departure from Federal Precedent*

The *Dindinger* court recognized in footnote 8 the issue this Note attempts to crystalize, noting the interplay of the aforementioned cases concerning the continuing violation doctrine in ICRA jurisprudence:

> When interpreting the ICRA, we have not always followed federal interpretations of similar language in the federal civil rights statutes. Departure from federal precedent in this case is appropriate. The United States Supreme Court's decision in *Ledbetter*, we believe, is inconsistent with the language of the ICRA, with *Morgan*, and with *Farmland Foods*. Our decision in *Farmland Foods* treats each independent discriminatory act as a separate unit for statute of limitations purposes. Discrete acts of discrimination do not become timely merely because they have been repeated, or untimely merely because they have occurred before.[200]

The *Dindinger* court neither followed *Ledbetter* nor concerned itself with the enactment of the FPA or the amendment of the ICRA because (1) the court found the ICRA amendment applied prospectively[201] and (2) Iowa wage discrimination precedent, albeit substantially developed through federal case law (most notably *Morgan*), did not obligate the court to adopt the *Ledbetter* reasoning for interpreting the ICRA.[202]

Therefore, *Dindinger*'s interpretations of parallel federal and state antidiscrimination statutes are distinguishable from *Goodpaster* and *Pippen* for two reasons. First, the court in *Dindinger* acknowledged that the ICRA was amended and the FPA was enacted.[203] The analysis did not account for either change in antidiscrimination statute because the discriminatory conduct at issue in the case occurred prior to the enactment of the ICRA amendment, and whether FPA applied retroactively was not before the court.[204] Second, the actionable discrimination before the court had been addressed by the amendment to the ICRA, and so the analysis of a wage discrimination claim under the ICRA will inevitably change the next time it is before the court because of the enactment of Iowa Code section 216.6A.[205] This is the major distinction: In *Goodpaster*, the court adopted principles and

200. *Id.* at 573 n.8 (citing Farmland Foods, Inc. v. Dubuque Human Rights Comm'n, 672 N.W.2d 733, 741 (Iowa 2003)).

201. *Id.* at 566.

202. *Id.* at 571.

203. *Id.*

204. *See id.* at 566, 571.

205. *Id.* at 562 n.1.

justifications surrounding the amended ADA (the ADAAA) to interpret the ICRA, despite the fact that the Iowa Legislature had not amended the ICRA; yet Iowa precedent had interpreted the ICRA, specifically with regards to disability discrimination, more narrowly than post-ADAAA regulations and decisions interpret disability discrimination cases.

V. COMPETING VIEWS ON HOW TO ADDRESS THE "CRISIS"

The recent case law has revealed two competing views of how to interpret the ICRA in light of an amendment to the federal counterpart: (1) use federal regulations and interpretations as persuasive authority to ensure that the ICRA is construed broadly to effectuate its purposes;[206] or (2) use federal regulations and federal court interpretations as persuasive authority, however, with a sense of caution not to disrupt the consistency in how the court relies on federal guidance.[207] The language used in the recent Iowa Supreme Court cases construing the ICRA creates some confusion for litigators on how to argue a claim under the ICRA—fulfilling the prediction that the amendments to federal antidiscrimination statutes would create an "interpretive upheaval" at the state court level.[208]

A. *The Practical Impact*

1. *Is Litigation the Only Remedy for This "Mid-Life Crisis"?*

As discussed above, the Iowa Supreme Court has addressed this interpretation issue in three recent decisions: *Goodpaster* controls when interpreting the ICRA, *Pippen* provides further support for using federal authority as persuasive only and should be used to construe the ICRA broadly, and *Dindinger* represents the sort of narrative analysis of the development of ICRA case law that should be undertaken when construing the ICRA and the relevant federal antidiscrimination statute.[209] *Dindinger*'s applicability to future antidiscrimination disputes arising under the ICRA is

206. Pippen v. State, 854 N.W.2d 1, 28 (Iowa 2014) (dicta); Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1, 9 (Iowa 2014).

207. *Pippen*, 854 N.W.2d at 38–39 (Waterman, J., concurring specially); *Goodpaster*, 849 N.W.2d at 20–21 (Waterman, J., dissenting).

208. Sperino, *Diminishing Deference*, *supra* note 3, at 40.

209. *See Dindinger*, 860 N.W.2d at 568–71; *Pippen*, 854 N.W.2d at 10, 28 (noting that while the part of the opinion pertinent to the issue of what effect to give federal authority in interpreting the ICRA is merely dicta, five justices signed on to the entire majority opinion, which included the dicta); *Goodpaster*, 849 N.W.2d at 9 (majority opinion).

instructive for determining how past state law cases and legislative actions impact the development of antidiscrimination laws, but to future wage discrimination claims, the relevant discussion in the case is dicta because the case addressed the 2009 ICRA amendment expanding wage discrimination protection.[210]

This new development in ICRA case law, practically speaking, should guide employment attorneys in arguing antidiscrimination disputes.[211] Arguing that the ICRA should be construed broadly and ignoring on-point federal authority carries merit before the court; not that such arguments did not have merit before, but the recent trends suggest the court is willing to diverge from strict adherence to federal interpretations, even if previous Iowa cases adopted such interpretations.[212] When the federal authority supports a narrow construction, the court may disregard that construction, reasoning that the narrow construction is "no longer extant."[213] Thus, employment attorneys should argue broad construction of the ICRA even if precedent does not clearly support the broad construction with regards to a specific form of discrimination. In fact, in *Dindinger*, the court rejected the Supreme Court's narrow interpretation of Title VII—*Ledbetter*[214]—and relied on the Supreme Court's previous broader interpretation—*Morgan*[215]—and the one adopted by the Iowa Supreme Court—*Farmland Foods*—for the reasons discussed above.[216]

However, the Iowa Supreme Court has not addressed all its cases in this arena,[217] and parties that could benefit from a stricter adherence to

210. *See Dindinger*, 860 N.W.2d at 561–66.

211. *See Pippen*, 854 N.W.2d at 30–32 (suggesting that if the plaintiffs had "invite[d] us to interpret the Iowa Civil Rights Act in a fashion different than Title VII of the Federal Civil Rights Act," the court would have analyzed each disparate impact claim (ICRA claim and Title VII claim) differently and in doing so would have come to a different conclusion regarding the ICRA claim).

212. *See id.* at 28; *Goodpaster*, 849 N.W.2d at 10–11.

213. *See Goodpaster*, 849 N.W.2d at 13.

214. *See Dindinger*, 860 N.W.2d at 572.

215. *See id.* at 571, 574.

216. *See id.* at 568; Farmland Foods, Inc. v. Dubuque Human Rights Comm'n, 672 N.W.2d 733, 741 (Iowa 2003). *But see* Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 621 (2007), *superseded by statute*, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, § 2, 123 Stat. 5 (codified at 42 U.S.C. § 2000e-5 note (2012)).

217. *See Dindinger*, 860 N.W.2d *passim* (failing to address other cases, such as *Fuller v. Iowa Department of Human Services*); *e.g.*, Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, *passim* (Iowa 1998).

federal authority should not shy away from arguing that such adherence in the realm of antidiscrimination statutes is not problematic or does not conflict with the "broad construction" instruction in all cases; rather, it is intricately intertwined throughout Iowa case law.[218] Thus, not only is the use of federal authority in interpreting the ICRA sound precedent, it is also critical to developing consistent and uniform case law interpreting the ICRA.[219] Litigation is only one way to affirm or correct the "mid-life crisis" of ICRA interpretation.

2. *Legislative Action*

The Iowa Legislature did not react to the narrow construction of the federal antidiscrimination statutes by federal courts and subsequent Iowa Supreme Court adoption of narrow construction in the past by amending the ICRA.[220] The Iowa Legislature could affirm the *Goodpaster* decision and clarify the legislative intent of the ICRA by amending Iowa Code section 216 to bring it in line with the ADAAA. In comparison, the Iowa Legislature amended the ICRA after the *Ledbetter* decision and, while the amendment was not applicable in the *Dindinger* decision, the amendment, broadening the protection of wage discrimination, was a reaction to a national shift and national debate over the issue.[221] Legislative action is often the scapegoat solution, but nonetheless, it is applicable to this crisis of sorts. The legislature has—with regard to wage discrimination—and can—with regard to disability discrimination—enact legislation to clarify the intent of the law or correct perceived misinterpretations of the law.

B. *An Ironic Development*

In light of the recent—last half-century—push to expand civil rights using state constitutions and state legislatures, *Goodpaster*'s reliance, acknowledgement, and development of a narrative of the short history of

218. *See* Pippen v. State, 854 N.W.2d 1, 35–40 (Iowa 2014) (Waterman, J., concurring specially); *Goodpaster*, 849 N.W.2d at 19–21 (Waterman, J., dissenting).

219. *See Pippen*, 854 N.W.2d at 35–40; *Goodpaster*, 849 N.W.2d at 19–21.

220. The Author recognizes, generally, it would not make sense for the legislature to react to a "broad" construction given the original intent and admonition of the legislature in 1965 but points this out for purposes of recognizing that the Iowa legislature could amend or repeal the ICRA to correct what state legislators may think are "overly broad" interpretations of the law. This has not happened nor has it been addressed in case law, but the Author mentions it as a practical consideration.

221. S*ee Dindinger*, 860 N.W.2d at 571.

disability rights provide for an interesting analysis of judicial review.[222] In an era where gridlock abounds and approval ratings are at the floor in legislative bodies all across the United States, the court could have strategically used this case to develop Iowa state case law further.[223] While the outcome—that MS is a disability—may not have been clearly decided, ICRA case law would have further been developed allowing Iowa, and providing the platform for other states, not to be as reliant on the federal government for guidance on antidiscrimination legislation.[224] That is not to say that the court strictly "relied" on the post-ADAAA authority, but it surely justified the interpretation of the ICRA with such authority.[225]

State court judicial review, to some degree, has allowed for state courts to expand individual rights if the federal government remains idle.[226] Furthermore, those in favor of expanding rights and using, specifically, state constitutions as mechanisms for achieving the goal have embraced a judicial federalism,[227] while others argue looking to federal interpretations further uniformity and consistency in case law.[228] The *Goodpaster* decision, in a way, represents a slight shift in judicial federalism (at least in the employment discrimination realm). In recent years, the court has looked to expand individual rights at a state level, but the court expanded individual rights justifying such expansion and broad interpretation of the ICRA by using post-amendment, persuasive federal authority.[229]

222. *See Goodpaster*, 849 N.W.2d at 21.

223. The majority could have ruled on this case, while still acknowledging the changes to disability discrimination law at the federal level, relying on almost exclusively Iowa Supreme Court cases that have interpreted the ICRA in regards to disability discrimination. *See supra* Part III.B.

224. *Compare Goodpaster*, 849 N.W.2d at 21 (Waterman, J., dissenting), *with* Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, 333 (Iowa 1998). The strong language used in *Goodpaster* and the indirect reliance on the ADAAA and accompanying federal regulations in expanding the definition of disability, seemingly, abrogated *Fuller*. *See Goodpaster*, 849 N.W.2d *passim* (majority opinion).

225. *See id.* at 12.

226. *See* Varnum v. Brien, 763 N.W.2d 862, 907 (Iowa 2009) ("[T]he language in Iowa Code section 595.2 limiting civil marriage to a man and a woman must be stricken from the statute, and the remaining statutory language must be interpreted and applied in a manner allowing gay and lesbian people full access to the institution of civil marriage.").

227. *See supra* note 2 and accompanying text.

228. *See supra* note 3 and accompanying text.

229. *See Goodpaster*, 849 N.W.2d at 12–13.

The irony is twofold: First, the Iowa Supreme Court in *Goodpaster* relied on federal authority in the vein of its usefulness as persuasive, whereas a strict judicial federalism approach would rely on state authority and case law to expand the rights of individuals.[230] Second, those more apprehensive to expanding rights through judicial interpretations argued for "judicial federalism"—or consistency of Iowa case law—as evidenced in the dissent and concurrence in *Goodpaster* and *Pippen*, respectively, where the argument was not to look to federal authority because the federal authority had changed and was not applicable.[231]

Regardless of judicial federalism arguments or judicial theory arguments, the foregoing discussion surely evidences the complexity in interpreting state antidiscrimination statutes when the judicial construction of the statutes has intertwined with federal authority for 50 years.

VI. CONCLUSION

What the Iowa Supreme Court did in *Goodpaster* may be heralded by some as a continued step in the right direction as an expansion of individual rights; others can make the argument that the decision was, in effect, an amendment to Iowa Code section 216.6 or an addition to the Iowa Administrative Code to amend the definition of disability.[232] Furthermore, as laid out above, Iowa courts have built up case law concerning Iowa Code section 216.6 and used "pre-amended" federal antidiscrimination statutes in the process.[233] The use of federal statutes, regulations, and federal courts' decisions interpreting the ICRA's federal counterparts were helpful when Iowa courts did not have case law for guidance, but now that changes have been made to federal counterpart statutes, the reliance on federal guidance is not as necessary as it was 20 years ago.[234]

Iowa courts can construe Iowa Code section 216 broadly without

230. *See id.*

231. *See* Pippen v. State, 854 N.W.2d 1, 35–40 (Iowa 2014) (Waterman, J., concurring specially); *Goodpaster*, 849 N.W.2d at 19–20 (Waterman, J., dissenting).

232. *See Goodpaster*, 849 N.W.2d at 6–13 (majority opinion).

233. *See supra* Part V.

234. *Compare Goodpaster*, 849 N.W.2d at 9 (holding federal law does not necessarily control), *with* Fuller v. Iowa Dep't of Human Servs., 576 N.W.2d 324, 333 (Iowa 1998) (relying on federal law). In light of the ADAAA and the use of ADAAA language in *Goodpaster*, is the reasoning and "common-sense" conclusion made in *Fuller* now obsolete?

relying on federal law to accomplish it.[235] In fact, they have been more than willing to divert from federal law in the past[236] and may continue to do so. However, in light of disability discrimination, the reliance and consideration given to the ADAAA may prove confusing in light of other suspect classes in the event Congress amends Title VII or the ADEA.[237]

Focusing on the legislature's instruction to construe the statute broadly, the court decided broader protections were more consistent with the spirit of the ICRA than well-established judicial review principles of precedent, uniformity, and consistency.[238] Said another way, selectively relying on federal interpretations of federal antidiscrimination statutes allows the court to justify using only those federal court cases which coincide with the spirit of the ICRA: "broadly construed to effectuate its purposes."[239] However, with 40-plus years of jurisprudence surrounding the ICRA, the need for the court to look to federal rules and regulations in the realm of antidiscrimination statutes is not as great as it was when it interpreted a "younger" and "less developed" law, as it did in *Goodpaster* and as it hinted at in *Pippen*.[240]

A consistent and uniform approach to interpreting the ICRA does not mean a strict lockstep approach.[241] Rather, the consistent and uniform interpretation focuses more on the development of the Iowa state courts' interpretations,[242] which historically relied on federal court interpretations

235. *See* Dindinger v. Allsteel, Inc., 860 N.W.2d 557, 574 (Iowa 2015).

236. *See* DeBoom v. Raining Rose, Inc., 772 N.W.2d 1, 13–14 (Iowa 2009) (holding that all claims' causation standard under the ICRA is a motivating factor, as opposed to a determining factor or "but-for").

237. *Cf.* Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 177 n.3 (2009) (citations omitted). What happens if Congress decides to amend the ADEA to supersede the decision in *Gross* and, in doing so, makes the law even more expansive than the ICRA (i.e., allows, while illogical, for a cause of action for reverse age discrimination in limited circumstances/industries; eliminates some of the exceptions for early retirement plans; shifts the burden of persuasion to the employer to show they did not act with the age of the injured employee in mind; etc.)?

238. *See Goodpaster*, 849 N.W.2d at 9–10. *But see* Pippen v. State, 854 N.W.2d 1, 35–40 (Waterman, J., concurring specially); *Goodpaster*, 849 N.W.2d at 20–21 (Waterman, J., dissenting).

239. Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 765–66 (Iowa 1971).

240. *See Pippen*, 854 N.W.2d at 38–39; *Goodpaster*, 849 N.W.2d at 12–13 (majority opinion).

241. *See generally* Loras Coll. v. Iowa Civil Rights Comm'n, 285 N.W.2d 143 (Iowa 1979) (en banc).

242. *See Goodpaster*, 849 N.W.2d at 19–22 (Waterman, J., dissenting).

of the federal antidiscrimination statutes because the persuasive authority was greater when the ICRA was a young law.[243] If the court focused more on uniformity, predictability, stability, and consistency in interpreting the ICRA, the use of federal authority for persuasive purposes would diminish, and the control of limiting, expanding, or more clearly defining civil rights would be left to either the Iowa Supreme Court's continued development of case law interpreting the ICRA, reliance on well-developed precedent, or the Iowa Legislature.

The Iowa Legislature has the ultimate say in determining whether it agrees with the direction the court has taken. If it agrees with the continued broad construction, it can (1) do nothing or (2) pass an amendment to codify the decisions of the court like Congress did with the *Price Waterhouse* decision and the Civil Rights Act of 1991.[244] If it disagrees, it can enact an amendment to supersede the recent decisions.[245] The determination of how to handle this so-called "mid-life crisis" lies with the legislature, but in the meantime, the court should carefully balance broadly interpreting the ICRA with promoting stability, uniformity, and consistency of case law.

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243. *See Loras Coll.*, 285 N.W.2d at 151 (McCormick, J., dissenting).

244. *See, e.g.*, Title VII, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C. (2012)).

245. *See, e.g.*, ADAAA, Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended in scattered sections of 29 U.S.C. & 42 U.S.C. (2012 & Supp. III 2015)).

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