Every Family for Themselves: The Iowa Supreme Court's *Frazier* Decision and Its Impact on Iowa Families

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ABSTRACT: For decades, Iowa courts have been acting as arbiters and resolving disputes between parents who share joint legal custody of their children. However, recently, when the Iowa Supreme Court decided In re Marriage of Frazier*, the Court determined that in most cases district courts can no longer provide this remedy. Instead, when two parents present it with an impasse, the district court can only resolve that dispute by modifying their joint legal custody status and awarding one parent sole legal custody. Later, the Iowa Supreme Court decided* Venechuk v. Landherr *which limited the breadth of* Fraizer *and determined district courts could also resolve these impasses if the parties' existing custody decree contained provisions for the court to modify that specifically involved the disputed legal custody issue.* Fraizer *(limited by* Venechuk*) has stirred up Iowa's legal community and for good reason. Effectively, in most cases, it leaves Iowa families to fend for themselves when two parents simply cannot reach an agreement over important parental decisions. This Note argues that the Court's analysis in* Frazier *is contradictory and incomplete and that the* Frazier *holding provides an inadequate remedy for joint legal custodians who reach an impasse. Further, because Iowa is the only state that requires its joint legal custodians to take such dramatic steps to resolve their disputes, the Iowa General Assembly should enact legislation that allows district courts to resolve these disputes without ever being required to terminate joint legal custody status. This legislation would align Iowa with the rest of the nation on this issue and give Iowa families an adequate remedy for resolving their legal custody disputes.*

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INTRODUCTION

In January of 2024, the Iowa Supreme Court decided *In re Marriage of Frazier*, and ever since, the Iowa family law community has been spinning.[1] For decades, when parents who share joint legal custody of their child cannot agree on major parental decisions, Iowa courts have stepped in as arbiters and resolved those disputes for them. In *Frazier*, the Iowa Supreme Court upended this remedy by determining district courts lack the authority to provide it. Instead, in most cases, the *Frazier* holding requires district courts to resolve these disputes in a more dramatic way by awarding one parent sole legal custody which allows that parent to make the decision themselves. In other words, when an impasse arises between two joint legal custodians over an important parental decision, they have one remedy: terminating one parent's legal custody rights completely. A year after *Frazier*, the Iowa Supreme Court decided *Venechuk v. Landherr* which attempted to limit *Frazier*'s holding. However, even after the *Venechuk* decision, Iowans are still subject to *Frazier* and the issues associated with it.

This Note argues that the *Frazier* holding is based on a flawed and incomplete analysis and provides joint legal custodians with an inadequate remedy for their disputes. As a result, even though *Venechuk* attempted to limit this impact, most Iowa families are left to fend for themselves, stuck in high-conflict situations. First, this Note discusses Iowa's legal custody system. Then, it explains how the *Frazier* Court utilized that system in its opinion and how Iowa families and their attorneys can navigate impasses under a *Frazier* regime—if they can at all. Lastly, because Iowa is the only state that limits its district courts so dramatically when resolving these impasses, this Note discusses how the rest of the nation handles these disputes and proposes legislation that will allow courts to resolve them without ever being required to modify joint legal custody status.

I. IOWA'S LEGAL CUSTODY SYSTEM

The *Frazier* and *Venechuk* decisions reshaped how Iowa district courts handle disputes between joint legal custodians. Before this Note can delve into the intricacies of these cases, it must first discuss how Iowa's legal custody system operates. First, this Part discusses the statutory authority that Iowa district courts possess to make basic legal custody allocations. Then, it examines the district court's more specific authority to resolve impasses between joint legal custodians before *Frazier*. The *Frazier* and *Venechuk* opinions analyze both of these aspects of the district court's authority.

1. *See generally In re* Marriage of Frazier, 1 N.W.3d 775 (Iowa 2024).

A. THE COURT'S AUTHORITY TO ALLOCATE LEGAL CUSTODY RIGHTS

Under the Iowa Code, district courts have the authority to allocate custody rights between unmarried and divorced parents upon petition.[2] This Section discusses the district court's statutory authority to divide legal custody rights between parents and the Iowa Code's standards that guide these allocations.

Generally, Iowa district courts may allocate two sets of child custody rights: physical care and legal custody rights.[3] Physical care refers to rights typically associated with the word "custody." It involves a parent's right to provide a home and routine care for their child.[4] On the other hand, legal custody rights refer less to the day-to-day care of a child and instead, involve a parent's right to make important parental decisions.[5] Legal custody rights specifically give parents the right to make decisions affecting five areas of their child's life: (1) legal status; (2) medical care; (3) education; (4) extracurricular activities; and (5) religious instruction.[6] This Note and the *Frazier* decision focus on legal custody rights.

The court may allocate legal custody rights among parents in two ways.[7] First, it can grant one parent sole legal custody.[8] With an award of sole legal custody, a parent has the exclusive authority to make decisions that affect their child's life without the other parent's consent.[9] The court also has the option to award both parents joint legal custody.[10] Under an award of joint legal custody, both parents have the right to equally participate in parental decisions.[11]

When determining whether to award sole or joint legal custody, the court is ultimately guided by one principle: "the best interest of the child."[12] However, the Iowa Code influences what the court ultimately determines is in the best interest of the child by establishing a strong preference for joint legal custody.[13] To create this preference, the Iowa Code presumes that the court will award joint legal custody and makes this presumption difficult for parents

2. *See* IOWA CODE § 598.41 (2025).

3. *See id.* § 598.1(5)–(7).

4. *Id.* § 598.1(7).

5. *Id.* § 598.1(5).

6. *Id.*

7. *See id.* § 598.41(2)(a)–(b).

8. *See id.* § 598.41(2)(b) (providing that the court may choose to not award joint legal custody).

9. *In re* Marriage of Gensley, 777 N.W.2d 705, 716 (Iowa Ct. App. 2009) (awarding sole legal custody and providing that one parent will make decisions regarding the child).

10. IOWA CODE § 598.41(2)(a).

11. *Id.* § 598.1(3); *In re* Marriage of Frazier, 1 N.W.3d 775, 777–78 (Iowa 2024).

12. *In re* Marriage of Bingman, 209 N.W.2d 68, 69 (Iowa 1973).

13. *See* IOWA CODE § 598.41(2)(b) ("If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence . . . that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.").

to overcome.[14] To receive an award of sole legal custody as opposed to joint, a parent must show by "clear and convincing evidence . . . that joint [legal] custody is unreasonable and not in the best interest of the child."[15]

The strength of this presumption is evident within Iowa case law. For example, in *In re Marriage of Harris*, a mother requested to modify her and her ex-husband's joint legal custody status to sole legal custody in favor of her.[16] When determining whether to grant this modification, the Court described the parents' "dysfunctional communication" in nearly all aspects of co-parenting their child. [17] This dysfunction included slamming car doors when exchanging their children, preferring email communications because they "create a record" that reduces conflict, and failing to agree on medical treatment to address their children's behavioral issues or what extracurricular activities their children should be involved in.[18] The Court dedicated two pages of its opinion to describing this conflict, yet it still did not find enough evidence to award the mother sole legal custody,[19] thus maintaining their shared legal custody status. The *Harris* case is just one example of how hard it is for parents to overcome Iowa's preference for joint legal custody

Although district courts have the authority to award both sole and joint legal custody, the Iowa Code's preference for joint legal custody guides these determinations with a strong hand. As a result, most district courts award parents joint legal custody, even in high-conflict situations. The next Section discusses the district court's historical role in resolving disputes between joint legal custodians and the legal basis it relied on for doing so.

B. THE COURT'S AUTHORITY TO RESOLVE IMPASSES BEFORE FRAZIER

Once awarded joint legal custody, parents must operate under this shared status in their day-to-day lives. Under a joint legal custody allocation, the Iowa Code requires parents to agree before making important decisions that fall within the five categories of legal custody.[20] The Code is silent as to

14. *Id.* § 598.41(2)(a). However, if cases that involve a history of domestic abuse, Iowa Code creates "a rebuttable presumption" that sole legal custody should be awarded. *Id.* § 598.41(1)(b).

15. *Id.* § 598.41(2)(b); *In re* Marriage of Harris, 877 N.W.2d 434, 441 (Iowa 2016); *The Iowa Supreme Court's* Frazier *Decision and the Current Status of Legal Custody Issues in Iowa (One Hour)*, MEDIATION SERVS. E. IOWA, at 0:12:30 (2024), https://mediateiowa.org/for-mediators/frazier-decision-cle-on-demand (Judge David Cox, Iowa Judicial District 6, stating, "when you bring [a modification request for sole legal custody] into the court, it's a very high burden").

16. *Harris*, 877 N.W.2d at 437, 440.

17. *Id.* at 437, 442–44.

18. *Id.*

19. *Id.* at 441–44 (awarding the mother sole physical care of the children but emphasizing that the award of physical care "does not deprive [the father] of his '[r]ights and responsibilities as joint legal custodian'").

20. *In re* Marriage of Frazier, 1 N.W.3d 775, 779 (Iowa 2024) (providing joint legal custody requires parents to halt the decision-making process until "[they] can either reach a mutually agreeable course of action together or modify their custody agreement").

what joint legal custodians should do when they do *not* agree on these decisions, but historically, parents have turned to the court. For decades, when parents reached true impasses over legal custody decisions, Iowa district courts have resolved these disputes as a tiebreaker.[21] However, the basis for the court's authority to do so is inconsistent and unclear throughout Iowa case law.[22] This Section discusses the practice of Iowa district courts resolving disputes between joint legal custodians and the different legal bases that these courts relied on to establish their authority to do so.

A salient example of an Iowa district court acting as an arbiter when parents could not reach an agreement over a legal custody decision is *In re Marriage of Laird*. In *Laird*, the Iowa Court of Appeals affirmed a district court's decision to determine which school a child should attend after her parents reached an impasse over the issue.[23] In this case, neither party requested to modify their legal custody rights.[24] Instead, they merely asked the court to resolve their disagreement over what school their child should attend, and the district court chose a school for them.[25] Several cases followed the same approach; the parties filed a petition with the court, asking it to resolve a parental dispute, and the court—guided by the best interest of the child—acted as an arbiter and rendered a decision that ultimately ended the parents' conflict.[26]

Historically, Iowa district courts not only made these decisions for parents, but the Iowa Court of Appeals *required* them to. In *In re Marriage of Flick*, a mother filed a petition for modification and asked the district court to determine which school her child should attend because she and the father "reached an impasse on that issue."[27] At the district court level, the court held that it did not have the authority to make that decision, and instead, granted

21. *See generally In re* Marriage of Laird, No. 11-1434, 2012 WL 1449625 (Iowa Ct. App. Apr. 25, 2012); *In re* Marriage of Bakk, No. 12-1936, 2013 WL 5962991 (Iowa Ct. App. Nov. 6, 2013); Gaswint v. Robinson, No. 12-2149, 2013 WL 4504879 (Iowa Ct. App. Aug. 21, 2013); *In re* Marriage of Flick, No. 20-1535, 2021 WL 2453111 (Iowa Ct. App. June 16, 2021); *In re* Marriage of Gulsvig, 498 N.W.2d 725 (Iowa 1993).

22. *Compare Flick*, 2021 WL 2453111, at *5 (relying on Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, LLP, 764 N.W.2d 534, 538 (Iowa 2009)), *with Gulsvig*, 498 N.W.2d at 728 (implying its authority from its ability to make legal custody allocations under the Iowa Code), *and In re* Name Change of Quirk, 504 N.W.2d 879, 882 (Iowa 1993) (Carter, J., concurring) (relying on the court's inherent power as a court in equity).

23. *Laird*, 2012 WL 1449625, at *4.

24. *Id.* at *2.

25. *Id.* ("[T]his is a case where joint custodians are unable to reach a mutual resolution to an issue that they have equal participation in making.").

26. *See, e.g.*, *Bakk*, 2013 WL 5962991, at *2 (determining whether the child could be removed from day care in the mornings during the parties' initial divorce proceedings that were initiated by a petition); *Gaswint*, 2013 WL 4504879, at *1, *5 (affirming that the district court's determination of which school the child should attend was in the child's best interest after the father had petitioned for a custody determination).

27. *Flick*, 2021 WL 2453111, at *1.

the mother the right to decide.[28] On review, the court of appeals determined that "[w]hile [it] recognize[d] the difficulty in making such a decision, the district court was required to make it," instead of punting it to one of the parents.[29] It then remanded the case back to the district court to determine which school the child should attend.[30]

Because the Iowa Code has never expressly addressed the district court's authority to resolve impasses between joint legal custodians, in these cases, the courts had to turn to some other basis to establish their authority to act as an arbiter. Through Iowa's legal custody jurisprudence, the basis for that authority has differed. In both *Flick*[31] and *Laird*,[32] the Iowa Court of Appeals relied on dicta from *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson and Sanger, LLP* to justify resolving the disputes at hand. In *Harder*, the Iowa Supreme Court stated, "[w]hen joint legal custodians have a genuine disagreement . . . the court must step in as an objective arbiter, and decide the dispute by considering what is in the best interest of the child."[33] However, because this statement of authority was dicta, it did not have any legal analysis to back it.

Interestingly, Iowa courts had resolved disputes between joint legal custodians before *Harder*, and therefore, they must have had a different basis for their authority to do so. In *In re Marriage of Gulsvig*, the Iowa Supreme Court held that it had *implied* authority, derived from the Iowa Code, to make a legal custody decision relating to a child's last name.[34] In that case, the parents disagreed on whether their child's last name should be the mother's or the father's.[35] Ultimately, the Court concluded it was in the child's best interest to retain the mother's last name.[36] The Court implied its authority to make this decision from its ability to allocate legal custody rights among parents under the Iowa Code.[37]

Beyond relying on *Harder* and implied statutory authority, some judges argued that the district court's authority to resolve these disputes *inherently*

28. *Id.*

29. *Id.* at *5.

30. *Id.* at *6.

31. *Id.* at *5.

32. *In re* Marriage of Laird, No. 11-1434, 2012 WL 1449625, at *2 (Iowa Ct. App. Apr. 25, 2012).

33. Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P., 764 N.W.2d 534, 538 (Iowa 2009). In other cases, since *Harder*, the Court also relied on this language to establish its authority to make decisions within the five realms of legal custody. *See, e.g.*, *In re* Marriage of Bakk, No. 12-1936, 2013 WL 5962991, at *2 (Iowa Ct. App. Nov. 6, 2013); Gaswint v. Robinson, No. 12-2149, 2013 WL 4504879, at *5 (Iowa Ct. App. Aug. 21, 2013).

34. *In re* Marriage of Gulsvig, 498 N.W.2d 725, 728 (Iowa 1993).

35. *Id.* at 728–29.

36. *Id.*

37. *Id.* at 728.

stemmed from its power as a court in equity.[38] Shortly after *Gulsvig*, and long before *Harder*, Iowa Supreme Court Justice James Carter discussed, in a concurrence,[39] that the authority to resolve impasses between joint legal custodians is derived from the district court's "general equity powers."[40] Under the Iowa Constitution, Iowa's district courts are courts of "law and equity," and under the Iowa Code, family law cases, including legal custody determinations, are held in equity.[41] The Iowa Supreme Court has consistently reaffirmed that district courts, as a court in equity, generally have "*inherent* power . . . in all proceedings involving the custody and care of minor children."[42] According to Justice Carter, the authority to resolve disputes between joint legal custodians comes from this inherent, equitable power to protect Iowa's children, not dicta nor implied statutory authority.[43]

While the basis for their authority to do so is mixed, Iowa courts have consistently acted as arbiters for joint legal custodians and resolved their disputes. However, in *In re Marriage of Frazier*, the Iowa Supreme Court contradicted these cases and severely limited the district court's authority to resolve these impasses. Consequently, in most cases under a *Frazier* regime, parents may no longer ask the district court to referee disputes over legal custody decisions. The next Part discusses *Frazier* and the specific ways it impacts Iowa families.

II. *FRAZIER* AND THE PROBLEMS IT CREATES FOR IOWA FAMILIES

In *Frazier*, the Iowa Supreme Court clarified the long-standing question of where district courts derive their authority to act as an arbiter and resolve disputes between joint legal custodians by determining that they do not have

38. *In re* Marriage of Frazier, 1 N.W.3d 775, 789 (Iowa 2024) (McDonald, J., dissenting).

39. In *In re Name Change of Quirk*, 504 N.W.2d 879, 880, 881 (Iowa 1993), the Iowa Supreme Court analyzed a petition to change a child's name under chapter 674 of the Iowa Code, Iowa's "name-change statute." The majority determined the district court did not have authority to change the child's name under chapter 674 and limited its analysis to that section of the Code. *Id.* at 881–82. Justice Carter agreed that chapter 674 did not provide a vehicle for the district court to resolve the dispute; however, he believed the court could change the child's name using "the court's general equity powers," an option the majority did not discuss. *Id.* at 882 (Carter, J., concurring).

40. *Id.*

41. IOWA CONST. art. V, § 6; IOWA CODE § 598.3 (2025) ("An action for dissolution of marriage shall be by equitable proceedings."); *id.* § 600B.7 (providing that actions of involving children of never-married parents are based on "principles of law and equity").

42. Schott v. Schott, 744 N.W.2d 85, 88 (Iowa 2008) (emphasis added) (citing Helton v. Crawley, 41 N.W.2d 60, 71 (Iowa 1950)); Addy v. Addy, 36 N.W.2d 352, 355–56 (Iowa 1949) (determining that the district court may order a father to provide support for his child even though no statute authorizes a court to do so because "[i]t is firmly established that equity has inherent power to protect the rights of minors").

43. *Quirk*, 504 N.W.2d at 882 (Carter, J., concurring) ("[T]he authority of a court to referee disputes over the initial naming of a child, in which the parents cannot agree, is found among the court's general equity powers.").

that authority at all. Under *Frazier*, in most situations, district courts only have the authority to resolve these impasses by dramatically terminating the parties' joint legal custody status and awarding one parent sole legal custody. The Court's rationale behind this conclusion is contradictory at times and fails to address key aspects of the case law it distinguishes. These issues with the opinion also sparked further litigation, *Venechuk v. Landherr*, that clarifies and limits the impact of *Frazier* but also leaves important questions about the district court's authority unanswered. This Part describes the intricacies of the *Frazier* and *Venechuk* opinions and the impact they have on Iowa families.

A. *THE* FRAZIER *OPINION*

In *Frazier*, the majority's opinion contains only one page of straightforward legal analysis regarding the district court's authority to resolve disputes between joint legal custodians, and this analysis is based strictly on the Iowa Code.[44] The majority spends the next nine pages of its analysis distinguishing case law that contradicts its holding.[45] First, this Section generally articulates the *Frazier* holding. Then, in the next three Subsections, this Section discusses and critiques the *Frazier* Court's analysis of the district court's authority to resolve impasses between joint legal custodians, specifically its discussion of: (1) the Iowa Code; (2) Iowa case law; and (3) case law from other states.

1. The *Frazier* Holding

In re Marriage of Frazier involved a dispute between two joint legal custodians over whether their children should be vaccinated for COVID-19.[46] After a failed mediation attempt, the parents reached an impasse, and Mary, the mother, filed an application for vaccine determination with the district court.[47] That application contained one ask: resolve the dispute between her and her ex-husband, Shannon, by deciding whether their children should be vaccinated.[48] She did not ask the court to give her sole legal custody.[49] She only asked the court to resolve her and Shannon's dispute because they had not been able to resolve it themselves.[50] The district court determined it did not have the authority to directly decide whether to vaccinate the children, and therefore, denied Mary's request.[51] Mary appealed this decision, and the

44. *See In re* Marriage of Frazier, 1 N.W.3d 775, 778–79 (Iowa 2024).

45. *See id.* at 780–88.

46. *Id.* at 778.

47. *Id.*

48. *Id.*

49. *Id.* at 782; Final Brief for Appellant Mary C. Streicher at 17, *Frazier*, 1 N.W.3d 775 (No. 22-0686) ("Mary is not . . . requesting to modify custody or parenting time.").

50. *See* Final Brief for Appellant Mary C. Streicher, *supra* note 49, at 22.

51. *Frazier*, 1 N.W.3d at 778.

Iowa Court of Appeals reversed the district court's determination and directed it to resolve the impasse as an arbiter.[52] Shannon then appealed this decision.[53]

Ultimately, the Iowa Supreme Court affirmed the district court's dismissal of Mary's case.[54] It came to this conclusion by determining the district court did not *entirely* lack the authority to resolve the parties' dispute, but lacked the authority to resolve it *how* Mary asked it to.[55] First, the Court determined that Mary did not properly invoke the district court's authority because she used an application instead of a petition, which is typically required to begin a civil proceeding.[56] But ultimately, the Court determined that even if Mary used a petition, the district court still would not have the authority to resolve the dispute how Mary requested it to—by *acting as an arbiter* and directly deciding whether the children should be vaccinated.[57] Instead, the Court determined the district court only has the authority to resolve the dispute by *granting one party sole legal custody*, effectively allowing that parent to make the decision on their own.[58] Since Mary specifically did not ask the district court to grant her sole legal custody, the Court determined it lacked the authority to help her.[59]

The rationale behind this conclusion involved: (1) analyzing the district court's authority under Iowa Code; (2) analyzing Iowa case law that suggests the district court has authority to resolve these disputes as arbiters; and (3) distinguishing case law from other states that contradicts the *Frazier* holding. The next three Subsections discuss these aspects of the Court's analysis.

2. *Frazier*'s Analysis of the Court's Authority to Resolve Impasses Under the Iowa Code

As discussed previously, the Iowa Code does not specifically grant the district court authority to resolve impasses between joint legal custodians by acting as an arbiter.[60] After analyzing the Iowa Code in *Frazier*, the Iowa Supreme Court concluded that to resolve an impasse between joint legal custodians, a district court is limited to exercising authority that the Iowa Code actually does grant it—specifically, the authority to allocate legal custody rights.[61]

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52. *Id.*

53. *Id.*

54. *Id.* at 788.

55. *Id.* at 777.

56. *Id.* at 779 ("Mary failed to properly commence this action because . . . 'a civil action is commenced by filing a *petition* with the court.'").

57. *See id.* ("Mary argues . . . the district court's authority . . . 'is not so rigid or limited as to require parties to file for a modification (when a party isn't actually seeking to modify prior orders).' In doing so, Mary overlooks the meaning of 'joint legal custody' under Iowa Code.").

58. *See id.* (providing that since "Mary did not file a petition to modify the parents' status as joint legal custodians" the district court cannot resolve the dispute).

59. *See id.*

60. *See supra* Section I.B. *See generally* IOWA CODE § 598 (2025).

61. *See Frazier*, 1 N.W.3d at 779, 788.

Using this authority, a district court must resolve an impasse by modifying the parties' joint legal custody status to give one parent sole legal custody.[62]

The *Frazier* Court grounded this conclusion in the Iowa Code's definition of joint legal custody. Under the Iowa Code, joint legal custodians are entitled to "equal participation" in parental decisions.[63] According to the Court, this definition requires an "all-or-nothing" approach to joint legal custody and does not allow the court to give "one parent a greater share of . . . legal custody" rights.[64] Applying this definition to Mary and Shannon's dispute, the Court determined that resolving the impasse in favor of one parent effectively diminishes the other parent's statutory right to equal participation in the vaccination decision.[65] If the district court granted Mary the right to vaccinate the children as she wished, the court's decision would trump Shannon's objections to that course of action, depriving him of his right to equally participate in the decision. Based on this rationale, the *Frazier* Court determined that the Iowa Code prevents district courts from resolving these disputes as an arbiter.

This rationale has its flaws, which Justice McDonald pointed out in his dissent. He argued that under the majority's rationale, regardless of whether the court resolves the dispute or refuses to, it will infringe upon one parent's right to equal participation in legal custody decisions.[66] Justice McDonald reasoned that when joint legal custodians face a decision that proposes two choices—to change or to keep the status quo—the parent who favors the status quo will always make the final decision (to keep the status quo), without the other parent's participation, simply by exercising their veto power.[67] Use Mary and Shannon's situation to illustrate. There, the parties' decision leads to two outcomes: vaccinating the children or not. Shannon, by simply refusing Mary's request to vaccinate the children, effectively forces the decision to not vaccinate the children. In this case, a decision to vaccinate requires participation from both Mary and Shannon: Both need to agree. A decision to not vaccinate the children only requires participation from one parent; by vetoing, Shannon effectively forces the status quo of nonvaccinating without input from Mary. It does not matter whether Mary agrees with this decision or not, and as a result, she has lost her right to equally participate in the decision.

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62. *Id.*

63. IOWA CODE § 598.1(3).

64. *Frazier*, 1 N.W.3d at 779 (quoting *In re* Marriage of Makela, 987 N.W.2d 467, 471 (Iowa Ct. App. 2022)).

65. *Id.* Under section 598.1(3), joint legal custodians have a right to participate in the medical decisions affecting their child's life. IOWA CODE § 598.1(3). The decision to vaccinate a child is a medical decision. *See* Armstrong v. Curtis, No. 20-0632, 2021 WL 210965, at *3 (Iowa Ct. App. Jan. 21, 2021) ("Instead, the court . . . ordered that all decisions concerning medical care, including vaccinations, . . . be made by [the father].").

66. *Frazier*, 1 N.W.3d at 779.

67. *Id.*

Under this explanation, it may seem like the district court is put in a lose-lose situation; either way, whether it resolves the dispute or not, it will diminish one party's right to equally participate in the decision-making process. However, when the court does resolve an impasse for two parents, those parents still equally participate in the decision-making process, and the *Frazier* majority failed to recognize this. The right to equal participation entitles both parents to the same opportunity to influence legal custody decisions: They have the right to collaborate, present their reasons for their preferred decision, and compromise to ultimately reach a final agreement.[68] These aspects of equal participation exist when parties partake in the judicial process.[69] Under the majority's holding, none of this collaboration exists nor is it incentivized; Shannon ultimately makes the decision, regardless of Mary's input, by turning down her request to vaccinate, and he has no incentive to collaborate with Mary because his decision (the status quo) is already in effect. The *Frazier* majority did not specifically address this argument that Justice McDonald presented.[70]

Regardless, the majority determined that the Iowa Code prevents district courts from resolving impasses between joint legal custodians as an arbiter.[71] Instead, the court must terminate the parents' status as joint legal custodians and grant one parent sole legal custody, severing any right the other parent has to make decisions affecting their child's life. Since Mary did not ask the district court to grant her sole legal custody, she did not properly invoke the court's authority to resolve the dispute.[72] The next Subsection discusses how the *Frazier* Court distinguished Iowa case law that portrays district courts resolving these disputes as arbiters and argues the Court inadequately did so.

3. *Frazier*'s Analysis of Iowa Case Law that Establishes Authority to Resolve Impasses

The *Frazier* Court determined that the Iowa Code's definition of joint legal custody prevents district courts from resolving disputes between joint legal custodians as an arbiter. As mentioned previously, Iowa case law shows

68. *Id.*

69. *Id.*

70. *Id.* at 796 (McDonald, J., dissenting).

71. The dissent argued that Iowa Code could be interpreted to give the court statutory authority to resolve disputes between joint legal custodians. *Id.* Under the Iowa Code's rules of construction, it explicitly denounces a strict interpretation of the Code and provides that the Code "shall be liberally construed [to] assist the parties in obtaining justice." IOWA CODE § 4.2 (2025). The Code dictates that the district courts are courts of equity, and it provides that the court has an obligation to act "in the best interest of the child." *Id.* § 598.3 ("An action for dissolution of marriage shall be by equitable proceedings."); *id.* § 598.41(1)(a), (2)(b), 2(d), (3) (providing that in custody allocations the court should act in "the best interest of the child"). The dissent argues that if the majority was interpreting the Code broadly to help the parents obtain justice as section 4.2 of the Code provides, it would interpret the district court's equitable powers and duty to act in the child's best interest to include the power to resolve disputes between joint legal custodians. *Frazier*, 1 N.W.3d at 796.

72. *Frazier*, 1 N.W.3d at 788 (majority opinion).

that district courts have exercised this authority for decades and that the Iowa Court of Appeals has affirmed these decisions.[73] The *Frazier* Court distinguished this case law, but it did so in a contradictory way and without addressing key principles of Iowa's legal custody system.[74]

First, the Court determined these cases were distinguishable from *Frazier* because they were properly brought before the district court using a petition.[75] The *Frazier* Court said, "Ultimately, the cases Mary cites as examples of the district court acting as a tiebreaker are distinguishable because those issues were properly before the district court on either a trial of the initial dissolution action or an action to modify their decree."[76] However, this statement contradicts the rest of the majority's opinion because it implies that the use of a petition would have saved Mary's case from dismissal. Recall that the *Frazier* Court not only took issue with Mary's lack of petition, but also her request to resolve the dispute without altering her and Shannon's status as joint legal custodians.[77] In attempting to distinguish a majority of the Iowa cases that contradict its holding, the Court fails to—and ultimately cannot—distinguish them on this second issue. In each of these cases, the district court resolved the parents' impasse by acting as an arbiter without awarding sole legal custody to one party.[78] This exercise of authority directly contradicts the *Frazier* holding, and the *Frazier* majority did nothing to address that contradiction.

For example, in *Flick*, which is analyzed in *Frazier*, the Iowa Court of Appeals directed the district court to resolve an impasse over what school the parties' child should attend. The *Frazier* majority correctly pointed out that, unlike Mary, the mother brought this issue before the court using a petition.[79] However, the *Frazier* majority did not address the fact that the Iowa Court of Appeals directed the district court to resolve the dispute as an arbiter *without*

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73. *See supra* Section I.B.

74. *See Frazier*, 1 N.W.3d at 779–88.

75. *Id.* at 783.

76. *Id.*

77. *See supra* notes 56–58 and accompanying text.

78. *See In re* Marriage of Flick, No. 20-1535, 2021 WL 2453111, at *5 (Iowa Ct. App. June 16, 2021) (providing "remand is necessary to allow the district court to make a determination" as to which school the child should attend); *In re* Marriage of Bakk, No. 12-1936, 2013 WL 5962991, at *2 (Iowa Ct. App. Nov. 6, 2013) (making the "educational decision[]" that a mother could take her child out of daycare in the morning causing the child to miss educational activities); Gaswint v. Robinson, No. 12-2149, 2013 WL 4504879, at *5 (Iowa Ct. App. Aug. 21, 2013) (approving the district court's determination of what school the child should attend because of the geographic proximity of the school to the parents' homes after noting that "neither party appealed from the award of joint legal custody"); *In re* Marriage of Comstock, No. 20-1205, 2021 WL 1016601, at *2 (Iowa Ct. App. Mar. 17, 2021) (remanding the case to the district court to make a decision on which school the child should attend); *In re* Marriage of Laird, No. 11-1434, 2012 WL 1449625, at *3 (Iowa Ct. App. Apr. 25, 2012) (approving the district court's decision regarding what school a child should attend after "not[ing] that neither party has requested to . . . modify custodial rights").

79. *Frazier*, 1 N.W.3d at 784; *Flick*, 2021 WL 2453111, at *1.

giving one parent sole custody.[80] In *Flick*, the Iowa Court of Appeals explicitly provided that the court is "*required* to make" the school choice decision as an "objective arbiter" using its equitable authority.[81] This statement directly contradicts the *Frazier* holding, yet the *Frazier* Court did not even address it beyond distinguishing the case procedurally because of the mother's petition. This omission by the *Frazier* Court suggests that district courts have the authority to resolve impasses as an arbiter between joint legal custodians, something the rest of the *Frazier* decision denies.

In addition to pointing out the use of a petition, the *Frazier* Court also distinguished some of these Iowa cases, like *Flick*, by invalidating their reliance on the Iowa Supreme Court's dicta statement made in *Harder* to establish their authority.[82] As mentioned previously,[83] the *Harder* Court said, "When joint legal custodians have a genuine disagreement concerning [a legal custody decision], the court must step in as an objective arbiter, and decide the dispute by considering what is in the best interest of the child."[84] The *Frazier* Court determined this statement has no precedential weight, and effectively distinguished any case that relied on it for authority.[85] But, what about the cases decided before *Harder* that could not have relied on this dicta statement? The *Frazier* Court only distinguished these pre-*Harder* cases by their use of a petition, which, as discussed above, is inadequate.[86]

In distinguishing these cases, the *Frazier* Court failed to address the fact that Iowa district courts have been resolving impasses between joint legal custodians as arbiters for decades. Since the majority failed to conclude that these district courts have been doing so in error and instead determined this case law is distinguishable because of the use of a petition or their reliance on dicta, the *Frazier* Court's rationale is contradictory and creates confusion about the district court's authority to act as an arbiter to resolve these disputes. The next Section discusses the majority's analysis of case law from other states that does not support its holding.

80. *See Flick*, 2021 WL 2453111, at *6 ("We reverse the district court's decision to delegate school-choosing authority to the mother and remand to the district court to make that decision for the parties.").

81. *Id.* at *5 (quoting Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P., 764 N.W.2d 534, 538 (Iowa 2009)).

82. *Id.* at *5; *Bakk*, 2013 WL 5962991, at *2; *Gaswint*, 2013 WL 4504879, at *5 (also relying on *In re Marriage of Gulsvig*, 498 N.W.2d 725 (Iowa 1993), which was decided before *Harder*); *Laird*, 2012 WL 1449625, at *2; *Comstock*, 2021 WL 1016601, at *1–2.

83. *See supra* Section I.B.

84. *Harder*, 764 N.W.2d at 538.

85. *In re* Marriage of Frazier, 1 N.W.3d 775, 783 (Iowa 2024).

86. *Id.*

4. *Frazier*'s Analysis of Case Law from Other States that Establishes Authority to Resolve Impasses

In addition to Iowa case law, the *Frazier* Court distinguished case law from other states where courts have resolved impasses between joint legal custodians without fully altering the parties' joint legal custody status. However, this Subsection argues it did so in an incomplete way.

First, the Court noted that other states have been able to resolve these impasses by utilizing a method that the Iowa Code does not allow: unbundling legal custody rights and awarding one parent the sole authority to make specific decisions while retaining equal decision-making authority in other areas.[87] For example, in these other states, district courts could have resolved Mary and Shannon's dispute by giving one parent the sole authority to make decisions regarding the COVID-19 vaccine.[88] This method does not allow the district court to resolve the dispute as an arbiter, but it also does not require the court to fully terminate the parents' shared legal custody status as *Frazier* does.

The *Frazier* Court determined that Iowa courts cannot resolve impasses in this way because the Iowa Code's all-or-nothing approach to joint legal custody, discussed above,[89] does not allow it to unbundle legal custody rights.[90] The Court explained that other state statutes differ from the Iowa Code, and therefore, in those states, courts may unbundle legal custody rights to resolve disputes.[91] These states either have statutes that specifically address how district courts should resolve impasses between joint legal custodians or have different, less extreme definitions of joint legal custody.[92] Because the *Frazier* Court's holding is based on Iowa's statutory, all-or-nothing definition of joint legal custody, it properly distinguished most of the case law from other states. Nearly every state has express statutory authority or a statutory definition of joint legal custody that allows its courts to unbundle legal custody rights.[93]

However, the *Frazier* Court notably failed to address the *opposing* case law from the one state that defines joint legal custody in the *same* all-or-nothing way that Iowa does. This failure to address Michigan law leaves a gaping hole in the *Frazier* Court's analysis. In Michigan, the court of appeals, like the *Frazier*

87. *Id.* at 784–86.

88. *See* Jones v. Jones, No. 1-22-1369, 2023 WL 2625862, at *1, *7 (Ill. App. Ct. Mar. 24, 2023) (resolving a similar dispute as Mary and Shannon's in this way).

89. *See supra* Section II.A.2.

90. *Frazier*, 1 N.W.3d at 779, 786.

91. *Id.* at 784–86.

92. *Id.* at 786.

93. *See, e.g.*, ALA. CODE § 30-3-151(2) (LexisNexis 2016) ("The court may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions."); Martin v. Lynch, No. 317, 2021, 2023 WL 116486, at *3 (Del. Jan. 5, 2023) (affirming a lower court's decision to grant the mother sole decision-making authority over the child's health care and operating under DEL. CODE ANN. tit. 13, § 727 (West 2006) which does not contain a definition of joint legal custody).

Court, specifically prohibited district courts from unbundling legal custody rights because of Michigan's definition of joint legal custody.[94] They held:

> [B]ecause [the Michigan Compiled Laws] provides that a joint custody arrangement "is available only where 'the parents will be able to cooperate [and generally agree on matters concerning important decisions affecting the welfare of]' their children," . . . we conclude that the Legislature did not intend to provide for a joint custody arrangement in which such important decisions are apportioned [among parents].[95]

This conclusion invoked the same principles that the *Frazier* Court used when it determined the Iowa Code's definition of joint legal custody does not allow courts to unbundle legal custody rights.[96]

While Michigan and Iowa define joint legal custody in the same way, unlike the *Frazier* Court, Michigan has not used this all-or-nothing approach to prohibit district courts from resolving impasses between joint legal custodians. Instead, it determined Michigan courts *have a duty* to resolve these disputes as arbiters.[97] Nearly three decades ago, in *Lombardo v. Lombardo*, the Michigan Court of Appeals held:

> [J]oint custody in this state by definition means that the parents share the decision-making authority with respect to the important decisions affecting the welfare of the child, and where the parents as joint custodians cannot agree on important matters such as education, it is the court's *duty* to determine the issue in the best interests of the child.[98]

Ever since *Lombardo*, Michigan has reinforced its holding and developed an entire system of *Lombardo* hearings to resolve impasses between joint legal custodians.[99] Ultimately, Michigan and Iowa define joint legal custody in the same way, yet the *Lombardo* and *Frazier* Courts used this definition to come to opposite conclusions. The *Frazier* Court did not address Michigan's similar definition of joint legal custody, the *Lombardo* case, nor its system of *Lombardo* hearings.[100] This case law directly opposes its holding, and the Court's failure to analyze it leaves its opinion incomplete.

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94. Shulick v. Richards, 729 N.W.2d 533, 539 (Mich. Ct. App. 2006).

95. *Id.* (quoting Schwiesow v. Schwiesow, 406 N.W.2d 878, 882 (Mich. Ct. App. 1987)).

96. *Frazier*, 1 N.W.3d at 779.

97. Lombardo v. Lombardo, 507 N.W.2d 788, 791–92 (Mich. Ct. App. 1993).

98. *Id.* (emphasis added).

99. *See Michigan Joint Custody Disagreements*, ASHLEY LEGAL PLLC (2024), https://ashleylegallc.com/legal-decision-disputes [https://perma.cc/5RHC-ZEV9].

100. The *Frazier* Court addressed Michigan law once. The Court distinguished case law from other states by asserting, "A number of these states and many others also have statutes expressly addressing how courts should resolve disputes between joint legal custodians over important decisions affecting their children." *Frazier*, 1 N.W.3d at 785. After this statement, the Court cited the Michigan Compiled Laws section 722.25(1). *Id.* (citation omitted). Section 722.25(1) provides, "If a child custody dispute is between parents, . . . the best interests of the child control."

While the *Frazier* opinion is flawed in several areas and creates confusion surrounding the status of the district court's authority, its holding stands. Under it, district courts cannot resolve disputes between joint legal custodians as arbiters. Instead, they must fully terminate their joint legal custody status and award one parent sole legal custody. The next Section discusses the impact this holding has on Iowa families.

B. FRAZIER*'S IMPACT*

When two joint legal custodians reach an impasse over a legal custody decision, they have two remedies when it comes to resolving the dispute: (1) reach a decision together without the court's involvement; or (2) modify their decree to give one parent sole legal custody.[101] There are several issues associated with each of these options, and this Section argues they can hardly be considered remedies at all.

The first *Frazier* remedy asks parents to resolve their impasses themselves. This option has the potential to produce positive impacts *if achieved* but actually achieving it can prove to be quite difficult. Generally, reaching a mutually agreeable decision produces the benefits that functional joint legal custody arrangements provide: collaboration, healthy communication, mutual involvement, and commitment to parental decisions. Coming to an agreement outside of court also ensures that important legal custody decisions are made by the people they impact the most: the families themselves.

If parents find it difficult to reach a decision purely on their own, they can use several alternative methods that are designed to help them resolve their disputes, including mediation, arbitration, and parenting coordination.[102]

Id. at 786 (alteration in original). This citation does not adequately distinguish Michigan law from Iowa law.

It is a far stretch to determine the cited language "expressly addresses" how district courts should resolve impasses between joint legal custodians as the *Frazier* Court said it does. Instead, the language more naturally reads as requiring courts to govern all decisions that generally involve child custody by the best-interest-of-the-child standard, a requirement that nearly every state, if not all of them, have and emphasize. *In re* Marriage of Bingman, 209 N.W.2d 68, 69 (Iowa 1973); *see, e.g.*, KAN. STAT. ANN. § 23-3206 (West 2024) ("[T]he court may make any order relating to custodial arrangements which is in the best interests of the child."). This statement from section 722.25(1) is all that the *Frazier* Court relied on to distinguish Michigan law from Iowa's, and similar language can be found in nearly every child custody case that has been heard by an Iowa court.

101. *Frazier*, 1 N.W.3d at 779.

102. Using mediation, parents sit down in a controlled environment and discuss their conflict with a neutral mediator who helps move the conversation toward a decision that both parents agree to. *See About Mediation*, MEDIATION SERVS. E. IOWA, https://mediateiowa.org/about-mediation [https://perma.cc/J5AV-3MK2]; IOWA CODE § 679C.102(1) (2025) ("[A] mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.").

Parents who agree to arbitrate present their dispute to a third party and give that third party the power to make the decision for them. Joan F. Kessler, Allan R. Koritzinsky & Stephen W. Schlissel, *Why Arbitrate Family Law Matters?*, 14 J. AM. ACAD. MATRIMONIAL L. 333, 334 (1997).

However, there are glaring issues associated with all of these methods. Mediation may fail and ultimately does not require parents to come to an agreement over decisions.[103] Further, arbitration and parenting coordination only authorize a third party to make binding decisions if parents *agree* to give that third party the authority to make those decisions in the first place.[104] There are obvious issues with asking high-conflict parents to agree on yet another thing, and if parents cannot mutually make the decision to participate in arbitration or parenting coordination, these methods are not an option for them.[105]

Typically, mediation, arbitration, and parenting coordination can be used preventively, and in the event that these methods fail, parents may still ask the district court to formally resolve their issues.[106] However, under a *Frazier* regime, judges cannot act as a backstop, and these alternative methods may be the only realistic option parents have to resolve their disagreements. As a result, reaching an agreement through them becomes all that more critical, and the issues associated with each method become even more troublesome. Ultimately, the first *Frazier* remedy asks parents to do something they sometimes cannot do: agree. No matter what alternative dispute resolution they use, some parents have proven they cannot resolve their impasses, especially when those impasses involve some of the most important decisions relating to their children. As a result, the first *Frazier* remedy can barely be called a remedy.

Parenting coordinators typically work with parents to improve their ability to make day-to-day decisions. *Parent Coordination & Parent Coaching*, CRILLEYLAW.COM (2023), https://crilleylaw.com/parent-coordination [https://perma.cc/QY3A-FKNN]. However, like arbiters they can also resolve impasses for parents if given the ability to do so. *Id.*

103. As evidenced by Mary and Shannon's situation in *Frazier*, parents may walk out of a mediation session no closer to resolving their dispute than before. *See Frazier*, 1 N.W.3d at 778.

104. *Parent Coordination & Parent Coaching*, *supra* note 102 ("*With prior approval of . . . [the] Parties*, the Parenting Coordinator has the authority to make limited decisions when parents are unable or unwilling to make decisions on their own." (emphasis added)); *see* Kessler et al., *supra* note 102, at 334. ("The key to any arbitration is the parties *agreement* to arbitrate."); *see* IOWA CODE § 679A.1 (affirming that written agreements to arbitrate are valid).

105. If parents do not agree, Iowa courts cannot order opposed parents to participate in these services either. Because *Frazier* determines that courts do not have the authority to resolve these disputes, the courts cannot delegate that same authority, *because they do not have that authority*, to arbitrators and parenting coordinators. *See Frazier*, 1 N.W.3d at 788. Iowa courts could order joint legal custodians to mediate over an impasse, but as pointed out, mediation does always end in an agreement between parties. *See* IOWA CODE § 598.7; *see also* text accompanying notes 47–48. Further, parties must be properly before the court, litigating matters that the court actually has the authority to hear before a court can order them to mediate over an impasse. *See* IOWA CODE § 598.2 (providing the rules of jurisdiction and venue for dissolution of marriage and domestic relations disputes).

106. *Crilley Mediation Services*, CRILLEYLAW.COM, https://crilleylaw.com/crilley-mediation-service [https://perma.cc/HS4V-JXRS] (providing that mediation can help parties "[s]ave money on [l]itigation expenses" and "[m]ove through the [l]itigation process more quickly"); *Parent Coordination & Parent Coaching*, *supra* note 102 (providing one of the goals of parenting coordination is to "[r]educe repeated re-litigation"); *see* Kessler et al., *supra* note 102, at 334 ("[Pre-divorce arbitration] involves situations in which the parties cannot agree on one or more of the issues but do not wish to ask the court to do anything but actually divorce them.").

The second *Frazier* remedy, to request and receive sole legal custody, is equally as inadequate as the first, if not more. In the wake of *Frazier*, parents have been resorting to this option—Iowa district courts have already seen increased requests for sole legal custody in modification proceedings since *Frazier*.[107] However, like the first option, this remedy is only effective *if achieved*, and the Iowa Code makes receiving sole legal custody nearly impossible.

To actually receive sole legal custody, a parent needs to overcome Iowa's preference for joint legal custody, which as discussed previously,[108] is a large burden to overcome even in high-conflict situations.[109] In addition, in modification proceedings, a parent must satisfy yet another burden: Generally, a parent must show "by a preponderance of the evidence a substantial change in circumstances occurred after the decree was entered" that "affect[s] the welfare of the children" and is "more or less permanent."[110] *Frazier* does not change this high standard, and as a result, even if a parent wants to resolve an impasse by terminating their joint legal custody status, that parent will most likely fail.[111]

It is also important to note that some parents do not want to alter their legal custody status even if they could overcome the high burden to do so.[112] In *Frazier*, Mary did not want to terminate her shared custody status with Shannon, and arguably, she took the preferred route to resolve her and

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107. *The Iowa Supreme Court's* Frazier *Decision and the Current Status of Legal Custody Issues in Iowa*, *supra* note 15, at 0:12:16 (Judge David Cox, Iowa Judicial District 6, stating, "I have been seeing an increase in requests for sole legal custody in modification cases, and I am thinking it's because of the *Frazier* case").

108. *See supra* Section I.A.

109. *See supra* Section I.A; IOWA CODE § 598.48(1)(b) (providing that the court must cite clear and convincing evidence that joint legal custody is unreasonable if it decides to award sole legal custody); *id.* § 598.48(2)(b) (providing that if the court finds a history of domestic abuse a rebuttable presumption against joint legal custody exists).

110. *In re* Marriage of Harris, 877 N.W.2d 434, 440 (Iowa 2016).

111. The *Frazier* majority does recognize that the inability to resolve a dispute after years of litigation may "suggest" an award of sole legal custody is necessary, but prior case law shows that parents need more. *In re* Marriage of Frazier, 1 N.W.3d 775, 781 (Iowa 2024). To justify sole legal custody, "the parties' inability to communicate and cooperate must rise above 'the usual acrimony that accompanies divorce.'" Armstrong v. Curtis, No. 20-0632, 2021 WL 210965, at *3 (Iowa Ct. App. Jan. 21, 2021) (quoting *In re* Marriage of Ertmann, 376 N.W.2d 918, 920 (Iowa Ct. App. 1985)). A minority of extreme, chronically high-conflict parents may have grounds for a sole custody award. *See, e.g.*, *In re* Marriage of Gensley, 777 N.W.2d 705, 715–16 (Iowa Ct. App. 2009) (awarding sole legal custody to a mother after recognizing that the parents "level of animosity . . . was unusual" and their relationship was "dysfunctional to the extreme level that it is negatively impacting the children"). But, even cooperative parents reach impasses, and under Iowa law, they do not have a basis for sole legal custody. *See Armstrong*, 2021 WL 210965, at *4. (determining that evidence showing two parents have different views on vaccinating and educating their children does not "rise[] to a level of clear and convincing evidence showing joint legal custody is unreasonable and not in the [child's] best interests to the extent that the legal custodial relationship between [the child] and his mother should be severed").

112. *See Frazier*, 1 N.W.3d at 782; Final Brief for Appellant Mary C. Streicher, *supra* note 49, at 17 ("Mary is not . . . requesting to modify custody or parenting time.").

Shannon's dispute. She did not try to strip Shannon of his parental decision-making rights or deprive her children of the benefits of joint legal custody.[113] She simply asked the court to resolve a dispute that she and Shannon could not.[114] However, the *Frazier* holding does not allow her to pursue this more amicable route and leaves her with a bitter choice: to preserve the status quo, stuck in an impasse; or to take the more adversarial approach and terminate Shannon's legal custody rights.

Since most parents run out of options under *Frazier* due to the reasons discussed above, Iowa attorneys have pitched ideas that attempt to circumvent the *Frazier* holding and invoke the court's assistance in resolving impasses. These ideas include using injunctions against one parent to prevent them from unilaterally making a decision and incorporating stipulations in decrees that retain the court's authority to resolve future impasses.[115] However, both of these ideas end up running into the *Frazier* holding, and as a result, they most likely cannot be utilized to invoke the court's assistance in resolving impasses between joint legal custodians.[116]

Attorneys have also advised clients to request sole legal custody upfront in initial custody proceedings to avoid *Frazier* issues later on.[117] However, this approach creates a high-conflict situation that otherwise may not have existed because parties are taking a more aggressive approach towards *sole* legal

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113. *Frazier*, 1 N.W.3d at 778.

114. *See id.*

115. *See id.* at 781; *see also The Iowa Supreme Court's* Frazier *Decision and the Current Status of Legal Custody Issues in Iowa*, *supra* note 15, at 0:45:47, 0:31:55 (addressing injunctions with Judge David Cox, Iowa Judicial District 6, and discussing stipulations with Judge Chad Kepros, Iowa Judicial District 6).

116. Under Iowa law, district courts can issue injunctions to *stop* a parent from unilaterally acting on decisions and violating the other parent's joint legal custody rights which may be beneficial. *The Iowa Supreme Court's* Frazier *Decision and the Current Status of Legal Custody Issues in Iowa*, *supra* note 15, at 0:46:57 ("If a modification is on file, and there's a concern that a parent may act unilaterally before you could reach a trial on the petition, and it would cause irreparable harm if a parent did act unilaterally, . . . there's a possibility of . . . filing an injunction to prevent [that] unilateral act[] until [the court] could hear the petition."). However, if a court issues an injunction ordering one parent to actually *move forward* with a decision, the court may run into the *Frazier* holding because under it, district courts do not have the authority to make these decisions in the first place. *Frazier*, 1 N.W.3d at 788; *The Iowa Supreme Court's* Frazier *Decision and the Current Status of Legal Custody Issues in Iowa*, *supra* note 15, at 0:46:20 ("[In asking for an injunction,] you might still have that all-or-none problem that we have for joint legal custodies [under *Frazier*] . . . [Injunction is] a possibility, but it's . . . not one hundred percent foolproof.").

117. *Panel of Family Attorneys and Mediators Weigh in on the* Frazier *Decision and Strategies for Dealing with High Conflict Parents. (One Hour).*, MEDIATION SERVS. E. IOWA, at 48:41 (2024), https://mediateiowa.org/for-mediators/frazier-decision-cle-on-demand (Jake Koller, Attorney for Appellant in *Frazier*, stating, "I'm not aware of any other option that doesn't have landmines along the way, other than a petition to modify and a request for sole legal custody, so I am telling clients [to request sole legal custody]. I'm also telling them how difficult that is, how long it takes, [and] how much it's going to cost.").

custody since the risks of *joint* legal custody are so high.[118] Further, in the end, the hostility, cost, and time associated with pursuing sole legal custody may be for nothing: As discussed above, most parents cannot overcome Iowa's presumption for joint legal custody.[119]

Ultimately, the *Frazier* remedies leave joint legal custodians between a rock and a hard place. The history of prolonged litigation[120] over these parental disputes prove that in some situations, parents like Mary and Shannon are simply unable to reach mutual decisions on their own, and in most cases, neither parent actually wants to strip the other of their joint legal custody status.[121] When parents cannot reach an agreement, they are required to request and receive sole legal custody to resolve their disputes.[122] Although these remedies are dissatisfying, Iowa attorneys cannot comfortably advise their clients to take any other path beyond them, and district court judges cannot craft different solutions to circumvent them.[123] However, all hope is not lost. The inconsistency and incompleteness of the *Frazier* holding along with the issues it created have prompted further litigation, and after observing the aftermath of the case, the Iowa Supreme Court seems willing to limit the

118. *Id.* at 53:04 (Iowa Attorney Kristen Frey).

119. *See supra* Sections I.A., II.B. However, the lack of remedy provided by *Frazier* creates pressure on the lower courts to undermine the Iowa Code's presumption of joint legal custody. Attorneys have already recognized that district court judges are more willing to award sole legal custody than they were before *Frazier* by lowering their standard required to overcome the presumption of joint legal custody. *Panel of Family Attorneys and Mediators Weigh in on the* Frazier *Decision and Strategies for Dealing with High Conflict Parents*, *supra* note 117, at 44:06 (Iowa Attorney Kristen Shaffer stating, "I'm hearing more from our district court judges that they're leaning towards sole legal [custody] compared to what they would have done before [*Frazier*] . . . For example, I had a trial in May, [and] . . . the court actually warned [the parties] that even though no one was asking for sole legal [custody] that the court would be considering [awarding sole legal custody] if [it] found [the parties] could not appropriately have joint legal custody."). But, as mentioned before, *Frazier* does not change this high standard, and appeals could easily overturn any case that does not cite clear and convincing evidence that sole legal custody is necessary.

120. In Mary and Shannon's case, Mary initiated her appeal to the Iowa Court of Appeals on April 21, 2022. *See generally In re* Marriage of Frazier, No. 22-0686, 2023 WL 4104024 (Iowa Ct. App. June 21, 2022). This was a year and nearly six months before the Iowa Supreme Court issued its holding on the case and does not include the time spent mediating before any proceedings were initiated nor the time spent litigating at the district court level. *See generally Frazier*, 1 N.W.3d 775.

121. *Frazier*, 1 N.W.3d at 782; Final Brief for Appellant Mary C. Streicher, *supra* note 49, at 17 ("Mary is not . . . requesting to modify custody or parenting time.").

122. *See Frazier*, 1 N.W.3d at 779.

123. In situations where parents need a resolution quickly, but have to complete the lengthy process to modify their custody arrangement, courts may be able to temporarily resolve the dispute by issuing temporary orders under *In re Marriage of Grantham*, using the case's "necessity" interpretation to justify the use of such orders. *See In re* Marriage of Grantham, 698 N.W.2d 140, 146 (Iowa 2005) ("Michael's absence from the parental role as a result of his military service necessitated that a temporary reassignment of custodial responsibilities be made without delay."); Rachel A. Schmit, *Temporary Custody Orders Pending a Modification: From* Grantham *to Granting Them*, 110 IOWA L. REV. 427, 534–36 (2024) (discussing how courts may interpret *Grantham* to allow temporary orders when they are necessary).

Frazier holding.[124] The next Section will discuss *Venechuk v. Landherr* and how the Court used that case to reduce the effect *Frazier* has on Iowa families.

C. THE VENECHUK *OPINION*

The *Venechuk v. Landherr* decision came out a year after the *Frazier* decision. Because it involved an Iowa Court of Appeals holding that directly applied *Frazier*, it was an opportunity for the Iowa Supreme Court to clarify and correct the inconsistencies of its *Frazier* opinion.[125] While *Venechuk* clarified some aspects of *Frazier*, it also added to the confusion the case originally created. This Section discusses the *Venechuk* opinion generally and then critiques the inconsistent aspects of its holding.

Venechuk involved a dispute between two unmarried parents over where their child should attend school.[126] The parents operated under an existing 2018 decree that awarded both parents joint legal custody and that, importantly, included a stipulation by the parties that specified what school district their child should attend.[127] Before the *Frazier* opinion was issued, the mother filed a petition with the district court, asking it to modify the school-choice provision in their decree to allow the child to attend another school district.[128] Deciding the case on the facts, the district court denied the modification because it determined changing schools was not in the best interest of the child.[129] The mother appealed this decision, and while the appeal was pending, the Iowa Supreme Court decided *Frazier*.[130] When the Iowa Court of Appeals eventually decided the case, it affirmed the district court's decision to deny the modification, but it did not do so based on the facts of the case.[131] Instead, it applied *Frazier* and determined that the district court did not have the authority to resolve the dispute because the mother did not ask the court to grant her sole legal custody.[132] In other words, she did not utilize the second *Frazier* remedy. The mother appealed this decision.[133]

When the case reached the Iowa Supreme Court, it reversed the court of appeals' decision and affirmed the district court's factual ruling.[134] In critiquing the court of appeals' decision, the Court pointed out the differences between *Frazier* and *Venechuk* and utilized those differences to ultimately limit *Frazier*'s

124. *See generally* Venechuk v. Landherr, 20 N.W.3d 471 (Iowa 2025).
125. *Id.* at 475.
126. *Id.* at 472.
127. *Id.* at 473.
128. *Id.*
129. *Id.* at 474.
130. *Id.* at 475.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 478.

applicability with its holding.[135] The Court determined that when the parties' decree includes a provision that covers their disputed legal custody issue, as was the case in *Venechuk*, the district court has the authority to resolve the dispute by modifying that provision.[136] The Court derived this holding from basic Iowa law concerning modifications of judgments: "A judicial decree . . . is a *judgment*. . . . [A] judgment that grants continuing relief—like a child custody and support decree—may be *modified* based on changed circumstances."[137]

In coming to this conclusion, the *Venechuk* Court did not overrule *Frazier*, but rather distinguished it. Unlike the parties in *Venechuk*, the parties in *Frazier* did not have a provision in their decree concerning vaccines that the Court could modify to resolve the dispute.[138] In *Frazier*, Mary was not asking the Court to simply modify its prior judgment; instead, she was asking it to resolve a "free floating" legal custody issue that the Court had never issued a judgment upon.[139] Therefore, by distinguishing *Frazier* in this way, the *Venechuk* Court clarified any confusion surrounding the *Frazier* holding and applied the case to affirm that district courts do not have the authority to resolve impasses between joint legal custodians as *arbiters*.[140] Instead, the court only has authority to resolve these disputes by modifying prior decrees.[141] Where no provision in the parties' decree pertains to the disputed legal custody issue, the district court has no ability to resolve an impasse beyond granting one parent sole legal custody because the decree's joint legal custody provision is the only provision available to modify.[142] Because the decree in *Venechuk* specified the child's school district, the *Venechuk* Court factually distinguished *Frazier* while reaffirming the legal principles the case originally established.

However, like the *Frazier* Court, the *Venechuk* Court established a strong affirmation of *Frazier* principles only to contradict it later in its opinion, creating confusion moving forward. The *Venechuk* Court affirmed *Frazier*'s analysis of Iowa case law that contradicted its holding by portraying district courts resolving legal custody disputes as an arbiter without awarding one party sole legal custody.[143] *Frazier* distinguished these cases because the parties brought the dispute during their initial custody proceedings or using a petition to modify their prior decree,[144] but as discussed previously, this

135. *See id.* at 476–77.
136. *Id.*
137. *Id.* at 477.
138. *In re* Marriage of Frazier, 1 N.W.3d 775, 778 (Iowa 2024).
139. *Venechuk*, 20 N.W.3d at 472; *see Frazier*, 1 N.W.3d at 778.
140. *Venechuk*, 20 N.W.3d at 476–77.
141. *Id.*
142. *See id.*
143. *Id.*
144. *Frazier*, 1 N.W.3d at 783–84.

attempt contradicts *Frazier*'s holding.[145] By affirming these cases, the *Venechuk* Court, like the *Frazier* Court, contradicts its own holding. If a prior decree is detailed enough to cover the disputed issue, *Venechuk* allows district courts to resolve legal custody impasses by modifying those specific provisions in the decree instead of the parties' joint legal custody status.[146] However, in the Iowa case law that *Venechuk* affirmed, not one of the decrees involved covered the disputed issue before the district court.[147] Therefore, by affirming these cases, *Venechuk* implies the district court could resolve these disputes without modifying some provision in the parties' decree, contradicting its own holding. This contradiction mirrors the contradictions *Frazier* made and adds to the confusion surrounding the cases.[148]

In *Venechuk*, the Iowa Supreme Court affirmed *Frazier*'s holding that district courts may not act as arbiters to resolve legal custody disputes.[149] It determined that district courts only have the authority to resolve these disputes by modifying some provision in the parties' decree—either a specific provision that addresses the disputed issue or the provision that awards joint legal custody.[150] However, while it clarified some aspects of the *Frazier* holding, it also added to the confusion *Frazier* created. Further, since it did not completely overturn *Frazier*, the impact associated with that case still persists to an extent. The next Section discusses the impact of *Frazier* after *Venechuk* and further points out the questions that have been left unanswered by both cases.

D. HOW VENECHUK *SOFTENS THE IMPACT OF* FRAZIER

In its opinion, the *Venechuk* Court softened *Frazier*'s blow. Moving forward, *Frazier* will apply in some instances and *Venechuk* will apply in others, creating two sets of Iowa families. This Section delineates which families *Frazier* applies to and which families *Venechuk* applies to. Then, it discusses the families that do not fall under either category, and how both cases will impact them moving forward.

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145. *See supra* Section II.A.3. By distinguishing these cases procedurally, the *Frazier* Court contradicted the rest of its opinion because it implies proper procedure would have given the district court authority to resolve Mary and Shannon's impasse as an arbiter. However, *Frazier* specifically determined that even if Mary had used proper procedure, the district court lacked the authority to resolve disputes as an arbiter under the Iowa Code. *See Frazier*, 1 N.W.3d at 779.

146. *Venechuk*, 20 N.W.3d at 476–77.

147. *See In re* Marriage of Flick, No. 20-1535, 2021 WL 2453111, at *1 (Iowa Ct. App. June 16, 2021); *In re* Marriage of Bakk, No. 12-1936, 2013 WL 5962991, at *1 (Iowa Ct. App. Nov. 6, 2013) (specifying that the court was hearing the parties' initial custody dispute and therefore, no decree was in place); Gaswint v. Robinson, No. 12-2149, 2013 WL 4504879, at *1–2 (Iowa Ct. App. Aug. 21, 2013) (specifying that the court was hearing the parties' initial custody dispute and therefore, no decree was in place); *In re* Marriage of Laird, No. 11-1434, 2012 WL 1449625, at *1 (Iowa Ct. App. Apr. 25, 2012); *In re* Marriage of Comstock, No. 20-1205, 2021 WL 1016601, at *1 (Iowa Ct. App. Mar. 17, 2021).

148. *See supra* Section II.A.3.

149. *Venechuk*, 20 N.W.3d at 476.

150. *See id.* at 476–77.

First, there are families that directly fall under the facts of *Venechuk*, and comparatively speaking, they're better off. *Venechuk* families will have a dispute over a legal custody issue and that issue will be covered by their decree. In this situation, the district court will have the authority to directly resolve the parties' dispute by considering the facts of the case and deciding whether to modify the provision in the parties' decree based on the best interest of the child.[151] For example, in *Venechuk*, the district court considered the facts of the case and determined it was not in the child's best interest to change schools as the mother wished; consequently, the court did not modify the provision in the parent's decree concerning the child's school district.[152] When a dispute over a legal custody issue arises, *Venechuk* families will not be limited to the *Frazier* remedies, and the problems associated with those remedies will not apply to them. In other words, they will not feel the impact of *Frazier*.

On the flip side of the coin, there are families that will directly fall under the facts of *Frazier*, and they will feel the full impact of the case. *Frazier* families will have a dispute over a legal custody issue that will *not* be covered by their decree, and they will be stuck with the *Frazier* remedies: mutual agreement or requests for sole legal custody.[153] Unfortunately, this means *Frazier* families will effectively have no remedy at all.[154]

Outside of these two categories of families, there will also be families that do not fit under the facts of either case because they have no existing custody decree in place. If two parents present their impasse to the district court during an initial custody action, it is unclear what remedy the court will be able to provide. In this situation, there is no prior decree to modify, so the court cannot provide a *Venechuk* remedy and would be left to resolve the dispute as an arbiter. Faced with this situation, the district court has two options. First, it could refuse to resolve the parties' impasse, declaring that under *Frazier*, it does not have the authority to act as a referee for joint legal custodians. [155] On the other hand, it could distinguish the case from *Frazier* (because it's an initial custody action) and establish some basis for the district court's authority to resolve the dispute.[156] Unfortunately, Iowans will have no

151. *Id.*

152. *Id.* at 478.

153. *Id.* at 476–77.

154. *See supra* Section II.B.

155. *See In re* Marriage of Frazier, 1 N.W.3d 775, 779 (Iowa 2024).

156. In this situation, a district court could distinguish the case from *Frazier* and *Venechuk* because it involves an initial custody action and determine it has broader authority in this context. However, doing so would involve the same internal contradictions that the *Frazier* and *Venechuk* Courts made when they suggested that the use of a petition in either an initial custody action or modification would provide the district court with authority to resolve impasses. *See supra* Sections II.A.3, II.C. Further, the Iowa case law that portrays district courts resolving legal custody disputes as arbiters in initial custody proceedings, not modifications like *Frazier*, relies on *Harder*, and *Frazier* denounced that as a proper basis for the district court to act as an arbiter. *See, e.g.*, *In re*

clear answer for how district courts can resolve these disputes until another case makes its way to the Iowa Supreme Court, and that Court clarifies the case law on this issue.

So, how does *Frazier* impact Iowa families after *Venechuk*? Luckily, in some situations, families will have a judicial remedy to their disputes. Unfortunately, in other situations, joint legal custodians effectively have no remedy. Then, there are some families who simply do not know (and will not know for the foreseeable future) how the court can help them when they reach an impasse. To quote Justice McDonald in his dissent in *Frazier*, "Who are the winners here?"[157] I cannot find any under a *Frazier* regime. The next Part discusses how other states handle impasses between joint legal custodians and how the Iowa General Assembly can align Iowa with the rest of the nation on this issue and alleviate the impact that *Frazier* has had.

III. THE LEGISLATIVE SOLUTION TO THE *FRAZIER* DECISION

Because of the inadequate remedies that *Frazier* families are stuck with and the remaining questions surrounding the case, Iowa parents face a real problem. If it is not already, Iowa will feel the pressure to create a remedy for its families. Since *Frazier* relies on the Iowa Code to reach its holding, it is clear what remedy Iowa needs to pursue: legislation. The next Section analyzes how the rest of the nation handles impasses between joint legal custodians and specifically, how their state statutes allow them to. Then, the final Section proposes legislation for the Iowa General Assembly to adopt that would allow Iowa to resolve these disputes in a similar way.

A. SURVEY OF OTHER STATES' LEGAL CUSTODY SYSTEMS

Iowa is behind the rest of the nation on this issue: It is the *only state* that requires its district courts to resolve impasses between joint legal custodians by terminating their joint legal custody status. Every other state[158] has some form of legislation that allows its district courts to resolve impasses between joint legal custodians without granting one parent sole legal custody. Among

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Marriage of Bakk, No. 12-1936, 2013 WL 5962991, at *2 (Iowa Ct. App. Nov. 6, 2013); Gaswint v. Robinson, No. 12-2149, 2013 WL 4504879, at *5 (Iowa Ct. App. Aug. 21, 2013); *Frazier*, 1 N.W.3d at 782–83. The Court would need to find some other basis for the district court's broader authority to resolve impasses in an initial custody setting: one that doesn't contradict *Frazier*'s principles.

157. *Frazier*, 1 N.W.3d at 797 (McDonald, J., dissenting).

158. As discussed in Subsection II.A.4, Michigan has legislation and case law similar to Iowa, yet it allows its district courts to resolve these impasses. Under the *Frazier* majority's rationale, there is nothing different about Michigan law that would allow its courts to resolve these disputes in a way that Iowa courts could not. While Michigan courts are able to resolve these disputes, I have not included it with the other forty-eight state statutes that allow district courts to resolve these impasses because under the reasoning in *Frazier*, Michigan's state statute should prevent its courts from doing so.

these states, no two state statutes are alike.[159] Each state uses its own structure and language to establish its legal custody framework. While each statute is unique in this sense, four general approaches arise among them: (1) either defining joint legal custody generally or not defining it at all; (2) allowing the district court to address future dispute resolution in the parties' custody order; (3) allowing the district court to authorize a third party to resolve disputes; and (4) expressly allowing for the unbundling of legal custody rights. The following Subsections will discuss each of these approaches.

1. Statutes that Define Joint Legal Custody Generally or Do Not Define It At All

Thirteen states take a generalized approach to joint legal custody which allows their courts to develop its legal custody system through case law.[160] At a minimum, these states grant their district courts the power to make custody allocations.[161] Only two provide definitions of joint legal custody that expressly give parents shared decision-making authority.[162] In other words, these state statutes *do not prevent* their district courts from resolving impasses, whereas the Iowa Code's definition of joint legal custody—and its requirement of equal participation in decision-making—*prohibits* district courts from doing so.[163]

Because of their lack of guidance, these generalized approaches give courts wide discretion in shaping their state's joint legal custody framework. As a result, courts have more flexibility to determine what the scope of their authority is when it comes to legal custody matters. For example, in Alaska, state courts have developed the authority to appoint third-party parenting coordinators, who can make binding decisions for joint legal custodians who

159. *See, e.g.*, ALASKA STAT. § 25.20.060(a) (2025); ARIZ. REV. STAT. ANN. § 25-403.02(C)(5) (2017); COLO. REV. STAT. §§ 14-10-128.3(1), 14-10-128.5(1) (2024).

160. These states include Alaska, Arkansas, Delaware, Indiana, Kentucky, Maryland, Nevada, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, and Virginia.

161. *See* ALASKA STAT. § 25.20.060(a) (2025); ARK. CODE ANN. § 9-13-101(a)(1)(A)(i) (2022 & Supp. 2024); DEL. CODE ANN. tit. 13, § 722 (West 2006 & 2025 Supp.); IND. CODE § 31-17-2-8 (LexisNexis 2019); KY. REV. STAT. ANN. § 403.270(2) (LexisNexis 2018 & 2024 Supp.); MD. CODE ANN., FAM. LAW § 1-201 (LexisNexis 2019 & 2024 Supp.); NEV. REV. STAT. § 125C.0045(1)(a) (2024); N.H. REV. STAT. ANN. § 461-A:3(II) (LexisNexis 2019); N.J. REV. STAT. § 2A:34-23 (2024); N.Y. DOM. REL. LAW § 240(1)(a) (McKinney 2010 & 2025 Supp.); N.C. GEN. STAT. § 50-11.2 (2023); 2A R.I. GEN. LAWS ANN. § 8-10-3(a) (2012); VA. CODE ANN. § 20-124.2(A) (2016 & 2024 Supp.).

162. IND. CODE § 31-9-2-67 (LexisNexis 2019) ("'Joint legal custody' . . . means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training."); VA. CODE ANN. § 20-124.1 (2016) ("'Joint custody' means . . . both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child."). Alaska, Arkansas, Delaware, Kentucky, Maryland, Nevada, New Hampshire, New Jersey, New York, North Carolina, and Rhode Island do not define joint legal custody.

163. IOWA CODE § 598.1(3) (2025).

have reached an impasse.[164] The Alaska state code does not specifically give the courts authority to appoint these parenting coordinators.[165] Even so, the courts still exercise this authority, and the state code's generalized approach to joint legal custody does not restrain them from doing so. Adopting a more generalized statute in Iowa could have similar unintended consequences.

The next Subsection discusses legislation that would give Iowa courts tools to help prevent impasses between joint legal custodians. However, these statutes still do not provide the perfect solution to the problems *Frazier* creates.

2. Statutes that Allow District Courts to Address Future Dispute Resolution in the Parties' Custody Order

Twenty state statutes[166] allow district courts to include provisions in the parent's initial decree that dictate how joint legal custodians will resolve future impasses.[167] These provisions are typically part of a larger parenting plan that includes other details about how the parties will parent.[168] The Iowa Code mentions parenting plans in one instance: District courts can require parties to submit a proposed parenting plan before the court determines whether to award parties joint physical care.[169] The Iowa Judicial Branch has included these parenting plans on its website to be used by attorneys if they desire.[170] These forms include a section that addresses how parties will resolve

164. *See* Clark v. Ide, No. S-18215, 2022 WL 17484923, at *1, 6 (Alaska Dec. 7, 2022) (providing this exercise of authority is contingent on a petition to the court and agreement of both parties).

165. *See generally* ALASKA STAT. § 20.

166. These states include Arizona, Connecticut, Georgia, Hawaii, Minnesota, Missouri, Montana, Nebraska, Massachusetts, New Mexico, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.

167. ARIZ. REV. STAT. ANN. § 25-403.02(C)(5) (2017); CONN. GEN. STAT. ANN. § 46b-56a(d) (West 2018); GA. CODE ANN. § 19-9-1(b)(2)(E) (2022); HAW. REV. STAT. § 571-46.5(c)(10) (2006); MASS. GEN. LAWS ch. 208, § 31 (2022); MINN. STAT. § 518.1705(1)(a)(3) (2014); MO. REV. STAT. § 452.310(8)(2)(f) (West 2021); MONT. CODE ANN. § 40-4-234(2)(i) (West 2009 & 2025 Supp.); NEB. REV. STAT. § 43-2935(1)(a) (2016); N.M. STAT. ANN. § 40-4-9.1(F)(4) (2024); N.D. CENT. CODE § 14-09-30(2)(g) (2017); OR. REV. STAT. § 107.102(3)(i) (2024); 23 PA. STAT. AND CONS. STAT. ANN. § 5331(b)(6) (West 2018); TENN. CODE ANN. § 36-15-240(a)(3)(b) (West 2018); TEX. FAM. CODE § 153.133(b) (West 2014); UTAH CODE ANN. § 81-9-203(10)(a)(i) (LexisNexis 2025 Supp.); VT. STAT. ANN. tit. 15, § 666(b)(7) (2019); WASH. REV. CODE § 26.09.184(2) (West 2016); W. VA. CODE §§ 48-9-205(c)(3), 48-9-208 (West 2021); WIS. STAT. § 767.41(1m)(m) (2025).

168. *E.g.*, 23 PA. STAT. AND CONS. STAT. ANN. § 5331(b) (2025) (providing that a parenting plan shall contain a physical care schedule, childcare arrangements, transportation arrangements, and other provisions related to parenting).

169. IOWA CODE § 598.41(5)(a) (2025).

170. *Rule 17.200—Form 229: Agreed Parenting Plan*, IOWA JUD. BRANCH (June 2024), https://www.iowacourts.gov/browse/files/143575b92ad547f98c4761f374dcaf88/download [https://perma.cc/2QWA-BHT8]; *Rule 17.200—Form 230: Proposed Parenting Plan*, IOWA JUD. BRANCH (June 2024), https://www.iowacourts.gov/browse/files/a43cfe5c78cb4a1a9721e0ba26a04b81/download [https://perma.cc/4ZYS-LZM8]; *Rule 17.400—Form 429: Agreed Parenting Plan*, IOWA JUD. BRANCH (Aug. 2019), https://www.iowacourts.gov/browse/files/0bf079fd3f4342ee8c39

disputes, but the methods to do so are limited to third-party assistance and mediation.[171] Iowa courts are not required to develop these parenting plans nor are they required to include dispute resolution provisions in their decrees like some other states are.[172]

A court-ordered parenting plan that requires parents to go through a process, like mediation, when a dispute arises may be beneficial. It encourages parents to work through disputes on their own, and parents may actually resolve their disputes without turning to the court. Through these provisions, the court can help parents resolve future disputes without getting involved in the conflict itself. However, these provisions are only effective if alternative dispute resolution *works*. They do not prevent parents from ultimately turning to the court to resolve an impasse when mediation or another method fails. In the end, parents may still ask the court to get involved in their parenting decisions. The next Subsection discusses state statutes that create a more drastic separation between the court and parental disputes.

3. Statutes that Allow District Courts to Authorize a Third Party to Resolve Disputes

Six states allow their district courts to hand off future dispute resolution to third parties.[173] Specifically, under these statutes, the district court can include a provision in a parties' parenting plan that requires them to submit future impasses to a third party that has binding authority to resolve the dispute.[174] A court order that includes these provisions would ensure that parents resolve their disputes outside of the courtroom because the third party, instead of the court, would ultimately make a binding decision for the parents.

While this method may be attractive to district courts that would rather not make parental decisions, it has its issues. First, in most states, parties have to agree to include this provision in their decrees.[175] As discussed previously, asking two parents, who already cannot agree, to agree to these methods may

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d96649c09c4a/download [https://perma.cc/3JUW-LPWR]; *Rule 17.400—Form 430: Proposed Parenting Plan*, IOWA JUD. BRANCH (Aug. 2019), https://www.iowacourts.gov/browse/files/c517eaf6143f4846b09da8dc2f9ad5c6/download [https://perma.cc/MDB5-TM49].

171. *Rule 17.200—Form 229: Agreed Parenting Plan*, *supra* note 170; *Rule 17.200—Form 230: Proposed Parenting Plan*, *supra* note 170; *Rule 17.400—Form 429: Agreed Parenting Plan*, *supra* note 170; *Rule 17.400—Form 430: Proposed Parenting Plan*, *supra* note 170.

172. *See generally* IOWA CODE § 598 (making such actions optional). *E.g.*, ARIZ. REV. STAT. § 25-403.02(B), (C)(5) ("[T]he court *shall* adopt a parenting plan . . . . Parenting plans *shall* include . . . [a] procedure by which . . . disputes . . . may be mediated or resolved." (emphases added)).

173. These states include Colorado, Florida, Idaho, Oklahoma, Tennessee, and Vermont.

174. COLO. REV. STAT. §§ 14-10-128.3(1), 14-10-128.5(1) (2024); FLA. STAT. § 61.125(2) (2019 & 2025 Supp.); IDAHO CODE § 32-717D (2019); OKLA. STAT. ANN. tit. 43, § 120.3(A) (West 2016); *see* TENN. CODE ANN. § 36-6-404(4)(c) (West 2018) (allowing for dispute resolution that includes arbitration); VT. STAT. ANN. tit. 15, § 666(b)(7) (2019).

175. *E.g.*, FLA. STAT. § 61.125(2) (providing that a parenting coordinator may make decisions for parents "*with the prior approval of the parents and the court*" (emphasis added)).

be difficult for obvious reasons.[176] Further, even if parties are not required to agree to these methods, the legislature needs to consider whether these third parties are better equipped to resolve these disputes than the court. In *Frazier*, the Court voiced its opinion that parental decisions are best made by parents not the district court,[177] and this opinion may be well-received. But these third-party statutory provisions no longer place decisions with parents; they place them with third parties, and whether a third party is a proper decision-maker is an entirely different question.

The three legislative approaches discussed above provide solutions that may prevent impasses between joint legal custodians, avoiding the issues associated with *Frazier*, but ultimately, they do not accomplish the most important legislative task needed to address the case: overturning it entirely. To overturn *Frazier*, the Iowa General Assembly needs to adopt legislation that changes the definition of joint legal custody. The next Subsection discusses legislation that does that.

4. Statutes that Expressly Allow District Courts to Unbundle Legal Custody Rights

A majority of states—twenty-nine—expressly define joint legal custody in a way that allows district courts to resolve impasses between joint legal custodians.[178] Specifically, these state statutes allow courts to resolve these disputes by unbundling and dividing decision-making rights among parents.[179] If the *Frazier* case had occurred in a state like Illinois, a district court could resolve the parties' dispute over whether to vaccinate their children by granting Mary or Shannon the sole authority to decide whether the children are

176. *See supra* Section II.B.

177. *In re* Marriage of *Frazier*, 1 N.W.2d 775, 781 (Iowa 2024).

178. These states include Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Maine, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

179. ALA. CODE § 30-3-151(2) (LexisNexis 2016); ARIZ. REV. STAT. § 25-403.02(C)(2) (2017); CAL. FAM. CODE § 3083 (2006); COLO. REV. STAT. § 14-10-124(1.5)(b); CONN. GEN. STAT. § 46b-56a(d) (West 2018); FLA. STAT. § 61.13(2)(c)(4); GA. CODE ANN. § 19-9-6(5) (2022 & 2025 Supp.); 750 ILL. COMP. STAT. 5/602.5(b) (2024); KAN. STAT. ANN. § 23-3211(c) (2024); ME. STAT. tit. 19-A, § 1501(1) (West 2012 & 2025 Supp.); MINN. STAT. § 518.1705(1)(a)(2) (2014); MISS. CODE ANN. § 93-5-24(5) (2021); MO. REV. STAT. § 452.375(1)(2) (West 2021); MONT. CODE ANN. § 40-4-234(2)(h) (West 2009 & 2025 Supp.); N.M. STAT. ANN. § 40-4-9.1(F)(2), (J)(5) (2024); N.D. CENT. CODE § 14-09-31 (2017); OHIO REV. CODE ANN. § 3109.04(A)(2) (West 2011); OKLA. STAT. tit. 43, § 109(B); OR. REV. STAT. § 107.169(1) (2023); 23 PA. STAT. AND CONS. STAT. ANN. § 5331(c) (West 2018); S.C. CODE ANN. § 63-15-210(1) (2024); S.D. CODIFIED LAWS § 25-5-7.1 (2024); TEX. FAM. CODE ANN. § 101.016 (West 2019); UTAH CODE ANN. § 81-9-101(7) (2025 Supp.); VT. STAT. ANN. tit. 15, § 664(1)(A) (2024); WASH. REV. CODE § 26.09.184(2) (West 2024); W. VA. CODE § 48-9-205(c)(2) (West 2021); WIS. STAT. ANN. §§ 767.01(1), 767.41(6)(b) (West 2009 & 2024 Supp.); WYO. STAT. ANN. § 20-2-201(d) (2025).

vaccinated.[180] An allocation of decision-making authority in one area like this can be specific or broad: The court can choose to award sole decision-making authority narrowly, like over COVID-19 vaccinations, but it could also choose to award decision-making authority more broadly, like over all medical decisions.[181]

Under these state statutes, courts resolve impasses by giving one parent the authority to make the specific decision themselves while still retaining joint legal custody rights as to other decisions.[182] Under *Frazier*'s all-or-nothing approach, Iowa courts do not have this flexibility; instead, they must award *full* sole legal custody to one parent, eliminating the other parent's decision-making authority in *every* aspect of their child's life.[183] By amending the Iowa Code to include a provision that expressly allows for the division of legal custody rights, district courts would not be required to take such a drastic step in order to resolve an impasse between joint legal custodians.

However, if the legislature decides to adopt a definition that allows for the division of rights, there are some intended and unintended consequences it should consider. Some intended consequences include overturning *Frazier*, and thus district courts could resolve disputes by allocating sole decision-making authority in one area to one parent. However, as an unintended consequence, the district court may also have the authority to simply resolve the dispute itself, as an *arbiter*, without making specific allocations of sole legal custody rights. In *Frazier*, the Court determined that it could not resolve Mary and Shannon's dispute in this way because the Iowa Code's definition of joint legal custody does not allow for the unbundling of legal custody rights.[184] Under this reasoning, by allowing these rights to be unbundled, the Iowa Code no longer stops district courts from resolving these disputes as a referee. In fact, most of the states that allow for the division of legal custody rights do resolve disputes in this way.[185] Instead of granting one parent sole decision-making authority in one area, as they have the authority to do, they act as an

180. *See* Jones v. Jones, No. 1-22-1369, 2023 WL 2625862, at *1, *7 (Ill. App. Ct. Mar. 24, 2023) (resolving a similar dispute as Mary and Shannon's in this way).

181. *See* Eddington v. Lamb, 818 S.E.2d 350, 358 (N.C. Ct. App. 2018) (providing that the lower court erred in giving the mother final decision-making authority as to all health care decisions instead of specific decisions regarding the child's ADHD treatment); *id.* at 359 (finding that the lower court erred in awarding sole decision-making authority over all school related matters instead of specific decisions regarding the child's enrollment in school).

182. *E.g.*, OR. REV. STAT. § 107.169(1) ("An order providing for joint custody may . . . designate one parent to have sole power to make decisions about specific matters while both parents retain equal rights and responsibilities for other decisions.").

183. *In re* Marriage of Frazier, 1 N.W.3d 775, 779 (Iowa 2024) ("This statutory definition treats joint legal custody as an all-or-nothing proposition that 'leaves no room for a parceling of rights.'").

184. *See id.*

185. *See, e.g.*, *In re* E.E.L-T., 548 P.3d 679, 682–83 (Colo. App. 2024) ("[W]e conclude that the magistrate did not modify the allocation of decision-making authority. Instead, when faced with an impasse between joint decision-makers, the magistrate broke the tie herself.").

arbiter and make the decision for the parent.[186] To avoid opening the door to this authority, the legislature could specifically dictate how the district court should resolve these disputes.[187]

Overall, a majority of states expressly allow for the unbundling of legal custody rights, and adopting similar legislation, with care, would overturn *Frazier* and alleviate some of the problems it has caused for Iowa families. With other states' approaches in mind, particularly this final approach, the next Section proposes legislation for the Iowa General Assembly to enact.

B. A Legislative Proposal for the Iowa General Assembly

During the 2025 legislative session, the Iowa General Assembly introduced a bill, Senate File 523 ("SF 523"), that would align Iowa with the rest of the nation on this issue and attempt to correct the problems created by *Frazier*.[188] This Section discusses SF 523, which failed to make it out of the legislative session. After discussing the bill, this Section proposes three changes to chapter 598 of the Iowa Code that are similar to SF 523 but with important differences. The next Subsections discuss these changes.

1. The Iowa General Assembly's Proposed Legislative Fix to *Frazier*

SF 523 included the addition of two relevant paragraphs to Iowa Code section 528.41(2), the section that authorizes district courts to make legal custody allocations.[189] The Senate unanimously passed SF 523, but its sister bill in the House, House Study Bill 164, failed to pass the subcommittee stage.[190]

The first paragraph of SF 523 allowed the district court to "award separate rights and responsibilities of joint legal custody to each parent."[191] This paragraph would overturn *Frazier* by expressly allowing district courts to unbundle legal custody rights and divide them among parents. The second paragraph of SF 523 required the district court to "resolve joint legal custody disputes between parents during or after the pendency of the parents' dissolution of marriage action."[192] It then laid out the procedural steps parents and the district court should follow to resolve these disputes.[193] This

186. *Id.*

187. *See, e.g.*, N.M. STAT. ANN. § 40-4-9.1(J)(5) (2024) (listing seven ways parental decisions can be made).

188. *See generally* S. File 523, 91st Gen. Assemb., Reg. Sess. (Iowa 2025).

189. *Id.*; IOWA CODE § 598.41 (2025). In addition to the paragraphs discussed in-depth in this Note, SF 523 also includes a paragraph that allows parents to "stipulate to a parenting plan that includes the allocation of parenting functions, parenting time, or both." Iowa S. File 523. This paragraph permits parents to agree on certain aspects of their parenting. *Id.* Unlike the statutes discussed above, SF 523 does not expressly mention parenting plan provisions that include future dispute resolution or third-party dispute resolution. *Id.*

190. H. Study B. 164, 91st Gen. Assemb., Reg. Sess. (Iowa 2025).

191. Iowa S. File 523.

192. *Id.*

193. The bill provides:

paragraph clarifies the court's authority to resolve impasses between joint legal custodians, the timing at which they can do so, and the procedure to carry it out.

SF 523 resolves the major issues associated with *Frazier*. However, in the context of Iowa's jurisprudence on the issue and case law from other states, it is clear that lingering issues will arise under SF 523 if it is eventually enacted as drafted. The next two Subsections provide legislative proposals for the 92nd General Assembly that address these lingering issues.

2. A Revision of the Iowa Code's Definition of Joint Legal Custody

First, to overturn *Frazier*, language that expressly allows district courts to unbundle and divide legal custody rights should be added to chapter 598; this change parallels the substance of SF 523's first paragraph. However, this Note's proposal alters *both* the Iowa Code's definition of joint legal custody under section 598.1(3) and its provision that gives the district court authority to make legal custody allocations under section 598.41. SF 523 only alters the latter.

Currently, under section 598.1(3), the Iowa Code defines joint legal custody as follows:

> "Joint custody" or "joint legal custody" means an award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.[194]

To this definition, the following sentence should be added:

> The court may award one parent separate rights and responsibilities of joint legal custody. If one parent is awarded separate rights and responsibilities of joint legal custody in one area, both parents may retain shared rights and responsibilities of joint legal custody, including the right to equal participation, in other areas.

> To initiate a dispute resolution, a parent must file an application with the court and serve process on the other parent. Upon receipt of the application, the court must set a hearing and resolve the dispute in the best interest of the child. A resolution of a dispute may award each parent separate rights and responsibilities of joint legal custody.

Id.

194. IOWA CODE § 598.1(3).

Further, section 598.41 currently includes provisions related to a court's authority to make legal custody and physical care allocations.[195] To this section, the following additional provision should be added:

> If the court awards joint legal custody to both parents, and the court finds by clear and convincing evidence it is in the best interest of the child, pursuant to the factors in subsection 3, the court may award one parent separate rights and responsibilities of joint legal custody. If one parent is awarded separate rights and responsibilities of joint legal custody in one area, both parents may retain shared rights and responsibilities of joint legal custody, including the right to equal participation, in other areas.

Both of these revisions overturn the *Frazier* holding and allow district courts to unbundle and divide decision-making authority between parents to promote the best interest of their children. Under this statutory authority, in an initial custody determination, the court could award sole decision-making authority to one parent over certain decisions that may create an impasse in the future, effectively preempting that impasse. Likewise, under this statutory authority, in a modification proceeding, the district court could resolve the parents' dispute by awarding one party sole decision-making authority over the decision at issue. The first paragraph of SF 523 substantively does the same thing.

Unlike SF 523, this proposal specifically alters the definition of "joint legal custody" under the Iowa Code. Currently, SF 523 leaves the definition section of chapter 598 untouched but amends the operational section of the chapter to allow district courts to unbundle legal custody rights. Admittedly, even without this alteration of the definition of joint legal custody, under SF 523, courts would likely no longer interpret the definition of joint legal custody in the all-or-nothing way that the *Frazier* Court did whether the definition of the term is altered or not.[196] However, because of the emphasis the *Frazier* Court placed on the statutory definition of joint legal custody in its holding, the clearest way for the legislature to respond to *Frazier* is by altering the definition of the term.[197] Given the historical lack of clarity in this area of the law, a clear response from the legislature is imperative.

Allowing for the unbundling of legal custody rights is necessary to overturn *Frazier*. However, doing so may open the door for Iowa district courts to act as an arbiter for joint legal custodians—something the *Frazier* Court was concerned about preventing.[198] Because of this consequence, the Iowa Code should be further amended to ensure that parental decisions are made by parents, not the court. The next Subsection proposes this additional amendment.

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195. *Id.* § 598.41.
196. *See In re* Marriage of Frazier, 1 N.W.3d 755, 779 (Iowa 2024).
197. *See id.*
198. *See id.* at 788.

3. An Addition to the Iowa Code's Custody Section

The *Frazier* holding relied on the Iowa Code's all-or-nothing joint legal custody approach to determine that district courts do not have the authority to act as arbiters and resolve impasses between joint legal custodians. Because the proposed changes above eliminate this all-or-nothing approach, the Iowa Code should expressly address how district courts may resolve impasses between joint legal custodians to prevent them from assuming an arbiter role. The second paragraph of SF 523 attempts to clarify the district court's role in these matters, but ultimately, as evidenced by case law from other states, the bill's current language will create more confusion for the court.[199]

To alleviate this confusion, the following provision should be added to section 598.41, the section that discusses legal custody awards:

> The court shall resolve joint legal custody disputes between parents during or after the pendency of the parents' dissolution of marriage action. To initiate the resolution of a dispute, a parent shall file an application with the court and serve process on the other parent. Upon receipt of the application, the court shall set a hearing and expeditiously resolve the dispute in the best interest of the child. The court may resolve the dispute by:
>
> i. ordering mediation;
>
> ii. awarding each parent separate rights and responsibilities of joint legal custody; or
>
> iii. terminating the parent's joint legal custody status and awarding sole legal custody to one parent.

Unlike SF 523, which provides that "[a] resolution of a dispute may award each parent separate rights and responsibilities of joint legal custody,"[200] this language clearly articulates, and limits, the district court's authority in resolving impasses between joint legal custodians to three remedies. In other states, where the court's authority has not been clearly laid out in the state code, courts have been inconsistent in how they have resolved these disputes. Some courts simply unbundle legal custody rights and give one parent the sole decision-making authority to resolve the impasse.[201] However, other courts bypass this handoff of decision-making power and instead assume an arbiter role and make the decision themselves.[202] The *Frazier* Court was

199. *See supra* notes 185–87 and accompanying text.

200. S. File 523, 91 Gen. Assemb., Reg. Sess. (Iowa 2025).

201. *See, e.g.*, Jones v. Jones, No. 1-22-1369, 2023 WL 2625862, at *1, *7 (Ill. App. Ct. 2023) (affirming a trial court's decision to resolve a dispute over whether a child should be vaccinated for COVID-19 by giving the mother the sole decision-making authority over vaccinations).

202. *See, e.g.*, *In re* E.E.L-T., 548 P.3d 679, 682–83 (Colo. App. 2024) ("[W]e conclude that the magistrate did not modify the allocation of decision-making authority. Instead, when faced with an impasse between joint decision-makers, the magistrate broke the tie herself.").

particularly concerned with the latter scenario and rightfully so.[203] Parents are best suited to make parental decisions, not the court. Under the provision proposed in this Subsection, the district court cannot act as an arbiter, and instead it must stick to methods it has traditionally used before *Frazier*, like ordering mediation and making custody allocations, to resolve these disputes.

Notably, this legislative proposal does not include language that allows district courts to include provisions in the parties' decree that dictate how future disputes shall be resolved, nor does it include language that allows the district court to appoint a third-party decision-maker. A provision that addresses future dispute resolution does not ensure that parties will resolve their disputes without the district court's help, and Iowa courts already have the ability to order the parties to mediate the issue. Regardless, these future dispute resolution provisions are typically included in a larger parenting plan that addresses issues beyond the scope of *Frazier* and beyond the scope of this Note. Additionally, because the revised changes above do not give the district court the authority to resolve impasses as an arbiter, the Iowa Code should not allow the court to authorize third parties to act as arbiters for joint legal custodians. Instead, under the statutory changes, the district court can resolve the dispute using methods within its traditional authority, and if parties prefer an arbiter, they can agree to arbitration.

Ultimately, *Frazier* has created problems for Iowa families that can only be solved by legislation. The Iowa Legislature can adopt the proposed legislation above to overturn *Frazier* and clarify the district court's role in resolving impasses between joint legal custodians. It can also look to other states that provide similar provisions that allow their district courts to resolve these disputes without being required to award one parent sole legal custody.

CONCLUSION

In *Frazier*, the Iowa Supreme Court effectively told joint legal custodians that they are on their own when they reach an impasse. Currently, in a *Frazier* regime, when two parents simply cannot agree, they cannot turn to the district court that serves them to resolve their dispute. Although the *Frazier* majority claims parents have a legal remedy in these situations, that remedy is harsh and is nearly impossible to obtain. In *Venechuk*, the Iowa Supreme Court limited the applicability of *Frazier*, but *Venechuk* only saves a fraction of Iowa families from *Frazier*'s impact. The remaining portion of the state is still subject to the case or unclear of the remedies Iowa law gives them. Under *Frazier*, Iowa families face real problems, and the legislature must act to help them. Until then, it is every family for themselves.

203. *Frazier*, 1 N.W.3d at 788.