

(The below is a verbatim email message to Joe Kelly and Mike Triplett, from Jim Nervig, Attorney at Law, with Brick Gentry, P.C. and being distributed with permission).

Joe and Mike:

I see that you are registered in favor of HF 161. I consider the Bill of upmost constitutional importance and am committed to do all I can to support. Please contact me if there is anything I can do to assist you in your efforts. The following is an informational emailing that I have been sending to interested persons, and there are a lot.

A new bill, House File 161, has been introduced in the 2015 Iowa Legislature. In my opinion, the Bill furthers the equal protection standards of the Iowa Constitution and should be supported.

In *Ames Rental Property Ass. v. City of Ames*, 736 N.W.2d 255 (Iowa 2007), the Iowa Supreme Court upheld a discriminatory City of Ames regulation that allowed an unlimited number of persons related by blood or marriage to live together while limiting to three the number of unrelated persons in single-family zones, based on a determination that there was a legitimate governmental interest in providing quiet neighborhoods. The Supreme Court's opinion was divided, with four Justices joining the opinion and three Justices dissenting. The case raised a very important equal protection question of whether government has the right to discriminate, as to zoning and housing regulations, in favor of individuals who are related by blood or marriage and those who are not.

HF 161 would eliminate the discrimination, by providing:

A city shall not, after January 1, 2016, adopt or enforce any regulation or restriction related to the occupancy of residential rental property that is based upon the existence of familial or nonfamilial relationships between the occupants of such rental property.

The Iowa Supreme Court has interpreted the Iowa Constitution's equal protection clause to afford a higher level of protection than afforded under the U.S. Constitution. *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1 (Iowa 2004). Under the Iowa Constitution, a classification based on an extreme degree of overinclusion or underinclusion cannot pass rational basis equal protection review. *Id.* In my opinion, the four-Justice majority erred in the *Ames Rental* decision. Under the discriminatory provisions of the Ames zoning ordinance, four related persons are permitted to live in a house, while four unrelated persons are prohibited. After the *Varnum* decision, it seems very clear to me that government has no rational basis for denying housing to similarly situated individuals based on whether or not they are married or blood relatives. If there is any rational basis for prohibiting four unrelated persons from living together, then the same rational basis would apply equally to deny four related individuals the right to live together. An ordinance that so discriminates is fatally underinclusive and in violation of Iowa equal protection.

The *Varnum* decision did not break new constitutional ground, but reaffirmed the original high standards of Thomas Jefferson and the Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The Declaration of Independence, July 4, 1776.

"The equal rights of man, and the *happiness of every individual*, are now acknowledged to be the only legitimate objects of government." [emphasis added] Thomas Jefferson to A. Coray, 1823, at 15:482, Memorial Edition, Lipscomb and Bergh, ed., 20 Vols, Washington, D.C., 1903-04.

When you check the list of lobbyist declarations on HF 161, you will note that Iowa cities are lined up in opposition. This is no surprise. Cities historically have argued that the Legislature should not interfere with their sacred home rule authority. Home rule is well established, but it cannot override the rights of the individual citizen to be free from irrational governmental discrimination. Cities have contended that there are legitimate reasons for discrimination against unrelated individuals. One example is alleged problems raised by four or more poor immigrants, unrelated by marriage or blood, living together in a single house because they cannot afford to live separately. Cities are concerned that such immigrants may drive separate cars to work, thereby creating traffic congestion in the neighborhood. Of course, the same traffic congestion could be caused by more than four related individuals living in the same house. There is absolutely no rational basis for such discrimination. It is Wrong. If cities are concerned about traffic problems and other issues that may come to exist by virtue of multiple occupants, then cities have the constitutional obligation to narrowly tailor their regulations to address the evils that they contend exist.

The Iowa Supreme Court lost its way on this issue. The Legislature now is considering doing the right thing. Our American way of life will only be enhanced by zealously protecting the rights of all of us to equal protection under the law. Please consider the Bill, and please consider supporting the Bill.



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