IN THE SUPREME COURT OF IOWA
No. 21-0856

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and
JILL MEADOWS, M.D.,

Appellees,

v.

KIM REYNOLDS ex rel. STATE OF IOWA and
IOWA BOARD OF MEDICINE,

Appellants.

On Appeal from the Iowa District Court for Johnson County
Case No. EQCV081855
The Honorable Mitchell E. Turner

APPELLEES' FINAL BRIEF

RITA BETTIS AUSTEN
American Civil Liberties Union
of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2316
Telephone: (515) 243-3988
Facsimile: (515) 243-8506
Email: rita.bettis@aclu.ia.org

ALICE J. CLAPMAN*
CHRISTINE CLARKE*
CAMILA VEGA**
Planned Parenthood Federation
of America
1110 Vermont Ave., NW, Ste. 300
Washington, DC 20005
Telephone: (202) 803-4045
Facsimile: (202) 296-3480
Email: alice.clapman@ppfa.org
Email: christine.clarke@ppfa.org
Email: camila.vega@ppfa.org
** Admitted pro hac vice*
*** Pro hac vice application pending*

Attorneys for Petitioners-Appellees

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES. 4

STATEMENT OF ISSUES PRESENTED FOR REVIEW. 15

ROUTING STATEMENT 20

STATEMENT OF THE CASE 21

STATEMENT OF THE FACTS 24

I. The Amendment 24

II. Abortion Services in Iowa 28

III. PPH's Informed Consent Process 29

IV. The Amendment's Effects on Iowans Seeking an Abortion 32

ARGUMENT 38

I. The District Court Correctly Held That the Amendment Violates the Iowa Constitution's Single-Subject Rule. 38

A. Standard of Review, Preservation of Error, and Scope of Review 38

B. The Text of the Provisions Demonstrates They Are Not One Subject. 38

C. Courts Have Invalidated Bills with More Properly Related Provisions 41

D. The Amendment Violates the Purpose of the Single-Subject Rule. 44

1. The Single-Subject Rule Exists to Prevent Surprise. 44

2. The Amendment's Passage Undermines Legislative Transparency. 48

3. The Amendment Was Logrolled. 49

II. The District Court Correctly Held That the Amendment Violates the Due Process and Equal Protection Clauses of the Iowa Constitution. 51

A. Standard of Review, Preservation of Error, and Scope of Review. 51

B. The State Should Be Precluded from Relitigating *PPHII*'s Findings. 51

C. Stare Decisis Counsels Against Overturning *PPHII*. 57

D. *PPHII* Was Correctly Decided. 61

CONCLUSION. 79

REQUEST FOR ORAL SUBMISSION. 79

COST CERTIFICATE. 81

CERTIFICATE OF COMPLIANCE. 82

TABLE OF AUTHORITIES

Cases **Page(s)**

Amro v. Iowa Dist. Ct. for Story Cnty.,
429 N.W.2d 135 (Iowa 1988) 54

Armstrong v. Montana,
989 P.2d 364 (Mont. 1999) 63

Baby Dolls Topless Saloons, Inc. v. City of Dallas,
295 F.3d 471 (5th Cir. 2002) 55

Baldwin v. City of Estherville,
929 N.W.2d 691 (Iowa 2019) 56

Bradwell v. Illinois,
83 U.S. 130 (1872) 66

Burns v. Bd. of Nursing of the State of Iowa,
528 N.W.2d 602 (Iowa 1995) 56

Burns v. Cline,
387 P.3d 348 (Okla. 2016) 43

Callender v. Skiles,
591 N.W.2d 182 (Iowa 1999) 67

Chi., R.I. & P. Ry. Co. v. Streepy,
224 N.W. 41 (Iowa 1929) 48

Cincinnati Women's Servs., Inc. v. Taft,
468 F.3d 361 (6th Cir. 2006) 75

Doe v. Maher,
515 A.2d 134 (Conn. 1986) 79

Emps. Mut. Cas. Co. v. Van Haaften,
815 N.W.2d 17 (Iowa 2012) 53, 54, 57

Est. of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC,
819 N.W.2d 408 (Iowa 2012) 29

Est. of Leonard ex rel. Palmer v. Swift,
656 N.W.2d 132 (Iowa 2003) 54

Ex parte Hallawell,
155 Cal. 112 (1909) 46, 47

Faber v. Loveless,
88 N.W.2d 112 (Iowa 1958) 58

Giles v. State,
511 N.W.2d 622 (Iowa 1994) ..... *passim*

Good v. Iowa Dep't of Hum. Servs.,
924 N.W.2d 853 (Iowa 2019) 22

Goodman v. Henry L. Doherty & Co.,
255 N.W. 667 (Iowa 1934) 58

Griffin v. Pate,
884 N.W.2d 182 (Iowa 2016) 40

Hensler v. City of Davenport,
790 N.W.2d 569 (Iowa 2010) 67

Hopkins v. Jegley,
968 F.3d 912 (8th Cir. 2020) 70

Howard v. Des Moines Reg. & Trib. Co.,
283 N.W.2d 289 (Iowa 1979) 64

Hunsucker v. Fallin,
408 P.3d 599 (Okla. 2017) 47

Hunter v. City of Des Moines,
300 N.W.2d 121 (Iowa 1981) 54

In re Carragher,
128 N.W. 352 (Iowa 1910) 66

In re Est. of Henrich,
389 N.W.2d 78 (Iowa Ct. App. 1986) 52

In re Guardianship of Kennedy,
845 N.W.2d 707 (Iowa 2014) 65

In re J.L.,
779 N.W.2d 481 (Iowa Ct. App. 2009) 67

June Med. Servs. L.L.C. v. Russo,
140 S.Ct. 2103 (2020) 57, 59, 70

Kincaid v. Magnum,
432 S.E.2d 74 (W. Va. 1993) 45, 47

Lawrence v. Texas,
539 U.S. 558 (2003) 64

Leach v. Pennsylvania,
141 A.3d 426 (Pa. 2016) 46

Long v. Bd. of Supervisors of Benton Cnty.,
142 N.W.2d 378 (Iowa 1966) 39, 40, 48

Marks v. United States,
430 U.S. 188 (1977) 70

Marquis v. City of Waterloo,
228 N.W. 870 (Iowa 1930) 58

McQuistion v. City of Clinton,
872 N.W.2d 817 (Iowa 2015) 65

N.M. Right to Choose/NARAL v. Johnson,
975 P.2d 841 (N.M. 1998) 79

Okla. Coal. for Reprod. Just. v. Cline,
292 P.3d 27 (Okla. 2012) 74

Pauscher v. Iowa Methodist Med. Ctr.,
408 N.W.2d 355 (Iowa 1987) 29

Penn v. Iowa State Bd. of Regents,
577 N.W.2d 393 (Iowa 1998) 56

People v. Carrera,
783 N.E.2d 15 (Ill. 2002) 47

People v. Reedy,
708 N.E.2d 1114 (Ill. 1999) 47

Planned Parenthood of Ariz. v. Humble,
753 F.3d 905 (9th Cir. 2014) 72, 73, 74

Planned Parenthood of Cent. N.J. v. Farmer,
762 A.2d 620 (N.J. 2000) 63

Planned Parenthood of Ind. & Ky., Inc. v. Box,
991 F.3d 740 (7th Cir. 2021) 70

Planned Parenthood of Mont. v. Montana,
342 P.3d 684 (Mont. 2015) 55

Planned Parenthood of Se. Pa. v. Casey,
505 U.S. 833 (1992) ..... *passim*

Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs.,
602 S.W.3d 201 (Mo. 2020) 43

Planned Parenthood of the Heartland v. Reynolds ex rel. State,
915 N.W.2d 206 (Iowa 2018) ..... *passim*

Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.,
865 N.W.2d 252 (Iowa 2015) ..... *passim*

Planned Parenthood of Wis., Inc. v. Schimel,
806 F.3d 908 (7th Cir. 2015) 72

Planned Parenthood Se., Inc. v. Strange,
33 F.Supp.3d 1330 (M.D. Ala. 2014) 72

Plowman v. Fort Madison Cmty. Hosp.,
896 N.W.2d 393 (Iowa 2017) 61

Redmond v. Carter,
247 N.W.2d 268 (Iowa 1976) 67

Renwick, Shaw & Crossett v. The Davenport & N.W. Ry.,
47 Iowa 511 (1877) 58

Reprod. Health Servs. v. Strange,
3 F.4th 1240 (11th Cir. 2021) 28

Robinson v. Hill,
507 S.W.2d 521 (Tex. 1974) 47

Roe v. Wade,
410 U.S. 113 (1973) 64, 66

Sanchez v. State,
692 N.W.2d 812 (Iowa 2005) 64

Schmidt v. State,
909 N.W.2d 778 (Iowa 2018) 23, 59

State v. Groves,
742 N.W.2d 90 (Iowa 2007) 67

State v. Heemstra,
721 N.W.2d 549 (Iowa 2006) 64

State v. Iowa Dist. Ct.,
410 N.W.2d 684 (Iowa 1987) 40, 50

State v. Jorgenson,
785 N.W.2d 708 (Iowa Ct. App. 2009) 67

State v. Mabry,
460 N.W.2d 472 (Iowa 1990) ..... *passim*

State v. Ochoa,
792 N.W.2d 260 (Iowa 2010) 68

State v. Pilcher,
242 N.W.2d 348 (Iowa 1976) 64

State v. Seager,
571 N.W.2d 204 (Iowa 1997) 54

State v. Short,
851 N.W.2d 474 (Iowa 2014) 77

State v. Taylor,
557 N.W.2d 523 (Iowa 1996) ..... *passim*

State v. Williams,
895 N.W.2d 856 (Iowa 2017) 58

Stuart v. Pilgrim,
74 N.W.2d 212 (Iowa 1956) 58

Utilicorp United Inc. v. Iowa Utils. Bd.,
570 N.W.2d 451 (Iowa 1997) 44, 48

Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice,
948 P.2d 963 (Alaska 1997) 63

Vasquez v. Hillery,
474 U.S. 254 (1986) 57

W. Ala. Women's Ctr. v. Miller,
217 F. Supp. 3d 1313 (M.D. Ala. 2016) 71

W. Int'l v. Kirkpatrick,
396 N.W.2d 359 (Iowa 1986) 42, 43

Whole Woman's Health v. Hellerstedt,
231 F. Supp. 3d 218 (W.D. Tex. 2017) 70

Whole Woman's Health v. Hellerstedt,
136 S.Ct. 2292 (2016) 57, 70, 71, 72

Winnebago Indus., Inc. v. Haverly,
727 N.W.2d 567 (Iowa 2006) 53, 57

Women of Minn. by Doe v. Gomez,
542 N.W.2d 17 (Minn. 1995) 63

Statutes

Iowa Code § 144A.2 25

Iowa Code § 146A.1(1) 25

Iowa Code § 146A.1(2) 36

Iowa Code § 146A.1(3) 25, 36

Iowa Code § 146A.1(6)(a) 36

Iowa Code § 148.6(2)(c) 25, 37

Iowa Code § 17A.1(3) 46

Iowa Const. art. III § 29 ..... 38, 45, 48

Iowa Const. art. III, § 13 46

Mo. Const. art. III, § 23 44

Okla. Const. art. V, § 57 44

Rules

H.R. 29, https://www.legis.iowa.gov/docs/publications/HR/1037437.pdf..... 50

H.R. 30, 2d Terr. Sess. (Iowa 1840) 40

Other Authorities

Br. for Amici Curiae Am. Hist. Ass'n and Org. of Am. Historians in Supp. of Resp'ts, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2021 WL 4341742 (U.S. Sept. 20, 2021) 65

H.F. 594, 88th Gen. Assemb. (Iowa 2020) 25, 39

Iowa H. Journal, 2020 Reg. Sess. 40

James Mohr, *Iowa's Abortion Battles of the Late 1960s and Early 1970s: Long-term Perspectives and Short-term Analyses*, *50 A*nnals of Iowa 63 (1989)..... 65

Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 Alb. L. Rev. 1629 (2019) 45, 47

Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797 (1987)..... 45

Ruth B. Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. Rev. 375 (1985) 77

Steven J. Burton, *The Conflict Between Stare Decisis and Overruling in Constitutional Adjudication*, 35 Cardozo L. Rev. 1687 (2014)..... 59

William J. Yost, *Before a Bill Becomes a Law—Constitutional Form*, 8 Drake L. Rev. 66 (1958) 45

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether Amendment H-8314 ("Amendment") to House File ("H.F.") 594, 88th Gen. Assemb. (Iowa 2020), codified at Iowa Code § 146A.1(1) (2020), violates the single-subject rule of the Iowa Constitution.

AUTHORITIES

Cases

Burns v. Cline, 387 P.3d 348 (Okla. 2016)

Chi., R.I. & P. Ry. Co. v. Streepy, 224 N.W. 41 (Iowa 1929)

Ex parte Hallawell, 155 Cal. 112 (1909)

Giles v. State, 511 N.W.2d 622 (Iowa 1994)

Griffin v. Pate, 884 N.W.2d 182 (Iowa 2016)

Hunsucker v. Fallin, 408 P.3d 599 (Okla. 2017)

Kincaid v. Magnum, 432 S.E.2d 74 (W. Va. 1993)

Leach v. Pennsylvania, 141 A.3d 426 (Pa. 2016)

Long v. Bd. of Supervisors of Benton Cnty., 142 N.W.2d 378 (Iowa 1966)

People v. Carrera, 783 N.E.2d 15 (Ill. 2002)

People v. Reedy, 708 N.E.2d 1114 (Ill. 1999)

Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs., 602 S.W.3d 201 (Mo. 2020)

*Planned Parenthood of the Heartland v. Reynolds ex rel. Stat*e, 915 N.W.2d 206 (Iowa 2018)

Robinson v. Hill, 507 S.W.2d 521 (Tex. 1974)

State v. Iowa Dist. Ct., 410 N.W.2d 684 (Iowa 1987)

State v. Mabry, 460 N.W.2d 472 (Iowa 1990)

State v. Taylor, 557 N.W.2d 523 (Iowa 1996)

Utilicorp United Inc. v. Iowa Utils. Bd., 570 N.W.2d 451 (Iowa 1997)

W. Int'l v. Kirkpatrick, 396 N.W.2d 359 (Iowa 1986)

Statutes

Iowa Code § 17A.1(3)

Iowa Const. art. III § 29

Iowa Const. art. III, § 13

Mo. Const. art. III, § 23

Okla. Const. art. V, § 57

Rules

H.R. 29, https://www.legis.iowa.gov/docs/publications/HR/1037437.pdf

H.R. 30, 2d Terr. Sess. (Iowa 1840)

Other Authorities

H.F. 594, 88th Gen. Assemb. (Iowa 2020)

Iowa H. Journal, 2020 Reg. Sess.

James Mohr, Iowa's Abortion Battles of the Late 1960s and Early 1970s: Long-term Perspectives and Short-term Analyses, 50 Annals of Iowa 63 (1989)

Richard Briffault, The Single-Subject Rule: A State Constitutional Dilemma, 82 Alb. L. Rev. 1629 (2019)

Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797 (1987)

William J. Yost, *Before a Bill Becomes a Law—Constitutional Form*, 8 Drake L. Rev. 66 (1958)

II. Whether the State is precluded from litigating factual issues recently determined after trial in *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018).

AUTHORITIES

Cases

Amro v. Iowa Dist. Ct. for Story Cnty., 429 N.W.2d 135 (Iowa 1988)

Baby Dolls Topless Saloons, Inc. v. City of Dallas, 295 F.3d 471 (5th Cir. 2002)

Baldwin v. City of Estherville, 929 N.W.2d 691 (Iowa 2019)

Burns v. Bd. of Nursing of the State of Iowa, 528 N.W.2d 602 (Iowa 1995)

Est. of Leonard ex rel. Palmer v. Swift, 656 N.W.2d 132 (Iowa 2003)

Hunter v. City of Des Moines, 300 N.W.2d 121 (Iowa 1981)

In re Est. of Henrich, 389 N.W.2d 78 (Iowa Ct. App. 1986)

Mut. Cas. Co. v. Van Haaften, 815 N.W.2d 17 (Iowa 2012)

Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393 (Iowa 1998)

Planned Parenthood of Mont. v. Montana, 342 P.3d 684 (Mont. 2015)\

*Planned Parenthood of the Heartland v. Reynolds ex rel. Stat*e, 915 N.W.2d 206 (Iowa 2018)

State v. Seager, 571 N.W.2d 204 (Iowa 1997)

Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567 (Iowa 2006)

III. Whether the Amendment is invalid under *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018).

AUTHORITIES

Cases

Amro v. Iowa Dist. Ct. for Story Cnty., 429 N.W.2d 135 (Iowa 1988)

Armstrong v. Montana, 989 P.2d 364 (Mont. 1999)

Baby Dolls Topless Saloons, Inc. v. City of Dallas, 295 F.3d 471 (5th Cir. 2002)

Baldwin v. City of Estherville, 929 N.W.2d 691 (Iowa 2019)

Bradwell v. Illinois, 83 U.S. 130 (1872)

Burns v. Bd. of Nursing of the State of Iowa, 528 N.W.2d 602 (Iowa 1995)

Burns v. Cline, 387 P.3d 348 (Okla. 2016)

Callender v. Skiles, 591 N.W.2d 182 (Iowa 1999)

Chi., R.I. & P. Ry. Co. v. Streepy, 224 N.W. 41 (Iowa 1929)

Cincinnati Women's Servs., Inc. v. Taft, 468 F.3d 361 (6th Cir. 2006)

Coal. for Reprod. Just. v. Cline, 292 P.3d 27 (Okla. 2012)

Doe v. Maher, 515 A.2d 134 (Conn. 1986)

Emps. Mut. Cas. Co. v. Van Haaften, 815 N.W.2d 17, 22 (Iowa 2012)

Est. of Leonard ex rel. Palmer v. Swift, 656 N.W.2d 132 (Iowa 2003)

Ex parte Hallawell, 155 Cal. 112 (1909)

Faber v. Loveless, 88 N.W.2d 112 (Iowa 1958)

Giles v. State, 511 N.W.2d 622 (Iowa 1994)

Goodman v. Henry L. Doherty & Co., 255 N.W. 667 (Iowa 1934)

Griffin v. Pate, 884 N.W.2d 182 (Iowa 2016)

Hensler v. City of Davenport, 790 N.W.2d 569 (Iowa 2010)

Hopkins v. Jegley, 968 F.3d 912 (8th Cir. 2020)

Howard v. Des Moines Reg. & Trib. Co., 283 N.W.2d 289 (Iowa 1979)

Hunsucker v. Fallin, 408 P.3d 599 (Okla. 2017)

Hunter v. City of Des Moines, 300 N.W.2d 121 (Iowa 1981)

In re Carragher, 128 N.W. 352 (Iowa 1910)

In re Est. of Henrich, 389 N.W.2d 78 (Iowa Ct. App. 1986)

In re Guardianship of Kennedy, 845 N.W.2d 707 (Iowa 2014)

In re J.L., 779 N.W.2d 481 (Iowa Ct. App. 2009)

June Med. Servs. L.L.C. v. Russo, 140 S.Ct. 2103 (2020)

Kincaid v. Magnum, 432 S.E.2d 74 (W. Va. 1993)

Lawrence v. Texas, 539 U.S. 558 (2003)

Leach v. Pennsylvania, 141 A.3d 426 (Pa. 2016)

Long v. Bd. of Supervisors of Benton Cnty., 142 N.W.2d 378 (Iowa 1966)

Marks v. United States, 430 U.S. 188 (1977)

Marquis v. City of Waterloo, 228 N.W. 870 (Iowa 1930)

McQuistion v. City of Clinton, 872 N.W.2d 817 (Iowa 2015)

N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841 (N.M. 1998)

Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393 (Iowa 1998)

People v. Carrera, 783 N.E.2d 15 (Ill. 2002)

People v. Reedy, 708 N.E.2d 1114 (Ill. 1999)

Planned Parenthood of Ariz. v. Humble, 753 F.3d 905 (9th Cir. 2014)

Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620 (N.J. 2000)

Planned Parenthood of Ind. & Ky., Inc. v. Box, 991 F.3d 740 (7th Cir. 2021)

Planned Parenthood of Mont. v. Montana, 342 P.3d 684 (Mont. 2015)

Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992)

Planned Parenthood of St. Louis Region v. Dep't of Soc. Servs., Div. of Med. Servs., 602 S.W.3d 201 (Mo. 2020)

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206 (Iowa 2018)

Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med., 865 N.W.2d 252 (Iowa 2015)

Planned Parenthood of Wis., Inc. v. Schimel, 806 F.3d 908 (7th Cir. 2015)

Planned Parenthood Se., Inc. v. Strange, 33 F.Supp.3d 1330 (M.D. Ala. 2014)

*Planned Parenthood of the Heartland v. Reynolds ex rel. Stat*e, 915 N.W.2d 206 (Iowa 2018)

Plowman v. Fort Madison Cmty. Hosp., 896 N.W.2d 393 (Iowa 2017)

Redmond v. Carter, 247 N.W.2d 268 (Iowa 1976)

Renwick, Shaw & Crossett v. The Davenport & N.W. Ry., 47 Iowa 511 (1877)

Robinson v. Hill, 507 S.W.2d 521 (Tex. 1974)

Roe v. Wade, 410 U.S. 113 (1973)

Sanchez v. State, 692 N.W.2d 812 (Iowa 2005)

Schmidt v. State, 909 N.W.2d 778 (Iowa 2018)

State v. Groves, 742 N.W.2d 90 (Iowa 2007)

State v. Heemstra, 721 N.W.2d 549 (Iowa 2006)

State v. Iowa Dist. Ct., 410 N.W.2d 684 (Iowa 1987)

State v. Jorgenson, 785 N.W.2d 708 (Iowa Ct. App. 2009)

State v. Ochoa, 792 N.W.2d 260 (Iowa 2010)

State v. Pilcher, 242 N.W.2d 348 (Iowa 1976)

State v. Seager, 571 N.W.2d 204 (Iowa 1997)

State v. Short, 851 N.W.2d 474 (Iowa 2014)

State v. Taylor, 557 N.W.2d 523 (Iowa 1996)

State v. Williams, 895 N.W.2d 856 (Iowa 2017)

State v. Mabry, 460 N.W.2d 472 (Iowa 1990)

Stuart v. Pilgrim, 74 N.W.2d 212 (Iowa 1956)

Utilicorp United Inc. v. Iowa Utils. Bd., 570 N.W.2d 451 (Iowa 1997)

Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice, 948 P.2d 963 (Alaska 1997)

Vasquez v. Hillery, 474 U.S. 254 (1986)

W. Ala. Women's Ctr. v. Miller, 217 F. Supp. 3d 1313 (M.D. Ala. 2016)

W. Int'l v. Kirkpatrick, 396 N.W.2d 359 (Iowa 1986)

Whole Woman's Health v. Hellerstedt, 231 F. Supp. 3d 218 (W.D. Tex. 2017)

Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292 (2016)

Winnebago Indus., Inc. v. Haverly 727 N.W.2d 567 (Iowa 2006)

Women of Minn. by Doe v. Gomez, 542 N.W.2d 17 (Minn. 1995)

Other Authorities

Br. for Amici Curiae Am. Hist. Ass'n and Org. of Am. Historians in Supp. of Resp'ts, Dobbs v. Jackson Women's Health Org., No. 19-1392, 2021 WL 4341742 (U.S. Sept. 20, 2021)

H.F. 594, 88th Gen. Assemb. (Iowa 2020)

Iowa H. Journal, 2020 Reg. Sess.

James Mohr, *Iowa's Abortion Battles of the Late 1960s and Early 1970s: Long-term Perspectives and Short-term Analyses*, 50 Annals of Iowa 63 (1989)

Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 Alb. L. Rev. 1629 (2019)

Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797 (1987)

Ruth B. Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. Rev. 375 (1985)

Steven J. Burton, *The Conflict Between Stare Decisis and Overruling in Constitutional Adjudication*, 35 Cardozo L. Rev. 1687 (2014)

William J. Yost, *Before a Bill Becomes a Law—Constitutional Form*, 8 Drake L. Rev. 66 (1958)

ROUTING STATEMENT

Appellees respectfully request that the Court retain this appeal because the case involves substantial constitutional questions regarding the validity of a state law and raises issues of broad public importance that will ultimately require this Court's resolution. *See* Iowa R. App. P. 6.1101(2)(a), (d).

STATEMENT OF THE CASE

Less than four years ago, based on a full trial record, this Court invalidated a law that would have required Iowans seeking an abortion to make multiple trips to a provider before obtaining care. *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206, 246 (Iowa 2018) ("*PPHII*"). The State has re-enacted this law (merely altering the length of the delay mandated between appointments) in an open bid to draw this Court back into "one of the most divisive issues in America today." *Id*. (Mansfield, J., dissenting).[1]

But this is not the case to revisit *PPHII*. As the district court correctly held, the Amendment at issue is unconstitutional for the independent reason that it was passed in violation of the Iowa Constitution's single-subject rule. Added at the last minute, in circumvention of ordinary procedure, to a bill that legislators *acknowledged* was not germane, the Amendment violates not only the text of the single-subject rule, but also its purpose of "keep[ing] the citizens of the state fairly informed of the subjects the legislature is considering." *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990) (citations

[1] *See* Iowa Legislature, *House Video (2020-06-13)* at 10:54:27 p.m., https://www.legis.iowa.gov/perma/102220217410 (sponsor Representative Lundgren stating "maybe this [Amendment] will provide an opportunity for the courts to rectify the terrible situation that they've created here in our state").

omitted). This purpose is particularly critical for legislation on issues like abortion that generate robust public interest and participation when considered by the legislature. Thus, this case can and should be resolved based on the single-subject rule alone. *Cf. Good v. Iowa Dep't of Hum. Servs*., 924 N.W.2d 853, 863 (Iowa 2019) (adhering "to the time-honored doctrine of constitutional avoidance" (citations omitted)).

If this Court does reach the district court's due process and equal protection holdings under *PPHII*, it should affirm those holdings for one of several alternative reasons: *First*, *PPHII* made findings that are decisive here and that the State is precluded from relitigating. *Second*, the legal holdings in *PPHII* are entitled to stare decisis, and dictate the same result here. And *third*, those holdings are correct under the Iowa Constitution.

After reviewing and crediting uncontested testimony, *PPHII* found that "[t]he imposition of a waiting period may have seemed like a sound means to accomplish the State's purpose of promoting potential life, but as demonstrated by the evidence, the purpose is not advanced." *PPHII*, 915 N.W.2d at 241. The Amendment shortens the mandatory delay required in *PPHII* from seventy-two to twenty-four hours. As the district court correctly

reasoned in this case, if a seventy-two hour delay would not change people's minds, it necessarily follows that a twenty-four hour delay would not either.

PPHII also found that mandating medically unnecessary trips for abortion patients, most of them low-income, inflicts serious harm: delaying Iowans seeking an abortion, increasing their medical risks and stress, eliminating their opportunity to avoid a more invasive procedure, endangering victims of intimate partner violence (over 10% of Iowa abortion patients), increasing the risk of reproductive coercion, straining their finances to such a degree that some would have to forego basic necessities, and in some cases forcing them to carry to term or driving them to self-induce. *PPHII*, 915 N.W.2d at 225–31. As the district court properly found, the State is precluded from re-litigating these facts.

Further, under principles of stare decisis, "the doctrine that provides stability, predictability, and legitimacy to our law," *Schmidt v. State*, 909 N.W.2d 778, 804 (Iowa 2018) (Waterman, J., dissenting), the Amendment must be struck under *PPHII*. The State has provided no evidence that *PPHII* is outdated or erroneous, let alone so erroneous it merits reversal a mere three years later. Further, the Amendment is invalid either under strict scrutiny or under the federal standard that the State urges. *Cf. Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 254 (Iowa 2015)

("*PPHI*") (declining to reach the question of which standard to apply because the challenged regulation failed either standard). Thus, although *PPHII*'s application of strict scrutiny was correct, and well-grounded in Iowa precedent, this case can be resolved without reaching the question of whether to preserve that standard (as stare decisis would counsel).

For these alternative reasons, this Court should affirm the district court's well-reasoned decision granting Petitioners-Appellees' Motion for Summary Judgment.

STATEMENT OF THE FACTS

I. The Amendment

The Amendment is virtually identical to the statute invalidated in *PPHII*. Where the prior bill required an extra trip and seventy-two hour waiting period prior to an abortion with only extremely narrow exceptions, the Amendment simply takes the same language and substitutes "twenty-four" for "seventy-two." App.71 ("H-8314"). As with the prior bill, the Amendment applies across the board, with only extremely narrow exceptions for "an abortion performed in a medical emergency," defined as "a situation in which an abortion is performed to preserve the life of the pregnant woman" or "when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function." *Id.* Physicians who

violate the Amendment are subject to license discipline by the Board of Medicine. H-8314; Iowa Code §§ 146A.1(3), 148.6(2)(c) (2020).

The Amendment was not passed through the ordinary legislative process, but rather "under highly unusual circumstances." App.561 (quoting Ruling on Pet'rs' Mot. for Temporary Injunctive Relief ("TI Ruling") 14). It was introduced as an amendment to an amendment to an entirely unrelated bill, which restricts the judiciary from mandating the withdrawal of artificial life support from minor children without parental consent. H.F. 594, 88th Gen. Assemb. (Iowa 2020), codified at Iowa Code § 146A.1(1) (2020) ("H.F. 594") (referencing Iowa Code § 144A.2 (2020)).[2] It was never subjected to any public hearings, and its existence was unknown to voters and many legislators until the Saturday evening it was introduced[3]—the last night of the 2020 legislative session. *See* App.75 ¶¶3–5; *id*. at 77 ¶8; *id.* at 88 ¶15; *id.* at 88–89 ¶¶18–19. The Amendment was voted on at 5:30 a.m. on a Sunday, mere hours after it was first introduced, when, "[a]s Respondents acknowledged, most

[2] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF594.

[3] *House Video (2020-06-13)* at 10:34:35 p.m. (Rep. Derry, "we are here debating, at the very end of session, without the benefit of public input"); App.75 ¶4 ("[L]egislators in both chambers were taken by surprise, learning of the contents of the bill only hours before voting on it, and the voters of Iowa were taken completely off-guard[.]").

Iowans would have been asleep." App.561 (quoting TI Ruling 14).

When the Amendment was introduced, Rep. Meyer objected that it was not germane to H.F. 594.[4] App.78 ¶17. The Speaker of the House immediately concurred. *Id.* at 78–79 ¶¶18–19.[5] Thereafter, the Amendment's sponsor moved to suspend the procedural rules to allow the Amendment to come up for a vote anyway. *Id.* at 79 ¶20. That sponsor later admitted that "Republicans had been looking for a bill to which to attach the waiting-period amendment"[6]—further confirming the arbitrary relationship between the Amendment and H.F. 594.

[4] The State asserts that the Speaker did not rule on whether H-8314 was germane to H.F. 594, but rather only on whether it was germane to the preceding technical amendment, H-8312. Appellants' Br. 43–44. The legislative record flatly contradicts this assertion, making explicit that what the representatives agreed was that "an abortion amendment" is not germane to "a . . . limitation on life-sustaining procedure." *House Video (2020-06-13)* at 10:20:40–10:21:20 p.m. (emphasis added).

[5] *See also House Video (2020-06-13)* at 10:20:40 p.m.

[6] Stephen Gruber-Miller & Ian Richardson, *Iowa Legislature Passes Late-Night Bill Requiring 24-Hour Abortion Waiting Period, Sending It to Governor*, Des Moines Register (last updated June 14, 2020), https://www.desmoinesregister.com/story/news/politics/2020/06/13/24-hour-abortion-waiting-period-iowa-republicans-last-minute-amendment-legislature/3148169001/.

Attaching the Amendment to this unrelated bill—a bill on which no action had been taken for over a year[7]—on the last evening of the legislative session circumvented the opportunities for debate that form a core component of Iowa's constitutional legislative process. The Amendment was not posted anywhere, including on the legislative website, until the evening it came up for a vote; no public hearing was ever held; legislators had no opportunity to solicit constituent feedback or to learn about potential ramifications from physicians; and the Amendment was neither debated nor voted on by the relevant committee or subcommittee. App.75 ¶3; *id.* at 77 ¶11; *id.* at 78 ¶¶14–15; *id.* at 80–81 ¶¶23–30; *id.* at 88–89 ¶¶15–20.

By contrast, five other bills restricting abortion *did* follow normal procedures during that same legislative session—they were introduced into the relevant chamber, assigned to subcommittees, and subjected to hearings. Each bill met with substantial opposition, with Iowans packing hearing rooms seeking to be heard. *See* App.81–82 ¶¶31–32; *id.* at 82 ¶34; *id.* at 87 ¶12; *id.* at 90 ¶24. *None* of those five became law.

[7] Iowa Legislature, *Bill History for House File 594*, https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=HF%20594&ga=88 (last visited Oct. 21, 2021).

II. Abortion Services in Iowa

Petitioners-Appellees Planned Parenthood of the Heartland and Jill Meadows (collectively, "PPH") provide a wide range of health care in Iowa, including cancer screenings, human papillomavirus (HPV) vaccines, annual gynecological exams, pregnancy care, contraception, adoption referral, miscarriage management, and abortion. App.94–95 ¶11. PPH provides two methods of abortion: medication abortion, which uses medication alone to end a pregnancy up to 11 weeks from the patient's last menstrual period ("LMP"), and procedural abortion, in which the uterus is emptied using instruments inserted through the cervix. *Id.* at 94–95 ¶11; *id.* at 95 ¶13; *id.* at 96 ¶16. PPH provides both methods of abortion in Des Moines and Iowa City, and provides medication abortion in Ames, Cedar Falls, Council Bluffs and Sioux City. *Id.* at 94–95 ¶11.

More than one in four women will have an abortion in their lifetime. *PPHII*, 915 N.W.2d at 214.[8] There are many reasons why:

> Sixty percent of abortion patients already have at least one child and many feel they cannot adequately care for another child. Other women feel they are currently unable to be the type of parent they feel a child deserves. Patients frequently identify financial, physical, psychological, or situational reasons for deciding to terminate an

[8] Although the term "women" is sometimes used in this brief, not all people seeking an abortion identify as women. *See Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021).

> unplanned pregnancy. Some patients are victims of rape or incest, and others are victims of domestic violence. Women also present with health conditions that prevent a safe pregnancy or childbirth. Sometimes, women discover fetal anomalies later in their pregnancies and make the choice to terminate.

Id. at 214–15.

Many people strongly prefer medication abortion, and for some, it is a safer option than a procedure. *Id.* at 215. Abortion is many times safer than labor and delivery. *Id.* Some people who cannot obtain abortion care at a health center will attempt to self-induce, including by dangerous means. *Id.* at 230–31. An Iowa study found that, even without the barrier of a two-trip law, a significant percentage of patients surveyed at an abortion clinic had attempted self-induction beforehand. *Id.* at 231.

III. PPH's Informed Consent Process

PPH obtains informed consent from patients for any medical care provided, consistent with medical ethics and Iowa law. *PPHII*, 915 N.W.2d at 216–17. Informed consent entails disclosing "information material to a patient's decision to consent to medical treatment," *Est. of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC*, 819 N.W.2d 408, 416 (Iowa 2012), including "all material risks involved in the procedure," *Pauscher v. Iowa Methodist Med. Ctr.*, 408 N.W.2d 355, 358 (Iowa 1987). Informed consent is an individualized process, and does not support imposing a mandatory delay

on all patients regardless of their individual circumstances and needs. *See* App.97–98 ¶¶20–24; Br. of Amici Curiae Biomedical Ethicists in Support of Pet'rs-Appellants, *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, No. 17-1579 (Iowa Nov. 20, 2017).

"[N]early all patients schedule their abortion appointments after giving considerable thought to their decision and after making a firm decision." *PPHII*, 915 N.W.2d at 217; *see also* App.97–98 ¶22; *id.* at 95 ¶10. PPH uses a comprehensive informed consent process for all patients. "Educators are trained to spend as much time as needed with patients in order to completely assess decisional certainty" and to use open-ended questions to draw out any concerns. *PPHII*, 915 N.W.2d at 216–17. They screen for coercion in *both* directions. *Id.*[9] They provide patients with complete and accurate information about the risks and benefits of abortion. *Id.*; App.97 ¶¶20–21. PPH gives its patients multiple opportunities to ask questions and discuss concerns with

[9] It is common for others to coerce a person *not* to have an abortion. App.165 ¶12; *see also PPHII*, 915 N.W.2d at 220 ("Abusers understand a woman is less likely to leave the relationship if she has a child. Abusers may forcibly impregnate women, refuse to wear a condom, or manipulate contraception in order to further their control and dominance.") While the Amendment's sponsors stated concern for women subject to coercion, laws like the Amendment that make abortion care harder to access significantly *increase* the risk that a person will be coerced by others. App.165 ¶12; *cf. PPHI*, 865 N.W.2d at 269 (noting the one-sided nature of the State's stated safety concerns about telemedicine abortion).

their physician prior to an abortion. *PPHII*, 915 N.W.2d at 216–17; App.97 ¶20.

If a patient is considering options other than abortion, PPH facilitates that consideration:

> If a patient expresses any interest in continuing the pregnancy, PPH provides a list of resources for prenatal care, encourages her to begin prenatal vitamins, and can refer patients to obstetricians. PPH has resources for parenting assistance, and educators review all of the information with the patient so she is able to pursue the resources when she leaves the clinic. If a patient expresses an interest in adoption, PPH is partnered with an adoption agency that is willing to travel to meet patients in any PPH health center. If a patient is interested, PPH will facilitate connecting the patient with the agency or will provide additional local resources to pursue adoption. Educators offer patients adoption counseling and can assist patients in creating an adoption plan.

PPHII, 915 N.W.2d at 217; *see also* App.97 ¶20. Ultimately, if PPH staff have concerns that a patient is unsure or may be facing coercion, PPH does not proceed with the abortion. *PPHII*, 915 N.W.2d at 217; App.98 ¶23.[10]

Consistent with Iowa law, PPH provides an ultrasound to every patient seeking an abortion and offers to show it to her. Most patients decline. *PPHII*, 915 N.W.2d at 216; App.97 ¶21.

[10] As in *PPHII*, the only other Iowa abortion clinic is credentialed by the National Abortion Federation, which sets similar standards. *See* Nat'l Abortion Fed'n, *2020 Clinical Policy Guidelines* at 3–4, available at https://5aa1b2xfmfh2e2mk03kk8rsx-wpengine.netdna-ssl.com/wp-content/uploads/2020_CPGs.pdf.

IV. The Amendment's Effects on Iowans Seeking an Abortion

As this Court recently held based on a full trial record, mandatory delay laws do not benefit Iowans seeking an abortion or change their minds about their decision. *PPHII*, 915 N.W.2d at 242–43. As set forth above, Iowans already deliberate on their own, and PPH's informed consent practices are designed to screen for coercion and uncertainty and to facilitate consideration of other options. Research on abortion-related decision-making confirms that mandatory delays do not change patients' minds, and also that people report relief as the overriding emotion experienced after an abortion, in both the short and long terms, as well as confidence that they made the right decision. *PPHII*, 915 N.W.2d at 218; *see also* App.166–67 ¶15 (citing new evidence since 2017). If a mandated seventy-two hour delay does not persuade patients, it necessarily follows that a *shorter* mandated delay would not either.

Rather than helping Iowans, mandatory delay laws harm them by obstructing their efforts to access care. *PPHII*, 915 N.W.2d at 242–43. In one Iowa study, 94% of subjects stated that receiving care as soon as possible was very important to them. *Id.* at 230. Iowans already "travel much farther than the average patient to receive an abortion, which requires greater resources and support." *Id.* at 219.

As this Court found, most Iowans seeking an abortion struggle with poverty, with limited access to transportation, time off from work, child care, and funds for the procedure itself (which is more costly later in pregnancy). *Id.* at 218–20; App.348–49 ¶¶10–11. "[E]ven with taking advantage of all available social services, half of all PPH patients live day-to-day with no savings and an increasing amount of debt." *PPHII*, 915 N.W.2d at 227. "When a woman living in poverty faces an unplanned pregnancy, she . . . must make difficult decisions about whether to leave bills unpaid or assume debt. *Id.* A mandatory delay and additional trip would exponentially compound these obstacles. *Id.* at 227–29; App.99–100 ¶28; *id.* at 165–67 ¶¶14–15.

To make the extra trip, Iowans would have to take far more time off school and/or work, which would be extremely difficult for many and impossible for some. *PPHII*, 915 N.W.2d at 229. Many would lose wages, have to pay for child care, and incur additional travel costs. *Id.* at 227–28; *see generally* App.85–90; *see also id.* at 99–100 ¶¶27–28; *id.* at 165–66 ¶14. The extra trip in combination with the associated delay would jeopardize Iowans' privacy by increasing the risk that partners, family members, employers, or others discover their circumstances. *PPHII*, 915 N.W.2d at 227, 231; *PPHI*, 865 N.W.2d at 267; App.99–100 ¶28; *id.* at 351 ¶¶15–16. These burdens would be the same whether the state mandated twenty-four or seventy-two

hours' delay between visits. App.101–103 ¶¶33–34; *id.* at 165–66 ¶¶13–14; *id.* at 350–52 ¶¶13–17.

As *PPHII* found, because PPH's health centers are already stretched thin, the extra visit requirement would cause additional scheduling delays. *PPHII*, 915 N.W.2d at 222. Due to limited physician availability, PPH can only schedule abortion patients one to two days a week at some health centers, and even less frequently at others. App.102 ¶35. As a result, staff already must schedule patients at least one week out. *Id.* Scheduling an extra appointment per patient would likely further delay patients. *Id.* at 103 ¶37; *PPHII*, 915 N.W.2d at 229 (scheduling additional visits per abortion patient would lead one- to two-week delays between appointments).

These delays would substantially harm Iowans seeking abortion care. While abortion is extremely safe, the later it takes place in pregnancy, the greater the medical risks and costs. *PPHII*, 915 N.W.2d at 229–230; App.98–99 ¶26; *id.* at 163–64 ¶8. Additionally, the Amendment would prevent a significant number of Iowans—potentially hundreds every year—from obtaining a medication abortion because it would push them past the point where this method is available. *PPHII*, 915 N.W.2d at 230; App.101 ¶30. As *PPHII* recognized, some patients "view medication as a less invasive and more natural procedure and prefer to terminate the pregnancy in the comfort

of their own homes." *PPHII*, 915 N.W.2d at 215. "Medication avoids needles and surgical instruments inserted into the vagina and cervix, which may be traumatic for victims of sexual assault." *Id.* For some, medication abortion is medically indicated. *Id.*

By making medication abortion unavailable for many Iowans, the Amendment would not only deprive them of a preferred or even safer option, but also force some to travel significantly farther for a surgical abortion. As stated above, PPH only provides surgical abortion in Des Moines and Iowa City. App.94–95 ¶11. Thus, for example, a woman in Sioux City no longer able to have a nearby medication abortion would have to travel approximately 400 miles round-trip to Des Moines for a procedure. *PPHII*, 915 N.W.2d at 228. Research demonstrates that increased travel distances themselves—apart from multiple trip requirements—delay and/or prevent people from obtaining abortions. *Id.* at 229–30; *PPHI*, 865 N.W.2d at 267.

The Amendment would particularly burden the significant percentage of Iowans with abusive partners or family members. *PPHII*, 915 N.W.2d at 231; App.287–89 ¶¶15–18 (detailing how abusive partners monitor and control financially, emotionally, and logistically). Not only do two-trip mandatory delay laws make it harder for abuse victims to access abortion care, but without that access, they and their children are less likely to escape their

abuser. *PPHII*, 915 N.W.2d at 231; App.286–87 ¶¶13–14. Abuse rates have not declined since *PPHII*; to the contrary, experts believe they have increased under the stress of the COVID-19 pandemic. App.290–92 ¶¶23–25.

Similarly, forcing people whose pregnancies are the result of rape or incest to comply with the Amendment's requirements would cause them further psychological harm, and could even prevent them from accessing care altogether (which could cause further trauma). *PPHII*, 915 N.W.2d at 220 ("Many rape and incest survivors are extremely distraught, and a pregnancy serves as a constant physical reminder of the assault. For many, termination is an important step in the recovery process."); App.163–64 ¶8; *id.* at 287–90 ¶¶15–21; *id.* at 292–93 ¶27. The Amendment, like the law invalidated in *PPHII*, makes no exceptions for these circumstances. *PPHII*, 915 N.W.2d at 231, 243 (noting that other state mandatory delay laws contain exceptions for rape victims).

Iowans with wanted pregnancies who seek abortions to protect their health would also face grave harms, unless they are at serious risk of losing their lives or impairment of "a major bodily function," Iowa Code §§ 146A.1(2), (6)(a) (a determination their physician must make knowing she could lose her license if the Board of Medicine disagrees, *id.* § 146A.1(3),

148.6(2)(c)). The Amendment would thus impose serious medical risks on people facing complications that threatens their health outside the dangerously narrow confines of the Amendment's exceptions. App.95 ¶12; *id.* at 163–64 ¶8.

And for patients who decide to terminate a wanted pregnancy after receiving a diagnosis of a severe fetal anomaly, the Amendment's requirements would be especially cruel, prolonging an extremely painful experience and interfering with physicians' ability to exercise medical judgment and provide compassionate care. *Id.* at 140; *id*. at 254.

When legal abortion is difficult to access, some people attempt to self-induce. *PPHII*, 915 N.W.2d at 230–31 (citing 2016 Iowa study surveying abortion patients and finding that: the vast majority disclosed having researched options online, and of those 30% disclosed having researched clandestine home use of misoprostol and 8.6% disclosed prior attempts to self-induce). Others are forced to carry an unwanted pregnancy to term. *PPHII*, 915 N.W.2d at 229–31; App.101 ¶32; *id.* at 353 ¶¶20–21; *id*. at 164–65 ¶¶11–12. In turn, they are exposed to increased risks of death and major complications from childbirth; they and their newborns are at risk of negative health consequences, including reduced use of prenatal care and poor maternal and neonatal outcomes; and they and their families are less likely to escape

poverty and, in some cases, domestic violence. App.201–202 ¶10; *id.* at 251, 252; *see also PPHII*, 915 N.W.2d at 245.

ARGUMENT

I. The District Court Correctly Held That the Amendment Violates the Iowa Constitution's Single-Subject Rule.

Iowa's Constitution states that "[e]very act" passed by the legislature "shall embrace but one subject, and matters properly connected therewith[.]" Iowa Const. art. III § 29. The Amendment violates this simple precept, commonly known as the "single-subject rule." As the district court properly found, H.F. 594 as amended covers two distinct, unrelated provisions and thus "is clearly, plainly and palpably unconstitutional." App.561.

A. Standard of Review, Preservation of Error, and Scope of Review

PPH agrees that review of constitutional claims is de novo, and that error was preserved on this issue.

B. The Text of the Provisions Demonstrates They Are Not One Subject.

The district court correctly held that the Amendment unconstitutionally violates the single-subject rule because a bill that "addresses circumstances in which a court may require withdrawal of life-sustaining procedures from a minor child over the objection of the parent or guardian . . . is clearly a different subject than a 24-hour waiting period for an abortion." App.561 (quoting TI Ruling 14); *see also* H.F. 594 (prohibiting courts from requiring

the removal of "life-sustaining procedures from a minor child" without parental consent); Iowa Code § 144.A.2 (defining "[l]ife-sustaining procedure" as a medical procedure that "[u]tilizes mechanical or artificial means to sustain . . . a spontaneous vital function" and, "would serve only to prolong the dying process.").

The single-subject rule requires that a bill's provisions must all "fall under some one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of . . . one general subject." *Mabry*, 460 N.W.2d at 474 (quoting *Long v. Bd. of Supervisors of Benton Cnty.*, 142 N.W.2d 378, 381 (Iowa 1966)). Yet, there is no relation "either logically or in popular understanding" between (1) prohibiting courts from withdrawing a minor's life support over parental objections, and (2) legislatively mandating that women make medically unnecessary trips to health centers twenty-four hours before obtaining an abortion. These provisions are at odds in both substance and purpose: the first protects private medical decision-making from state interference, while the second explicitly enacts such state interference in individual medical decision-making. Where, as here, a bill "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection or relation to each other," it violates the

single-subject rule. *State v. Iowa Dist. Ct.*, 410 N.W.2d 684, 686 (Iowa 1987) (citing *Long*, 142 N.W.2d at 381).

When the Amendment was introduced, a legislator objected that it was not germane to the underlying bill. In response, as the district court noted, the Speaker of the House[11] agreed—*without debate*—that it was not germane, requiring the House to suspend its own rules to permit a vote on the Amendment. App.562; *see also* Iowa H. Journal, 2020 Reg. Sess., at 758–59.

Contrary to the State's contentions, PPH is not arguing that deviation from internal House rules is itself unconstitutional. Rather, the legislature's understanding of the subject matter of provisions under its consideration and of the term "germane" are both undoubtedly relevant to the question at hand—whether those two provisions' subject matters are "germane" to each other.[12] In seeking to ignore the House's determination, the State asks this Court to override the legislature's own understanding of these bills and their relationship to each other. *Cf. Griffin v. Pate*, 884 N.W.2d 182, 190–91 (Iowa

[11] The State objects that the district court took notice of the party membership of the House Speaker. Appellants' Br. 42 n.12. However, the Speaker's party is noted only to demonstrate that his ruling on germaneness was *not* part of any partisan effort to sink the Amendment. Indeed, Speaker Pro Tempore Wills voted *for* the Amendment. *See* App.562 n.5.

[12] The House's germaneness rule is not new and, in fact, predates the single-subject rule of the Iowa Constitution. *See* H.R. 30, 2d Terr. Sess. (Iowa 1840).

2016) (considering legislative history to determine meaning of "infamous" in Iowa Constitution).

C. Courts Have Invalidated Bills with More Properly Related Provisions

This Court has not hesitated to strike down provisions that violate the single-subject rule. Some such cases have involved provisions more plausibly related to their underlying acts than that at issue here.

In *State v. Taylor*, 557 N.W.2d 523, 526 (Iowa 1996), the Iowa Supreme Court struck down a provision relating to weapons trafficking in a bill concerned with juvenile justice. Under the State's theory here, "weapons trafficking" and "juvenile justice" could have been subsumed under some broad umbrella subject, such as "crime" or "weapons." But the Court rejected the State's argument "that *any* weapons law could have an impact on juveniles," noting "[s]uch reasoning would bring within its orbit virtually *any* new crime whether germane to the subject of juvenile justice or not." *Id.* The Court rejected that argument because, like the State's approach here, it would render the constitution's single-subject rule virtually meaningless.

Similarly, in *Giles v. State*, 511 N.W.2d 622, 625-26 (Iowa 1994), the Court struck down a provision affecting procedures for prisoners to challenge state action in a statutory corrections bill. Under the State's theory here, those provisions could both be said to relate to the broad category of "statutory

revisions." This Court, however, rejected such a contention. *Id.* at 624–25 (striking down provision changing only two words as constituting more than a mere "minor revision" of a "technical defect"). *See also W. Int'l v. Kirkpatrick*, 396 N.W.2d 359, 361, 364–66 (Iowa 1986) (invalidating change in workers compensation appeals process in bill seeking to "adjust and correct earlier omissions and inaccuracies, remove inconsistencies, and reflect or alter current practices").

Like the provisions struck down in those cases, the Amendment fails the Constitution's single-subject rule. Just as a weapons trafficking ban added to a juvenile justice bill in *Taylor* did not broaden the bill's subject to a vague umbrella subject like "crime," 557 N.W.2d at 526–27; and just as the provisions in *Giles* did not broaden the bill's subject to "statutory revisions," 511 N.W.2d at 625; so, too, the amendment of a mandatory delay for abortions does not broaden the subject of a bill relating to judicial authority over life-support for minors to a vague umbrella subject like "medical procedures" or "healthcare in general." Appellants' Br. 37. To hold otherwise would not merely afford the single-subject rule a "broad view," Appellants' Br. 33, it would swallow it whole.

Indeed, some of the State's proposed umbrella subjects are broad enough to encompass provisions the Iowa Supreme Court has already held do

not constitute one subject. The State suggests subjects such as "the protection of the health and safety of Iowans" and "protection of human life," Appellants' Br. 37; these would have easily subsumed the provisions in *Taylor* concerning "weapon-free school zones" and weapons trafficking. *See* 557 N.W.2d at 526. Likewise, the State's theory would require a court to uphold the provisions at issue in *Kirkpatrick* because, presumably, any changes to the workers' compensation scheme affects the health and safety of Iowans.[13] *See Kirkpatrick*, 396 N.W.2d at 365–66. Yet, that is not how this Court decided either case, and, for the same reasons, this Court should strike down the Amendment—because the single-subject rule prohibits the legislature from combining provisions not "properly connected" to each other.

Courts in other states have also applied analogous single-subject rules to invalidate provisions more plausibly related than those at issue here. *See Burns v. Cline*, 387 P.3d 348, 355 (Okla. 2016) (finding single-subject violation notwithstanding that "each sub-part relates in some way to abortion"); *c.f. Planned Parenthood of St. Louis Region v. Dep't of Soc.*

[13] The State's proposed subject of "the parent-child relationship" is similarly unpersuasive. Appellants' Br. 37. An amendment to H.F. 594 eliminating child support or mandating preconception parental classes could not conceivably survive a single-subject challenge, though they have far more to do with the "parent-child relationship" than a mandatory delay before obtaining an abortion.

Servs., Div. of Med. Servs., 602 S.W.3d 201, 210 (Mo. 2020) (striking down provision prohibiting Planned Parenthood from obtaining Medicaid reimbursements in appropriations bill).[14]

D. The Amendment Violates the Purpose of the Single-Subject Rule.

The State argues that, even when a single-subject violation exists, courts should only intervene "in extreme cases." Appellants' Br. 35 (quoting *Utilicorp United Inc. v. Iowa Utils. Bd.,* 570 N.W.2d 451, 454 (Iowa 1997)). However, as the district court correctly found, the Amendment constitutes precisely such an "extreme case," where the violation is so severe as to be "clearly, plainly, and palpably unconstitutional." App.561. The extent of the constitutional violation is clear both from the text of the Amendment and H.F. 594, as discussed above, and from the degree to which the Amendment subverts multiple purposes underlying the single-subject rule, discussed below.

1. The Single-Subject Rule Exists to Prevent Surprise.

Iowa's single-subject rule has three purposes: (1) to "keep[] the citizens of the state fairly informed of the subjects the legislature is considering"; (2) to "facilitate[] the legislative process by preventing surprise when legislators

[14] Missouri and Oklahoma's single-subject rules are nearly identical to Iowa's. *See* Okla. Const. art. V, § 57; Mo. Const. art. III, § 23.

are not informed"; and (3) to prevent logrolling. *Mabry*, 460 N.W.2d at 473 (citing William J. Yost, *Before a Bill Becomes a Law—Constitutional Form*, 8 Drake L. Rev. 66, 67 (1958)); *see also Giles*, 511 N.W.2d at 626 ("the single-subject requirement . . . keeps legislators apprised of pending bills[] and alerts citizens to matters under legislative consideration"). When two matters are "properly connected" to one another, as the single-subject rule requires, awareness of legislative consideration of one matter provides notice that the other matter may be on the table. *See* Iowa Const. art. III, § 29; *Proper*, Black's Law Dictionary (11th ed. 2019) (defining "proper" as "[b]elonging to the natural or essential constitution of" or "[s]trictly pertinent").

Single-subject rules were passed in the early 19th century in response to legislative abuses, including "[l]ast-minute consideration of important measures, logrolling, mixing substantive provisions in omnibus bills, low visibility and hasty enactment of important, and sometimes corrupt, legislation, and the attachment of unrelated provisions in the amendment process." Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 Alb. L. Rev. 1629, 1632 (2019) ("Briffault article") (quoting Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797, 798 (1987)); *see also, e.g.*, *Kincaid v. Magnum*, 432 S.E.2d 74, 79 (W. Va.

1993) (noting member of state constitutional convention "expressed the general purpose of the one-subject rule: 'If you strike out this provision, you can towards the heel of a session, take any bill, whether important or not, and make it an omnibus to carry through all sorts of schemes, tacking them on as amendments.'"); *Ex parte Hallawell*, 155 Cal. 112, 114 (1909) (noting single-subject rule aims to prevent use of riders that "not infrequently embrace[] ill-digested and pernicious legislation"); *Leach v. Pennsylvania*, 141 A.3d 426, 430 (Pa. 2016) (noting single-subject rule aims to prevent "the inclusion at the last minute of unrelated provisions").

The interest in public legislative accountability embodied in the single-subject rule is central to Iowa's constitutional democracy. *See* W. Blair Lord, *The Debates Of The Constitutional Convention Of The State Of Iowa*, Vol. II at 802 (Jan. 19, 1857) ("If you allow the people to vote upon this question, you get the voice of the people upon the law as it is passed." (Rep. Clarke, of Henry)); *see also* Iowa Const. art. III, § 13 ("The doors of each house shall be open . . . ."); Iowa Code § 17A.1(3) (stating that purpose of Iowa Administrative Procedure Act is to "increase public access to governmental information . . . [and] increase public participation").

This Court and others have recognized that the requirement serves to keep the citizenry apprised of proposed legislation and to ensure an informed

and deliberative legislative process. *See, e.g.*, *Mabry*, 460 N.W.2d at 473; *Giles* 511 N.W.2d at 625; *Taylor*, 557 N.W.2d at 525; *Hunsucker v. Fallin*, 408 P.3d 599, 608 (Okla. 2017) ("[T]he public is entitled to be adequately notified of the potential effect of legislation[] and these constitutionally protected public policies have been recognized since statehood."); *Kincaid*, 432 S.E.2d at 79; *People v. Carrera*, 783 N.E.2d 15, 24 (Ill. 2002) ("A[n] . . . important purpose of the single subject clause is to facilitate the enactment of bills through a legislative process that is orderly and informed." (quoting *People v. Reedy*, 708 N.E.2d 1114, 1120 (Ill. 1999))); *Robinson v. Hill*, 507 S.W.2d 521, 524 (Tex. 1974); *Ex parte Hallawell*, 155 Cal. at 114; Briffault article at 1656–57 (noting courts "have emphasized that the troublesome sections of a bill. . . were added at the 'last minute' or 'eleventh hour' [which] underscores the single-subject rule's purpose of making sure that legislators are able to understand and deliberate what they are voting on and that the legislative process is sufficiently transparent so that the broader public can keep track of legislative action." (collecting cases)).

Consistent with these principles, this Court has rejected single-subject challenges where a bills' subjects were sufficiently similar to provide reasonable notice of the subjects under legislative consideration—that is, where the subjects could be considered "properly connected" to each other,

see Iowa Const. art. III § 29—and upheld challenges when such was not the case. *Compare, e.g.*, *Utilicorp*, 570 N.W.2d at 454–55 (upholding statute where combination of provisions was "eminently logical" and "not surprising"); *Long*, 142 N.W.2d at 382 (upholding provisions concerning compensation and work duties because "'[c]ompensation'. . . implies payment for services to be rendered"); *with, e.g.*, *Taylor*, 557 N.W.2d at 526 (striking down weapons trafficking provision in juvenile justice bill); *Giles*, 511 N.W.2d at 625 (striking down provision replacing "applicant" with "party" in statutory corrections bill, where change affected procedural rules).

2. The Amendment's Passage Undermines Legislative Transparency.[15]

As the district court correctly held, "what occurred in the Iowa Legislature on June 13th and 14th, 2020 was exactly such 'tricks in legislation' and 'mischiefs' that the single-subject rule exists to prevent." App.564 (citing *Chi., R.I. & P. Ry. Co. v. Streepy*, 224 N.W. 41, 43 (Iowa 1929)). A bill on a controversial topic of great public debate was voted on in the dead of night, mere hours after it was first introduced, with no prior notice

[15] While the Amendment also amended the bill's title, this cannot cure the single-subject defect. As Senators who *defend* the Amendment note, "[t]he title requirement has the primary purpose of guaranteeing reasonable notice is given to legislators and the public of the inclusion of provisions in a proposed bill[.]" Br. for 10 Iowa State Senators as Amici Curiae 11. Here, the title was changed mere hours before the vote, which can hardly be considered "reasonable notice."

to legislators or the public. *See* App.563, citing *PPHII*, 915 N.W.2d at 246 (Mansfield, J., dissenting) ("Abortion is, under any analysis, a polarizing and highly controversial topic."). Virtually no one in Iowa—members of the public, legislative advocacy groups, or *even many legislators*—knew the Iowa legislature intended to vote on such a polarizing subject until that very evening.

In a state where abortion-related legislation typically garners substantial public engagement, this bill was introduced and passed in only a few hours, rendering public engagement impossible. *See* App.80 ¶¶23–24; *id.* at 82 ¶¶32–33; *id*. at 88–89 ¶¶15–20; *id.* at 562–63. Legislators voted without any time to consider the Amendment's potential effects or to receive feedback from constituents. While the Amendment requires women to undergo a twenty-four hour waiting period ostensibly to ensure they have time to make a considered decision, neither Iowa's legislators nor its citizens were given even a *single daylight hour* to consider the merits of the Amendment before it was voted on at 5:30 a.m. It is this kind of blindsiding that the single-subject rule exists to avoid.

3. The Amendment Was Logrolled.

Among its other purposes, the single-subject rule exists specifically to prevent logrolling. *Mabry*, 460 N.W.2d at 473; *Giles*, 511 N.W.2d at 625;

Taylor, 557 N.W.2d at 525; *Iowa Dist. Ct.*, 410 N.W. 2d at 686. As the district court correctly held, "[l]ogrolling clearly occurred." App.564.

The State disputes this because legislators voted on the Amendment. Appellants' Br. 49–50. Nevertheless, the Amendment unquestionably concerns a controversial topic, App.561; *id*. at 563; *id.* at 87 ¶12; *id.* at 90 ¶24; *id.* at 80 ¶27; *id.* at 81–82 ¶¶31–32; and was attached to an unquestionably uncontroversial bill,[16] *id.* at 561. Had the Amendment not been attached to such a bill, it *could not* have been introduced, let alone passed, at that late stage in the legislative session. *See* H.R. 29, https://www.legis.iowa.gov/docs/publications/HR/1037437.pdf. Moreover, five other abortion-related bills were introduced that session through the appropriate legislative means, including notice to the public and, where the bill made it out of committee, public hearings—and *none of them* became law. App.81–82 ¶31; *id.* at 87 ¶12; *id.* at 90 ¶24.

Because the Amendment was attached to an unrelated bill at the eleventh hour, one cannot know whether the Amendment would have met a similar fate if introduced through appropriate means. What *is* known is that the Amendment's unconstitutional single-subject violation deprived Iowa

[16] *Senate Video (2020-06-13)* at 4:25:21 a.m. (Sen. Bisignano noting "[t]his was filed [as] an amendment to a very good bill, a bill that there are families probably as we speak whose children are on life support").

voters and legislators of sufficient notice of subjects of legislature action, leaving legislators scrambling to understand the ramifications of a bill they had mere hours to consider and leaving most Iowans to learn of a proposed abortion restriction for the first time *after* it had already been passed. That constitutional violation is reason enough to strike down the Amendment.

II. The District Court Correctly Held That the Amendment Violates the Due Process and Equal Protection Clauses of the Iowa Constitution.

A. Standard of Review, Preservation of Error, and Scope of Review

PPH agrees that review of constitutional claims is de novo, and that error was preserved on this issue.

B. The State Should Be Precluded from Relitigating *PPHII*'s findings.

After a full trial, *PPHII* made extensive findings of fact, which the State is precluded from relitigating. Specifically, this Court found that mandatory delay laws do not change people's minds. *See PPHII*, 915 N.W.2d at 241 ("The imposition of a waiting period may have seemed like a sound means to accomplish the State's purpose of promoting potential life, but as demonstrated by the evidence, the purpose is not advanced. Instead, an objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period.").

This Court further found that laws requiring Iowans seeking an abortion (who predominantly have low incomes) to make multiple trips to a provider

before having an abortion impose a range of medical, financial, emotional and social burdens on them. *See, e.g.*, *id.* at 242 ("[T]he burdens imposed on women by the waiting period are substantial, especially for women without financial means . . . . Patients will inevitably delay their procedure while assembling the resources needed to make two trips to a clinic."); *see, e.g.*, *id.* at 243 ("The Act's mandatory delay indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim."); *cf. id.* at 258 (Mansfield, J., dissenting) (recognizing that "requiring two trips will result in emotional and financial costs. It will make it more difficult for some women to have medication abortions and force them into riskier and more invasive surgical abortions. Inevitably, a 72-hour waiting period will end up being longer than seventy-two hours in many cases.").

Having fully litigated these factual issues previously, the State is precluded from relitigating them—particularly since, as the district court correctly noted, the State did not even attempt to meet its burden to "set forth specific, relevant, evidentiary facts that demonstrate there are any unanswered issues in this case." App.566 (citing *In re Est. of Henrich*, 389 N.W.2d 78, 80

(Iowa Ct. App. 1986)).[17] PPH, though not required to, did provide evidence showing the Court's findings in *PPH* have only been reinforced in recent years. App.166–67 ¶15; *id.* at 94 ¶8; *id.* at 285 ¶¶9–10; *id.* at 347 ¶7; *id*. at 29 ¶¶5, 8. Ultimately, at issue here are two statutes with virtually identical language; applied to the same people; justified by the same state interest; and subject to the same constitutional requirements.[18]

The doctrine of issue preclusion "serves a dual purpose: to protect litigants from 'the "vexation of relitigating identical issues with identical parties"'. . . and to further 'the interest of judicial economy and efficiency by preventing unnecessary litigation.'" *Emps. Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012) (quoting *Winnebago Indus., Inc. v. Haverly*, 727

[17] The State notes the pandemic in passing, but that development only heightens the harms a mandatory delay law would inflict. *see* App.53 ¶22 n.1. The State also notes that Planned Parenthood affiliates have expanded telehealth services, but omits that PPH has used telehealth to provide abortion care in Iowa since 2008, long before *PPHII*. Finally, the State notes that PPH has reopened its Sioux City health center and resumed providing medication abortion services there since *PPHII*; but no portion of *PPHII* turned, even in part, on this clinic having been closed.

[18] The State complains that it "has not yet had the chance" to seek discovery regarding whether material facts have changed; in fact, it had seven months to do so. Appellants Br. 59 n.16. Moreover, much of the relevant testimony in *PPHII* came from experts, 915 N.W.2d at 213–232, and nothing prevented the State from developing expert testimony during those seven months. Vague, unsupported complaints about insufficient discovery opportunities cannot carry the State's burden in opposing summary judgment. Iowa R. 1.981(5).

N.W.2d 567, 571–72 (Iowa 2006)). The State argues that the standard is "heightened" in cases where issue preclusion is used offensively, App.517, yet the Iowa Supreme Court has "allowed the offensive use of issue preclusion unless the defendant 'lacked a full and fair opportunity to litigate the issue in the first action or unless other circumstances justify affording him an opportunity to relitigate the issue.'" *Emps. Mut. Cas. Co.*, 815 N.W.2d at 27 (quoting *Hunter v. City of Des Moines*, 300 N.W.2d 121, 125 (Iowa 1981)). Neither circumstance applies here.

Nor do the cases the State cites support its position, as each is distinguishable. *See Emps. Mut. Cas. Co.*, 815 N.W.2d at 23–24 (holding issue preclusion *applied* to prior Alford plea because "factual basis" for plea had been determined by trial court); *State v. Seager*, 571 N.W.2d 204, 207–09 (Iowa 1997) (finding that issue preclusion did not apply to prior order suppressing evidence when state used a new search warrant based on new facts); *Amro v. Iowa Dist. Ct. for Story Cnty.*, 429 N.W.2d 135, 140 (Iowa 1988) (finding that issue preclusion did not apply to a second contempt order for alleged violation of different prior court order based on new facts); *Est. of Leonard ex rel. Palmer v. Swift*, 656 N.W.2d 132, 147–48 (Iowa 2003)

(finding that issue of whether conservator acted appropriately was not identical to issue of whether conservator's attorney acted negligently).

Lacking support under Iowa precedent, the State instead relies on *Planned Parenthood of Mont. v. Montana*, 342 P.3d 684 (Mont. 2015). In that case, issue preclusion did not bar the state entirely from defending a challenged parental involvement law because the law differed from a prior, invalid one in ways that went to the heart of the claims at issue. *Id*. at 155–57 (finding that new law applied to a narrower category of younger minors than prior statute and provided more accessible judicial bypass option).[19] The provision at issue here, however, contains the same fundamental constitutional flaw as the seventy-two hour law: it *does not advance* a compelling state interest. *PPHII*, 915 N.W.2d at 241. Nor does it sweep more narrowly; like the seventy-two hour law, it "indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty" or special circumstances heightening her need for immediate care.

[19] The other out-of-state cases the State cites, Appellants' Br. 62–63, are also inapposite; in each, the law under review differed materially from the prior law or, as was the case in *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471, 479 (5th Cir. 2002), presented a "special circumstance" because it was based on "considerable [interim] study and fact-finding" by the governmental actor.

Id. at 243. The Amendment addresses none of the prior law's constitutional defects.

The State next argues that "[c]ourts should be particularly cautious in applying issue preclusion in constitutional adjudication,", but cites no Iowa cases in support. App.517. In fact, Iowa courts have not shied away from applying issue preclusion to constitutional issues when appropriate. *See, e.g.*, *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 399–400 (Iowa 1998) (granting summary judgment on constitutional claims based on issue preclusion); *Burns v. Bd. of Nursing of the State of Iowa*, 528 N.W.2d 602, 605 (Iowa 1995) (upholding district court finding that issue preclusion barred constitutional claims).

Finally, the State goes so far as to suggest every "new statute" is immune from issue preclusion. Appellants' Br. 61. But if this were the case, Iowans could *never* obtain lasting constitutional protection.[20] If issue preclusion were as weak a principle as the State suggests, it would offer no protection "from the vexation of relitigating identical issues with identical

[20] Iowa law does not generally provide for fee shifting in constitutional cases, *see Baldwin v. City of Estherville*, 929 N.W.2d 691, 700 (Iowa 2019), requiring prevailing plaintiffs to cover the costs of vindicating the rights of all Iowans. If the State could simply re-enact *any* invalidated law, that would eviscerate the protections afforded by the Iowa Bill of Rights for regular Iowans who are unable to finance endless repeat litigation.

parties," and "the interest of judicial economy and efficiency" would be critically undermined. *Emps. Mut. Cas. Co.*, 815 N.W.2d at 22 (internal quotation marks omitted) (quoting *Winnebago Indus., Inc.*, 727 N.W.2d at 571–72).

C. Stare Decisis Counsels Against Overturning PPHII.

Ultimately, the State seeks not only to relitigate specific *factual* issues decided by *PPHII* on a full trial record but to overturn *PPHII* altogether. To do so would violate core principles of stare decisis.

Stare decisis is "an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion." William Blackstone, Commentaries on the Laws of England 69 (1765). It is the principle that recently prompted Chief Justice Roberts to re-affirm *Whole Woman's Health*, 136 S.Ct. 2292 (2016), a four-year-old federal abortion precedent from which he had dissented. *June Med. Servs. L.L.C. v. Russo*, 140 S.Ct. 2103, 2134 (2020) (Roberts, C.J., concurring); *see also Vasquez v. Hillery*, 474 U.S. 254, 265–66 (1986) ("[T]he important doctrine of stare decisis . . . permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby

contributes to the integrity of our constitutional system of government, both in appearance and in fact.").

This Court has long recognized the value of stare decisis, and has historically set a high bar for abandoning precedent, including constitutional precedent. *See Renwick, Shaw & Crossett v. The Davenport & N.W. Ry.*, 47 Iowa 511, 512 (1877) (finding constitutional question "determined" by precedent, even though the court would decide the issue differently "[i]f the question were a new one"); *Marquis v. City of Waterloo*, 228 N.W. 870, 872 (Iowa 1930); *Goodman v. Henry L. Doherty & Co.*, 255 N.W. 667, 668 (Iowa 1934); *Faber v. Loveless*, 88 N.W.2d 112, 116 (Iowa 1958) ("Ordinarily courts will not inquire into Constitutional questions previously decided where the issues presented are similar to those previously presented and determined." (citations omitted)).

This Court, and its members, have also extolled the value of stare decisis more recently. *See, e.g., State v. Vandermark*, No. 19-2112, slip op. at 14 (Iowa Oct. 22, 2021); *State v. Allen*, No. 19-1509, slip op. at 5–6 (Iowa Oct. 22, 2021); *State v. Williams*, 895 N.W.2d 856, 859 (Iowa 2017) ("Legal authority must be respected; not because it is venerable with age, but because it is important that courts, and lawyers and their clients, may know what the law is and order their affairs accordingly." (quoting *Stuart v. Pilgrim*, 74

N.W.2d 212, 216 (Iowa 1956))); *cf. Schmidt*, 909 N.W.2d at 804 (Waterman, J., dissenting) (stressing that stare decisis "provides stability, predictability, and legitimacy to our law," and that it "require[s] the highest possible showing that a precedent should be overruled before taking such a step" (citation omitted)); *cf.* Steven J. Burton, *The Conflict Between Stare Decisis and Overruling in Constitutional Adjudication*, 35 Cardozo L. Rev. 1687, 1697 (2014) ("To the extent possible, the Constitution and precedents interpreting it should form a coherent corpus of law, widely perceived and practiced as such.").

PPHII was decided after a full trial. 915 N.W.2d at 214. This Court took great pains to review the evidence and consider the arguments on both sides fully, as well as the full range of relevant precedent. *Id.* at 214–32. Its factual findings were well-supported, and have not been shown to be clearly erroneous. *Cf. June Med. Servs.*, 140 S.Ct. at 2142 (Roberts, C.J., concurring) (noting that *Whole Woman's Health*'s factual basis was not "clearly erroneous"). While two justices dissented from the decision, they twice acknowledged that, even on the less protective federal standard urged by the state, the case would still have been "close" because indisputably "requiring two trips will result in emotional and financial costs. It will make it more difficult for some women to have medication abortions and force them into

riskier and more invasive surgical abortions." *PPHII*, 915 N.W.2d at 255, 258 (Mansfield, J., dissenting). Stare decisis counsels strongly against reversing as "clearly erroneous" a precedent that, a mere three years ago, the dissenters acknowledged decided a "close" issue.

Finally, although *PPHII* itself is relatively recent, it preserved a nearly-fifty-year status quo under which Iowans have been able to obtain abortions without the state forcing them to make additional, medically unnecessary trips (sometimes hundreds of miles) to a provider beforehand. That reliance was apparent on the day the 2017 statute briefly took effect: As health center manager Jason Burkhiser Reynolds testified, patients "were shocked, angry, worried, and confused—almost disbelieving." App.34 ¶4.

> Women asked us why the state was imposing this requirement on them, and why the state thought they could not make this decision on their own or had not thought it through already before making an appointment. One said to us: "It hurts that it is a man making a decision for me, it emotionally and physically impacts you." Another described the experience of waiting to end her pregnancy as "having this weight on my chest."

Id. ¶13.

Thus, even if *PPHII* had been incorrectly decided, it could not be reversed without grave harm to the stability of the law and to the Iowans who

have, for nearly 50 years, relied on their ability to obtain safe, legal abortion care without direct state interference.

D. *PPHII* Was Correctly Decided.

Not only should *PPHII* be preserved as a matter of stare decisis, but it was correctly decided. Under strict scrutiny, or even under the intermediate standard of review the State urges, a law that, without justification, imposes significant barriers to exercising a fundamental right cannot stand.

1. PPHII Correctly Held that Iowans Have A Fundamental Right to Reproductive Autonomy.

This Court's holding that reproductive autonomy is a fundamental right under the Iowa Constitution was well-grounded in state precedent and also consistent with federal precedent.

Whether or not to end a pregnancy is among "the most intimate and personal choices a person may make in a lifetime," and is "central to personal dignity and autonomy" and therefore "central to the liberty protected by the Fourteenth Amendment." *PPHII*, 915 N.W.2d at 236 (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992)); *see also Plowman v. Fort Madison Cmty. Hosp.*, 896 N.W.2d 393, 410 (Iowa 2017) (in the context of recognizing wrongful birth claim for failure to diagnose a fetal

anomaly, stating that "[i]t is not this court's role to second-guess that intensely personal and difficult decision").

As this Court recognized in *PPHII*, this decision is uniquely personal for two reasons. *First*, "the mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear," and this "suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture." *PPHII*, 915 N.W.2d at 236–237 (quoting *Casey*, 505 U.S. at 852). And *second*, reproduction is life-altering and creates lifelong obligations, and "[t]he destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society." *Id*. at 237 (quoting *Casey*, 505 U.S. at 852); *id*. at 249 (Mansfield, J., dissenting) ("[B]eing a parent is a life-altering obligation that falls unevenly on women in our society.").

To state the point conversely, to *compel* pregnancy, childbirth and parenthood *deprives* a person of both physical autonomy over her own body and decisional autonomy over the course of her life. It also subjects people forced to carry unwanted pregnancies to serious medical risk and emotional harm; reduces their chances of escaping poverty or domestic violence; and prevents some from achieving educational, professional, and other life goals.

Id. at 227–31. These are profound harms. *Cf. id.* at 249 (Mansfield, J., dissenting) (agreeing that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free.").[21]

Because of these inescapable facts about pregnancy, childbirth and parenthood, "the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law"—despite whatever moral objections others may have to how she exercises this liberty. *Casey*, 505 U.S. at 852; *see also id.* at 850 ("Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code."); *PPHII*, 915 N.W.2d at 243–44. Thus, *Casey* and *PPHII* agreed that,

[21] *See also Armstrong v. Montana*, 989 P.2d 364, 377 (Mont. 1999) (emphasizing a woman's "moral right and moral responsibility to decide, up to the point of fetal viability, what her pregnancy demands of her in the context of her individual values, her beliefs as to the sanctity of life, and her personal situation"); *Women of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) ("[F]ew decisions [are] more intimate, personal, and profound than a woman's decision between childbirth and abortion," and "this decision is of such great import that it governs whether the woman will undergo extreme physical and psychological changes and whether she will create lifelong attachments and responsibilities."); *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 968 (Alaska 1997) ("A woman's control of her body, and the choice whether or when to bear children, involves the kind of decision-making that is necessary for . . . civilized life and ordered liberty" (internal quotation marks and citation omitted)); *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620, 622 (N.J. 2000) (abortion right rooted in women's "personal dignity and autonomy").

however courts weigh an asserted state interest in fetal life, a woman's right to choose must have "real and substantial protection as an exercise of her liberty under the Due Process Clause." *Lawrence v. Texas*, 539 U.S. 558, 565 (2003).

PPHII's recognition that Iowans have a fundamental right to reproductive autonomy is well-grounded in Iowa precedent. This Court has long recognized that Iowans have a fundamental privacy right under the state constitution. *See State v. Pilcher*, 242 N.W.2d 348, 359 (Iowa 1976) ("Before the state can encroach into recognized areas of fundamental rights, such as the personal right of privacy, there must exist a subordinating interest which is compelling and necessary" (citation omitted)); *Howard v. Des Moines Reg. & Trib. Co.*, 283 N.W.2d 289, 301 (Iowa 1979) (citing *Roe v. Wade*, 410 U.S. 113, 152 (1973) and stating that "[t]he right of privacy is a fundamental social value which is also constitutionally protected"); *cf. Sanchez v. State*, 692 N.W.2d 812, 820 (Iowa 2005) (citing with approval federal case law that fundamental liberty interests include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion" (citation omitted)); *State v. Heemstra*, 721 N.W.2d 549, 561 (Iowa 2006) (quoting with approval federal case law characterizing "individual's right of privacy . . . [as] a

fundamental tenet of the American legal tradition" (internal quotation marks and citation omitted)).[22]

In arguing that abortion falls wholly outside this well-established line of precedent protecting decisions related to procreation, the State gives a distorted history of abortion in Iowa. Abortion has been common throughout this country's history, and constitutionally protected for almost fifty years. *See* Br. for Amici Curiae Am. Hist. Ass'n and Org. of Am. Historians in Supp. of Resp'ts, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2021 WL 4341742 (U.S. Sept. 20, 2021). While the Iowa legislature did, in the late 19th century, prohibit abortions performed *later* in pregnancy,[23] this was part of a national prohibition movement that was *not* predominantly motivated by

[22] Relatedly, this Court afforded special protections for decision-making related to procreation prior to *PPHII*. *See McQuistion v. City of Clinton*, 872 N.W.2d 817, 832 (Iowa 2015) ("The right to procreate is implied in the concept of ordered liberty and qualifies for due process protection as a fundamental right."); *In re Guardianship of Kennedy*, 845 N.W.2d 707, 714 (Iowa 2014) ("A statutory scheme that empowered a court-appointed actor ... to have an intellectually disabled person sterilized without some form of judicial review would raise serious due process concerns.").

[23] The legislature prohibited abortion for "pregnant" women in 1858, but this phasing was understood for decades to apply only after quickening, until a court case reinterpreted it more broadly. James Mohr, *Iowa's Abortion Battles of the Late 1960s and Early 1970s: Long-term Perspectives and Short-term Analyses*, 50 Annals of Iowa 63, 65 (1989). (The term "quickening" referred to the point in pregnancy when the woman could feel fetal movement, a point that varied by woman and centered her own experience, and that generally occurred at the end of the fourth month or beginning of the fifth, *id*. at 63; the overwhelming majority of abortions occur before this point. App.96 ¶17).

concern for fetal life, but rather by various "accidents of history," such as: concerns about the dangers of abortion methods at that time, a belief that all married women had an enforceable *duty* to the State to reproduce, and fear that Catholics would "overwhelm" the Protestant population. *Id.* at 14–26; *Roe*, 410 U.S. at 147–52.

As this Court recognized, that previous abortion prohibition coexisted with laws barring female pharmacists from selling alcohol because it was "common knowledge" that they were not "fitted" to do so, *PPHII*, 915 N.W.2d at 244 (quoting *In re Carragher*, 128 N.W. 352, 354 (Iowa 1910)), and laws barring women from practicing law because their "natural and proper timidity and delicacy" made them "unfit[] . . . for many of the occupations of civil life," *id.* (quoting *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring)). That a society that took it for granted that women were not fit for civil life *also* legally compelled them to carry pregnancies to term cannot possibly answer the question of whether, in 2021, such compulsion is compatible with our contemporary understanding of due process and equal protection. *Cf. Casey*, 505 U.S. at 852 (pregnancy and childbirth entails "suffering [that] is too intimate and personal for the State to insist, without

more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture.").

Indeed, as this Court's own precedent on the right to privacy reflects, "substantive due process has evolved and our court has previously indicated that article I, section 9 protects certain rights related to procreation and families." *PPHII*, 915 N.W.2d at 255 n.11 (Mansfield, J., dissenting); *see also Callender v. Skiles*, 591 N.W.2d 182, 190 (Iowa 1999) ("Due process protections, however, should not ultimately hinge upon whether the right sought to be recognized has been historically afforded. Our constitution is not merely tied to tradition, but recognizes the changing nature of society." (citing *Redmond v. Carter*, 247 N.W.2d 268, 273 (Iowa 1976))).

2. PPHII Correctly Applied Strict Scrutiny.

After recognizing that Iowans have a fundamental right to decide whether or not to continue a pregnancy, this Court properly applied strict scrutiny, the usual Iowa standard for protecting such a right. *See, e.g.*, *State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007); *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010); *see also In re J.L.*, 779 N.W.2d 481, 490–91 (Iowa Ct. App. 2009); *State v. Jorgenson*, 785 N.W.2d 708, 715 (Iowa Ct. App. 2009). In relying on Iowa precedent rather than adopting the federal standard, the Court followed a long tradition of treating federal precedent as

"no more binding upon our interpretation of . . . [the Iowa Constitution than is a case decided by another state supreme court under [an analogous] provision of that state's constitution." *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010).[24]

Contrary to the State's suggestion, this Court's approach did not dismiss or disrespect the State's interest in favoring childbirth over abortion. Rather, this Court properly reasoned that, given the fundamental individual interest at stake, courts had to meaningfully inquire into whether the State's interest (which this Court recognized as compelling) was in fact *served*: "[t]he State has a legitimate interest in informing women about abortion, but the means used under the statute enacted does not meaningfully serve that objective." *PPHII*, 915 N.W.2d at 212.

As set forth above, this Court's conclusion that the 2017 mandatory delay law did not, in fact, advance fetal life was not offhand; to the contrary, it was grounded in careful factual analysis based on a voluminous trial record. *See* Facts § IV & n.11 above. This Court further correctly found that, even if the 2017 mandatory delay law had advanced the State's asserted interest, it would still sweep too broadly (and more broadly than mandatory delay laws

[24] As this Court has recognized, many state courts have rejected the federal standard in favor of greater protection for abortion. *PPHI*, 865 N.W.2d at 262 n.2 (collecting some of these cases).

in other states) because: it would apply to all women "regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim," *PPHII*, 915 N.W.2d at 243; "Unlike mandatory delay statutes in other states, the Act does not provide an exception for rural women who live far from health centers," *id.*; and it provides no exception for rape, incest, domestic violence or trafficking victims, *id.*; *cf. id.* at 258 n.14 (Mansfield, J., dissenting) ("I might agree with the majority that a 72-hour waiting period ought to have an exception for victims of rape."). (Like the Amendment, the 2017 law also provided no exception for Iowans who had been diagnosed with a lethal or severe fetal anomaly, or for those with a health indication falling short of a dangerously narrow emergency exception, *see* Facts § IV above.) This analysis was solidly supported by the record, and correct.

Thus, *PPHII*'s application of strict scrutiny was proper, and should be reaffirmed. The State does not even attempt to argue that the Amendment would survive such review, and clearly it would not. *See* Facts § IV above.

3. Alternatively, Both the 2017 Mandatory-Delay Law and the Amendment Would "Unduly Burden" Iowans Seeking an Abortion.

The State urges this court to overturn *PPHII* and hold that the proper standard for reviewing abortion restrictions under the Iowa Constitution is the less protective "undue burden" standard applied by federal courts. But the

2017 mandatory delay law and the Amendment would also fail the federal standard.

The undue burden standard "requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer." *Whole Woman's Health*, 136 S.Ct. at 2309 (citations omitted).[25] This is so regardless of the state interest asserted. *Id.* (construing *Casey* as having balanced benefits and harms in its consideration of restrictions defended as further an interest in fetal life); *Whole Woman's Health v. Hellerstedt*, 231 F. Supp. 3d 218, 228–29 (W.D. Tex. 2017) (applying balancing test to law

[25] Federal courts are divided as to whether Justice Roberts' recent lone concurrence in *June Med. Servs.*, 140 S.Ct. at 2133–42, overruled this balancing test and replaced it with a test requiring only that a challenged restriction: 1) be "reasonably related" to a valid state interest and 2) not impose a substantial obstacle on individuals seeking an abortion. *See generally Planned Parenthood of Ind. & Ky., Inc. v. Box*, 991 F.3d 740, 742–52 (7th Cir. 2021) (laying out arguments on both sides before concluding that balancing remains the standard); *but see Hopkins v. Jegley*, 968 F.3d 912, 915 (8th Cir. 2020) (per curiam) (combining concurrence and dissenting opinions into new holding despite U.S. Supreme Court's contrary advice in *Marks v. United States*, 430 U.S. 188, 193 (1977)). The Seventh Circuit's approach better accords with ordinary rules of precedent, but if this Court adopts the standard Roberts proposes, it should apply that standard consistent with its prior recognition that "[a] standard that only reviews the burdens of the regulation fails to guarantee that the objective of the regulation is, in fact, being served and is inconsistent with the protections afforded to fundamental rights." *PPHII*, 915 N.W.2d at 240. And the Amendment would be invalid even under the Roberts standard because the evidence in *PPHII*, which has not changed, shows that a mandatory delay law is not reasonably related to fetal life *and* that it imposes a substantial obstacle on Iowans seeking an abortion. *See* Facts § IV above.

passed for the asserted purpose of "expressing the State's respect for life" (citation omitted)); *W. Ala. Women's Ctr. v. Miller*, 217 F. Supp. 3d 1313, 1346–47 (M.D. Ala. 2016) (same); *but see PPHII*, 915 N.W.2d at 240 (in dicta, reading *Casey* as applying a different test when considering laws justified as advancing fetal life).

This analysis is highly context-specific. *Whole Woman's Health*, 136 S.Ct. at 2310–14; *Casey*, 505 U.S. at 885–87 (upholding mandatory delay law as a "close[] question," "on the record before [it]"). It requires the State to demonstrate a *link* between the legislation it enacts and its asserted interest. *See generally Whole Woman's Health*, 136 S.Ct. at 2309 (it "is wrong to equate the judicial review applicable to the regulation of a constitutionally protected personal liberty with the less strict review applicable where, for example, economic legislation is at issue" (citations omitted)); *id.* at 2311–12 (noting the absence of any evidence from the State demonstrating a problem the challenged statute would solve); *cf. PPHI*, 865 N.W.2d at 264–69 (closely examining the evidence on safety and burden). And any "means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it." *Casey*, 505 U.S. at 877.[26] As set forth at

[26] As stated above in Facts § IV, note 11, recent evidence demonstrates that mandatory delay laws in fact hinder a woman's free choice by increasing the risk that she will be coerced by others into continuing her pregnancy.

Facts § IV & Argument § II.A above, the Amendment does *not* advance the State's interest in potential life, thereby leaving one side of the scale empty.

The "burden" side of the scale takes into account the broad range of harms abortion restrictions cause, such as: delay, and its effect on medical risk and on whether a patient has access to medication abortion; the need for additional travel and its effects on vulnerable populations, such as those with the fewest financial resources; risks to patient confidentiality, particularly in the context of domestic abuse; lack of individualized attention and emotional support; longer wait times and increased crowding. *Whole Woman's Health*, 136 S.Ct. at 2302, 2312–13, 2318; *Casey*, 505 U.S. at 885–86, 894; *Planned Parenthood of Ariz. v. Humble*, 753 F.3d 905, 915 (9th Cir. 2014); *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 920 (7th Cir. 2015); *Planned Parenthood Se., Inc. v. Strange*, 33 F.Supp.3d 1330, 1357–58 (M.D. Ala. 2014). This Court correctly found that the 2017 mandatory delay law would impose "substantial" burdens and "hardships" on Iowans, *PPHII*, 915 N.W.2d at 225–31, 242–43, and the Amendment would be no different in this respect, *see* Facts § I above.[27] Thus, even if this Court applied the undue

[27] The State suggests perhaps it might be able to build a different record today than in 2017, but it had seven months to serve discovery and chose not to, and did not submit *any* specific evidence to meet its burden for resisting a motion for summary judgment. *Contrast* App.73–443 (PPH providing specific factual evidence from six witnesses).

burden test, that would not have altered the outcome in *PPHII*, nor should it alter the outcome here.

That *Casey* upheld a 1992 mandatory delay requirement "on the record before [it]" does not alter this conclusion. 505 U.S. 885–87. As this Court has held, the burden inquiry is "context-specific." *PPHI*, 865 N.W.2d at 268–69 (unanimously rejecting argument that *Casey* stated per se approval for particular restrictions, and explaining that it rather "turned on the evidence and record in that case"); *see also Humble*, 753 F.3d at 916 (distinguishing *Casey*, and noting that "[a]lthough there may be cases in which additional travel time does not in itself rise to the level of an undue burden, this factor must be evaluated on a case-by-case basis and balanced against the strength of the state's interest" (citation omitted)); *cf. PPHII*, 915 N.W.2d at 255 (Mansfield, J., dissenting) (noting that federal courts have invalidated waiting periods under the *Casey* standard). Even *Casey* found the burdens imposed by Pennsylvania mandatory delay law "troubling," and its constitutionality a "close[] question," 505 U.S. at 885–86.

That *Casey* was record-dependent is critical, because the record in *PPHII* and here differs from that in *Casey* in several key respects. First, in the absence of record evidence to the contrary, *Casey* found it was "reasonable" to assume that "important decisions will be more informed and deliberate if

they follow some period of reflection" after a patient has received "important information" specified by statute. 505 U.S. at 885. By contrast, PPH presented extensive evidence in *PPHII* (evidence no less true today) based on which that assumption no longer appears reasonable. *See* Facts § IV above.

Second, the facts of abortion provision have changed significantly since *Casey* found that the burdens of a two trip requirement came "close," but did not quite amount, to a substantial obstacle, 505 U.S. at 885–86. For example, whereas *Casey* was decided before early medication abortion was available, Petitioners have established that an extra-trip requirement would substantially reduce access to this safe procedure (an effect considered significant by this Court in *PPHI*, 865 N.W.2d at 267); *see also Humble*, 753 F.3d at 915 (striking down medication abortion restriction as undue burden, and noting evidence that "some women so strongly prefer medication abortion, and so object to surgical abortion, that they will forego abortion entirely if they cannot obtain a medication abortion"); *Okla. Coal. for Reprod. Just. v. Cline*, 292 P.3d 27 (Okla. 2012) (same).

The evidence also shows that because surgical abortion is only provided in two cities in Iowa, an extra trip requirement would delay Iowans in a way that would force some to travel hundreds of miles to obtain an abortion. *Compare* Facts § II (surgical abortion only available in two cities in Iowa),

with Rachel K. Jones, et al., *Abortion in the United States: Incidence and Access to Services, 2005*, 40 Persps. on Sexual & Reprod. Health 6, 11 (2008) (at the time of the *Casey* decision, there were *81* abortion providers in Pennsylvania). PPH has also presented extensive evidence that two-trip mandatory delay laws harm and endanger patients who are at risk of domestic abuse, whereas *Casey*'s holding "reli[ed] on the paucity of the record [in that case] concerning how the in-person informed-consent requirement affected abused women." *Cincinnati Women's Servs., Inc. v. Taft*, 468 F.3d 361, 372 (6th Cir. 2006); *see also PPHI*, 865 N.W.2d at 267 (unanimously finding that increased travel distances and an additional trip to a clinic are severe burdens, among other reasons because they can result in "a greater possibility that an abusive spouse, partner, or relative could find out the woman is terminating her pregnancy").

Third, peer reviewed research since *Casey*, made a part of the record in *PPHII*, shows that such obstacles delay patients, sometimes dramatically, and even prevent some individuals from obtaining care. *PPHII*, 915 N.W.2d at 229–30. The research shows these obstacles also drive some people to self-induce. *See id.* at 230–31 (citing 2016 Iowa study finding a significant incidence of patients researching and attempting self-induction). Thus, while the "the record evidence" before *Casey* "show[ed] that in the vast majority of

cases, a 24-hour delay does not create an appreciable health risk" to Pennsylvanians, 505 U.S. at 885, the evidence in the record in *PPHII* demonstrates otherwise. That evidence also demonstrates that one of the cruel aspects of these laws is that they pile financial strain on people who are already struggling with poverty, forcing some of them further into debt. *See PPHII*, 915 N.W.2d at 227–29, 242; *see also PPHI*, 865 N.W.2d at 267 (unanimously recognizing that increased travel distances and an additional trip to a clinic are severe burdens, among other reasons because they can "cause a working mother to potentially miss two to four days of work and incur additional child care expense").

Finally, whereas *Casey* relied on lower court interpretations to find that the emergency exception to Pennsylvania's delay requirement would cover common complications "such as preeclampsia, inevitable abortion, or prematurely ruptured membrane," it "is not clear that [the Act's] 'medical emergency' exception would be defined as broadly as the exception in *Casey*." Ruling on Pet'rs' Pet. for Declaratory and Injunctive Relief 37, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. EQCE081503 (Iowa Dist. Ct. Polk Cnty. Sep. 29, 2017); the Amendment replicates this dangerously narrow and unclear language, along with the same risk that

physicians may lose their license if the State takes issue with their judgments about what constitutes a medical emergency.[28]

For these reasons, both the 2017 mandatory delay law and the Amendment would fail the undue burden test. Even if this Court were to depart from strict scrutiny, the Court should affirm the judgment below.

4. The State Provides No Argument for Overturning PPHII's Equal Protection Holding.

Finally, the State urges this Court to reverse its equal protection holding in *PPHII*, but ignores this Court's rationale for that holding. This Court's equal protection holding did not turn on its conclusion that reproductive freedom is an aspect of the fundamental constitutional right to privacy, the conclusion the State attacks. Rather, this Court's holding turned on its recognition that the right to decide whether to bear children is critical to "a woman's autonomous charge of her life's full course . . . , her ability to stand in relation to man, society, and the state as an independent, self-sustaining, equal citizen." *PPHII*, 915 N.W.2d at 245 (quoting Ruth B. Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. Rev. 375, 383 (1985)). "Laws that diminish women's control over their

[28] Even if *Casey* were not distinguishable, and it is, this Court has applied "open textured" standards like the "undue burden" standard "more stringently than the federal case law under the Iowa Constitution." *State v. Short*, 851 N.W.2d 474, 491 (Iowa 2014) (citations omitted).

reproductive futures can have profound consequences for women. . . . Without the opportunity to control their reproductive lives, women may need to place their educations on hold, pause or abandon their careers, and never fully assume a position in society equal to men, who face no such similar constraints for comparable sexual activity." *Id.*

Women and men are not similarly situated in terms of the biological capacity to be pregnant, but they are similarly situated in their right to dignity and autonomy. As this Court recognized, laws that target pregnancy and restrict decision-making around this state necessarily *place* women on a different and less autonomous level, both in their everyday lives and in their relationship to the State. And however well-intended, these laws have the *harshest* effects on those women who are *already* disadvantaged, and are most likely to compel those already-disadvantaged women to carry to term. *PPHII*, 915 N.W.2d at 227–32.[29]

[29] Legislator amici suggest that mandatory delay laws are not unique because the State also prescribes waiting periods for decisions to alter one's legal status, such as through marriage, divorce or termination of parental rights. Br. of Amici Curiae 60 Members of the Iowa Legislature 39–40. These other areas are not comparable to mandatory delays for time-sensitive medical care—particularly given that delays in abortion care are stressful and increase medical risks and costs, may require further travel, restrict medical options, jeopardize confidentiality, endanger the significant percentage of Iowans with abusive or coercive partners, and set some women on a life trajectory with fewer educational, economic and professional opportunities. *PPHII*, 915 N.W.2d at 227–31, 245.

That is state discrimination, and *PPHII* properly recognized it as such. Any other approach would ignore "the biological reality that sometimes requires [women], but never requires their male counterparts, to resort to abortion procedures if they are to avoid pregnancy and childbearing." *Doe v. Maher*, 515 A.2d 134, 160 (Conn. 1986) (citation omitted); *N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 854 (N.M. 1998) ("[T]o determine whether a classification based on a physical characteristic unique to one sex results in the denial of equality of rights under law . . . we must ascertain whether the classification operates to the disadvantage of persons so classified." (internal quotation marks and citation omitted)).

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's judgment.

REQUEST FOR ORAL SUBMISSION

PPH requests to be heard in oral argument.

Respectfully submitted,

/s/ Alice J. Clapman
ALICE J. CLAPMAN*
CHRISTINE CLARKE*
CAMILA VEGA**
Planned Parenthood Federation of America
1110 Vermont Ave., NW, Ste. 300
Washington, DC 20005
Telephone: (202) 803-4045
Facsimile: (202) 296-3480
Email: alice.clapman@ppfa.org
Email: christine.clarke@ppfa.org
Email: camila.vega@ppfa.org

/s/ Rita Bettis Austen
RITA BETTIS AUSTEN (AT0011558)
American Civil Liberties Union of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2316
Telephone: (515) 243-3988
Facsimile: (515) 243-8506
Email: rita.bettis@aclu-ia.org

Attorneys for Petitioners-Appellees

** Admitted pro hac vice*
*** Pro hac vice application pending*

Dated: November 9, 2021

COST CERTIFICATE

PPH certifies that it expended no funds for the printing of its response brief in this Court.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements and type-volume limitations of Iowa Rules of Appellate Procedure 6.903(1)(e) and 6.903(1)(g)(1) or (2) because it has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 13,771 words, excluding those portions of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

Dated: November 9, 2021

/s/ Alice J. Clapman
Alice J. Clapman
Counsel for Appellees