IN THE SUPREME COURT OF IOWA

No. 21-0856

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

Petitioner-Appellees,

v.

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

Respondent-Appellants.

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

Brief Of *Amicus Curiae* League Of Women Voters (Iowa Chapter)

Michael Streit, AT007661
Colin C. Smith, AT0011362
SULLIVAN & WARD, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
Telephone: #(515) 244-3500
Facsimile: #(515) 244-3599
E-mail: mstreit@sullivan-ward.com
csmith@sullivan-ward.com

Counsel For League Of Women Voters Of Iowa

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES

CASES

OTHER AUTHORITIES

STATEMENT OF *AMICUS CURIAE*

The League of Women Voters of Iowa (the "League") was founded over one hundred years ago. Initially formed to support women's suffrage, the League has grown to be a prominent non-partisan, non-profit organization that regularly weighs in on government policy issues, focusing on fostering the well-being of all Iowans, particularly women.

An essential function of the League is to represent the interests of its members in the democratic process and in litigation that may impact the broader political, social, and economic concerns of the citizens of the State of Iowa. To that end, the League has historically participated in official proceedings to further its mission. *See, e.g.*, *League of United Latin-American Citizens of Iowa v. Pate*, 950 N.W.2d 204, 206 (Iowa 2020) (the League as *amicus curiae*); *Griffin v. Pate*, 884 N.W.2d 182, 183 (Iowa 2016) (same); *Berent v. City of Iowa City*, 738 N.W.2d 193, 198 (Iowa 2007) (noting the League's involvement in pre-litigation administrative proceedings); *In re Legislative Districting of General Assembly*, 193 N.W.2d 784, 784 (Iowa 1972) (noting the League's involvement in redistricting litigation).

The issues in this case impact the League's membership and the constituencies for which the League advocates. Therefore, this Court should

consider the unique viewpoints, information, and arguments hereby submitted by the League in this Brief. *See* IOWA R. APP. P. 6.906(5)(*a*)(3).

ARGUMENT

Citizens are not guaranteed any substantive outcome from the legislative process. But, as a result of perceived procedural abuses, many state constitutions were amended…to require, in mandatory terms, that legislators follow certain procedures. Therefore, citizens are constitutionally entitled to a certain process in the enactment of statutes…a 'due process of lawmaking.'

When fundamental elements of this constitutionally mandated process are ignored and not remedied by the legislative or executive branches, the courts should step in and examine reliable evidence of violations…[*and*] *the court should not hesitate to invalidate the act in question…*[1]

* * *

I. INTRODUCTION AND SCOPE OF ARGUMENT.

This Brief is not about abortion. This Brief — indeed, this entire case — is fundamentally about compliance with the Iowa Constitution. *See* IOWA CONST. art. XII, § 1 ("This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void."). "Although the [state]

---

[1] Robert F. Williams, *State Constitutional Limits On Legislative Procedure: Legislative Compliance And Judicial Enforcement*, 48 U. PITT. L. REV. 797, 798, and 826-27 (1987) ("Williams") (emphasis added).

constitutional issues raised by [HF594][2] are extremely important, the process by which this controversial statute was enacted by the Legislature raises another set of much less visible, but equally important, state constitutional issues." Williams, at 798.

In this litigation, Appellants and Appellees have gone back-and-forth about Due Process, Equal Protection, legislative content, and titles of bills. *See* TI Order, at pp. 6-7; Pets' Mot. for MSJ, at p. 1; Resps' Resist. to MSJ, at p. 2. Those are all compelling issues, but this Court does not have to go that far to resolve this case. *See, e.g., Williams-Yulee v. Florida Bar*, 575 U.S. 433, 454 (2015) ("We decline to wade into this swamp"). There is a much easier path to a constitutional resolution.

The legislative process is designed to be one of thoughtful consideration and contemplation on important public policy. *See, e.g., IA Motor Vehicle Ass'n v. Bd. of Ry. Comm'rs*, 221 N.W. 364, 368 (Iowa 1928) ("The Legislature is presumed to have full information upon such matters…"). This policy necessarily presupposes at least a measure of public awareness and opportunity to participate in the democratic process. *See* IOWA CONST. art. III, § 13 (stating the "doors of each [legislative] house shall be open…");

[2] Also known as Section 2, of the Act of June 29, 2020 (House File 594), ch. 1110, 2020 Iowa Acts 298.

IOWA CODE § 17A.1(3) (extolling the virtues of "increas[ing] public access to governmental information…[and] increas[ing] public participation…"); *ACLU v. Atlantic Comm. Sch. Dist*., 818 N.W.2d 231, 236 (2012) (Cady, J., dissenting) (referencing "the new age of open government in this State"); *see also State v. Aguirre*, 41 N.E.3d 1178, 1179 n.2 (Ohio 2014) (criticizing efforts to create "shields from the public gaze.").

"Parents often caution their children that nothing good happens after midnight." *State v. Brodeur*, Case No. 2006AP2340-CR, 2007 WL 1774944, at *5 n.5 (Wis. Ct. App. Jun. 21, 2007). "That old adage…proved true in this case." *People v. McGriff*, Case No. A142712, 2016 WL 4367197, at *1 (Cal. Ct. App. Aug. 16, 2016).[3] The Legislature passed HF594 in the "middle of the night." *See United States v. Granderson*, 511 U.S. 39, 52 n.9 (1994) (describing late evening and overnight congressional proceedings); *see also United States v. Jerez*, 108 F.3d 684, 716-17 (7th Cir. 1997) (Coffey, J., dissenting) (describing the meaning of "middle of the night."). HF594's

[3] Similar sentiments were voiced by former Iowa Supreme Court Justice King Thompson when he began an opinion with: "A bunch of the boys were whooping it up in the Hotel Fort Des Moines. The date was the night of March 20–21, 1947, and the occasion was the annual convention of the Iowa Automobile Dealers' Association." *McCarville v. Ream*, 72 N.W.2d 476, 477 (1955).

legislative "title" did not initially include the topic of abortion until it was added before midnight, without advance public notice. *See* TI Order, at p. 14; *see also* SUF ¶ 42; 46; and 50. HF594's legislative history bears trifling hallmarks of the principles of minimal public awareness and opportunity for participation envisioned by the Iowa Constitution. *See* W. Blair Lord, THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA 802 (Vol. I Jan. 19, 1857) (Rep. Clarke, of Henry) ("If you allow the People to vote upon this question, you get the voice of the People upon the law as it is passed.").

The timing and rushed nature of HF594's passage would undoubtedly offend the sensibilities of Iowa's founders. *See id*. at 286 (Rep. Clarke, from Henry) ("I go home at night fatigued physically and mentally, and I think the State has no right to require this of me. I want an opportunity afforded all members here, to compare their views upon this matter, so that they may be able to act systematically and understandably."); *see also id*. at 287 (Rep. Clarke, from Johnson) ("I am also free to confess that I am not now prepared to act upon this subject, for the simple reason, that we are kept here from early morning 'till late at night, and when I leave here, I am too exhausted and worn out to examine these reports.").

Policy debates on the substantive parts of HF594 are fair, but this Court should make its rulings on procedural rather than substantive grounds whenever possible. *See City of Chicago v. Morales*, 527 U.S. 41, 63-64 n.35 (1999) (Stevens, J., plurality opn.) (holding on procedural rather than substantive due process grounds); *id*. at 86 n.8 (Scalia, J., dissenting) (noting same); *Burkhart v. IA Dept. of Human Servs*., Case No. 13-1979, 2014 WL 4231048, at *1 (Iowa Ct. App. Aug. 27, 2014) (favoring procedural resolutions over reaching substantive merits); *see also State v. Graber*, 537 P.2d 117, 119 (Or. Ct. App. 1975) (courts should not "rush too quickly to raise and discuss a questionable constitutional issue when the matter can be resolved on procedural…grounds."). *Cf. State v. McGee*, 959 N.W.2d 432, 439 (Iowa 2021) (discussing the "narrowest grounds doctrine").

The passage of HF594 violated the Iowa Constitution's "single-subject" rule by failing to keep Iowans "fairly appraise[d]…of the subject being considered." *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990) (citing and quoting William J. Yost, Note, *Before A Bill Becomes A Law – Constitutional Form*, 8 DRAKE L. REV. 66, 67 (1958) ("Yost")). This ground alone can resolve this case.

Actual harm results when the People — for whom the Iowa Constitution exists to protect, *see* IOWA CONST. art. I, § 2 — are excluded from

the democratic process by those who make the laws that govern us all. *See*, *e.g.*, *Global Dynamics, LLC v. United States*, 138 Fed. Cl. 207, 210-11 (2018) (quoting *Cincom Sys., Inc. v. United States*, 37 Fed. Cl. 266, 269 (1997)) ("'It is axiomatic that the public has an interest in honest, open, and fair [government]. Whenever a plaintiff is improperly excluded from that process, that interest is compromised.'"). Iowa's single-subject rule commands at least a modicum of public awareness and opportunity to participate in the political process. That did not happen here.

Less than ten hours passed between the time the Iowa General Assembly introduced, debated, and then voted on the legislation in question. *See* SUF, at ¶¶ 51-55. Advocacy organizations and regular Iowans alike were unfairly caught off-guard by this quickened legislative pace. *See* SUF, at ¶¶ 40; 43-47; 53; and 59-70. Neither opponents nor proponents of the legislation were given a chance to adequately advocate for or against HF594 in that brief period of time — which began shortly before sundown and ended shortly before sunrise. In other words, the Act in question was literally passed in the dead of night.[4]

---

[4] Sunset on the day HF549 was introduced was 8:52 p.m. (thirty five minutes after HF594 was introduced). The "waiting period" amendment was introduced around 11:00 p.m. the same night, well after sundown. Sunrise on

Courts rightfully avoid delving into policy issues in single-subject challenges, *see State v. Social Hygiene, Inc*., 156 N.W.2d 28, 289-91 (Iowa 1968), but this Court should not shy away from identifying constitutional violations when it sees them, *see Indust. Union Dept. v. Amer. Petrol. Instit*., 448 U.S. 607, 686 (1980) (Rehnquist, J., concurring) ("We ought not shy away from our judicial duty to invalidate unconstitutional [exercises] of legislative authority…"); *McNabb v. Osmundson*, 315 N.W.2d 9, 17 (Iowa 1982) (where government action "would be incongruous" to what "the constitution mandates," the Court "cannot avoid" addressing the issue); *Chicago, R.I. & P. Ry. Co. v. Streepy*, 224 N.W. 41, 43 (Iowa 1924) (in a single-subject challenge, stating "we must not hesitate to proclaim the supremacy of the Constitution.").

This Court should resolve this case on narrow single-subject grounds. *See State v. Iowa Dist. Ct. for Webster Cnty*., 801 N.W.2d 513, 522 (Iowa 2020). *Amici* urges the court to do so.

---

the day HF549 passed was 5:44 a.m. (minutes after HF594 was passed). *See* The Old Farmer's Almanac Online, SUNRISE AND SUNSET TIMES FOR DES MOINES, IOWA ON THE DATES OF JUNE 28-29, 2020, *available at* https://www.almanac.com/astronomy/sun-rise-and-set/ IA/Des % 20 Moines/ 2020 -06-29 (last visited Sept. 28, 2021).

II. IOWA'S SINGLE-SUBJECT RULE DEMANDS PUBLIC AWARENESS AND AN OPPORTUNITY TO PARTICIPATE.

A. SINGLE-SUBJECT RULES GENERALLY.

State constitutional limitations on the subjects of pending legislation "were adopted throughout the nineteenth century in response to state legislative abuses." Williams, at 798. "Last-minute consideration of important measures, logrolling, mixed substantive provisions in omnibus bills, low visibility, and hasty enactment of important, sometimes corrupt, legislation….led to the adoption of constitutional provisions restricting the legislative process." *Id*. Chief among these reforms were "state constitutional limitations on the legislature [to require] that a bill contains only matters on a 'single subject.'" *Id*. at 798-99. Born out of a "distrust shown of the Legislature," these provisions "seek generally to require a more open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner." *Id*. at 798. *See also Long v. Bd. of Sup'rs of Benton Cnty*., 142 N.W.2d 378, 382 (Iowa 1966) ("Another purpose served by the one-subject rule is to facilitate orderly legislative process."). *Accord* Michael D. Gilbert, *Single Subject Rules And The Legislative Process*, 67 U. PITT. L. REV. 803, 805 (2006) ("Gilbert") ("The purpose of the [single-subject] rule is to combat various forms of legislative

misconduct."); Deborah Bartell, *The Interplay Between The Gubernatorial Veto And The One-Subject Rule In Oklahoma*, 19 OKLA. CITY U. L. REV. 273, 286-87 (1994) ("Bartell") ("The theory behind the rule is that distinct types of subjects of legislation should stand or fall on their own merits.").

Single-subject rules are not new. They date back at least to ancient Rome, "where crafty lawmakers learned to carry an unpopular provision by harnessing it up with one more favored." *See* Gilbert, at 812 (marks omitted). *See also* Cooter & Gilbert, *A Theory Of Direct Democracy And The Single Subject Rule*, 110 COLUM. L. REV. 687, 693 (2010) ("Cooter") (noting "the Romans in 98 B.C. forbade laws consisting of unrelated provisions."). "Similar legislative misbehavior plagued colonial America," so much so that even the British monarchy attempted to curtail the practice. Gilbert, at 812. *See also* Cooter, at 704-05. However, it wasn't until the early 1800s that single-subject restrictions found themselves widely adopted either constitutionally or through statute. *See* Gilbert, at 812. (detailing single-subject legislation evolving in Illinois, Louisiana, Texas, New York, and Iowa between 1818 and 1846); Cooter, at 704-05 (describing the adoption of single-subject rules amongst American states).

One state appellate court noted single-subject constitutional provisions are meant to "simplify the [legislative process] and improve political

transparency." *American Hotel & Lodging Ass'n v. City of Seattle*, 432 P.3d 434, 440 (Wash. Ct. App. 2018) (citing *State v. Broadaway*, 942 P.2d 363, 367-68 (Wash. 1997) (*en banc*)). *Accord People v. Olender*, 854 N.E.2d 593, 600 (Ill. 2005) (state constitutional single-subject rules further the policy purpose of "ensur[ing] that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny…"); Cooter, at 693 ("The single-subject rule has another purpose…increasing transparency in lawmaking.").

"Despite…criticism, the[se] limitations on state legislative procedure survived the wave of state constitutional revisions that occurred during the middle of the twentieth century." *Id*. at 800. "Therefore, because these limits have in effect been re-adopted in contemporary state constitutions and continue to reflect important policies relating to the nature of the deliberative process in state legislatures, they should be respected and complied with by the legislative, executive, and judicial branches of state government." *Id*. *See also* Denning & Smith, *Uneasy Riders*: *The Case For A Truth-In-Legislation Amendment*, 1999 UTAH L. REV. 957, 963 (1999) ("Denning & Smith") ("examples of the mischief that the single-subject provisions were intended to halt" include "omnibus bills that roll wide varieties of legislation into one act…[and] bills with low visibility and deceptive wording that skulk through the legislative process [during] eleventh hour consideration…").

Put differently, while the "informational and citizen participation" rationale for a single-subject rule may often be listed last in the case law describing it, *see Mabry*, N.W.2d at 473; *Taylor*, 557 N.W.2d at 525, that is not because it carries less legal importance, *see Woods v. Fayette Cnty. Zoning Bd. of Adjust.*, Case No. 17-0090, 2018 WL 1099008, at *4 (Iowa Ct. App. Feb. 18, 2018) (describing "last but not least" in legislative drafting). Indeed, a single-subject rule's information and participatory opportunity purposes have been held to be vitally important. *E.g.*, *In re Matter of Title*, 454 P.3d 1056, 1064 (Colo. 2019) (Marquez, J., concurring and dissenting in part) (stating the purpose of the analogous Colorado single-subject rule is to "inform[] the public of the content of proposed legislation and prevent[] the passage of unknown and alien subjects…coiled up in the folds of [a] bill.") (marks omitted); *M.A.W. v. State*, 185 P.3d 388, 393-94 (Okla. Crim. App. 2008) ("The single-subject rule also ensures that legislators and voters — citizens — of Oklahoma know the potential effect of legislation."); *City of Baltimore v. State*, 378 A.2d 1326, 1330 (Md. Ct. App. 1977) ("noting that the purpose of the [single-subject] requirement is to inform…the public of the nature of the proposed legislation.").

B. IOWA'S SINGLE-SUBJECT RULE SPECIFICALLY.

Iowa's Constitution contains a single-subject provision. Article III, § 29 of the Iowa State Constitution reads:

> "Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

IOWA CONST. art. III, § 29. This provision is similar to its counterparts found in other state constitutions.[5] *See Mabry*, 460 N.W.2d at 473.

This provision advances three goals: ***First***, it prevents logrolling, attaching favorable legislative language to otherwise unfavorable legislative language to ensure passage. ***Second***, it prevents undesirable "surprises" or "fraud" from being visited upon legislators. ***Third***, it helps keep the citizenry of the State reasonably informed of the subjects under legislative consideration so that all may participate in the democratic process. *See id*.

---

[5] At least forty-three states have enacted some form of a "single-subject" rule either constitutionally or by statute. Daniel N. Boger, *Constitutional Avoidance, The Single-Subject Rule As An Interpretive Principle*, 103 VA. L. REV. 1247, 1249 and 1252 (2017). *See also* 1A Sutherland, *Statutory Construction* § 22.08, at 187 (1985) (describing state single-subject provisions); Gilbert, at 806 ("Forty other states have some version of the single-subject rule embedded in their constitutions, and collectively they have tried thousands of cases on a wide variety of topics.").

(citing and quoting Yost, at 67). *See also State v. Taylor*, 557 N.W.2d 523, 525 (Iowa 1996); *Rush v. Reynolds*, Case No. 19-1109, 2020 WL 825953, at *11 (Iowa Ct. App. Feb. 19, 2020). *Accord Giles v. State*, 511 N.W.2d 622, 625 (Iowa 1994) (Snell, J., dissenting); Todd E. Pettys, THE IOWA STATE CONSTITUTION 172 (2d ed. 2018) ("Pettys").[6]

[6] While the primary focus of this Brief is on the legislative procedures relating to HF594, an argument can be made that single-subject issues also apply to the Executive Branch — indeed, to the ***benefit*** of the Executive Branch. *See* Gilbert, at at 847 ("Courts tend not to identify a constitutional relationship between the single-subject rule and governors' veto power. But, as a practical matter, the two are clearly related: the broader the definition of permissible subjects, the more constrained is the governor's ability to exercise a veto."). Rigorous enforcement of the single-subject rule helps "prevent legislatures from eroding governors' veto power." *Id*. at 817. "By limiting the scope of bills, the single-subject rule allows governors to exercise their veto power with respect to each general provision that receives majority support in the legislature. This not only discourages logrolling and riding but also appears to boost governors' power by giving them more opportunities to exercise their authority." *Id*. at 818; *see also id*. at 847-48. *Accord Nova Health Sys. v. Edmonson*, 233 P.3d 380, 381 n.6 (Okla. 2010) (single-subject rules "exist[] to prevent the Legislature from 'veto-proofing' a bill…"); *Brown v. Firestone*, 382 So.2d 654, 663-64 (Fla. 1980) (single-subject rules, if left unfollowed, "severely limit[] if not destroy[]…one of the intended checks on the authority of the legislature," such as "[t]he veto power of the chief executive…"); *In re House Bill No. 1353*, 738 P.2d 371, 372 (Colo. 1987) (single-subject noncompliance threatens gubernatorial veto power); *Porten Sullivan Corp. v. State*, 568 A.2d 387, 400 (Md. Ct. App. 1990) ("An additional purpose of the single-subject rule is to protect the integrity of the governor's veto power.") (marks omitted).

This constitutional provision is mandatory, not directory in nature. *See W. Int'l v. Kirkpatrick*, 396 N.W.2d 359, 366 (Iowa 1986) (characterizing Article III, § 29 as a "mandate"); *see also Green v. City of Mt. Pleasant*, 131

Despite the Iowa Governor being a nominal defendant in this case, it should be noted that a strong single-subject outcome from this litigation would work in her favor, and to the favor of her future successors. *See* Gilbert, at 848; *see also id*. at 847 ("The tradeoff between the breadth of acts and executive authority implicates separation of powers concerns."); and 848 ("strict interpretations of the single-subject rule strengthen a governor's veto power but do not necessarily strengthen a governor's power overall."); Harold Stearley, *Missouri's Single-Subject Rules: A Legal Tool To Block Environmental Legislation?*, 7 MO. ENVIRO. L. & POL'Y REV. 41, 44 (1999) ("Concurrent with the adoption of single-subject provisions, states were adding another complementary feature to their legislative schemes — the gubernatorial veto."); *id*. at 55 ("The single-subject rule provides an appropriate measure of checks and balances on lawmaking power of state government…[t]he final legislative product then remains subject to the scrutiny of the executive veto [and] the scrutiny then shifts to the judiciary."); Bartell, at pp. 285-87 (discussing the relationship between executive veto powers and single-subject restrictions); Courtney Odishaw, *Curbing Legislative Chaos: Executive Choice Or Congressional Responsibility*, 74 IOWA L. REV. 227, 240-48 (1988) (examining the relationship between the executive veto power and single-subject provisions binding upon state legislatures). *Cf*. IOWA CONST., art. III, § 16 (Iowa's gubernatorial veto power).

This aspect of state constitutional single-subject rules "is an important tool in the preservation of the separation of powers…" *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. 2013) (*en banc*). It should not be overlooked.

N.W.2d 5, 18 (Iowa 1964) ("The provisions of the Constitution are mandatory and as binding on the legislative branch of government as on the citizens."). It remains part of the Constitution, "which must be followed." *City of Marshalltown v. Blum*, 12 N.W. 266, 267 (Iowa 1882).

Infirmities may exist concerning HF594 regarding logrolling and legislative notice issues; however, this Brief focuses squarely on the third pillar of the tripartite purposes of the single-subject rule: The right of the people "to be fairly appraise[d]…of the subjects being considered" by the Legislature, and, relatedly, the right of the people to participate in the legislative process. *Mabry*, 460 N.W.2d at 473; *see also* Yost, at 67; Gilbert, at 808 (single-subject rules exist to "improve political transparency, both for citizens and politicians."). This principle was violated in this case.

III. IOWA'S SINGLE-SUBJECT RULE WAS VIOLATED BECAUSE NEARLY NO PUBLIC AWARENESS NOR REALISTIC OPPORTUNITY FOR PARTICIPATION WAS GIVEN DURING HF594'S PASSAGE.

A. LEGISLATIVE MACHINATIONS EVIDENCE A VIOLATION OF THE SINGLE-SUBJECT RULE.

State legislatures should not pull "magic tricks" to circumvent constitutional requirements during lawmaking. *Ariz. State Legis. v. Ariz. Indep. Redistrict. Comm'n*, 576 U.S. 787, 825 (2014) (Roberts, J., dissenting); *Streepy*, 224 N.W. at 43 (decrying "tricks in legislation…"). Unfortunately,

that is what the Iowa Legislature did in this case. The record and common sense strongly suggest a lack of compliance with the letter and spirit of Iowa's single-subject rule. *See Cook v. Marshall Cnty*., 93 N.W. 372, 377 (Iowa 1903) (recognizing that "[a]ny construction of [the single-subject] provision of the Constitution that would interfere with the very commendable policy of incorporating the entire statutory law upon one general subject in a single act…would not only be contrary to its spirit, but also seriously embarrassing to honest legislation."); *see also Bradley v. Brown*, 39 N.W. 258, 259 (Iowa 1888) (Reed, J., dissenting) (one must not "consider[] merely the language of the statute, while disregarding its spirit and purpose…[to reach] a safe [and] sound rule or construction.").

As of 8:17 p.m. on the night before the Iowa Legislature formally "gaveled out" for the 2020 session, HF594's content and bill "title" had nothing to do with terminating a pregnancy. *See* TI Order, at p. 14. Shortly before 11:00 p.m. the same night, that changed. A stand-alone bill about removing life-sustaining measures to hospitalized minors suddenly also included language about terminating a pregnancy. *See* TI Order, at p. 14; *see also* SUF ¶ 42; 46; and 50. The amendment[7] in question made HF594 very much about abortion, "one of the most controversial and fiercely debated

[7] Also known as H-8314 (amendment to the bill).

political issues of our time…" *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 915 N.W.2d 206, 252 n.9 (Iowa 2018) ("*PPH II*") (Mansfield, J., dissenting) (quoting *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 35 (2000) (Barker, J., dissenting in part and concurring in part)).

Less than ten hours later, at 5:41 a.m. the following morning, the "waiting period" amendment was voted on and passed. *See* TI Order, at p. 14; SUF, at ¶ 55. There is no dispute the amendment was unveiled when most Iowans were unaware of legislative happenings and would likely have been asleep. *See* TI Order, p. at 14; *see also* SUF, at ¶¶ 51-55. Iowans went to bed believing their elected officials were doing one thing (or perhaps nothing) and awoke to realize their belief was wrong — controversial legislation had been introduced and passed while they snoozed, unaware. *See Granderson*, 511 U.S. at 51-52 n. 9 (discussing fleeting legislative actions that took place "in the middle of the night."); *United States v. Bass*, 504 U.S. 336, 344 (1971) (noting legislation being passed as "a last-minute Senate amendment" to a free-standing bill that "was hastily passed, with little discussion, no hearings, and no report.").

The kinetic pace by which the amendment sailed through the legislative hopper was, if nothing else, impressive.[8] But it also contradicted the principle of the single-subject rule "to alert citizens to matters under legislative consideration." *Giles*, 511 N.W.2d at 625 (citing *Mabry*, 460 N.W.2d at 473); *see also Utilicorp United Inc. v. IA Util. Bd*., 570 N.W.2d 451, 458 (Iowa 1997) (same). Even in the age of instant information sharing over the internet and social media, if lawmaking occurs in the middle of the night when most Iowans are in bed, while smartphones and computer screens are switched off, the public is literally — and figuratively — "in the dark." *See Chonich v. Ford*, 321 N.W.2d 693, 469 (Mich. Ct. App. 1982) ("the public's right to know will be maximized and the numerous legislative bodies in society cannot operate in the dark, knowing that their activities will not likely be subject to public scrutiny."). This is exactly the type of underhandedness that Iowa's single-subject rule was intended to prevent. *See Mabry*, 460 N.W.2d at 473 (citing Yost, at 67); Gilbert, at 811-12; Denning & Smith, at 965-67.

"[T]he constitutional requirement that every legislative act be confined to one subject or object…ensures that both legislators and the public have proper or reasonable and fair notice of the general nature and substance of the

---

[8] Even the State admits the legislation in question "moved swiftly…" Appellants' Proof Br., at p. 50.

content and interests likely to be affected by a bill so the public nor the legislature is misled…." 82 C.J.S. *Statutes* § 248 (2021) (collecting authorities). This implies "the people of the state are given an opportunity to be heard if they so desire." *Id*. "This rule thus guard[s] against surprise and fraud, subterfuge, and deception as to the true nature and subject of legislative enactments…" *Id*. HF594's passage violated the purpose and spirit of Iowa's single-subject rule and is therefore unconstitutional. *See id*. (single-subject rules are designed so "each bill can be better grasped and more intelligently discussed" to "facilitate orderly legislative procedure.").

B. THERE WAS NO "WAITING PERIOD" ON A BILL ABOUT "WAITING PERIODS."

There is tension between Iowa's single-subject rule, HF594, and the method by which HF594 was passed. Article III, § 29 implies a reasonable opportunity for the public to learn and react to pending legislative proposals. *See Mabry*, 460 N.W.2d at 473 (citing Yost, at 67). HF594 was passed in under ten hours. *See* SUF, at ¶¶ 51-55. Yet, HF594 imposes a ***24-hour*** waiting period for a woman seeking to terminate a pregnancy. *See* IOWA CODE § 146A.1(1) (2020) (statute enacted by HF594).

If the aim of HF594 was to promote contemplative reflection before a consequential life decision, it is ***peculiar*** the Iowa Legislature spent less than

half a similar "waiting period" considering whether or not there should be a waiting period at all. *Compare Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833, 969 (1992) ("We are of the view that, in providing time for reflection and reconsideration, the waiting period helps ensure that a woman's decision to abort is a well-considered one…"), *with*, *Campbell Cnty. Sch. Dist. v. Catchpole*, 6 P.3d 1275, 1281 (Wyo. 2000) ("the legislature must be afforded ample time for adequate study, drafting of appropriate reform legislation, and debate on and passage of that legislation…[and needs] a reasonable period…to achieve constitutional compliance.") (quotations omitted).

Passing under-studied legislation is not in the public interest. *E.g.*, *Commonwealth ex rel. Morrison v. Peace*, Case No. 102, 1918 WL 3123, at *3 (Pa. Ct. Com. Pl. Jan. 1, 1918) ("A study of the Act…shows that it is a sample of half-baked legislation, being crude, incomplete and inconsistent, apparently drawn by somebody without knowledge either of the existing laws or the actual method of policing [its subject matter]."). Some jurisdictions even impose express "waiting periods" on their own legislative actions to encourage thoughtful consideration of pending laws. *E.g.*, *Nat'l Indep. Business Alliance v. City of Beverly Hills*, 180 Cal. Rptr. 59, 64 (Cal. Ct. App. 1982) (describing a "five-day waiting period before an ordinance can be

passed…for allowing time for consideration, with a view to preventing haste and ill-considered legislation.").

Iowa does not have a "waiting period" for pending legislation, though maybe it should. *Amici* is not advocating for the Court to craft restrictions rightfully left to the separate chambers of the General Assembly. *See* IOWA CONST. art. III, §§ 1 and 9; *see also Carlton v. Grimes*, 23 N.W.2d 883, 889 (Iowa 1946) (each legislative chamber may make its own rules, "so long as it observes the mandatory requirements of the Constitution."). *Amici* instead advocates for a straightforward judicial application of Article III, § 29 of the Iowa Constitution to ensure at least a minimal degree of public awareness and opportunity to participate in the democratic process. *See Mabry*, 460 N.W.2d at 473.

The League — a storied civil rights organization with a century of active political participation experience,[9] and an employer of professional lobbyists[10] — was blindsided by the legislation in question. If a "repeat

---

[9] The League regularly advocates in-person, via phone, and via email to state legislators, attends policy discussions at political events, and speaks upon and influences local, state, and federal matters.

[10] Information about the lobbyists employed by the League for legislative matters can be found on the Iowa General Assembly's website. *See*

player" at the Iowa State Capitol Building, such as the League, was caught off-guard by the legislation in question, it can reasonably be assumed the everyday Iowan was placed at an even more pronounced informational and participatory disadvantage. *Cf. Robinson v. Robinson's Ex'rs*, 1860 WL 4954, at *3 (Vt. Feb. 1, 1860) ("we think the Legislature must have intended…not to mislead common men" in its enactments).

Appellants argue if stakeholders are unhappy with the voting process on HF594, they can voice their opinions at the ballot box during the next election. *See* Appellants' Proof Br., at p. 52. That is cold comfort to those who must abide by the law until then, especially if constitutional questions remain open. Having baseline information and the opportunity to let legislators know how one feels about consequential public policy is a constitutional guarantee ***that lives in the present***, ***not in the past***. *See Mabry*, 460 N.W.2d at 473 (stating the single-subject rule intends to keep "citizens of the state fairly informed of the subjects the legislature is ***considering***" [present tense], not what it already has ***considered*** [past tense]); *see also Abrams v.*

---

https://www.legis.iowa.gov/lobbyist/reports/client?clientID=617&ga=89&session=1 (last visited Sept. 9, 2021).

Johnson, 521 U.S. 74, 106 (1997) (Breyer, J., dissenting) (gleaning the insight of a legislator ***after*** a vote holds little weight).[11]

C. THE PUBLIC POLICIES MOTIVATING THE SINGLE-SUBJECT RULE TILT TOWARDS UNCONSTITUTIONALITY IN THIS CASE.

"The intuition is that when a bill is limited to a single subject it is easier for legislators to more fully understand the ramifications of enactment and for the public to know what their legislators are up to." Richard Briffault, *The*

---

[11] *Accord Calzone v. Interim Comm'r of Dept. of Elementary and Secondary Educ*., 584 S.W.3d 310, 315-16 (Mo. 2019) (*en banc*) (explaining the original purpose of single-subject requirements as being designed to prevent the enactment of legislation that may deceive legislators or the public regarding its effect or disrupt the ability of the public to fairly be apprised of the subject matter of pending laws) (citations omitted); *Town of Brilliant v. City of Winfield*, 752 So.2d 1192, 1120 (Ala. 1993) (single-subject requirements are "intended to provide notification to the public of the nature of the [pending] legislation…") (cleaned up in original); *Parrish v. Lamm*, 758 P.2d 1356, 1362 (Colo. 1988) (*en banc*) (stating one of the purposes of a constitutional single-subject rule is "to notify the public and legislators of pending bills so that all may participate in the legislative process…"); *Hall v. Coupe*, Case No. 10307-VCS, 2016 WL 3094406, at *6 (Del. Ch. May 25, 2016) ("The Single-Subject Provision is 'intended to assure sufficient notice that legislation, the content of which is adequately brought to the public's attention, or so-called sleeper legislation' does not slip through the General Assembly.'" (quoting *Evans v. State*, 872 A.2d 539, 551 (Del. 2005)); *Unity Church of St. Paul v. State*, Case No. C9-03-9570, 2004 WL 1670069, at *5 (D. Ct. Minn. Jul. 12, 2004) (state single-subject rule is meant to prevent surprise upon the public during the legislative process).

Single-Subject Rule: A State Constitutional Dilemma, 82 ALB. L. REV. 1629, 1635-36 (2019) ("Briffault"). "That can facilitate input while the measure is pending…[and] prevent surprise and fraud upon the people and the legislature by barring special interest groups from hiding deals or giveaways in long and complex multi-subject measures." *Id*. Put differently, the "purposes of the single-subject rule — majority rule, deliberation, transparency, orderly procedure, public accountability — are surely desirable legislative process goals, if not essential to legislative legitimacy." *Id*. at 1658-59.

This is especially true concerning controversial matters like those involved in this case. *See Int'l Org. of Masters, Mates, & Pilots v. Brown*, 498 U.S. 466, 477 (1991) ("it is fair to assume that more, rather than less, freedom in the exchange of views will contribute to the democratic process."). More citizen awareness and opportunity for participation should have been the rule concerning HF594. Unfortunately, that was not the case. To the contrary, it appears legislative jockeying was sculpted to impede public input rather than foster it. *See id. See also Siefert v. Alexander*, 596 F. Supp. 2d 860, 862 (W.D. Wis. 2009), *aff'd in part and rev'd in part on other grounds*, 608 F.3d 974 (7th Cir. 2010) ("generally the view is that more rather than less information advances democratic values and that the government should not be the arbiter of which ideas are…helpful or harmful."). *Cf. Williams-Yulee*,

575 U.S. at 452 ("leaving open more, rather than fewer, avenues of expression, especially when there is no indication that the selective restriction of speech reflects a pre-textual motive," is preferred.).

IV. THE COURT CAN, AND SHOULD, RESOLVE THIS CASE ON SINGLE-SUBJECT GROUNDS WITHOUT ADDRESSING SUBSTANTIVE ABORTION ISSUES.

Abortion is a sensitive matter. *See PPH II*, 915 N.W.2d at 252 n.9 (Mansfield, J., dissenting). Resolving a case with touchy constitutional implications is best done without reaching controversial questions. *See Jones v. Univ. of Iowa*, 836 N.W.2d 127, 142 (Iowa 2013). The single-subject violations in this case provide an appropriate vehicle for the Court to fashion equitable relief on tailored grounds. *See PPH II*, 915 N.W.2d at 241; *Santi v. Santi*, 633 N.W.2d 312, 317 (Iowa 2001). *See also Westmarc Cablevision, Inc. v. Blair*, Case No. 03-0667, 2005 WL 1224269, at *10 (Iowa Ct. App. May 25, 2005) (courts strive to resolve cases "on procedural rather than substantive grounds.").

Stringent enforcement of single-subject requirements is favorably viewed. *See* Williams, at 800 ("It is suggested that increased judicial enforcement could result in greater legislative compliance with mandatory constitutional requirements," "particularly where the legislative proposal is controversial" and where "legislators often do not follow the legislative

procedure requirements of the state constitution.") (collecting authorities). It cannot be forgotten that "the single-subject rule is judicially enforceable," particularly when "the evil which [the single-subject rule] was intended to prevent" is apparent. Williams, at 810. *See also Taylor*, 557 N.W.2d at 526-27 (striking portions of a bill on single-subject grounds); *Giles*, 511 N.W.2d at 625 (same); *W. Int'l*, 396 N.W.2d at 365 (same).

Appellants claim HF594's "journey through the legislative terrain is irrelevant to the required constitutional analysis of whether the Act embraces one subject." Appellants' Proof Br., at p. 51. This is not true. Process and procedure matter. *See, e.g.*, *Hummel St. Joseph Cnty. Bd. of Comm'rs*, Case No. 3:10-CV-003 JD, 2013 WL 817382, at *12 (N.D. Ind. Mar. 4, 2013); *accord Alarm Protection Tech., LLC v. Crandall*, 491 P.3d 928, 934 (Utah 2021) ("procedure matters."). Here, that process and procedure frustrated the ability of Iowans — directly or indirectly through their advocacy representatives, like the League — to weigh in on HF594. *See Doe v. McMillan*, 412 U.S. 306, 341 (1973) (Rehnquist, J., concurring in part and dissenting in part) ("public participation in a relatively open legislative process is desirable…").

Ignoring the reasonable parameters of Iowa's single-subject rule would be incongruent with this State's founding principles. *See* Benjamin F.

Shaumbaugh, FRAGMENTS FROM THE DEBATES OF THE IOWA CONSTITUTIONAL CONVENTIONS OF 1844 AND 1846, at p. 382 (1900) (citing and quoting *The Bloomington Herald*, *New Series*, Vol. 1, No. 3 (May 1, 1846) (stating it "is contrary to the whole spirit of our institutions [to] den[y] the poor man any participation in the administration of government, and in effect creates an aristocracy under the garb of economy."). And, "as we have seen, in controversial matters, legislative attitudes are not always governed by concern for the merits of the procedural point." Williams, at 826.

Article III, § 29 of the Iowa Constitution "does have teeth." Pettys, at 173. The Court should find HF594 unconstitutional on single-subject grounds. *See Taylor*, 557 N.W.2d at 526-27; *Giles*, 511 N.W.2d at 625; *Mabry*, 460 N.W.2d at 473; *W. Int'l*, 396 N.W.2d at 365.

CONCLUSION

"The single-subject clause goes to the heart of the legislative process mandated by the people of the State of Iowa when they adopted our Constitution." *Godfrey v. State*, 752 N.W.2d 413, 430 (Iowa 2008) (Wiggins, J., dissenting). "The courts should not abdicate their inherent function of interpreting and enforcing the written constitution. Increased judicial enforcement, in appropriate cases, of state constitutional restrictions on the legislative procedure, would likely result in the long-run increased legislative

compliance with such provisions, which is the original goal of the constitutional provisions." Williams, at 827.

The passage of HF594 violated Iowa's constitutional single-subject rule. *See* IOWA CONST. art. III, § 29. This Court should declare HF594 unconstitutional on those narrow grounds. *See Taylor*, 557 N.W.2d at 526-27; *Giles*, 511 N.W.2d at 625; *Mabry*, 460 N.W.2d at 473; *W. Int'l*, 396 N.W.2d at 365. *See also* SUF, at ¶ 47 (comments by Rep. Derry) ("We are here debating, at the very end of session, without the benefit of public input.").

Respectfully submitted,

/s/ Michael Streit
Michael Streit, AT007661
/s/ Colin C. Smith
Colin C. Smith, AT0011362
SULLIVAN & WARD, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
Telephone: #(515) 244-3500
Facsimile: #(515) 244-3599
E-mail: mstreit@sullivan-ward.com
csmith@sullivan-ward.com

Counsel For League Of Women Voters Of Iowa

CERTIFICATE OF COMPLIANCE

Neither Party nor their counsel participated in the drafting of this Brief, in whole or in part. Neither Party nor their counsel contributed any money to the undersigned for the preparation or submission of this Brief. The drafting of this Brief was prepared *pro bono* by counsel to *Amicus Curiae*.

This Brief complies with the type-volume limitation of IOWA R. CIV. P. 6.903(1)(*g*)(1) because it contains **6,436** words, excluding parts of the Brief exempted by that Rule. This Brief complies with the typeface requirements of IOWA R. APP. P. 6.903(1)(*e*), and the type-style requirements of IOWA R. APP. P. 6.903(1)(*f*) because it has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman, 14-point font.

/s/ Colin C. Smith
Colin C. Smith, *Counsel*