IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC, and JILL MEADOWS. M.D., Petitioners, v. KIM REYNOLDS ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE, Respondents.	No. EQCE 083074 **OPPOSITION TO MOTION TO DISSOLVE PERMANENT INJUNCTION**

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INTRODUCTION

This case, challenging a 6-week abortion ban (the "Ban"), was closed in 2019 when this Court permanently enjoined the Ban and the State chose not to appeal. State Br. at 12. The State has moved to reopen the case and vacate the permanent injunction based on *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710 (Iowa 2022), *reh'g denied* (July 5, 2022) ("*PPH IV*") and *Dobbs v. Jackson Women's Health Org.*, __ U.S.__, 142 S. Ct. 2228, 2237, 213 L.Ed.2d 545 (2022). The State's Motion is meritless.

Notably, the State fails to cite any rule of civil procedure conferring jurisdiction or a procedural basis to vacate the order, nor does the State cite a single Iowa case vacating a permanent injunction due to a change of law, much less where the injunction is in place to protect constitutional rights. But even if Iowa law allowed for such a motion, which it does not, this one would fail. Contrary to the State's briefing, there has not been any substantial change in the law that could conceivably support upholding a ban at six weeks after a woman's last menstrual period (LMP), and the injunction remains warranted.[1]

While *PPH IV* overruled prior precedent applying *strict scrutiny* to abortion restrictions, the Court made clear that "the *Casey* undue burden test we applied in *PPH I* remains the governing standard." *PPH IV* at 716; *see also id.* at 746 (reaffirming that "'[a]utonomy and dominion over one's body go to the very heart of what it means to be free,'" and recognizing that the "life-altering obligation" of parenthood "falls unevenly on women." (quoting *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018) ("*PPH II*") at 237 (majority opinion) and at 249 (Mansfield, J., dissenting)). The Ban at issue here, which would prohibit

[1] References to "woman" in Plaintiffs' submissions are shorthand for people who are or may become pregnant. People with other gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion care.

abortion roughly two weeks after a missed period (before many women even know they are pregnant) is clearly unconstitutional under the undue burden standard. See *Planned Parenthood of Se. Pa v. Casey*, 505 U.S. 833, 878–79, 112 S. Ct. 2791, 2821, 120 L. Ed. 2d 674 (1992), *overruled by Dobbs*, 142 S. Ct. 2228 ("An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability"; "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.").

While *Dobbs* has altered federal constitutional law, it does not change the Iowa Supreme Court's interpretation of the state constitution. Indeed, the Iowa Supreme Court indicated as much when it declined the State's motion to reconsider its *PPH IV* decision to set a new lower standard after *Dobbs* was decided. *PPH IV*, Iowa Supreme Court No. 21-0856, July 1, 2022 State Pet. for Reh'g; *PPH IV*, Iowa Supreme Court No. 21-0856, July 5, 2022 Order on Pet. for Reh'g; see also *PPH IV* at 716 ("we zealously guard our ability to interpret the Iowa Constitution independently of the Supreme Court's interpretations of the Federal Constitution"). Accordingly, there is no basis for disturbing the permanent injunction issued by this Court nearly four years ago. Iowa procedural rules do not allow for such a motion, and res judicata bars the State's Motion which, if granted, would take away the right of Iowans to obtain previability abortions, in violation of current Iowa Supreme Court precedent.

LEGAL BACKGROUND

In 2015, the Iowa Supreme Court considered whether a ban on telemedicine medication abortions violated the Iowa Constitution. See *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 269 (Iowa 2015) ("*PPH I*"). The Court applied the federal "undue burden" standard under the Iowa Constitution and invalidated the ban under this standard. *Id.* In

PPH I, the Court did not reach the issue of whether the right under the Iowa Constitution was broader than the federal right because it found the telemedicine ban was unconstitutional even under the undue burden test. *Id.* at 262–63. Three years later, the Court considered a statute mandating a 72-hour delay between an initial visit and the abortion procedure. *PPH II* at 212, 221. The Court held abortion to be a fundamental right entitled to strict scrutiny under the Iowa Constitution and invalidated the challenged law under that standard. *Id.* at 237, 241, 246.[2]

Just before *PPH II* was decided—but after the Iowa Supreme Court had ruled that the *PPH II* plaintiffs were likely to succeed on the merits, *see PPH II*, Iowa Supreme Court No. 17-1579, October 23, 2017 Order on Mot. for Temp. Injunctive Relief and Stay Pending Appeal—the Legislature passed the law at issue in this litigation banning abortions after the presence of embryonic cardiac activity (as early as approximately six weeks LMP), see Iowa Code chapter 146C. Plaintiffs brought this action in the Polk County District Court based on the blatant unconstitutionality of this Ban under PPH I and PPH II. After granting an uncontested motion for a temporary injunction, this Court granted Plaintiffs' motion for summary judgment, holding that the law violated the Iowa Constitution and enjoining enforcement of the Ban. See June 4, 2018 Order Entering Temp. Inj'n; Jan. 22, 2019 Ruling on Mot. Summ. Judgment ("MSJ Ruling"). While the Court applied *PPH II*'s strict scrutiny standard in concluding that the 6-week Ban was patently unconstitutional, it also reasoned that this conclusion was "buttressed" by a long line of federal precedent, including *Casey*, holding that under the undue burden standard states may not

[2] In assessing potential standards, the Court explained that "[u]nder the [*Casey*] undue burden standard, the state may enact previability abortion restrictions in furtherance of its interest in promoting potential life. However, the state may not enact a regulation that 'has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.'" *PPH II* at 238 (quoting *Casey*, 505 U.S. at 877, 112 S. Ct. at 2820). Any such previability regulation "'must be calculated to inform the woman's free choice, not hinder it.'" *Id.* (quoting *Casey*, 505 U.S. at 877, 112 S. Ct. at 2820).

ban abortion prior to viability. MSJ Ruling at 6–8. As further support for its conclusion, the Court also noted that, based on *Casey*'s clear holding to this effect, "[e]ven the dissenting opinion in *PPH II* appears to acknowledge that the state's interest in promoting potential life does not extend to a restriction imposed previability." MSJ Ruling at 6 n.10. The State did not appeal this Court's judgment.

After this Court entered the permanent injunction, the Iowa Legislature passed another abortion restriction, this time mandating a 24-hour delay between a patient's initial visit and abortion procedure. *See* Iowa Code § 146A.1 (2021); *PPH IV* at 718. PPH challenged this law as unconstitutional. *Id*. at 720. The Iowa Supreme Court overturned PPH II's holding that abortion is a fundamental right under the Iowa Constitution and that strict scrutiny applied. *Id*. at 716. However, the Court indicated that the Iowa Constitution still provides protection for abortion and stated that the undue burden test is now the proper test for abortion restrictions. *Id*.[3]

After *PPH IV* was issued, the U.S. Supreme Court overturned *Casey* in *Dobbs*. One week later, the State petitioned the Iowa Supreme Court for rehearing to reconsider *PPH IV* and to set rational basis as a new lower standard for review of abortion restrictions under the Iowa Constitution, *PPH IV*, State Pet. for Reh'g; the Court summarily denied that petition, *PPH IV*, Order on Pet. for Reh'g. The State now moves to vacate the permanent injunction this Court entered on January 22, 2019, arguing solely that *PPH IV* and *Dobbs* constitute a substantial change in law that justifies dissolution of the existing permanent injunction.

[3] *See also PPH II* at 254–58, n.11 (Mansfield, J., dissenting) (finding *Casey* persuasive, in part because of women's longstanding reliance on abortion rights, and applying the undue burden test to conclude that the 72-hour mandatory wait period was not facially invalid under article I, section 9 of the Iowa Constitution).

ARGUMENT

A prior final judgment bars the relief the State seeks. The State attempts to avoid this finality by arguing that a substantial change in legal circumstances justifies vacating the permanent injunction. This argument fails because (1) there is no basis in Iowa law to apply this doctrine to a permanent injunction, particularly a permanent injunction in place to protect a recognized constitutional right and (2) even if there were a basis, the State has not justified modifying this permanent injunction.

I. There Is No Basis for the State's Motion

There is no basis in Iowa law for the State's Motion. Under the principles of res judicata, the judgment in this case is final, and the case is closed. *See Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998) (identifying elements for issue preclusion); *Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 319 (Iowa 2002) (identifying elements for claim preclusion). While the Iowa Rules of Civil Procedure grant district courts jurisdiction to consider a motion to vacate a prior judgment, they do not allow the State's Motion. Indeed, the Court lacks jurisdiction under the governing Iowa court rules to entertain this Motion as more than one year has passed since the judgment was entered. Furthermore, no Iowa court has held that it has the power to vacate a permanent injunction based on a change in law. Respectfully, this Court should not do so for the first time in this case, where vacating the injunction would infringe on constitutional rights. Should the State wish to relitigate the constitutionality of a law banning abortion at six weeks LMP, it may do so through a newly enacted statute.

A. The Iowa Rules of Civil Procedure do not provide a basis for the State's Motion

Iowa Rule of Civil Procedure 1.1012 governs motions to vacate a final judgment, including an injunction. *See In re Davidson*, 860 N.W.2d 343 (Iowa Ct. App. 2014). The State's Motion

necessarily fails, since the Motion does not meet the procedural or substantive requirements of that rule.

First, the State's Motion is time-barred. Rule 1.1013 sets out the process for invoking a district court's power to vacate or modify a final judgment under Rule 1.1012. Iowa R. Civ. P. 1.1013. "A petition for relief under rule 1.1012 . . . must be filed and served in the original action within one year after the entry of the judgment or order involved." *Id.* This time to file is jurisdictional; Iowa courts are without power to entertain a petition filed after one year. *Kern v. Woodbury Cnty.*, 234 Iowa 1321, 1324, 14 N.W.2d 687, 688 (1944); *see also* I.C.A. Rule 1.1012 advisory committee's note to 1943 amendment; *In re Marriage of Fairall*, 403 N.W.2d 785, 788 (Iowa 1987) (holding that, despite filing of petition to vacate within one year, the district court lacked jurisdiction to grant relief because the petition was not served the same year). Despite its burden to establish that the procedural requirements of Rule 1.1013 have been met, the State has not argued that it can overcome this jurisdictional bar, much less cited any authorities to support it on this point.

Furthermore, even if this jurisdictional requirement were satisfied, Rule 1.1012 does not permit vacatur based on a change of law. Indeed, it permits a court to correct, vacate, or modify a final judgment or order only where there has been:

> 1.1012(1) Mistake, neglect or omission of the clerk.
> 1.1012(2) Irregularity or fraud practiced in obtaining it.
> 1.1012(3) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record.
> 1.1012(4) Death of a party before entry of the judgment or order, and its entry without substitution of a proper representative.
> 1.1012(5) Unavoidable casualty or misfortune preventing the party from prosecuting or defending.
> 1.1012(6) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004.

Iowa R. Civ. P. 1.1012. Nothing in this section indicates that a change in law could support a motion to vacate, nor does the State suggest that Rule 1.1012 provides such a basis to vacate an injunction.

Notably, as discussed further below, the State relies upon federal cases to suggest its Motion is appropriate. However, Federal Rules of Civil Procedure Rule 60(b) provides much broader grounds on which a trial court may issue relief from a final judgment than Iowa's Rule 1.1012. For example, Federal Rule 60(b)(5) empowers a court to modify or vacate a judgment where "applying [the judgment] prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). Such a motion must be filed "within a reasonable time" and is not subject to the one-year limitation applicable to other bases for relief. *Id.* 60(c)(1). Because the federal rules are far broader than the Iowa rules on this issue, the State cannot establish that a motion to vacate a permanent injunction for change in law in Iowa is appropriate by pointing to federal authorities. *Cf. Kreft v. Fisher Aviation, Inc.*, 264 N.W.2d 297, 305–06 (Iowa 1978) (Uhlenhopp, J., concurring specially) (confirming that Iowa Rule 1.1012 is different and more stringent than Federal Rule 60(b)).

Notably, even though as early as 1948, Federal Rule 60(b)(5) provided that a judgment might be reversed where "it is no longer equitable that the judgment should have prospective application," *see Klapprott v. United States*, 335 U.S. 601, 608 n.1, 69 S. Ct. 384, 387, 93 L. Ed. 266 (1949) (excerpting the March 1948 amendment to Federal Rule 60(b)), Iowa Rule 1.1012 was amended in 1997 and 2001, and the committee (and ultimately the Court) did not add a similar provision. Since Rule 1.1012 was amended after this language was added to Federal Rule 60(b)(5), the Iowa committee had the benefit and option to include this provision but chose not to. It would be inappropriate to read in such a provision here.

B. Iowa case law does not provide a basis for the State's Motion

The State has not cited a single Iowa decision that has applied the principle that a substantial change in law justifies dissolution of a permanent injunction, much less a decision where the permanent injunction is in place to preserve constitutional rights and the infringing law had been declared void. That is because there is no such case.

Despite this, the State surprisingly announces "It has long been the law in Iowa that '[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law.'" State Br. at 13. The State cites only one Iowa case—*Bear v. Iowa District Court*—for that proposition. *Bear*'s statement to this effect is clearly dictum; indeed, *Bear* did not even involve a motion for modification or a change of law or fact; the Court concluded merely that a party had violated a permanent injunction. See *Bear v. Iowa District Court*, 540 N.W.2d 439, 440, 442 (Iowa 1995). Furthermore, the case *Bear* cites for that proposition, *Helmkamp v. Clark Ready Mix Co.*, did not involve a change of law; rather it involved the issue of whether a change in fact had occurred that was material to whether an injunction should be vacated: "The question, therefore, is whether a *factual* basis for the injunction does or does not any longer exist" (emphasis added). *Helmkamp v. Clark Ready Mix Co*., 249 N.W.2d 655, 656 (Iowa 1977) (involving nuisance claims) ("The law is clear that a court may so modify or vacate an injunction, otherwise the party restrained might be held in bondage of a court order no longer having a *factual* basis." (emphasis added)).

Here, the facts are unchanged since the permanent injunction was entered,[4] and the State has presented no Iowa authority to support a motion predicated on a change in law. Indeed, the

[4] The State appears to concede as much. *See* State Br. at 27 ("To be clear, this Court can and should dissolve the injunction permanently right now because no additional factual development

State moves immediately from citing isolated and irrelevant state court dicta to discussing non-binding federal authorities applying the Federal Rules of Civil Procedure, which do not govern its Motion in this case. As noted above, the federal rules regarding relief from final judgments, including permanent injunctions, are far broader than those in Iowa. Rule 60(b) contains an express provision allowing for relief from a judgment when "applying it prospectively is no longer equitable," Fed. R. Civ. P. 60(b)(5), which has been interpreted to permit a motion to modify an injunction when the party seeking relief can show a significant change in law, *see Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997, 2006, 138 L. Ed. 2d 391 (1997).5 Though the State discusses federal cases applying Rule 60(b)(5) as if they apply in Iowa, it does not present an argument as to why such federal decisions should apply with equal force in Iowa, where the rule regarding relief from a final judgment is dramatically more narrow.

The State then further misleads by turning to *Wood Bros. Thresher Co. v. Eicher*, to assert "*[t]hat rule* applies with even greater force in cases enjoining 'the enforcement of statutes.'" State Br. at 14 (emphasis added) (quoting *Wood Bros. Thresher Co. v. Eicher*, 231 Iowa 550, 558, 1 N.W.2d 655, 659 (Iowa 1942)). But *Wood Bros. Thresher Co.* did not involve "that rule"—*i.e.*, it did not involve a dissolution of a permanent injunction due to changed law; it involved a motion by defendants to dissolve a temporary injunction that had been issued without notice to them. 1 N.W.2d at 658–59; *see also* Iowa R. Civ. P. 1.1509 ("A party against whom a *temporary* injunction is issued without notice may, at any time, move the court where the action is pending to dissolve,

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is needed to establish that there has been a substantial change in the law and the Court's injunction is now founded on superseded law." (internal quotation marks and citations omitted)).

[5] Further demonstrating how broad the Federal Rules are in allowing for relief from judgments, they include a catchall allowing for relief from judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

vacate or modify it." (emphasis added)). That case does not remotely imply any doctrine that would permit, still less require, vacating a *permanent* injunction based on a change in the law. *See PIC USA v. N. Carolina Farm P'ship*, 672 N.W.2d 718, 723 (Iowa 2003) ("permanent injunctions are those granted as part of a final judgment, while temporary injunctions are those granted at any prior stage of the proceedings" (internal quotation marks omitted)); *see also* Iowa R. Civ. P. 1.1501 ("An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction.").

Not only does the State's Motion lack legal support, but the novel legal approach it proposes would be especially inappropriate here, where the statute at issue was declared unconstitutional in a final judgment. The Iowa Constitution provides "[t]his constitution shall be the supreme law of the state, and any law inconsistent therewith, *shall be void*." Iowa Const., Art. XII, § 1 (emphasis added). Based on this provision, when a statute is ruled unconstitutional, it is treated essentially as if it had not been passed. Sec. *Sav. Bank of Valley Junction v. Connell*, 198 Iowa 564, 200 N.W. 8, 10 (1924). This Court recognized this in declaring the 6-week Ban "unconstitutional and therefore void." MSJ Ruling at 8 (citing Iowa Const., Art. XII, § 1).

As the Iowa Supreme Court has explained, an unconstitutional legislative act "'is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, *as inoperative as though it had never been passed*.' 'Where a statute is adjudged to be unconstitutional *it is as if it had never been*.'" *Sec. Sav. Bank of Valley Junction*, 200 N.W. at 10 (string citing authorities) (emphasis added) (internal citations omitted); *cf. State ex rel. Stenberg v. Murphy*, 247 Neb. 358, 365, 527 N.W.2d 185, 192 (1995); *McGuire v. C & L Rest. Inc.*, 346 N.W.2d 605, 614 (Minn. 1984); *Lovgren v. Peoples Elec. Co.*, 380 N.W.2d 791, 795 n.6 (Minn. 1986). "In such cases the law, so–called, is not a law at all." *Bonnett v. Vallier*, 136 Wis.

193, 116 N.W. 885, 887 (1908). There can be no dispute that Iowa Code section 146C.2 was unconstitutional when enacted and so is void and "as inoperative as though it had never been passed." *Sec. Sav. Bank of Valley Junction*, 200 N.W. at 10. The State provides absolutely no support for reviving a statute that has been declared void.[6]

In light of the absence of any binding authority suggesting a court may vacate a permanent injunction based on a change in law, the Court should decline the invitation to do so here to vacate an injunction that would render the Ban—declared unconstitutional and void—enforceable. If the State wishes to ban abortion at six weeks LMP and believes it has the authority to do so consistent with the Constitution, it may instead petition the current Iowa Legislature to pass such a law now, rather than attempting to revive a law that was clearly unconstitutional and void at the time it was passed by an earlier legislature.

C. The State Has Not Met its Burden of Showing that the Permanent Injunction Is No Longer Warranted

Even if the State could overcome the jurisdictional bar set forth above and a change in law could in some situations justify vacating a permanent injunction in Iowa—it cannot—there is no basis at all to disturb *this* four-year-old injunction, which continues to be required by the Iowa Constitution.

As an initial matter, given the unprecedented nature of the State's request, it is not even clear what standard the Court should apply in considering the State's Motion. If the Court were to

[6] This situation is not remotely comparable to the cases involving changes of fact regarding private interests like nuisance, for an additional reason. *See, e.g.*, *Helmkamp*, 249 N.W.2d 655. Here, democratic interests are at stake. The Iowa Constitution dictates how the people of Iowa elect their representatives who enact laws. *See* Iowa Const., Art. III. The time restriction to vacate a final judgment under Iowa Rule 1.1013 protects against executive branch overreach and seeking to revive laws that have been enjoined for years and which may no longer have the support of a majority of the legislature to pass again. If a majority of the current legislature supports the law, it can simply pass such a law; the executive, years later, cannot press a court to legislate by fiat in ruling on a motion to vacate.

apply the standard applied in Iowa case law concerning changed factual circumstances, the Court retains discretion to deny such motions. *Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 769 (Iowa 2019). Further, in that case law, Iowa courts consider whether the movant has established that a basis for the injunction no longer exists. *See Helmkamp*, 249 N.W.2d at 656–57.[7] The State concedes that would be its burden were the Court to extend this case law to permanent injunctions issued pursuant to subsequently-overruled law. State Br. at 13.

The State has not and cannot make that showing. The Iowa Supreme Court held clearly in *PPH IV*: "the *Casey* undue burden test we applied in *PPH I* remains the governing standard," *PPH IV* at 716; *id*. ("[A]ll we hold today is that the Iowa Constitution is not the source of a fundamental right to an abortion necessitating a strict scrutiny standard of review for regulations affecting that right."). The U.S. Supreme Court decision in *Dobbs* does not change that the undue burden test remains the appropriate test to apply in Iowa. Indeed, in *PPH IV*, the Iowa Supreme Court noted that the opinions of the U.S. Supreme Court could *inform* how the Iowa Supreme Court should rule, but also made clear that it "zealously guard[s] [its] ability to interpret the Iowa Constitution

[7] The State cites only federal law to argue that the Court has authority to vacate the injunction because "the permanent injunction this Court previously issued is now 'founded on superseded law.'" State Br. at 7 (quoting *Toussaint v. McCarthy*, 801 F.2d 1080, 1090 (9th Cir. 1986)). *But see Toussaint*, 801 F.2d at 1085–86, 1091 n.7 (involving direct appeal of a permanent injunction, not a motion to vacate). Even under the far more permissive federal rule, relief from judgment "is an extraordinary remedy," requiring "exceptional circumstances . . . to justify intrusion into the sanctity of a final judgment." *Watkins v. Lundell*, 169 F.3d 540, 544 (8th Cir. 1999) (internal quotation marks omitted). Federal courts addressing Rule 60(b)(5) motions to modify or vacate a permanent injunction require a showing that changed circumstances cause the injunction to be unjust, *Keith v. Mullins*, 162 F.3d 539, 540–41 (8th Cir. 1998), such that continuing the injunction would be inequitable. Fed. R. Civ. P. 60(b)(5). The question in such a case is whether the trial courts' original judgment "rests upon a legal principle that can no longer be sustained." *Agostini*, 521 U.S. at 238. Thus, even federal standards would not warrant vacating the injunction here.

independently of the Supreme Court's interpretations of the Federal Constitution." *Id*. at 716, 745–46.

The Iowa Supreme Court chose not to wait for *Dobbs* to issue its decision setting an undue burden standard. And after the U.S. Supreme Court's decision in *Dobbs*, the State petitioned the Iowa Supreme Court in *PPH IV* for rehearing in an effort to convince the Court to establish rational basis as the new standard of review in abortion rights cases. *(PPH IV*, July 1, 2022 State Pet. for Reh'g.) The Iowa Supreme Court summarily rejected this invitation to set a new and lower standard of review than the federal undue burden standard applied in *PPH I*. (*PPH IV*, July 5, 2022, Order on Pet. for Reh'g.) Thus, the State's effort to now extend *Dobbs* to Iowa and declare that rational basis should be the standard under the state constitution, despite the Iowa Supreme Court rebuffing similar arguments of the State after *Dobbs*, is misplaced and inappropriate. Only the Iowa Supreme Court's precedent would be material in assessing whether there has been a change in Iowa constitutional law substantial enough to justify granting the extraordinary relief sought. *Cf. Agostini*, 521 U.S. at 238. Iowa case law has not produced such a material change.

While the State spends pages arguing that rational basis should apply, this case is not the appropriate vehicle for this argument. And to the extent the State suggests that the undue burden test was to be applied only in *PPH IV* on remand and not to other challenges to abortion laws, State Br. at 21, this is inaccurate. The Court expressly held that the undue burden test remains the governing standard for regulations affecting the right to abortion. *PPH IV* at 716. Importantly, the State does not even argue that the injunction should be vacated under the undue burden standard, as it must concede that a ban on nearly all abortion—like the one at issue here—violates that standard.

With undue burden as the appropriate standard to apply to abortion laws in Iowa, there is plainly no basis for disturbing the injunction in this case. In its ruling on Plaintiffs' motion for summary judgment, this Court held that the 6-week Ban was unconstitutional as a prohibition of previability abortions. MSJ Ruling at 7–8. While applying the strict scrutiny standard then in effect, the Court also held that its decision was buttressed by federal cases that ruled that previability gestational age bans did not satisfy the Casey undue burden standard—i.e., the standard that is left in place in Iowa by *PPH IV*—either. See MSJ Ruling at 6–7 (citing federal cases holding pre-viability gestational age bans unconstitutional under the undue burden standard).

Indeed, in *PPH I*, the Court observed that "[i]f the state's interest is to advance fetal life, '[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'" 865 N.W.2d at 263 (quoting *Casey*, 505 U.S. at 878, 112 S.Ct. at 2821, 120 L.Ed.2d at 715). *Casey* further observed that "[r]egardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Casey*, 505 U.S. at 879 (plurality opinion). As this Court previously found, this ban on abortions at 6 weeks "would probably require women to engage in a level of diligence resembling something along the lines of 'mov[ing] heaven and earth.'" MSJ Ruling at 7 (quoting *PPH II* at 240). Obviously such a ban has the purpose *and* effect of "plac[ing] a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability," *Casey*, 505 U.S. at 878, and prohibits women "from making the ultimate decision to terminate [their] pregnancy before viability." *Id* at 879. Indeed, every federal court to apply the *Casey* undue burden standard to a pre-viability gestational age ban found the ban to violate that standard. *See, e.g., Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265, 274 (5th Cir. 2019) (striking down

15-week ban) ("The Act is a ban on certain pre-viability abortions, which Casey does not tolerate . . . ."), *rev'd and remanded*, 142 S. Ct. 2228 (2022); *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 772–73 (8th Cir. 2015), *cert. denied*, 577 U.S. 1119 (2016) (6-week ban); *Edwards v. Beck*, 786 F.3d 1113, 1117–19 (8th Cir. 2015), *cert. denied*, 577 U.S. 1102 (2016) (12-week ban); *Isaacson v. Horne*, 716 F.3d 1213, 1217, 1231 (9th Cir. 2013), *cert. denied*, 571 U.S. 1127 (2014) (20-week ban); *Jane L. v. Bangerter*, 102 F.3d 1112, 1117–18 (10th Cir. 1996) (20-week ban); *Sojourner T. v. Edwards*, 974 F.2d 27, 29, 31 (5th Cir. 1992) (total ban); *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1368–69, 1371–72 (9th Cir. 1992) (total ban); *Robinson v. Marshall*, No. 2:19-cv-365-MHT, 2019 WL 5556198, at *3 (M.D. Ala. Oct. 29, 2019) (total ban); *Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796, 800–04 (S.D. Ohio 2019) (6-week ban); *Bryant v. Woodall*, 363 F. Supp. 3d 611, 630–32 (M.D.N.C. 2019) (20-week ban).

Accordingly, even if the Motion was procedurally proper, there is no basis to disturb this injunction. The current standard to apply to an abortion restriction is the undue burden standard, and that standard and decisions applying it were considered in, and are consistent with, this Court's prior judgment. Vacating the injunction would wrongly eliminate the right of Iowans to obtain previability abortions despite the Iowa Constitution continuing to protect abortions under the undue burden standard. Equity demands that this injunction remain in place.

II. Alternative Relief Should Be Denied

The parties agree that no further factual development is needed to resolve this Motion. Indeed, the only questions at issue are purely legal: (1) whether Iowa law permits modification of a permanent injunction for change of law and (2) assuming it does, whether the State has met its burden of showing that the injunction is no longer justified. However, the State goes on to request that if factual development is ordered, the Court should "dissolve the injunction temporarily while that occurs." State Br. at 27. The State cites only inapposite cases involving motions for temporary

injunction to support its position, apparently seeking to put the burden on Plaintiffs to maintain the injunction. *See id.* at 27–28 (citing *Beidenkopf v. Des Moines Life Ins. Co*., 160 Iowa 629, 142 N.W. 434, 437 (Iowa 1913); *Iowa State Dep't of Health v. Hertko*, 282 N.W.2d 744, 752 (Iowa 1979)). This is wholly inappropriate, as any modification of the injunction requires the State to satisfy its burden, which it has not done. Furthermore, vacating the permanent injunction, even temporarily, would violate the rights of Iowans. Accordingly, the State's request for this alternative relief should be denied.

CONCLUSION

For the foregoing reasons, the State's Motion to Dissolve the Permanent Injunction should be denied in its entirety.

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