IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

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| PLANNED PARENTHOOD OF THE HEARTLAND, INC., *et al.*,<br><br>Petitioners,<br><br>v.<br><br>KIM REYNOLDS *ex rel.* STATE OF IOWA, *et al.*,<br><br>Respondents. | Equity Case No. EQCV081855<br><br>**PETITIONERS' REPLY IN FURTHER SUPPORT OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT AND RESISTANCE TO RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT** |

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## INTRODUCTION

Petitioners brought the instant Motion for Summary Judgment to permanently enjoin Amendment H-8314 ("the Amendment") to House File 594, 2020 Iowa Acts ch. 1110 (codified at Iowa Code § 146A.1(1) (2020)) ("the Act"), on the basis that the Amendment violates the Iowa Constitution's single subject rule, Due Process Clause, and Equal Protection Clause. *See generally* Mem. in Supp. of Pet'rs' Mot. for Summ. J. ("Pet'rs' Br."). Respondents filed a Resistance and Cross-Motion for Summary Judgment on the issue of the single subject requirement. *See generally* Resistance to Pet'rs' Mot. for Summ. J. and Br. in Supp. of Resp'ts' Cross-Mot. for Partial Summ. J. ("Resp'ts' Br."); Resp'ts' Cross-Mot. for Partial Summ. J. ("Resp'ts' Cross-Mot."). There are no issues of material fact in dispute. *See* Resp'ts' Cross-Mot. at ¶ 5; Resp'ts' Statement of Disputed Material Facts (not disputing any facts contained in Petitioners' Statement of Undisputed Material Facts ("SUF"), objecting only to ¶¶ 8–25 as characterizations of a prior case). As a matter of law, Petitioners are entitled to summary judgment, and Respondents' Motion should be denied.

## I. THE ACT VIOLATES THE SINGLE SUBJECT REQUIREMENT

"[T]o pass constitutional muster[,] the matters contained in [any given] act must be germane." *See State v. Mabry*, 460 N.W.2d 472, 474 (Iowa 1990). As the Amendment is not germane to the remainder of the Act, it violates the single subject rule and should be struck.

### A. The Act Contains More Than One Subject

The Amendment, which imposes a 24-hour mandatory delay and extra trip requirement on Iowans seeking an abortion, is indisputably not germane to the Act's other provisions. The Court need not take Petitioners' word on the issue, because the legislature

has already made this exact determination. *See* SUF ¶ 45; Ruling, June 30, 2020 ("TI Order") at 15 (noting that the Speaker of the Iowa House, a member of the same political party that sponsored the 24-hour waiting period amendment, ruled that that the amendment was not germane when it was challenged on that basis). Contrary to Respondents' argument that the germaneness of the provision is "fairly debatable," Iowa legislators agreed that there was no debate on the issue of germaneness. *Contra* Resp'ts' Br. at 4 (quoting *Utilicorp United Inc. v. Iowa Utils. Bd.*, 570 N.W.2d 451, 454 (Iowa 1997); *but see* SUF ¶ 45. Because the lack of a single subject was not fairly debatable, the House Rules had to be suspended entirely—thus suspending the germaneness requirement—in order for the 24-hour waiting period amendment to pass. *See* SUF ¶¶ 45–46.

Respondents point to *Long v. Board of Supervisors of Benton County*, 142 N.W.2d 378 (Iowa 1966) to argue that the germaneness of the bill at the time it passed is irrelevant to the question of whether the combined bill has a single subject. Resp'ts' Br. at 6. *Long*, however, supports the opposite proposition, stating that the single subject rule, by "limiting each bill to one subject[,] means that extraneous matters may not be introduced into consideration of the bill by *proposing amendments not germane* to the subject under consideration." *Long*, 142 N.W.2d at 382 (emphasis added) (citation omitted); *see also Godfrey v. State*, 752 N.W.2d 413, 426 (Iowa 2008) ("[T]he single-subject rule 'prevents attachment of undesirable "riders" on bills certain to be passed because of their popularity or desirability.'" (quoting 1A Norman J. Singer, *Statutes and Statutory Construction* § 17:1, at 5–6 (6th ed. 2000))).

Respondents further argue that the fact that the Act's differing subjects do not relate to one another is immaterial, as both fall under the "expressly identified general subject of

'medical procedures'" or alternatively, "healthcare in general; the parent-child relationship; the protection of the health and safety of Iowans; or the protection of human life." Resp'ts' Br. at 4–5 (footnote omitted). But the case Respondents cite, *Miller v. Blair*, involves provisions substantially more similar than those at issue here. *See* 444 N.W.2d 487, 488–90 (Iowa 1989) (holding that bill including economic development incentives and revenue adjustments all related to the single subject of promoting economic development). Indeed, Respondents cite to no cases, nor could they, where topics as disparate as those contained within the Act have been upheld against a single subject challenge. *Cf. Utilicorp United Inc.*, 570 N.W.2d at 455 (upholding statute where all provisions amended portion of Iowa Code regulating rates and services of public utilities, where the combination of provisions was "eminently logical" and "not surprising"); *Long*, 142 N.W.2d at 382 (holding that statutory provisions related to the compensation and work duties of certain officers were part of a single subject because "'[c]ompensation' . . . implies payment for services rendered").

Indeed, Iowa courts have struck down provisions much more closely related to their underlying bills than the Amendment. For example, in *State v. Taylor*, the Iowa Supreme Court struck down a provision relating to weapons trafficking in a bill otherwise largely concerned with juvenile justice issues. 557 N.W.2d 523, 526 (Iowa 1996). The Court rejected the state's argument "that *any* weapons law could have an impact on juveniles and, hence, [the challenged provision] is 'in some reasonable sense auxiliary to' juvenile justice." *Id.* In so doing, the Court noted that "[s]uch reasoning would bring within its orbit virtually *any* new crime whether germane to the subject of juvenile justice or not." *Id.* Moreover, the Court struck down the challenged provision despite the fact that juvenile

justice and weapons trafficking could conceivably fall under the vague umbrella subjects of "crime," "the protection of the health and safety of Iowans," or "the protection of human life."

Similarly in *Giles v. State*, the Court struck down a provision affecting the procedures by which prisoners could challenge certain state action in a bill otherwise containing routine statutory corrections. 511 N.W.2d 622, 626 (Iowa 1994). The challenged provision changed only two words (replacing "the applicant" with "a party"). *Id.* at 624. Nevertheless, the Court rejected a contention that the provision constituted only a "minor revision" or correction of a "technical defect," and therefore held that the provision was invalid under the single subject rule. *Id.* at 625; *see also W. Int'l & Nat'l Union Fire Ins. Co. v. Kirkpatrick*, 396 N.W.2d 359, 361, 364–66 (Iowa 1986) (striking down change in workers compensation appeals process as part of an act that sought to "adjust and correct earlier omissions and inaccuracies, remove inconsistencies, and reflect or alter current practices").

Like the provisions struck down in *Taylor*, *Giles*, *and Western International*, the Amendment fails the single subject test set forth by *Mabry*: that "all matters treated [within the act] should 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 (alterations and ellipses in original) (quoting *Long*, 142 N.W.2d at 381). Just as the legislature's passing of a bill involving juvenile justice and weapons trafficking in *Taylor* did not "broad[en]" the bill's subject to "crime;" and just as the combination of topics in *Giles* did not broaden the bill's subject to "statutory revisions;"

so too the passage of the Amendment here did not broaden the subject of a bill relating to judicial authority over life-support decisions for minors to "healthcare in general."

### B. In Passing the Amendment, the Legislature Resorted to Precisely Those Legislative Irregularities the Single Subject Rule Exists to Prevent

The single subject rule exists to "prevent[] logrolling," "prevent[] surprise when legislators are not informed" and "keep[] the citizens of the state fairly informed of the subjects the legislature is considering." *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) ("*Constitutional Form*")). The Amendment's passage entailed each of these problems—the Amendment was logrolled with other legislation; legislators were surprised; and the overwhelming majority of Iowa voters only learned of the proposed legislation after it had already become law. Each of these problems supports the conclusion that the Amendment must be struck.

#### *1. The Act's Passage Entailed "Logrolling"*

The single subject rule exists to prevent legislators from bundling unfavorable legislation with favorable legislation, thereby passing unpopular laws which would not otherwise become law, in a tactic known as "logrolling." *See id.*; *see also Long*, 142 N.W.2d at 382 ("universally-recognized purpose of the one-subject rule is to prevent 'log-rolling'").

Respondents argue that the passage of the Amendment involved no logrolling by simply ignoring the definition of logrolling Petitioners have alleged. Respondents refer only to one specific form of logrolling, wherein two unpopular bills are combined to obtain majority support. *See* Resp'ts' Br. at 7. Petitioners' claim, however, concerns an entirely different type of logrolling wherein "unfavorable legislation rides in with more favorable

legislation." *Mabry*, 460 N.W.2d at 473 (citing *Constitutional Form*); *see also* TI Order at 14; *Giles*, 511 N.W.2d at 625 ("the single-subject requirement discourages 'logrolling' (the passage of unfavorable legislation on the coattails of more favorable proposals)" (citing *Mabry*, 460 N.W.2d at 473)).

Specifically, Petitioners argue that the Amendment, which concerns a politically controversial topic, was purposefully combined with the rest of the Act, which concerned uncontroversial subject matters. In issuing a temporary injunction, this Court noted that such logrolling likely occurred, writing:

> [T]here certainly [is] some evidence in the limited record before the Court that ultimately may support a finding of "logrolling," since the Amendment was attached to what would likely be a non-controversial provision regarding withdrawal of life-sustaining procedures from a minor child . . . .

TI Order at 14. Respondents point to nothing that would contradict the Court's reasoning, nor can they dispute that the Amendment concerns a more controversial topic than the remainder of the Act. Instead, Respondents claim that no logrolling occurred because "[a]ll legislators had a chance to vote up or down on whether to broaden the subject of the bill." Resp'ts' Br. at 7. By this logic, however, the Constitution would not need to protect against legislative logrolling since any bill that becomes law, by definition, has been voted on by the legislature. Because such a reading of the single subject rule would render the rule superfluous, it must be rejected. *See Godfrey v. State*, 898 N.W.2d 844, 875 (Iowa 2017) (refusing to apply rule where it would render portion of Iowa Constitution superfluous).

Respondents also fail to note that the Senate vote on the Amendment happened at 5:34 a.m., after an all-night legislative session and after only 30 minutes of debate on the Amendment, with no input from the public. *See* S. Journal, 88th G.A., 2d. Sess., at 841–42 (Iowa 2020). Moreover, as noted by Sen. Wessel-Kroeschell, because the Amendment was

"double-barrelled" (introduced as an amendment to an amendment), no modifications of the Amendment could even be considered by the Senate. *See* App. in Supp. of Pet'rs' Mot. for Summ. J. ("P. App.") 008–09. The House vote on the Amendment occurred at 10:54 p.m., after only 34 minutes of debate. *See* Iowa Legislature, *House Video (2020-06-13)* at 10:54:43 p.m., https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20200613100758317&dt=2020-06-13&offset=598&bill=HF%20594&status=i; *see also* H. Journal, 88th G.A., 2d. Sess., at 759–60 (Iowa 2020). Both chambers only learned of the existence of the Amendment earlier that same afternoon. *See* SUF ¶¶ 38–40.

Respondents argue that Petitioners have proffered no evidence that the Amendment passed only because it was bundled with more favorable legislation. Resp'ts' Br. at 7. Even if such evidence were required to prevail on a single subject challenge,[1] contrary to Respondents' suggestion, Petitioners have provided uncontroverted evidence that five other abortion-related bills that were not logrolled—most less onerous than the 24-hour waiting period and two trip requirement contained in the Amendment—failed to pass on their own. *See* SUF ¶¶ 60, 71–72. Indeed, most failed to even make it to a hearing, and those that did faced substantial and vocal public opposition. *Id.*; *see also* P. App. 013.

The single subject rule exists to "prevent riders from being attached to bills that are popular and so certain of adoption that the riders will secure adoption, not on their own merits, but on the merits of the measure to which they are attached." *Long*, 142 N.W.2d at

[1] The very case Respondents rely on identifies a logrolling problem so long as legislators might "perhaps" have voted differently had the provisions not been combined. *Id.* (citing *Long*, 142 N.W.2d at 382). Indeed, once a provision like the Amendment has successfully evaded all the usual avenues for public notice, hearings, and media attention, it becomes impossible to prove the hypothetical that such a provision *could not* have passed but for the logrolling. It is precisely this uncertainty that the single subject rule was intended to avoid.

382. Where, as here, a single-subject violation results in logrolling, the logrolled provision must be struck down as unconstitutional.

*2. The Amendment Caused Surprise to Legislators and the Public*

As the Iowa Supreme Court has held, the single subject rule also "facilitate[s] the legislative process by reducing surprise . . . when legislators are uninformed." *Taylor*, 557 N.W.2d at 525 (citing *Mabry*, 460 N.W.2d at 473). The undisputed evidence in the record shows that at least some legislators were surprised by the last-minute addition of the Amendment. *See* SUF ¶ 57; P. App. 011 (ranking member of the subcommittee that likely would have held hearings on and voted on the Amendment saying that "the way H-8314 was introduced into both chambers of the legislature . . . caught me and other legislators by surprise"); *see also* TI Order at 14. The Amendment came as a surprise not only to legislators, but also to well-informed and active advocates on reproductive access issues, including the Executive Director of the Interfaith Alliance of Iowa Action Fund. *See* SUF ¶¶ 7, 59, 65–70.

Without any forewarning that the Amendment was going to be introduced at the eleventh hour on the last night of the legislative session, legislators were unable to solicit feedback from the public, and the public was unable to educate lawmakers about the public opinion on the Amendment or the Amendment's likely effects. SUF ¶¶ 47, 57, 61–70.

More concerningly, in arguing that Iowa voters unhappy about the Amendment "are free to make that political case to legislators," *see* Resp'ts' Br. at 7, Respondents ignore the following facts, as set forth in this Court's prior order:

> [T]he circumstances surrounding the passage of the Amendment in this case, as set forth in the limited record available to the Court at this stage of litigation, appear to show that the Amendment was passed under highly unusual circumstances, including the speed at which the Amendment was passed. Abortion is, under any analysis, a polarizing and highly

> controversial topic, yet the Amendment was passed with limited to no debate, and without Iowans being given a chance to resond to the Amendment. As Respondents acknowledge, most Iowans would have been asleep by the time the Amendment was passed in its final form.

TI Order at 14; *see also* SUF at ¶¶ 36–70. It is worth noting that nothing in the record available to the Court at the time of the temporary injunction order has changed or been either challenged or controverted by Respondents. *See* Resp'ts' Statement of Disputed Material Facts.

Thus, the vast majority of Iowa voters were not only unable to educate legislators about public opinion on the Amendment or its likely effects, but they were also shut out of the legislative process entirely, learning of the 24-hour waiting period only after it had already become law. But the Iowa Constitution requires more than the ability to register one's objections *after* a bill has passed. It requires that "citizens of the state [be] fairly informed of the subjects the legislature is considering," *before* a bill becomes law. *Mabry*, 460 N.W.2d at 473 (citing *Constitutional Form*).

## II. RESPONDENTS ARE PRECLUDED FROM RELITIGATING *PPH II*

Summary judgment is also appropriate for Petitioners because the Amendment is unconstitutional under *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018) ("*PPH II*"), and Respondents are barred from relitigating that case. The doctrine of issue preclusion "serves a dual purpose: to protect litigants from the vexation of relitigating identical issues with identical parties or those persons with a significant connected interest to the prior litigation, 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) (internal quotation marks omitted) (quoting *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 571–72 (Iowa 2006)). While

Respondents argue that the standard is "heightened" in cases where, as here, issue preclusion is used offensively, Resp'ts' Br. at 8 (citing *Emps. Mut. Cas. Co.*, 815 N.W.2d at 22), the Iowa Supreme Court has been clear that it "allow[s] 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)). Respondents have provided neither argumentation nor evidence to support a finding that either circumstance applies here.

As this Court previously noted, "[t]he Iowa Supreme Court already has made several determinations regarding mandatory delay laws and the obstacles they present to individuals seeking abortions, and these same parties had a full and fair opportunity to litigate those issues." TI Order at 15 (citing *PPH II*, 915 N.W.2d 206). For precisely those reasons, issue preclusion bars Respondents from re-litigating the issues which were fully and finally adjudicated in *PPH II* only three years ago.

The provision at issue here is identical to that litigated in *PPH II* but for the fact that the term "seventy-two" was replaced with "twenty-four." *See* Pet'rs' Br. at 3. Had the Iowa Supreme Court struck down the prior law solely because it imposed too lengthy a waiting time on women, Respondents' arguments against preclusion would carry more weight. However, the Court struck down the prior law because its purported purpose was not served by a mandated waiting period:

> In truth, the evidence *conclusively demonstrates* that the Act will not result in a measurable number of women choosing to continue a pregnancy they would have terminated without a mandatory 72-hour waiting period.

*PPH II*, 915 N.W. 2d at 242 (emphasis added); *see also id.* at 216–18. This holding was based on a substantial record, including research focused on 24-hour waiting periods. There

is no reason to believe, and Respondents offer none, that a one-day waiting period is *more* likely to improve decision-making than a three-day waiting period.[2]

Not only did the Court find that the waiting period did not serve its ostensible purpose, it also held that the burdens the law imposed resulted from its requirement of two separate trips to a health center, rather than from the precise degree of delay mandated between those trips:

> Moreover, the burdens imposed on women by the waiting period are substantial, especially for women without financial means. Under the Act, patients will need to make two trips to a PPH clinic since it is likely they would not be readily able to obtain certification from a local, non-PPH provider. The Act requires poor and low-income women, which is a majority of PPH patients, to amass greater financial resources before obtaining the procedure. Patients will inevitably delay their procedure while assembling the resources needed to make two trips to a clinic.

*PPH II*, 915 N.W. 2d at 242. The same is true of the Amendment. *See* SUF ¶¶ 15–24, 26, 28–29.

The underlying facts at issue in this case have thus already been both fully litigated and finally adjudicated. Respondents offer no reason why the substantial factual findings made by the Iowa Supreme Court only three years ago, which were based on the overwhelming expert social scientific consensus, should be ignored and re-litigated. The only changes in circumstance Respondents can point to is the global COVID-19 pandemic, though Respondents offer no reason why the pandemic would make waiting periods *more* likely to change a woman's mind, nor why the pandemic would make a two-trip requirement *less* burdensome (as opposed to more burdensome, as Plaintiffs' evidence

[2] Respondents do not argue, nor could they, that the state interest in the 24-hour waiting period is different from that in the 72-hour waiting period. *See generally* Resp'ts' Br.; *see also* SUF ¶¶ 30, 48.

reflects, *see* SUF ¶ 22 n.1).[3] Ultimately, at issue here are two statutes with virtually identical language; applied to the same people (abortion providers and, by extension, Iowans seeking abortions); justified by the same state interest; and which are subject to the same constitutional requirements.

The factual and legal issues are thus identical and Respondents are precluded from re-litigating them. The cases on which Respondents rely are not to the contrary, as none involves issues nearly as similar as those presented here. *See State v. Seager*, 571 N.W.2d 204, 207–09 (Iowa 1997) (finding that issue preclusion does 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, 139–40 (Iowa 1988) (noting that issue preclusion does not apply to a new alleged violation based on new facts); *Estate 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); *see also Emps. Mut. Cas. Co.*, 815 N.W.2d at 22 (holding issue preclusion applies to prior *Alford* plea because "factual basis" for plea has been determined by trial court).

The same is true of the Respondents' cited cases from other jurisdictions.[4] For example, Respondents rely on *Planned Parenthood of Montana v. Montana*, 342 P.3d 684

[3] Respondents repeatedly refer to the "fluid" nature of the "abortion industry," without explaining what they mean or how the supposed "fluidity" they identify matters to the case. *See* Resp'ts' Br. at 10.

[4] None of the cases Respondents rely on from other jurisdictions support their position that any difference in a new statute, however irrelevant to that statute's legality, saves it from issue preclusion. *See Yeoman v. Commonwealth of Ky., Health Pol'y Bd.*, 983 S.W.2d 459, 465–66 (Ky. 1998) (noting prior statute included multiple provisions not included in subsequently challenged statute); *Am. Trucking Ass'ns, Inc. v. Conway*, 566 A.2d 1323, 1327–28 (Vt. 1989) (noting that second challenged provision "involves a

(Mont. 2015). In that case, issue preclusion did not apply because, not only were the two statutes in question different, but they were different in a way that went straight to heart of the constitutional question—whether an abortion restriction was narrowly tailored to achieve a compelling state interest. *Id.* at 155–57 (noting that the second statute's parental notification requirement applied only to younger minors, that "[i]t is axiomatic that the younger a minor is the more protection she may require," and that second statute lowered legal barrier to judicial bypass procedure).[5] The provision at issue here, by contrast, cannot fix the fundamental constitutional flaw identified by the Iowa Supreme Court when it invalidated the 72-hour law: that mandatory delay laws do not advance any state interest in improving patient decision-making. *PPH II*, 915 N.W.2d at 241 ("[A]n objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period."). Nor does the new mandatory delay law sweep more narrowly; like the 72-hour law, it "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" and, by failing "to target patients who are uncertain

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wholly separate scheme of taxation having an impact only on trucks from the [certain states]" and that "evidence needed to support this challenge is sufficiently different" from that involved in prior challenge); *Bushco v. Shurtleff*, 729 F.3d 1294, 1301–02 (10th Cir. 2013) (in case concerning void-for-vagueness challenge, noting second challenged statute was narrower and clearer); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471, 479 (5th Cir. 2002) (noting "special circumstance" where city government conducted "considerable study and fact-finding," which it had not done prior to first ordinance's passage).

[5] In any event, Montana law on issue preclusion differs substantially from Iowa law. For example, Montana law still requires mutuality or privity of parties, a requirement abandoned by Iowa courts forty years ago. *Compare Hunter*, 300 N.W.2d at 125 ("[O]ffensive application of the doctrine of issue preclusion should not invariably be precluded where mutuality of parties is lacking."), *with Planned Parenthood of Mont.*, 342 P.3d at 686 (listing mutuality or privity of parties as an element of issue preclusion).

when they present for their procedures," thereby "imposes blanket hardships upon all women." *Id.* at 243. The Amendment here addresses *none* of the overbreadth issues identified by the Court—instead, it simply copied the prior statute *verbatim* but for replacing "seventy-two" with "twenty-four."

Finally, Respondents argue that "[c]ourts should be particularly cautious in applying issue preclusion in constitutional adjudication." Resp'ts' Br. at 8. Respondents cite no Iowa cases in support of this proposition, *see id.*, nor could they, as Iowa courts have not shied away from applying issue preclusion when appropriate to constitutional issues. *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). Moreover, the cases Respondents cite from other jurisdictions are inapposite. *Cf. Montana v. United States*, 440 U.S. 147, 162 (1979) (noting that issue preclusion may not apply to "successive actions involving *unrelated subject matter*" (emphasis added)); *Yeoman*, 983 S.W.2d at 466 ("[I]ssue preclusion cannot apply, because the issue we are faced with in the instant case is not identical to the one in the previous case."); *Gold v. DiCarlo*, 235 F. Supp. 817, 820 (S.D.N.Y. 1964) (holding issue preclusion did not apply with respect to a 37-year-old U.S. Supreme Court decision which had been "completely repudiated" including by the Court itself).

## CONCLUSION

For the foregoing reasons and those set forth in Petitioners' prior briefing, Petitioners respectfully request that this court grant Petitioners' Motion for Summary

Judgment, permanently enjoin Respondents from enforcing the Amendment, and deny Respondents' Cross-Motion.

Respectfully submitted,

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