Supreme Court No. 19–1197
Polk County Case No. EQCE084567

IN THE SUPREME COURT OF IOWA

MIKA COVINGTON, AIDEN DELATHOWER, and ONE IOWA, INC.,

Petitioners–Appellants,

v.

KIM REYNOLDS *ex rel.* STATE OF IOWA, and IOWA DEPARTMENT OF HUMAN SERVICES,

Respondents–Appellees.

Appeal from the Iowa District Court for Polk County
Honorable David Porter, District Court Judge

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ARGUMENT

I. Appellants' claims are ripe.

The district court incorrectly held that the claims asserted by Appellants Mika Covington ("Ms. Covington"), Aiden DeLathower (Vasquez) ("Mr. Vasquez"), and One Iowa Inc. ("One Iowa") (together, "Appellants") are not ripe. (*See* 7/18/19 Order 10–11).

Appellants' five claims—that Division XX of House File 766 (the "Division") violates equal protection in two ways, facially and because it was motivated by an improper legislative purpose; violates Iowa's Single-Subject and Title Rules; and violates Iowa's Inalienable-Rights Clause—are ripe. As set forth fully in Appellants' opening brief, these claims require no further factual development, they are not speculative, and withholding adjudication will cause Appellants significant hardship. (Appellants' Br. 57–67).

Appellees Kim Reynolds *ex rel.* the State of Iowa, and the Iowa Department of Human Services ("DHS") (together, the "State"), fail to address Appellants' arguments on any of these points in their brief and cite no contrary authority. As a result, the State has waived its opposition to these points. Iowa R. App. Pro. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."); Iowa R. App. Pro. 6.903(3) ("If the appellee files a brief, the brief shall conform to the requirements of

rule 6.903(2).”); *see also Dolezal v. City of Cedar Rapids*, 326 N.W.2d 355, 360 (Iowa 1982) (appellees’ failure to cite authority for their argument “render[ed] it waived”)

Rather than respond to Appellants’ actual arguments regarding ripeness, the State, as the district court did below, treats Appellants’ challenge to the Division as if it were a challenge to section 441-78.1(4) of the Iowa Administrative Code (the “Regulation”), which this Court invalidated. *Good v. Iowa Dep’t of Human Servs.*, 924 N.W.2d 853 (Iowa 2019). Specifically, the State argues that Appellants are barred from pursuing their challenge because they have not exhausted various administrative remedies. (Appellees’ Br. 12–15). In doing so, the State fails to address the authorities in Appellants’ brief demonstrating that the administrative remedies proposed by the State cannot reach the Division, which is a legislative action, not an agency action. (Appellants’ Br. 48–52).

The State likewise fails to explain how any administrative process could invalidate the Division. (*See* Appellees’ Br. *passim*). Nor does the State address Appellants’ argument that administrative remedies need not be exhausted because they would be futile. (*See* Appellants’ Br. 52–53) (citing, *inter alia*, *Sioux City Police Officers Ass’n v. City of Sioux City*, 495 N.W.2d 687, 693 (Iowa 1993)).

With respect to the State's renewed suggestion that Appellants must seek an administrative waiver from the discriminatory Regulation (Appellees' Br. 15), the State makes no attempt to rebut the authorities cited by Appellants demonstrating that they are *not* required to file a petition for rulemaking or request an administrative waiver. (*See* Appellants' Br. 54–57). Nor does the State provide any assurance that it actually would grant Appellants a waiver if they sought one, even if a waiver could provide relief on Appellants' five constitutional claims, which it cannot. (Appellants' Br. 56) (citing *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1040 (D.C. Cir. 2002), *modified on other grounds on reh'g*, 293 F.3d 537 (D.C. Cir. 2002)).

Declining to engage with any of Appellants' arguments, the State instead makes three conclusory assertions to support its position that Appellants' claims are not ripe.

First, the State says that it "makes no . . . concession" that the Division reinstated the Regulation following the *Good* case because the Regulation "never went anywhere." (Appellees' Br. 13). But the State cannot possibly dispute that the Division restored the Regulation, which this Court struck down and enjoined in *Good*. *See Good*, 924 N.W.2d at 862. The Regulation "never went anywhere" only in the sense that its text was never removed from

the governing administrative rules. After *Good*, the Regulation was not effective until the Division reinstated it.

In this respect, the Regulation is no different from numerous provisions of law that similarly "never went anywhere" following invalidation by a court but that, having been declared unenforceable, are no longer in effect. *See, e.g.,* Iowa Code § 595.2(1) (2019) ("Only a marriage between a male and a female is valid.") (declared unconstitutional in *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)); Iowa Code § 718A.1A (2019) (Iowa's flag-desecration statute) (declared unconstitutional in *Phelps v. Powers*, 63 F. Supp. 3d 943, 954 (S.D. Iowa 2014)).

Additionally, the State conceded below that the Regulation is "currently in effect." (Resistance Temp. Inj. 4). This concession occurred *after* the Division's enactment. This is the very definition of legislative reinstatement.

Second, the State argues that the Division does not "allow[] the State to discriminate against [Appellants] solely because [they are] transgender" because it does not say "the State is now free to discriminate based on gender identity." (Appellees' Br. 13–14). This argument is puzzling. The Division's title expressly states that as to "certain surgeries or procedures"—i.e., medically necessary gender-affirming surgery—the Division provides an "exemption from required accommodations" under the Iowa Civil Rights Act

("ICRA"). 2019 Iowa Acts, House File 766, *available at* http://www.legis.iowa.gov/legislation/BillBook?ga=88&ba-hf766, p. 87; Iowa Code § 216.7(3) (2019). Additionally, the plain language of the Division creates an exception to ICRA's prohibition against discrimination in public accommodations by allowing discrimination when Medicaid participants request coverage for medically necessary gender-affirming surgery. *Id.* The Division expressly authorizes the denial of this coverage, despite this Court's determination in *Good* that doing so discriminates on the basis of gender identity. 924 N.W.2d at 862–63. There is also ample legislative history demonstrating that the Division's purpose is to reauthorize the discriminatory denial of Medicaid coverage for medically necessary gender-affirming surgery. (Appellants' Br. 33–35). The Division's purpose and effect is therefore to authorize discrimination on the basis of gender identity.

Third, the State claims that the Division "does not even *arguably* affect the 'bases' upon which the State makes Medicaid coverage determinations." (Appellees' Br. 14) (emphasis in original). But the Division expressly does just that. Following *Good*, and prior to the Division's enactment, transgender Iowans eligible for Medicaid were entitled to, and actually received, coverage for medically necessary gender-affirming surgery, despite the fact that the discriminatory Regulation allowed the denial of this coverage. *Good*, 924

N.W.2d at 862–63. The Division authorizes the denial of this coverage again, regardless of medical necessity. Iowa Code § 216.7(3) (2019). Thus, while Medicaid normally provides coverage for medically necessary surgery, transgender Iowans who have a medical need for gender-affirming surgery will be denied Medicaid coverage as a result of the Division. This change in the basis on which the State makes Medicaid coverage determinations is the "exemption from required accommodations" for "certain surgeries or procedures" expressly referenced in the Division's title. 2019 Iowa Acts, House File 766, *available at* http://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf766, p. 87; Iowa Code § 216.7(3) (2019).

These three arguments, which the State makes in reference to Appellants' equal-protection claims, are unavailing for the reasons stated above and in Appellants' opening brief. And they also fail to account for (1) how Appellants could bring their Single-Subject and Title-Rule challenges to the Division in an administrative forum and (2) how One Iowa could bring any administrative claims at all.

As set forth fully in their opening brief, Appellants' anti-logrolling claims implicate issues with the legislative process that are wholly independent from the Regulation. (Appellants' Br. 49–52). These claims are based on the interests safeguarded by the Single-Subject and Title Rules—

i.e., to ensure notice, input, and debate with respect to proposed legislation and to protect the democratic process. *See* Iowa Const., art. III, § 29; *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990); *Western Int'l v. Kirkpatrick*, 396 N.W.2d 359, 365 (Iowa 1986). These interests cannot be secured by administrative remedies related to the Regulation. Therefore, "the administrative process" is as irrelevant to Appellants' anti-logrolling claims as it is to their equal-protection claims.

Nor does the State's theory provide any avenue for One Iowa—which the State apparently now concedes has standing (*see* Argument Part II, below)—to engage in the "administrative process" the State proposes for Ms. Covington and Mr. Vasquez. As an organization that is not eligible for Iowa Medicaid, but that is nonetheless injured by the Division on its own behalf and on behalf of its members (Appellants' Br. 67–80), One Iowa would have no way, under the State's administrative-exhaustion theory, to seek relief on its Equal-Protection, Title-Rule, Single-Subject-Rule, and Inalienable-Rights claims.

Appellants' challenge is to the Division: it facially violates equal protection by carving out an exception to ICRA that authorizes discriminatory coverage determinations for transgender Iowans seeking medically necessary gender-affirming surgery; it violates equal protection because it was enacted

with an improper legislative purpose; it violates Iowa's Single-Subject and Title Rules because of the way it was enacted; and it violates Iowa's Inalienable-Rights Clause. Appellants' challenge is not to the Regulation, which could not be enforced absent the Division. As set forth in their opening brief, the relief Appellants seek—an injunction prohibiting the Division's enforcement—would require Medicaid coverage determinations for medically necessary gender-affirming surgery to be made on the same grounds as all other Medicaid coverage determinations: (1) eligibility for enrollment in Iowa Medicaid and (2) medical necessity. (Appellants' Br. 63). The State's arguments to the contrary are unsupported by law and require the Court to ignore both longstanding precedent regarding ripeness and the nature of Appellants' actual constitutional claims. This Court should reject those arguments and reverse the district court's decision.

II. One Iowa has standing.

The district court also erred by holding that One Iowa lacks standing to challenge the Division. (*See* 7/18/19 Order 12). As set forth in Appellants' opening brief, One Iowa has both direct organizational standing and representational standing to bring its five constitutional claims. (Appellants' Br. 67–80).

The State has waived its opposition to these arguments. Its brief does not address One Iowa's standing, even on a cursory basis. (*See* Appellees' Br. *passim*). *See* Iowa R. App. Pro. 6.903(2)(g)(3); Iowa R. App. Pro. 6.903(3); *see also Dolezal*, 326 N.W.2d at 360.

The district court's dismissal of One Iowa's claims on standing grounds was erroneous. It should be reversed.

III. Appellants are entitled to a temporary injunction.

Finally, Appellants are entitled to a temporary injunction while this appeal is pending and while they litigate their claims below on remand. Appellants are likely to succeed on the merits of their claims, they will face ongoing and serious injury absent relief, the balance of harms weighs in their favor, and there is no adequate legal remedy available.

A. Appellants are likely to succeed on the merits.

The district court did not address Appellants' likelihood of success on the merits of their claims. (*See* 7/18/19 Order 10). In their opening brief, Appellants focused on their claim that the Division facially violates the Iowa Constitution's Equal-Protection Guarantee by discriminating against transgender Iowans based on their transgender status. (Appellants' Br. 81–100). The State disputes this contention and also argues that Appellants'

Single-Subject, Title-Rule, and Inalienable-Rights claims fail on the merits. (Appellees' Br. 15–24).

Appellants need only demonstrate a likelihood of success on one of their claims to prevail. They can, however, demonstrate a likelihood of success on all the claims challenged by the State, as discussed below. *See State v. Carroll*, 767 N.W.2d 638, 644 (Iowa 2000) (argument was properly addressed in reply brief since, under the circumstances at issue, appellant was not required to address argument until appellee raised it); *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014) (noting that "exceptions" exist to rule that arguments must be raised in initial brief).

1. The Division facially violates the Iowa Constitution's Equal-Protection Guarantee.

Appellants are likely to succeed on the merits of their claim that the Division facially violates the Iowa Constitution's Equal-Protection Guarantee.

As set forth fully in Appellants' opening brief, the Division facially discriminates against transgender Iowans based on their gender identity. (Appellants' Br. 81–100). Transgender and nontransgender Iowa Medicaid recipients are similarly situated for equal-protection purposes in that both groups share a financial need for medically necessary treatment. (Appellants' Br. 82–83). But the Division discriminates against transgender Medicaid

recipients on the basis of their transgender status by authorizing the denial of Medicaid coverage for medically necessary gender-affirming surgery while otherwise covering medically necessary surgery. (Appellants' Br. 83–84). This facially discriminatory classification is unconstitutional under either heightened scrutiny or rational-basis review. (Appellants' Br. 84–100).

These constitutional issues were litigated before the district court, and decided against the State, in *Good*. *Good v. Iowa Dep't of Human Servs*., No. CVCV054956, at *20–34 (Polk County Dist. Ct. 2018) (finding that the Regulation violated the Iowa Constitution's Equal-Protection Guarantee). They should be decided in Appellants' favor here as well, given that the Division brings the unconstitutional Regulation back into effect.

a. Transgender and nontransgender Iowans eligible for Medicaid are similarly situated.

The State argues that "[t]ransgender and nontransgender Medicaid beneficiaries are not at all similarly situated to non-transgender Medicaid beneficiaries *for purposes of the Civil Rights Act*" because "[n]on-transgender Medicaid beneficiaries are not protected by the Civil Rights Act." (Appellees' Br. 18–19) (emphasis in original). The State's argument has no merit.

Transgender and nontransgender Iowans eligible for Medicaid are similarly situated. The Division facially discriminates against transgender Medicaid recipients by specifically authorizing the discriminatory denial of

medically necessary gender-affirming surgery rejected in the *Good* case. (Appellants' Br. at 82–84).

The State incorrectly asserts that "[n]on-transgender Medicaid beneficiaries are not protected by the Civil Rights Act." (Appellees' Br. 18–19). All Iowans on Medicaid, a public accommodation, are protected by ICRA. ICRA prohibits discrimination in the provision of Medicaid coverage, against nontransgender and transgender beneficiaries alike, based on race, sex, gender identity, and religion. *See* Iowa Code § 216.7(1)(a) (2019) ("It shall be an unfair or discriminatory practice for any . . . employee or agent [of any public accommodation] . . . [t]o refuse or deny to any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services or privileges thereof, or otherwise to discriminate against any person because of [those characteristics] in the furnishing of such accommodations, advantages, facilities, services or privileges."). If, for example, DHS were to provide some type of Medicaid coverage to transgender people that it did not provide to nontransgender people, like coverage for counseling, then this would violate ICRA's prohibition on gender-identity discrimination.

The only exception to nondiscrimination coverage under ICRA, based on the Division, is for transgender Iowans who have a medical need for

gender-affirming surgery. The purpose and effect of this exception is to deny transgender Iowans necessary Medicaid coverage. The Division is therefore unconstitutional.

b. The Division is facially discriminatory.

The State also argues that the Division does not discriminate against transgender Medicaid beneficiaries because "nothing in the Civil Rights Act requires a government unit to provide for . . . sex reassignment surgery," and "[n]othing in the Civil Rights Act requires a government unit to provide for any other kind of surgery sought by a non-transgender Medicaid beneficiary either." (Appellees' Br. 19). This argument fails.

The Division facially discriminates against transgender Medicaid recipients. It singles them out by reinstating the discriminatory Regulation, which authorizes the denial of Medicaid coverage for medically necessary care expressly based on transgender status. *See* Iowa Admin. Code r. 441-78.1(4) (2019) (excluding coverage for "[p]rocedures related to transsexualism . . . [or] gender identity disorders" and "[s]urgeries for the purposes of sex reassignment") (invalidated by this Court in the *Good* case as discrimination in public accommodations under ICRA).

Varnum is instructive. 763 N.W.2d 862. In *Varnum*, the "benefit denied by the marriage statute—the status of civil marriage for same-sex couples—

[was] so closely correlated with being homosexual as to make it apparent the law [was] targeted at gay and lesbian people as a class." *Id*. at 885 (quotation marks omitted). Here, gender transition through social transition and medical interventions, such as surgical treatment for gender dysphoria, "is so closely correlated with being [transgender] as to make it apparent" that the discrimination specifically authorized by the Division, allowing for the denial of such treatment, "is targeted at [transgender] people as a class." *See id.* (quotation marks omitted).

The State incorrectly suggests that the legislature's discretion to decide what ICRA does and does not cover renders the Division nondiscriminatory. (Appellees' Br. 19). The legislature does not have boundless discretion to amend ICRA when it does so with the purpose and effect of harming a discrete group of Iowans. "[T]he Iowa Constitution of 1857 tended to limit the power of the legislature while it protected the independence of the court [system]." *Godfrey v. State*, 898 N.W.2d 844, 865 (2017). These limitations included the Bill of Rights, which "the framers of the Iowa Constitution put . . . in the very first article." *Id*. at 864. This was consistent with the constitutional framers' desire "to put upon the record every guarantee that could be legitimately placed [in the constitution] in order that Iowa . . . might . . . have the best and

most clearly defined Bill of Rights" of any state in the country. *Id*. (quotation marks omitted).

The Iowa Constitution's Bill of Rights includes a two-part Equal-Protection Guarantee. Iowa Const. art. I, §§ 1, 6. This guarantee is essentially a direction that all persons similarly situated should be treated alike under the law. *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335, 351 (Iowa 2013); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). More precisely, it requires "that laws treat alike all people who are similarly situated with respect to the legitimate purposes of the law." *Varnum*, 763 N.W.2d at 882 (quotation marks omitted); *Bowers v. Polk County Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002).

A legislative amendment that violates this constitutional limitation by purposely harming transgender Iowans violates Iowa's equal-protection guarantee. This is true even where the amendment removes statutory protections the State was never required to provide. *See Romer* v. *Evans*, 517 U.S. 620, 627 (1996) (recognizing that removal of, and prohibition against, state and local antidiscrimination protections violated federal equal protection); *U.S. Dep't of Agric. v. Moreno,* 413 U.S. 528, 534 (amendment of Food Stamp Act to exclude households of unrelated individuals, such as "hippies" living in "hippie communes," violated federal equal-protection

clause); *Perry v. Brown*, 671 F.3d 1052, 1083 (9th Cir. 2012), *vacated and remanded on other grounds sub nom. Hollingsworth v. Perry*, 570 U.S. 693 (2013) (state initiative to take away marriage for same-sex couples violated equal protection, even if there was no federal constitutional right to marriage).

The Division does not simply take away ICRA's protections from discrimination by third-party private actors as occurred in *Romer*; it specifically authorizes the State to discriminate. It does so by restoring the discriminatory Regulation struck down under ICRA in *Good*. The Division thus violates equal protection by, together with the Regulation, allowing the State to deny Medicaid coverage for medically necessary surgery to Appellants, and other transgender Iowans, solely because they are transgender. *See Diaz v. Brewer*, 656 F.3d 1008, 102–15 (9th Cir.2011) (law limiting health-insurance benefits to married couples, when state law prohibited same-sex couples from marrying, violated equal protection); *Bassett v. Snyder*, 951 F. Supp. 2d 939, 963 (E.D. Mich. 2013) (same); *cf. Johnson v. New York*, 49 F.3d 75, 79 (2d Cir.1995) (employment policy discriminated based on age, even though it did not mention age, where it incorporated another policy that discriminated based on age); *Erie County Retirees Ass'n v. County of Erie, Pa.,* 220 F.3d 193, 211 (3d Cir.2000) (same).

On its face, the Division states that the public-accommodation provisions of ICRA "shall not require any state or local government unit or tax-supported district to provide for sex reassignment surgery or any other cosmetic, reconstructive, or plastic surgery procedure related to transsexualism, hermaphroditism, gender identity disorder, or body dysmorphic disorder." Iowa Code § 216.7 (2019). Based on the Division, the discriminatory Regulation that was struck down in *Good* is once again effective, as the State acknowledges. *Good*, 924 N.W.2d at 862–63 (concluding that "expressly exclud[ing] Iowa Medicaid coverage for gender-affirming surgery specifically because this surgery treats gender dysphoria of transgender individuals" constitutes unlawful discrimination). (*See* Resistance Temp. Inj. 4) (agreeing that Regulation is "currently in effect").

The Division's express purpose and effect of taking away protections under ICRA violates equal protection in the same way that taking away nondiscrimination protections, food stamps, and marriage violated equal protection in *Romer, Moreno*, and *Perry*. *See Romer,* 517 U.S. at 627; *Moreno*, 413 U.S. at 534; and *Perry*, 671 F.3d at 1083. The Division works together with the Regulation to violate equal protection, as did the statutes at issue in *Diaz* and *Bassett*, which limited benefits to married couples where state law at the time prevented same-sex couples from marrying. Based on

these well-established authorities, the State's discretion to determine what ICRA does and does not cover is not a defense to Appellants' equal-protection challenge to the Division.

2. The Division violates the Iowa Constitution's Single-Subject and Title Rules.

Appellants are also likely to succeed on the merits of their claim that the Division violates the Iowa Constitution's Single-Subject and Title Rules.

Section 29 of Article III of the Iowa Constitution contains two distinct but interrelated requirements: (1) that "[e]very act shall embrace but one subject, and matters properly connected therewith" (the Single-Subject Rule) and (2) that the act's subject "shall be expressed in the title" (the Title Rule). Iowa Const. Art. III, § 29. Thus, "Section 29 imposes two requirements upon the General assembly, one concerning the number of subjects that a single bill may address and the other concerning the descriptive accuracy of a bill's title." Todd E. Pettys, *The Iowa State Constitution* 171 (2d ed. 2018).

The State argues that the Division does not violate the Single-Subject Rule because House File 766, the bill containing the Division, was "united by a single purpose: monetary issues relating to health, human services, and veterans." (Appellees' Br. 22). It also argues that the Division does not violate the Title Rule because House File 766's title is "sufficiently clear under the

deferential standard that applies to" Title-Rule challenges. (Appellees' Br. 23). These arguments have no merit.

a. The Division violates the Single-Subject Rule.

The State mischaracterizes the Division to try to save it from the Single-Subject Rule. The Division is not merely a funding restriction on a DHS appropriation, the subject matter of the annual Health and Human Services Appropriations Bill ("HHS Appropriations Bill") of which the Division was part. On the contrary, the Division is a new, substantive third subsection to the section of ICRA otherwise ensuring protections against nondiscrimination in public accommodations. It facially carves out an area formerly covered by ICRA's nondiscrimination protections, thereby depriving transgender Iowans on Medicaid of nondiscriminatory access to medically necessary care.

The Single-Subject Rule is concerned with *germaneness. Utilicorp United v. Iowa Utilities Bd*., 570 N.W.2d 451, 454 (Iowa 1997); *Kirkpatrick*, 396 N.W.2d at 364. Germaneness is a mandatory constitutional requirement. *Mabry*, 460 N.W.2d at 474 ("[T]o pass constitutional muster the matters contained in the act must be germane."); *Long v. Bd. of Supervisors of Benton County*, 142 N.W.2d 378, 382 (Iowa 1966) ("[L]imiting 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."). "To be germane," this Court has explained, "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." *Utilicorp*, 570 N.W.2d at 454 (quotation marks omitted).

Here, the subject matter of the Act of which the Division was part—i.e., the annual HHS Appropriations Bill—has nothing to do with the subject matter of the Division—i.e., ICRA's protections against discrimination in public accommodations. Legislators expressly acknowledged that the amendment containing the Division was not germane to the annual HHS Appropriations Bill. H.J. 1064 (Apr. 27, 2019), *available at* https://www.legis.iowa.gov/docs/pubs/hjweb/pdf/April%2027,%202019.pdf#page=9; *see also* Iowa General Assembly, House File 766, Video Recording of 4/27/19 Debate, *available at* https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20190427092516225&dt=2019-04-27&offset6564&bill=HF%20766&status=r (point of order raised by Representative Heddens challenging amendment's lack of germaneness; Representative Upmeyer, at 11:15:00 through 11:22:12, acknowledging and ruling on point of order). (*See also* Crow Aff. ¶ 17). This point was ruled well taken by Representative Upmeyer, Speaker of the House. *Id.* ("You are correct. The

amendment is not germane.") Then, Representative Fry, the amendment's sponsor, moved to suspend the rules to consider the amendment anyway. *Id.* at 11:22:13– 11:24:00. The motion narrowly passed. *Id.*

Representative Fry's motion to suspend the rules may have remedied the Division's noncompliance with the General Assembly's internal procedures, but it did nothing to cure the amendment's unconstitutionality under the Single-Subject Rule. "It is entirely the prerogative of the legislature . . . to make, interpret, and enforce its own procedural rules, and the judiciary cannot compel the legislature to act in accordance with its own procedural rules *so long as constitutional questions are not implicated*." *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996) (emphasis added); *see also Carlton v. Grimes*, 23 N.W.2d 883, 889 (Iowa 1946) ("Whether either chamber strictly observes these [internal procedural] rules or waives or suspends them is a matter entirely within its own control or discretion, *so long as it observes the mandatory requirements of the Constitution*. If any of these [constitutional] requirements are covered by its rules, such rules must be obeyed . . . .") (emphasis added).

The Single-Subject Rule is mandatory, not directory. *C.C. Taft Co. v. Alber*, 171 N.W. 719, 720 (Iowa 1919) ("[T]he provisions of the Constitution are mandatory and binding upon the Legislature, and . . . any act that

contravenes the provisions of the Constitution . . . is not binding upon the people or any of the agencies of government."); *Green v. City of Mt. Pleasant*, 131 N.W.2d 5, 18 (Iowa 1964) (same); *Kirkpatrick*, 396 N.W.2d at 366 (referring to "the mandate of Article III, § 29 and striking portions of statute that violated Art. III, § 29"). Because the Single-Subject Rule is mandatory rather than directory, the legislature cannot cure the constitutional defect through a suspension-of-the-rules vote, as took place here. Rather, statutes contravening the Single-Subject Rule are void.

This Court has described the Single-Subject Rule's purpose as "to prevent logrolling and to facilitate orderly legislative procedure." *Kirkpatrick*, 396 N.W.2d at 364. The Court has described "logrolling" as "the practice of several minorities combining their proposals as different provisions of a single bill, and thus consolidating their votes so that a majority is obtained . . . where perhaps no single proposal of each minority could have obtained majority approval separately." *Long*, 142 N.W.2d at 382. In theory, "[b]y limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed by the legislators." *Id.* The purpose of the Single-Subject Rule also includes "preventing surprise" and "keep[ing] the citizens of the state fairly informed." *Mabry*, 460 N.W.2d at 473.

These purposes were thwarted by including the Division in the annual HHS Appropriations Bill. Affidavits from Senator Joe Bolkcom ("Sen. Bolkcom") and Keenan Crow ("Crow"), One Iowa's Director of Policy and Advocacy, detailed the normal lawmaking process for substantive policy matters and how the process for logrolling the Division into the annual HHS Appropriations Bill derogated from that process.

Normally, a bill, once sponsored and filed, is assigned to a subcommittee and committee. (Bolkcom Aff. ¶¶ 5–6; Crow Aff. ¶¶ 4–5). The subcommittee of legislators meets in public, invites formal public input, and makes any changes to the legislation that it deems appropriate. (Bolkcom Aff. ¶ 5; Crow Aff. ¶ 5). A majority of the subcommittee may then advance the legislation to a full committee. (Bolkcom Aff. ¶ 6; Crow Aff. ¶¶ 5–6). Before the full committee, a larger group of legislators makes any changes to the legislation deemed appropriate by a majority of the committee and may, upon a majority vote, advance the legislation to the full chamber for a vote. (Bolkcom Aff. ¶ 6; Crow Aff. ¶¶ 6–7). The same process takes place in the opposite chamber. (Bolkcom Aff. ¶ 6; Crow Aff. ¶ 7).

As both Senator Bolkcom and Crow explained, this process affords sufficient time and opportunity for input from the public, experts, impacted people, and other legislators. (Bolkcom Aff. ¶¶ 4–6; Crow Aff. ¶¶ 5–6, 8). But

when logrolling occurs, as it did in this case, there is no opportunity for this input. (Bolkcom Aff. ¶¶ 7–8; Crow Aff. ¶ 10).

The Division was never subject to normal filing, subcommittee, or committee processes. (Bolkcom Aff. ¶¶ 7–8; Crow Aff. ¶ 10). Members of the public had no opportunity to submit input or share their concerns. (Bolkcom Aff. ¶¶ 7–8; Crow Aff. ¶ 10–11, 12–14, 16). Rather than the typical time frame of several weeks to months that usually accompanies the lawmaking process, the time between filing the amendment containing the Division, on one hand, and passing the final legislation in both chambers, on the other, was a mere thirty-two hours. (Crow Aff. ¶¶ 8, 12).

The General Assembly's inclusion of nongermane matters in the annual HHS Appropriations Bill frustrated the purpose of the Single-Subject Rule by surprising both legislators and citizens. (Bolkcom Aff. ¶ 8; Crow Aff. ¶ 10). Substantive antidiscrimination protections and annual HHS appropriations do not "fall under . . . one general idea." *Utilicorp*, 570 N.W.2d at 454 (quotation marks omitted). Nor are they "so connected with or related to each other, either logically or in popular understanding, as to be part of . . . one general subject." *Id*. (quotation marks omitted). In the end, the General Assembly passed a bill that contained matters not germane to each other and—

extraordinarily—*acknowledged* that it was doing so. It is difficult to imagine a starker effort to flout the Single-Subject Rule.

b. The Division violates the Title Rule.

The State's argument that the Division complied with the Title Rule likewise has no merit. The title of the annual HHS Appropriations Bill was: "An Act relating to appropriations for health and human services and veterans and including other related provisions and appropriations, providing penalties, and including effective date and retroactive and other applicability date provisions." 2019 Iowa Acts, House File 766, *available at* http://www.legis.iowa.gov/legislation/BillBook?ga=88&ba-hf766, p. 1. This title does not reference ICRA at all, much less provide any notice that the Division would create an exception to ICRA's prohibition against gender-identity discrimination in public accommodations.

While the purpose of the Single-Subject Rule is to preserve the overall integrity of the democratic legislative process, the purpose of the Title Rule is to ensure notice to legislators and the public about what is being included in a bill. *Kirkpatrick*, 396 N.W.2d at 365 (The "purpose of the [title] requirement is to guarantee that reasonable notice is given to legislators and the public of the inclusion of provisions in a proposed bill; thus it is said to prevent surprise and fraud."); *see also State v. Talerico*, 290 N.W. 660, 663 (Iowa 1940) ("[The

Title Rule] was designed to prevent surprise in legislation."). Therefore, in analyzing a Title-Rule challenge, a court will determine whether a title "gives fair notice of a provision in the body of an act." *See Kirkpatrick*, 396 N.W.2d at 365 (striking down legislation for violating the Title Rule where the title in question did not inform readers "that a drastic change in the workers' compensation law [would] result from [the legislation's] enactment").

Here, the title of the annual HHS Appropriations bill did not alert readers that a "drastic change" to ICRA's protections against nondiscrimination would result from the bill's enactment. *See id*. The changes were buried in the middle of a 108-page bill otherwise related to appropriations. And there was no reasonable basis to expect that a substantive amendment to ICRA's nondiscrimination protections for transgender Iowans in public accommodations, in place since 2007, would be amended through an annual appropriations bill. *Cf.* 2007 Iowa Acts, Senate File 427, *available at* https://www.legis.iowa.gov/legislation/billTracking/billHistory?ga=82&billName=SF427 (indicating that, when ICRA was amended in 2007, the title of the bill *adding* protections against gender-identity discrimination was "A bill for an act relating to the Iowa civil rights Act and discrimination based upon a person's sexual orientation or gender identity"). The Title of the Annual Appropriations Bill containing the Division unfairly took both citizens

and legislators by surprise, thereby violating the Title Rule. (Bolkcom Aff. ¶ 8; Crow Aff. ¶ 17, 18).

3. The Division violates the Iowa Constitution's Inalienable-Rights Clause.

Finally, Appellants are likely to succeed on the merits of their claim that the Division violates the Iowa Constitution's Inalienable-Rights Clause.

The State argues that the Inalienable-Rights Clause does not apply because that provision only protects common-law rights that predated the Iowa Constitution, and there is no "common law right to receive medical care." (Appellees' Br. 23–24). But Appellants are not asserting a right to medically necessary care under the Inalienable-Rights Clause. The joint federal–state Medicaid program already provides that right to those who are eligible for Medicaid. *See, e.g., Good*, 924 N.W.2d at 862–63 (concluding that Medicaid generally pays for medically necessary surgery).

Instead, Appellants seek the right to receive the coverage necessary for their life, liberty, and bodily safety on the same terms as all other Medicaid-eligible Iowans. Under the Division, they are subject to the State's arbitrary and discriminatory interference with that right. As the State conceded below, the Inalienable-Rights Clause "prevents only arbitrary, unreasonable legislative action." (Resistance Mot. to Dismiss 23).

Appellants need not take a position on whether the Inalienable-Rights Clause requires a program such as Medicaid to meet the life-sustaining medical needs of indigent Iowans as a general matter. Rather, their claim is that, once such a program exists, the State cannot interfere, on an arbitrary and discriminatory basis, with the right to obtain the care the program provides without violating the Inalienable-Rights Clause. This claim is directly in furtherance of the right to be free from state interference with life, liberty, and bodily safety that the Inalienable-Rights Clause protects. *See, e.g., Atwood v. Vilsack*, 725 N.W.2d 641, 651 (Iowa 2006); *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 352 (Iowa 2015).

B. Appellants face ongoing, substantial injury absent injunctive relief, and the balance of harms warrants that relief.

The State makes two arguments that Appellants will not face ongoing and substantial injury absent temporary injunctive relief. First, it argues that Appellants' constitutional claims are not subject to the rule that deprivation of constitutional rights constitutes irreparable injury. (Appellees' Br. 25). Second, it argues that Appellants' injuries are "*possible* rather than *actual*." (Appellees' Br. 25, 26) (emphasis in original). Both arguments fail.

Because equal protection is a substantive constitutional right of the utmost importance, the State's argument that a violation of this right should not be treated as an irreparable injury is erroneous, as recognized by ample

persuasive authority. Likewise, the State's alternative argument—that Appellants have not already suffered, and will not suffer, irreparable harm absent an injunction—ignores that Appellants' pleaded facts in their petition and application for temporary injunctive relief showing ongoing, substantial harm. Each argument is discussed in turn below.

First, the State improperly seeks derogation from the rule that a deprivation of constitutional rights "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011); Mary Kay Kane, 11A Federal Practice & Procedure § 2948.1 (3d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, such as the right to free speech or freedom of religion, most courts hold that no further showing of irreparable injury is necessary."). (*See* Resp. 25). It argues that violations of the Iowa Constitution's Equal-Protection Guarantee, Single-Subject and Title Rules, and Inalienable-Rights Clause should be treated differently from other substantive constitutional rights in this respect and should be exempted from this rule, as the First Circuit exempts

violations of procedural due process. (Appellees' Br. 25) (citing *Pub. Serv. Co. v. Town of W. Newbury*, 835 F.2d 380, 382 (1st Cir. 1987)).[1]

The State cites no binding or persuasive authority, and Appellants are aware of none, holding that the right to equal protection, among the most important and cherished constitutional rights, and one that is substantive, not procedural, is exempt from the rule that violations of constitutional rights constitute irreparable injury. To the contrary, this principle has long been affirmatively applied to equal-protection cases. *See, e.g., Grimm v. Glouchester County Sch. Bd.*, __ F. Supp. 3d __, 2019 WL 3774118, *13 (E.D. Va. Aug. 9, 2019); *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017); *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 743 F. Supp. 977, 996 (N.D.N.Y. 1990); *Roe v. Anderson*, 966 F. Supp. 977, 985 (E.D. Cal. 1997), *aff'd*, 134 F.3d 1400 (9th Cir. 1998); *Battle v. Municipal Housing Auth. for the City of Yonkers*, 53 F.R.D. 423, (S.D.N.Y. 1971); *Henry*

[1] The First Circuit's decision in *Town of West Newbury* appears to stand alone in this regard. The First Circuit is an outlier when it comes to whether other constitutional claims constitute irreparable injury as well, being the only circuit to have found, after *Elrod*, that even deprivation of First Amendment rights "does not automatically require a finding of irreparable injury." *Town of West Newbury*, 835 F.2d at 382. Other courts have found that procedural-due-process claims are, in fact, subject to this principle. *See e.g., Bordelon v. Ch. Sch. Reform Bd. of Trs.*, 8 F. Supp. 2d 779, 789 (N.D. Ill. 1998); *Rauccio v. Frank*, 750 F. Supp. 566, 573 (D. Conn. 1990); *Gour v. Morse*, 652 F. Supp. 1166, 1173 (D. Vt. 1987).

v. Greenville Airport Comm'n, 284 F.2d 631, 633 (4th Cir. 1960) (citing *Clemons v. Bd. of Educ.*, 228 F.2d 853, 857 (6th Cir. 1957)); *Bd. of Supervisors of La. State Univ. v. Wilson*, 92 F. Supp. 986, 989 (E.D. La. 1950), *aff'd* 340 U.S. 909 (1951).

Second, the State incorrectly argues that Appellants cannot show irreparable injury until they receive "an administrative decision that [they have] neither asked for nor received" and characterizes the ongoing injuries Appellants are suffering as "*possible* rather than *actual*." (Appellees' Br. 25, 26) (emphasis in original). The State, like the district court below, ignores the evidence of ongoing, serious harm presented by Appellants. Appellants and their healthcare providers have provided affidavits establishing that Appellants' healthcare has already been interrupted, causing them emotional distress, anxiety, depression, and physical pain. (Pet. ¶¶ 29–36, 43–51; Temp. Inj. Br., Ex. 1 ¶ 26; Ex. 6 ¶ 32; Ex. 7; Ex. 3). These are actual, severe, irreparable harms occurring at this moment. Courts have repeatedly held that the emotional distress, anxiety, depression, and physical pain from inadequate medical care to treat gender dysphoria constitute irreparable harm. *See Hicklin v. Precynthe*, No. 4:16–cv–01357–NCC, 2018 WL 806764, at *10, 14 (E.D. Mo. Feb. 9, 2018); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019);

Flack v. Wis. Dep't of Health Servs., 328 F.Supp.3d 931, 942–46 (W.D. Wis. 2018); *Matlock v. Weets*, 531 N.W.2d 118, 122–23 (Iowa 1995).

The State also ignores the balance-of-harms inquiry altogether. It offers no argument that the balance in this case favors denying a temporary injunction. (Appellees' Br. 25–26). Indeed, the State does not claim that it will suffer any harm from the remedy Appellants seek: enjoining the Division and reinstating a nondiscriminatory coverage-determination process under Iowa Medicaid. (Appellees' Br. 25–26).

Because the deprivation of Appellants' constitutional rights, and the existence of their serious medical needs, are current and ongoing, and because the balance of harms will continue to fall solely on Appellants absent temporary injunctive relief, this Court should grant Appellants a temporary injunction.

C. There is no adequate legal remedy available.

As with Appellants' arguments on ripeness and standing, the State declines to respond to Appellants' arguments regarding the final prong of the test for temporary injunctive relief. (Appellees' Br. 15–26). Appellants face continued and further disruption of their medical treatment for gender dysphoria, as well as significant distress, pain, and risk of self-harm and suicidality. (Pet. ¶¶ 29–36, 43–51; Temp. Inj. Br., Ex. 1 ¶ 26; Ex. 6 ¶ 32; Ex.

7; Ex. 3). Because monetary damages are insufficient to remedy these harms, a temporary injunction is necessary to protect Appellants. (Appellants' Br. 104–05). The district court's denial of temporary injunctive relief on this basis was erroneous and must be reversed.

CONCLUSION

Appellants' claims are ripe, One Iowa has standing to challenge the Division, and Appellants are entitled to a temporary injunction. Appellants respectfully ask this Court to (1) reverse the district court's order dismissing Appellants' claims as not yet ripe for adjudication and dismissing One Iowa for lack of standing, (2) remand this case to the district court for further proceedings, and (3) temporarily enjoin the Division until final adjudication of this matter.

Respectfully submitted,

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