IN THE SUPREME COURT OF IOWA
Supreme Court No. 24–1018
Johnson County No. LACV085048

RONALD STOUGHTON and REBECCA MYERS,

*Plaintiffs–Appellants*,

vs.

STATE OF IOWA,

*Defendant–Appellee*.

Appeal from the Iowa District Court
For Johnson County
The Honorable Kevin McKeever, District Judge

# BRIEF FOR APPELLEE

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## STATEMENT OF THE ISSUES

1. Does the Fraud in Assisted Reproduction Act apply retrospectively?

## ROUTING STATEMENT

It is appropriate for this Court to retain the case. Plaintiffs assert that a recently enacted statute, the Fraud in Assisted Reproduction Act ("the Act"), Iowa Code § 714I, applies retrospectively to conduct occurring over 75 years ago. Appellants' Br. 5. The law is well settled: a statute applies retrospectively only if the statute expressly says so. *See* Iowa Code § 4.5. The Act does not say that it applies retrospectively, so Plaintiffs' claims fail. But because this Court has not specifically addressed whether the Act applies retrospectively, this case presents an issue of first impression and thus meets the criteria for retention. *See* Iowa R. App. P. 6.1101(2)(*c*).

In making its routing decision, the Court should be aware of two other pending appeals that raise the same issue and were resolved by the district court in materially identical orders: *Miller v. State*, No. 24-1017, and *Bright v. State*, No. 24-1019.

## NATURE OF THE CASE

This case asks a question of statutory interpretation: does the Fraud in Assisted Reproduction Act apply retrospectively?

Plaintiffs Ronald Stoughton and Rebecca Myers sued the State in 2024. D0003, Petition (02/08/2024). They allege that in the 1940s, a University of Iowa Health Care physician violated the Act by misrepresenting the source of human reproductive material used in assisted reproduction treatments their mother received. D0003 at ¶¶ 19, 25. The Act, which was passed in 2022, prohibits fraud related to assisted reproduction services. 2022 Iowa Acts ch. 1123, § 3 (codified at Iowa Code § 714I.3). Because the petition was based on conduct that occurred over 75 years before the Act was enacted, and the Act does not say that it applies retrospectively, the State moved to dismiss the petition. D0007, MTD Br. (03/06/2024).

The district court granted the State's motion to dismiss. D0020, MTD Order at 7 (05/30/2024). It reasoned that "[a] statute is presumed to be prospective in its operation unless expressly made retroactive," Iowa Code § 4.5, and the Act "contains no express language indicating legislative intent for retrospective application." D0020 at 4, 6. The court rejected Plaintiffs' arguments based on the Legislature's purported intent, stressing that express retrospective language "must be found in the text of the statute." D0020 at 6 (citation omitted).

This appeal followed. D0021, Notice of Appeal (06/19/2024).

## STATEMENT OF THE FACTS[1]

In the 1940s, Marlys Stoughton and her husband Clyde struggled to conceive a child. D0003 at ¶ 11. At some point—the petition does not say when—Marlys Stoughton sought fertility treatment from what is now University of Iowa Health Care in Iowa City. D0003 at ¶¶ 12–13. Marlys was purportedly seen by Dr. John Randall, the head of the Department of Obstetrics and Gynecology. D0003 at ¶ 13.

The petition does not say what the couple's specific fertility issue was, or what type of fertility treatment was provided. D0003 at ¶ 14 ("[I]t is believed that Dr. Randall assisted Marlys Stoughton with fertility treatment."). This is perhaps because when the Stoughtons sought treatment in the 1940s, fertility treatment was in its early stages—indeed, the University of Iowa did not open its multi-specialty fertility clinic until 1952. *See* Kara W. Swanson, *The Birth of the Sperm Bank*, 71 The Annals of Iowa 241, 247 (2012). At the time, fertility treatment was controversial, and so "doctors and patients kept [fertility] treatment secret to avoid public condemnation and controversy." *Id.* at 247–48. This was especially true for artificial insemination using donor sperm, which at the time "was virtually the only effective technique medicine had to offer infertile men." *Id.* at 245, 247–48. Coupled with the fact that over

[1] The State accepts the well-pleaded factual allegations as true only for purposes of this appeal but it does not accept Plaintiffs' legal conclusions. *See, e.g.*, *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014).

70 years have passed, it is unsurprising that there are no allegations about medical records of Marlys' visits.

Marlys Stoughton eventually gave birth to two children: Plaintiff Ronald Stoughton in 1943 and Plaintiff Rebecca (Stoughton) Myers in 1948. D0003 at ¶ 14. Dr. Randall passed away in 1959. D0003 at ¶ 13. Marlys Stoughton passed away in 2012, and her husband in 2000. D0003 at ¶¶ 16.

Recently, Plaintiffs took a DNA test through Ancestry.com. D0003 at ¶ 17. They allege that this test revealed that Dr. Randall is their biological father. D0003 at ¶ 17. Based on the test, Plaintiffs allege that Dr. Randall's sperm was used in Marlys Stoughton's assisted reproduction procedures. D0003 at ¶¶ 19, 25.

So Plaintiffs sued the State. D0003 at ¶¶ 6–7. They allege that the State violated the Fraud in Assisted Reproduction Act (1) by "providing false information" to Marlys Stoughton regarding the identity of the donor material used in her assisted reproduction procedure and (2) by using reproductive material that differed from what Marlys Stoughton consented to in writing. D0003 at ¶¶ 21, 27. Plaintiffs do not allege any details of what Marlys Stoughton understood about the identity of the donor whose sperm was used in the procedure (e.g., whether it was from an anonymous donor). Nor do they explain what Marlys Stoughton allegedly consented to in writing.

The State moved to dismiss the petition because the Act, enacted in 2022, does not contain language saying that it applies retrospectively. D0007. In response, Plaintiffs argued that portions of the Act allowing an action to be commenced at any time by the patient, her spouse, or her children is retrospective language. D0014, Resistance to MTD Br. at 8 (04/01/2024) (citing Iowa Code §§ 714I.4(6), 714I.4(1)(*a*)(1)).

The district court concluded that the Act does not apply retrospectively because it "contains no express language indicating legislative intent for retrospective application." D0020 at 6. It explained that no part of the law that Plaintiffs cited addressed retrospectivity. Allowing an action to be brought at any time merely "suggest[s] legislative intent for chapter 714I to apply prospectively without time limits." D0020 at 5. And the subsection about proper plaintiffs "only addresses who has capacity to sue and nothing more." D0020 at 5. Plaintiffs now appeal the district court's dismissal of their petition. D0021.

## ARGUMENT

The district court correctly held that the Fraud in Assisted Reproduction Act does not apply retrospectively to conduct that allegedly occurred over 75 years before the Act's enactment. "A statute is presumed to be prospective in its operation unless expressly made retrospective." Iowa Code § 4.5. If a statute does not contain an "express statement making the statutory immunity provisions retrospective, . . . the law can only be applied prospectively to conduct occurring after the effective date of the statute." *Nahas v. Polk Cnty.*, 991 N.W.2d 770, 779 (Iowa 2023).

Here, the Act does not contain an express statement saying that it applies retrospectively. If it did, the language would be clear and obvious because the Act creates both criminal and civil liability for the same conduct. Nor do any of the portions of the Act that Plaintiffs invoke relate to a retrospective application. This Court should affirm the district court's dismissal of Plaintiffs' petition.

### I. The district court correctly held that the Fraud in Assisted Reproduction Act does not apply retrospectively.

#### A. Preservation and Standard of Review.

The sole issue here is whether the Fraud in Assisted Reproduction Act applies retrospectively. Plaintiffs preserved this issue for appeal by making the argument in their resistance to the State's motion to dismiss. D0014 at 5–13. The district court disagreed and granted the State's motion to dismiss. D0020 at 4–6.

This Court "review[s] a district court's ruling on a motion to dismiss for the correction of errors at law." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014) (citation omitted). In doing so, it "accept[s] as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id.* This Court "will affirm a district court ruling that granted a motion to dismiss when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Id.*

### B. The Act creates criminal and civil liability for misrepresentations related to assisted reproduction services.

The Legislature passed the Fraud in Assisted Reproduction Act in 2022. 2022 Iowa Acts ch. 1123 (codified at Iowa Code § 714I (2022)). The Act created two types of "[p]rohibited practices and acts" relating to assisted reproduction. Iowa Code § 714I.3.

First, it prohibits healthcare professionals from engaging in conduct that the person knows or reasonably should have known "provides false information to a patient related to an assisted reproduction procedure or treatment." *Id.* § 714I.3(1). That includes information about the human reproductive material (e.g., sperm or egg) used in an assisted-reproduction procedure, as well as the medical history of the donor of the material. *Id*.

Second, the Act prohibits healthcare professionals from intentionally using human reproductive material in a way that differs

from the express written consent of the patient or donor. *Id.* § 714I.3(2)(a). That changed Iowa healthcare law. Before the Act, healthcare providers were not required to obtain written consent. *See* Iowa Code § 147.137 (creating "a presumption that informed consent was given" if a written consent meets certain requirements, but not requiring that informed consent be written).

The Act also established new criminal and civil consequences for engaging in the "[p]rohibited practices and acts" described in section 714I.3. *Id.* §§ 709.4A, 714I.4.

On the criminal side, a healthcare professional commits fourth-degree sexual abuse if he or she violates section 714I.3(2) by using human reproductive material in a manner that differs from what the patient consented to in writing. *Id.* § 709.4A(1). A healthcare professional also commits fourth-degree sexual abuse if he or she uses his or her own human reproductive material in a procedure without the patient's consent. *Id.* § 709.4A(3) (stating that this is a class "D" felony). Prosecutions for those crimes are not subject to a statute of limitations, and "may be commenced at any time after the commission of the offense." *Id.* § 802.2E.

On the civil side, the Act created a private right of action. *Id.* § 714I.4. Aside from the patient and her spouse, the patient's child can bring a cause of action if the child was born "as the result of being conceived through assisted reproduction" that violates the Act, or if "the

patient's spouse is deceased or is otherwise unable to bring such cause of action." *Id.* § 714I.4(1)(*a*)(1)(a)–(b). Donors whose human reproductive material was used in violation of the Act can sue, too. *Id.* § 714I.4(2). Like the criminal provisions, civil suits brought under the Act are "not subject to a statute of limitations and may be commenced at any time." *Id.* § 714I.4(6).

Finally, if a healthcare professional uses his or her own human reproductive material in an assisted-reproduction procedure in violation of section 714I.3(2), and a child who is biologically related to the healthcare professional is born as a result, the healthcare professional must provide financial support to the child. *Id.* § 714I.4(3).

### C. The Act does not apply retrospectively because it does not expressly say so.

This Court "presume[s] that statutes operate only prospectively." *Hedlund v. State*, 991 N.W.2d 752, 758 (Iowa 2023). That "presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994). After all, "a legislature makes law for the future, not for the past." *Hedlund*, 991 N.W.2d at 758 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 261 (2012)). So "[e]ven when [statutes] do not say so (and they rarely do), [they] will not be interpreted to apply to past events." Scalia & Garner, *Reading Law* at 261; *see also Landgraf*,

511 U.S. at 268 ("[A] requirement that Congress first make its intention clear helps ensure that Congress itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness.").

The Legislature has "built this presumption into every law that it enacts." *Hedlund*, 991 N.W.2d at 758. Iowa Code section 4.5 states: "A statute is presumed to be prospective in its operation unless expressly made retrospective."

To determine whether a statute applies retrospectively, this Court has formulated a three-part test, which it recently revised in *Hrbek v. State*, 958 N.W.2d 779, 782 (Iowa 2021). *See Hedlund*, 991 N.W.2d at 757–58 (explaining the history of this "revised" test). *First*, the Court asks "whether the statute's application is in fact retrospective." *Id.* at 757 (quotation marks omitted). *Second*, "[i]f the application is indeed retrospective, then the court next must determine whether the statute should be applied retrospectively." *Id.* "For this determination, [courts] engage in statutory interpretation to determine whether the legislature 'expressly made [the statute] retrospective.'" *Id.* (quoting Iowa Code § 4.5). If no express language indicates a retrospective application, then the Court stops its inquiry. *Id.* at 758–59. *Third*, if there is express retrospective language, "then the court determines whether any substantive law bars the statute's retrospective application." *Id.* at 757.

Here, because the Act does not contain express language providing a retrospective application, only the first and second steps are relevant.

For the first step, Plaintiffs agree that they are seeking to apply the Act retrospectively. D0020 at 4; Appellants' Br. 13–14. A statute is applied retrospectively when it "attaches new legal consequences to events completed before its enactment," *Nahas*, 991 N.W.2d at 777 (citation omitted), and that is exactly what Plaintiffs seek to do by applying a recently enacted statute to conduct that occurred over 75 years ago.

This case turns on the second step: whether the Act contains express language stating that it applies retrospectively. *See Nahas*, 991 N.W.2d at 779. The express language must be clear and unequivocal, and there must not be any doubt that the Legislature intended a retrospective application. *See Burke v. Barron*, 8 Iowa 132, 135 (1859) ("Courts will give to statutes a prospective effect only, unless the language is so clear and imperative as not to admit of a doubt."); *State ex rel. Shaver v. Iowa Tel. Co.*, 154 N.W. 678, 683–84 (Iowa 1915) (applying statutes retrospectively only in "clear cases unequivocally evidencing the legislative intent to that effect"); *accord State v. Macke*, 933 N.W.2d 226, 233 (Iowa 2019) (requiring a "clear indication").

The district court correctly concluded that there is no express language in the Act providing that it applies retrospectively. D0020 at 4–6. The Legislature "rarely" includes express language applying a statute retrospectively. Scalia & Garner, *Reading Law* at 261. When it does, its

language is crystal clear. *See, e.g.*, 2021 Iowa Acts ch. 183, § 26 ("The following applies retroactively to January 1, 2021 . . .").

For the Act, one would expect that retrospective language would be especially obvious because it creates both criminal and civil liability for the same conduct. *See* Iowa Code § 709.4A(3)(*a*) (making it a felony for a healthcare professional to use his "own human reproductive material for assisted reproduction in violation of section 714I.3, subsection 2"); *id.* § 714I.4(1) (creating a private right of action for violations of section 714I.3, subsection 2). Indeed, section 714I is primarily a criminal statute, as it appears in Title XVI of the Iowa Code, which is titled "Criminal Law and Procedure." To avoid violating the Ex Post Facto Clause, the Legislature would need to conspicuously state and define any retrospective effect for the new civil causes of action. *See* Iowa Const. art. I, § 21.

But the Act contains no express language stating that it applies retrospectively. *See* 2022 Iowa Acts ch. 1123. It does not mention an effective date, nor does it refer to retroactivity or a retrospective application. This contrasts with other States' statutes, which include express retrospective language in similar fertility fraud statutes. Illinois's statute, for example, states that "this Act shall be retroactive and apply to any treatment by a health care provider occurring prior to the effective date of this Act." 815 ILCS 540/5 (2024). Iowa's statute does not.

None of the language Plaintiffs cite expressly states that the Act should apply retrospectively. Plaintiffs first point to the lack of a statute of limitations on these new causes of action. Iowa Code § 714I.4(6) ("[A]n action brought pursuant to this section is not subject to a statute of limitations and may be commenced at any time."); Appellants' Br. 16. But as the district court recognized, the lack of statute of limitations merely "suggest[s] legislative intent for chapter 714I to apply prospectively without time limits" and "do[es] not indicate that [its provisions] apply to fraud that occurred before [the Act] was enacted." D0020 at 5. In short, this section specifying when a plaintiff can bring an action in the future says nothing about whether the Act applies to conduct in the past.

If Plaintiffs were right that the lack of a statute of limitations is an express statement of retrospective application, then the criminal provision of the Act would apply retrospectively as well, for it similarly lacks a statute of limitations. *See* Fraud in Assisted Reproduction Act, 2022 Iowa Acts ch. 1123, § 8 (codified at Iowa Code § 802.2E) ("An information or indictment for sexual abuse in the fourth degree may be commenced at any time after the commission of the offense."). That cannot be the case, because it would violate the Ex Post Facto Clause. Iowa Const. art. I, § 21; *see also* Iowa Code § 4.4(1) (presumption that statutes do not violate the Iowa Constitution).

Plaintiffs next rely on the fact the Act allows children of a deceased patient to sue "if the patient's spouse is deceased or is otherwise unable

to bring such cause of action." Iowa Code § 714I.4(1)(*a*)(1)(b); Appellants' Br. 16–17. But as the district court noted, this "only addresses who has capacity to sue and nothing more." D0020 at 5. Defining who can sue says nothing about when the conduct they are suing about must have occurred. Plaintiffs thus fail to demonstrate that the Act includes express retrospective language.

Shifting away from the Act's text, Plaintiffs briefly discuss two cases in which this Court has found that a statute applies retrospectively. Appellants' Br. 15. Each is distinguishable.

*City of Waterloo v. Bainbridge* held that a statute shortening the time a city had to wait before obtaining title to an abandoned building applied retrospectively. 749 N.W.2d 245, 250–51 (Iowa 2008). The Court relied on the fact that the statute was "not a substantive statute," *id.* at 251, and thus fell under an exception to the presumption that statutes apply only prospectively, *id.* at 249–51. Indeed, this Court has noted that "the law[] in *Bainbridge* . . . w[as] not retroactive at all because [it] only set standards for conduct occurring *after* [its] enactment—i.e., a city could seek title to abandoned land." *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 565 n.3 (Iowa 2015).

But here the Act affects the scope of permissible conduct by creating new causes of action, new rights or obligations, and is thus a substantive law. *See id.* at 563 ("When a statute creates new rights or obligations, it is substantive rather than procedural or remedial."); D0020 at 4 (noting

Plaintiffs' agreement that retrospective application of the Act "would apply new obligations to practitioners and facilities when providing fertility services and impose new consequences if those obligations were not met"). *Bainbridge*'s retrospective application of a procedural statute therefore does not apply here. The normal presumption against retrospective application still applies.

*Shell Oil* is similarly inapplicable because it involved a remedial statute, not a substantive one. *See Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 370, 375 (Iowa 2000) (stating that "[a] remedial statute is not always applied retroactively," and applying the relevant three-part test). Indeed, the statute at issue in *Shell Oil* contained an express statement of retrospective intent: this Court found that the statute's statement that it applied to "*past* and existing petroleum leaks" unambiguously "revealed an intent for the act to apply retroactively." *Id.* at 375, 376 (emphasis altered) (citation omitted). The Act here, by contrast, is not a remedial statute and does not include similar language referring to past conduct.

Finally, unable to find any textual support for their argument, Plaintiffs turn to what they believe to be the "purpose and policies" behind the Act. Appellants' Br. 18. But "only the text of the statute itself" can establish that a statute applies retrospectively, not Plaintiffs' description of the general purpose of the statute. *Landgraf*, 511 U.S. at 287 (Scalia, J., concurring in the judgment) (collecting cases requiring

"express words" for a retrospective effect); *accord Macke*, 933 N.W.2d at 233 ("The clear indication of intent for retroactive application must be found in the text of the statute; legislative history is no substitute.").

Even so, it would be odd if the Legislature intended the Act, creating a new written-consent requirement, to apply retrospectively to conduct that occurred almost 20 years before the State's first law referencing written consent appeared. *See* 1975 Iowa Acts ch. 239, § 17 (codified at Iowa Code § 147.137) (creating a new presumption of informed consent if there is written consent, but not requiring written consent).

Because "there is no express statement making the [Act] retrospective, . . . the law can only be applied prospectively to conduct occurring after the effective date of the statute." *Nahas*, 991 N.W.2d at 779. This Court "thus need not move to the third step" of the *Hedlund* test and should affirm the district court. *Hedlund*, 991 N.W.2d at 758.

## CONCLUSION

The judgment below should be affirmed.

## REQUEST FOR NON-ORAL SUBMISSION

The State agrees with Plaintiffs that oral argument is unnecessary and therefore does not request it. If the Court grants Plaintiffs oral argument, the State requests equal time.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*g*) and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 3,644 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

*/s/William C. Admussen*
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## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 16th day of September, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

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