IN THE IOWA SUPREME COURT
No. 21-0856

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

Petitioners-Appellees,

vs.

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

Respondents-Appellants.

ON APPEAL FROM
THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

THE HONORABLE MITCHELL E. TURNER

CASE NO. EQCV081855

BRIEF OF AMICI CURIAE 33 IOWA STATE LEGISLATORS

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STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

No party or party's counsel authored this brief in whole or in part nor contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

INTEREST OF AMICI CURIAE

The Iowa General Assembly is the lawmaking body for the State of Iowa. Iowa Const. art. III, § 1. Iowa legislators take an oath to support Iowa's Constitution. Iowa Const. art. III, § 32. As elected Iowa State Senators and Representatives, Amici have an interest in ensuring the passage of legislation that complies with constitutional requirements, including the so-called "Single-Subject Rule" of Iowa Constitution Article III, section 29.

Amici include: Senate Minority Leader Zach Wahls, and Senators Tony Bisignano, Joe Bolkcom, Nate Boulton, Claire Celsi, William A. Dotzler, Eric Giddens, Pam Jochum, Jim Lykam, Liz Mathis, Janet Peterson, Herman C. Quirmbach, Amanda Ragan, Jackie Smith, Todd E. Taylor, Sarah Trone Garriott; House Minority Leader Jennifer Konfrst, and House Members Marti Anderson, Timi Brown-Powers, Molly Donahue, Eric Gjerde, Bruce Hunter, Dave Jacoby, Brian J. Meyer, Bob Kressig, Monica Kurth, Amy Nielsen, Jo Oldson, Rick Olson, Kristin Sunde, Phyllis Thede, Beth Wessel-Kroeschell, and Cindy Winckler (hereinafter, and as above, "33 Iowa State Legislators").

INTRODUCTION

In contentious political eras, legislators on one side of a political line can be tempted to seize an opportunity to push through laws aimed to assert one set of values over others, even if such laws run contrary to public opinion, are violative of express constitutional provisions, and are wholly inconsistent with clearly-established Iowa Supreme Court precedents.

That is what happened in the Iowa General Assembly when, in the early morning hours of the last day of the legislative session, on Sunday, June 14, 2020, the legislators passed Amendment H-8314 ("the Amendment") to House File 594 ("HF 594"), 88th Gen. Assemb. (Iowa 2020), codified at Iowa Code § 146A.1(1) (2020), and violated the so-called "Single Subject Rule" as embodied in Article III, section 29, of the Iowa Constitution.

Prior to the Amendment, HF 594 had addressed only the withdrawal of life-sustaining procedures from minors and had undergone the ordinary law-making processes, including: public notice, committee consideration, and legislative debate. By contrast, the Amendment, having been subject neither to prior public notice nor committee review, was attached to a bill whose subject matter had no relation to the Amendment.

Under the Amendment, women seeking an abortion would be required, after receiving an ultrasound and certain state-mandated information, to wait at least 24

hours before returning to the health center to have an abortion. Pursuant to Iowa Code section 146A.1, the Iowa Board of Medicine would be responsible for the Amendment's implementation, including any discipline of individuals licensed to practice medicine who violated the law. When initially offered in the House, the Speaker ruled that the Amendment was not germane to the main bill. Procedural maneuvering followed and the Amendment passed. Governor Kim Reynolds signed the bill into law on June 29, 2020.

The Amendment violated the Iowa Constitution on multiple fronts, two of which are addressed in this brief. First, the Amendment was unconstitutional because it violated Article III, section 29, of the Iowa Constitution, sometimes called the "Single Subject Rule" or the "One Subject Rule" (hereafter, "Single Subject Rule"), which requires that every act of the legislature must "embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title." The Amendment's passage, as the Iowa District Court found, violated this provision. On that basis alone, the Amendment should be held by this Court to have been unconstitutional and void.

Second, additionally, the Amendment unconstitutionally burdens women's access to abortion services, as determined by the Iowa Supreme Court in *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W. 2d 206 (Iowa 2018), which had held a very similar bill unconstitutional less than four years ago. Nothing has

occurred between that decision and the present date that should cause this Court, in effect, to reverse itself on a matter of fundamental constitutional law.

The Iowa Supreme Court's review of the Amendment, now, is an essential part of the balance-of-power structure of Iowa constitutional governance and is particularly well-suited for addressing a particular type of problem that may arise in divisive and combative political eras, such as in the present moment. Judicial oversight, buttressed by express constitutional limitations and decades of common-law precedents, now requires this Court to affirm the district court's determination that the Amendment is unconstitutional and the law void.

ARGUMENT

I. Article III, Section 29 of the Iowa Constitution Protects Important Democratic Interests of Legislators and Their Constituents and Serves as a Check on the Power of the General Assembly to Enact Legislation.

A. Iowa's Constitution provides a system of checks and balances on the three branches of government.

The concept of separation of powers "permeates all ideas and rules which relate to the American system of government." *Welden v. Ray*, 229 N.W.2d 706, 716 (Iowa 1975) (Harris, dissenting). The Iowa Constitution expressly inscribes it:

> The powers of the government of Iowa shall be divided into three separate departments - the Legislative, the Executive, and the Judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Iowa Const., Art. III, § 1. "Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts." *Planned Parenthood of the Heartland*, 915 N.W.2d at 212.

Separation of powers, however, does not mean each branch of government is granted power without bounds. "Of practical necessity the three branches, by a system of checks and balances, should 'be so far connected and blended as to give each a constitutional control over the others * * *.' The Federalist, Number 48 (Madison)." *Welden*, 229 N.W.2d at 716 (Harris, dissenting). Thus, "[t]he efficient functioning of government depends on adherence by each branch to the delicate balance which must be maintained under the separation of powers precept. It also depends on cooperation among the branches and mutual respect for the system of checks and balances." *Redmond v. Ray*, 268 N.W.2d 849, 858 (Iowa 1978).

It is within this framework that Article III, section 29 of the Iowa Constitution, the Single Subject Rule, and the role of Iowa's courts in enforcing it, must be considered. That provision states as follows:

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

Iowa Const., Art. III, § 29 (emphasis added). To assert, as other Amici do, that the Iowa Supreme Court's review of particular bills under the Single Subject Rule presents

nonjusticiable separation of powers political questions (Brief of Amicus Curiae by Ten Iowa State Senators) and does not provide a justiciable standard to find the combination of subjects in a bill unconstitutional (Brief of Amicus Curiae by Kirkwood Institute, Inc. and Twelve Members of the 89th General Assembly of Iowa ("Kirkwood Institute et al."), pp. 28-34) is to render Article III, section 29 meaningless. Indeed, without the power of Iowa's courts to determine and cross-check what is void, both the separation of powers doctrine and Single Subject Rule lose all functioning in a democratic society.

The Single Subject Rule, rather than to be discarded as if a misguided relic of the past—such as Ten State Senators and Kirkwood Institute et al. Amici appear to argue—is an essential part of the balance-of-power structure of Iowa constitutional governance. The Rule is well-suited for addressing the present moment, where a particular type of problem in a divisive and combative political era is being experienced. In such contentious time periods, legislators on one side of a battle line can be tempted to seize an opportunity to push through laws aimed at enforcing one set of values over others, even if such laws are of questionable constitutional validity. At such moments, constitutionally-created legislative restraints, such as the Single Subject Rule, are all the more important and must be enforced.[1] Kirkwood Institute

[1] Many state Supreme Courts have enforced Single Subject Rule provisions in their state constitutions. *See*, *e.g.* Michael L. Buenger, Friction by Design: The Necessary Contest of State Judicial Power and Legislative Policymaking, 43 U. Rich. L. Rev. 571, 615 (2009) (citing cases and observing that courts have used single-subject provisions

et al. Amici's argument, although couched in historical terms, sounds more in ideology than in law.

The clear terms of the constitutional restraint, the law (as contained in the Iowa Constitution) and the courts that enforce those laws, live outside political hotbeds and debate. They are unambiguous contracts to bind a democratic society, and cannot be jettisoned upon the whim of one party or another. That is their fundamental purpose, and what protects democratic society from tyranny, or laws that change with the whims of politicians. *Webster Cty. Bd. of Supervisors v. Flattery*, 268 N.W.2d 869, 873 (Iowa 1978) (holding that the historic separation of powers as embodied in Article III, section 1, safeguards against tyranny). The judiciary must guard its own role in determining "whether any department has exceeded its constitutional functions." *Id.* (citations omitted). The Court therefore cannot abdicate that role by hiding behind the political question doctrine, as urged by other Amici. *Id.* ("For the judiciary to play an undiminished role as an independent and equal coordinate branch of government

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to strike down "sentencing guidelines, revenue, administrative rule-making by state agencies, zoning and ethics and election reform, economic development and livestock indemnification, allocation of space in a state capitol and water rights, crime, and tort reform"); *Missouri Health Care Ass'n v. Att'y Gen. of the State of Mo.*, 953 S.W.2d 617, 622 (Mo. 1997) (noting that its single-subject provision "establishes a mandatory, not directory, limitation on the legislature"); *In re Nowak*, ¶¶ 46-47, 104 Ohio St. 3d 466, 475–76, 820 N.E.2d 335, 343 (Ohio 2004) (observing that "Ohio [had been] the only state which [held] its one-subject provision to be directory rather than mandatory," and rejecting that approach) (cleaned up).

nothing must impede the immediate, necessary, efficient and basic functioning of the courts.").

The early morning hours of June 14, 2020, witnessed one such legislative effort to seize political opportunity and to push legislation concerning a particularly divisive issue related to abortion access, without following the ordinary legislative process. The resulting constitutional overreach began with the violation of the Single Subject Rule, and now continues with the attempt to avoid the powers of the Court to enforce the Iowa Constitution. Judicial oversight, buttressed by express constitutional limitations and decades of common law precedents, now requires this Court to dispassionately affirm the district court's determination that Amendment H-8314 to House File 594, 88th Gen. Assemb. (Iowa 2020), codified at Iowa Code § 146A.1(1) (2020), violates the Single Subject Rule, as embodied in Article III, section 29, of the Iowa Constitution.

B. The General Assembly may suspend its own rules in passing legislation, but it cannot suspend constitutional requirements.

Ten State Senators Amici "urge the Court to find that the rules of procedure utilized by the General Assembly in passing legislation are nonjusticiable political questions for purposes of the single-subject rule *so long as the procedures otherwise comply with Iowa's Constitution*." (Brief of Amicus Curiae by Ten Iowa State Senators, p. 6) (emphasis added). It is undisputed that, following a determination by the Speaker of the House that the proposed amendment to HF 594 (H-8314) was not germane, a motion to suspend the rules for immediate consideration of the Amendment

prevailed by a vote of 52 to 42. (Ruling on Motions for Summary Judgment, p. 7, ¶¶ 22-26).

Members of the General Assembly are free to suspend their own rules when the necessary votes are obtained. *Adams v. Fort Madison Cmty. Sch. Dist.*, 182 N.W.2d 132, 137 (Iowa 1970). However, they cannot suspend constitutional requirements, including the specific requirement every act shall embrace "but one subject, and matters properly connected therewith" and that such "subject shall be expressed in the title." Iowa Const., Art. III, § 29; *see Carlton v. Grimes*, 23 N.W.2d 883, 889 (Iowa 1946) (noting that whether the General Assembly "strictly observes or waives or suspends" its rules of procedure "is a matter entirely within its own control or discretion, *so long as it observes the mandatory requirements of the Constitution*.") (emphasis added). Indeed, the Amicus Brief expressly recognizes that the procedures must "otherwise comply with Iowa's Constitution." (Brief of Amicus Curiae by Ten Iowa State Senators, p. 6). But there can be no vote to avoid a constitutional requirement, supermajority or otherwise. This would eviscerate the separation of powers, or other constitutional guarantees, if it could be superseded by a majority vote, and then not properly challenged in court. As the district court found, the procedures adopted by the Iowa General Assembly to accommodate passage of Amendment H-8314 to House File 594 failed to comply with Iowa's Constitution and decades of caselaw interpreting Article III, Section 29.

C. *State v. Mabry* and other Iowa cases articulating the Single Subject Rule doctrine make clear that the Court is not bound to the four-corners of a bill in determining whether it violates Article III, section 29 of the Iowa Constitution.

Nothing in the Iowa Constitution suggests that a particular bill's viability under Article III, section 29, must be restricted to a review of the express language found within a challenged bill's four corners. Rather, over a period of many years, the Iowa Supreme Court has articulated a Single Subject Rule doctrine for evaluating the constitutionality of a particular piece of legislation, which includes the context within which a bill has been passed by the Iowa General Assembly. Under the doctrine, the Single Subject Rule serves three essential purposes:

- First, legislative "log-rolling" is prevented—the inclusion of several subjects having no connection with each other in one bill for the purpose of bringing in various interests in support of the whole;[2]

- Second, legislators are shielded from being surprised or misled as to the contents of a bill so that they know the extent of what is being deliberated and adopted;[3] and

- Third, the public is permitted to be fully apprised of the subjects of legislation so that citizens may have an opportunity of being heard if they so desire.[4]

[2] *State v. Iowa Dist. Ct.*, 410 N.W.2d 684, 686 (Iowa 1987).
[3] *Long v. Board of Supervisors*, 142 N.W.2d 378, (Iowa 1966) ("By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed by legislators.").
[4] *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990).

The context of a particular bill's passage is critical in determining whether the Iowa General Assembly has stepped out of bounds in a specific instance under the Single Subject Rule. There are innumerable ways in which the legislative process might be unduly manipulated and obfuscated. Underlying principles of transparency and honesty serve as the shared basis for legislators to conduct law-making processes in the normal course of legislative affairs. By contrast, legislative amendments concerning new subjects introduced in the middle of the night in the waning hours of a legislative session, such as transpired in this instance, ignore those underlying principles, run rough-shod over normal rules of procedure, and increase the probability that the resulting legislation will violate substantive constitutional rights of citizens and defy public opinion.[5]

Such violations of constitutionally-based bill-writing limits—the Single Subject Rule—resulting in violations of substantive constitutionally-protected rights arising from legislative manipulations is exactly what happened in this instance. In the middle of the last night of the legislative session, without any committee hearings, without advance notice to the lobby or to the public, and in a manner such that the House

[5] It is not disputed that the purpose of the Amendment is to restrict Iowa women's access to abortion services. Recent polling, however, shows a majority of Iowans support protecting the right of Iowa women to safe and legal abortion. *See, e.g., Iowa Poll: Less than a third of Iowans support anti-abortion constitutional amendment,* Des Moines Register, (March 26, 2021), *available at* https://www.desmoinesregister.com/story/news/politics/iowa-poll/2021/03/26/iowa-poll-less-than-third-back-anti-abortion-constitutional-amendment/4655603001/

Speaker ruled was non-germane, the Iowa Legislature passed the Amendment to HF 594.

The Ten State Senators Amici, while admitting that their proposed framework for analyzing the Amendment to HF 594 is not the one that courts "have historically applied," nevertheless argue, radically and with novelty, that "the Court need only focus on the specific language within the four corners of the Act being challenged in order to make a single-subject determination." (Brief of Amicus Curiae Ten Iowa State Senators, p. 8). To achieve the result that they seek, the reversal of the trial court's determination that the Amendment to HF 594 violated the Single Subject Rule, the Ten State Senators Amici essentially ask this Court to ignore decades of legal precedent interpreting Article III, section 29. To adopt such a proposition would require this Court to defy *stare decisis*—the legal doctrine that obligates courts to follow historical cases when making a ruling on a similar case. *See In re Estate of Vera E. Caviezell v. Coronelli*, 958 N.W.2d 842, 848 (Iowa 2021) ("*Stare decisis* is a valuable legal doctrine which lends stability to the law.") (citation omitted). This is most particularly true when enforcing fundamental constitutional protections and provisions.

In contrast to Ten State Senators Amici's invitation, however, and, as this Court has repeatedly recognized:

> [i]t is of the greatest importance that the law should be settled. Fairness to the trial courts, to the legal profession, and above all to citizens generally demands that interpretations once made should be overturned only for the most cogent reasons . . . . Legal authority must be respected; not because it is venerable with

> age, but because it is important that courts, and lawyers and their clients, may know what the law is and order their affairs accordingly.

Bd. of Water Works Trs. of City of Des Moines v. Sac Cty. Bd. of Supervisors, 890 N.W.2d 50, 61 (Iowa 2017) (quoting *State v. Liddell*, 672 N.W.2d 805, 813 (Iowa 2003) (alteration in original) (quoting *Stuart v. Pilgrim*, 247 Iowa 709, 714, 74 N.W.2d 212, 215-16 (1956))). From its beginnings, this Court has "guarded the venerable doctrine of *stare decisis* and required the highest possible showing that a precedent should be overruled before taking such a step." *Bd. of Water Works Trs. of City of Des Moines*, 890 N.W.2d at 60 (citations omitted). "Courts adhere to the holdings of past rulings to imbue the law with continuity and predictability and help maintain the stability essential to society." *Id.* at 61 (citation omitted). The cases interpreting the Single Subject Rule of Article III, section 29 are as consistent with each other as they are clear, as described further below. Ten State Senators Amici have presented no compelling argument for ignoring *stare decisis* and overturning or otherwise modifying the analysis used by Iowa Courts in interpreting and applying Article III, section 29.[6]

[6]Amici Kirkwood Institute et al. argues that because there have been only three cases in which the Court found that a statute included impermissibly connected subjects, out of approximately 100 single-subject challenges, "a successful challenge based on the subjects of a statute will rarely, if ever, be possible." (Brief of Amicus Curiae Kirkwood Institute et al., pp. 7, 21-28). Assuming Amici's numbers are correct, and single-subject violations are rare, the argument ignores the district court's conclusion that, based on the undisputed material facts, "this *is* an extreme case" where "legislation is clearly, plainly and palpably unconstitutional." (Ruling on Motions for Summary Judgment, p. 18). The general subjects were so totally distinct and removed from each other that there can be no credible argument that it meets the test.

The Single Subject Rule requires that an act "should embrace some one general subject, and by that it is meant, merely, that all matters treated therein 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 or germane to one general subject." *Stanley v. Sw. Cmty. Coll. Merged Area, etc.*, 184 N.W.2d 29, 34 (Iowa 1971) (quoting *Long v. Board of Supervisors*, 142 N.W.2d 378, 381 (Iowa 1966)). "[T]he act should not include legislation so incongruous that it could not by any fair intendment be considered germane to the general subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several." *Cook v. Marshall County*, 93 N.W. 372, 377 (Iowa 1903)(citation omitted). It is not necessary that "the connection or relationship should be logical. It is enough that the matters are connected with and related to a single subject in popular signification." *Id.* (citation omitted). And while a law may contain "matters which might be and usually are contained in separate acts, or would be more logically classified as belonging to different subjects," those matters must be "germane to the general subject of the act in which they are put." *Id.* (citation omitted). [7]

[7] As noted previously, the House Speaker expressly ruled that the Amendment, when first proposed, was not germane to HF 594. (Ruling on Motions for Summary Judgment, p. 7, ¶¶ 22-26).

The Single Subject Rule's procedural restrictions are not merely symbolic. They exist to be enforced and, under clear Iowa Supreme Court precedents, over a period of many years, they have been. Yet, Amici Kirkwood Institute et al., in their insistence that *State v. Mabry*, 460 N.W.2d 472 (Iowa 1990) "gets the text and the history of the single-subject clause not quite right," (Brief, p. 28) ignores both the power of that decision and other precedents that have set forth the same analytical framework upon which *Mabry* was based. In particular, *Long v. Board of Supervisors*, 142 N.W.2d 378 (Iowa 1966)[8] sets forth the purposes of the One Subject Rule as follows:

> The primary and universally recognized purpose of the one-subject rule is to prevent "log-rolling" in the enactment of laws, the practice of several minorities combining their several proposals as different provisions of a single bill, and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately. It was designed 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.
>
> Another purpose served by the one-subject rule is to facilitate orderly legislative procedure. By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed by legislators. Also, 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, 42 N.W.2d 378, 382 (citation omitted); *see also Western International v. Kirkpatrick*, 396 N.W.2d 359, 364 (Iowa 1986) ("The 'one subject' rule is in place to prevent

[8] Notably, Amici Kirkwood Institute et al. ignores the *Long* case in its Brief.

logrolling and to facilitate orderly legislative procedure." (citing *Long*, 142 N.W.2d at 381, and *Green v. City of Cascade*, 231 N.W.2d 882, 886 (1975))). *Mabry* added to this list the additional purpose of keeping the citizens of the state "fairly informed of the subjects the legislature is considering." 460 N.W.2d at 473; *see also Giles v. State*, 511 N.W.2d 622, 625 (Iowa 1994) (the single-subject requirement "alerts citizens to matters under legislative consideration" (citing *Mabry*, 460 N.W.2d at 473)). Thus, Article III, section 29 "was designed to prevent surprise in legislation," to either legislators or citizens, and "to prevent the union in one bill of matters having no fair relation to each other." *Long*, 142 N.W.2d at 381.

Given the stated purposes of Article III, section 29, and in contrast to Ten State Senators Amici's argument, in order to determine whether those purposes have been met, a review of the facts surrounding the passage of a particular act are necessary. It is insufficient to rely on the text of the Act, without more. Context matters.

D. Applying Iowa law to the Undisputed Material Facts, the District Court Correctly Concluded Amendment H-8314 to House File 594 Violates Article III, Section 29 of the Iowa Constitution.

In determining whether the Single Subject Rule's requirement has been complied with, the Court construes an act liberally in favor of its constitutionality. *State v. Iowa Dist. Ct.*, 410 N.W.2d 684, 685 (Iowa 1987). However, the inclusion of a provision in a bill that does not reference or is not related to the same general subject as the other provisions in the same legislation tests that presumption of

constitutionality. To be held unconstitutional, "an act must encompass two or more dissimilar or discordant subjects that have no reasonable connection or relation to each other." *Id.* When it is clear that Article III, section 29 has been disregarded, the Court "must not hesitate to proclaim the supremacy of the Constitution." *Western International v. Kirkpatrick*, 396 N.W.2d 359, 366 (Iowa 1986) (citation omitted).

Iowa's single subject jurisprudence brings to light the various considerations that should be used in interpreting the rule. In this instance, the undisputed material facts, as set forth by the district court in its ruling (Ruling on Motions for Summary Judgment, pp. 5-8), are egregious and clearly show the General Assembly's disregard for Article III, section 29. Not only was the process of passage of HF 594 deeply flawed, but the subject matter of the act—life sustaining procedures for a minor child—bears no relationship whatsoever to a waiting period for a woman to obtain an abortion. Attempting to connect the two as "the decision-making process for irreversible acts that would cause the death of a child, born or not" (Brief of Amicus Curiae Kirkwood Institute et al., p. 33) is a stretch by any measure and ignores the undisputed facts, including the stated confusion of legislators and the declaration of House Speaker Grassley that amendment H-8314 was not germane to the Act. (Ruling on Motions for Summary Judgment, p. 7, ¶¶ 22-25).

Not only did citizens have virtually no opportunity to respond to the Amendment – as noted by Senator Petersen and others – but, in addition, legislators were left confused about the Amendment and the purpose of its inclusion in a bill

related to life-sustaining procedures for minors. (Ruling on Motions for Summary Judgment, p. 7 ¶¶ 23, 27, 31, 36; p. 20 n.6). The procedures of the legislature are not above scrutiny, particularly when those procedures violate the purposes of the Single Subject Rule requirement of Article III, section 29, as articulated and followed by this Court for decades.

The district court considered the subject matter of the Act,[9] the Amendment thereto, and, rightfully, the process by which the Amendment was adopted. Its consideration of the undisputed material facts, when applied to the Article III, section 29, and decisions of this Court interpreting it, led it to the only possible conclusion—a violation of the Constitution.[10] This Court should affirm the district court's ruling on this basis.

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[9] Amici Kirkwood Institute, Inc. and Twelve Members of the 89th General Assembly of the State of Iowa assert, "No one can argue that the topic of abortion is hidden by this title," noting the title as "An Act relating to medical procedures including abortion and limitations regarding the withdrawal of a life-sustaining procedure from a minor child." (Brief of Amicus Curiae Kirkwood Institute, Inc. and Members of the 89th General Assembly of the State of Iowa, p. 33). While the district court based its decision on the subject-matter provision of Article III, section 29, rather than the title requirement, Amici's assertion intentionally misrepresents the undisputed material fact that the title was changed only *after* the Amendment had been passed. (Ruling on Motions for Summary Judgment, p. 7 ¶ 29). In fact, both the Iowa House and Senate Journals recording the votes in both chambers referred to the bill with its original title, "An Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child." (Ruling on Motions for Summary Judgment, p. 6 ¶¶ 18, 33). By its very terms, "life-sustaining procedure[s]" clearly have nothing to do with abortions.

[10] Amicus Curiae Kirkwood Institute, Inc. and Twelve Members of the 89th General Assembly of the State of Iowa argue at some length that the district court should be overruled due to Iowa's codification rules. Their argument is baroque, obscure, irrelevant and misplaced. Suffice it so say that the Amendment's challenge, affirmed

II. The Holding in *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018), Which Declared a Similar Bill Unconstitutional, Applies to Equal Effect in This Case.

Amicus Curiae 60 Members of the Iowa Legislature ("60 Members") ask the Court to overturn *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018)(hereinafter "*PPH*"), a case decided less than four years ago that declared unconstitutional a bill nearly identical to the one at issue in this case.

As noted previously, from its beginnings, this Court has "guarded the venerable doctrine of *stare decisis* and required the highest possible showing that a precedent should be overruled before taking such a step." *Bd. of Water Works Trs. of City of Des Moines v. Sac Cty. Bd. of Supervisors*, 890 N.W.2d 50, 60 (Iowa 2017) (citations omitted). "Courts adhere to the holdings of past rulings to imbue the law with continuity and predictability and help maintain the stability essential to society." *Id.* at 61 (citation omitted). Amici 60 Members present no compelling reasons for upsetting the predictability and continuity of the established law in favor of the chaos of deciding previously decided issues anew every three or four years.

In *PPH*, a majority of the Iowa Supreme Court recognized,

> Autonomy and dominion over one's body go to the very heart of what it means to be free. At stake in this case is the right to shape, for oneself, without unwarranted governmental intrusion, one's own identity, destiny, and place in

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by the district court, was raised *prior to* codification of H-8314 to House File 594, so the arguments Amici Kirkwood Institute et al. raise related to codification are inapplicable to the facts presented here. *See Giles*, 511 N.W.2d 622, 626 (Iowa 1994)(holding that defendant's Article III, section 29 constitutional challenge was valid "because he raised it prior to codification.").

> the world. Nothing could be more fundamental to the notion of liberty. We therefore hold, under the Iowa Constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy.

PPH, 915 N.W.2d at 237. With the benefit of a fully-developed record following a trial on the merits in district court, the Court concluded,

> The overwhelming weight of the evidence demonstrates that requiring all women, regardless of decisional certainty, to wait at least seventy-two hours between appointments will not impact patient decision-making, nor will it result in a measurable number of women choosing to continue a pregnancy they otherwise would have terminated without mandatory delay.

PPH, 915 N.W.2d at 243. Applying strict scrutiny, the court concluded a 72-hour waiting requirement violated due process under the Iowa Constitution. *PPH*, 915 N.W.2d at 244. The Court went on to hold the waiting requirement violated the right to equal protection under the Iowa Constitution. *PPH*, 915 N.W.2d at 244-246.

In this instance, it was undisputed by the parties, below, that the Amendment, if allowed to stand, will require women seeking an abortion, first, to receive an ultra sound and certain state-mandated information, and then, second, to wait at least 24 hours before returning to the health center to have an abortion. (Ruling on Motions for Summary Judgment, p. 1, p. 6 ¶ 10). Relying on the holding in *PPH*, the district court correctly concluded that the 24-hour amendment did not further any compelling state interest and could not satisfy strict scrutiny and, accordingly, violated the due process and equal protection provisions of the Iowa Constitution. (Ruling on Motions for Summary Judgment, p. 24).

The district court's ruling in this case notes various findings by the *PPH* court—based on the fully-developed record before it on appeal—to support the conclusion that mandatory delay laws, including 24-hour waiting periods, "do not benefit individuals seeking an abortion or change their minds about their decision." (Ruling on Motions for Summary Judgment, pp. 24-25)(citing *PPH*, 915 N.W.2d at 219-31; 241-43). As the district court in this case noted, a 24-hour waiting period would not eliminate the two-trip requirement that the *PPH* Court had concluded substantially burdened women, particularly women without financial means. (Ruling on Motions for Summary Judgment, p. 25)(citing *PPH*, 915 N.W.2d at 227-42).

Amici 60 Members claim "*Reynolds I* likely has contributed to Iowa's rising abortion rates." (Amicus Curiae Brief of 60 Members, p. 40). This statement ignores the General Assembly's defunding of Planned Parenthood from family planning and sex education in 2017. *See Iowa abortions continue to increase, reversing long decline*, Associated Press (July 16, 2021), *available at* https://perma.cc/8XR7-D5DK; *see also PPH*, 915 N.W.2d at 215 (noting the "substantial decrease in funding" to Planned Parenthood due to the legislature's elimination of $3 million in federal funds that subsidized family planning services in Iowa).

The fully-developed record on appeal in *PPH*, and the Iowa Supreme Court's detailed analysis and application of it to the 72-hour waiting period at issue in *PPH*, applies equally here to defeat the Amendment's 24-hour waiting period. We agree

with the district court's conclusion in its Ruling on Motions for Summary Judgment, and urge this court to affirm it.

CONCLUSION

For the reasons stated herein, the Court should affirm the Iowa District Court's Ruling on Motions for Summary Judgment, concluding that Amendment H-8314 to House File 594, 88th Gen. Assemb. (Iowa 2020), codified at Iowa Code § 146A.1(1) (2020), violates the Single Subject Rule, as embodied in Article III, section 29, of the Iowa Constitution. The Court should reject Amici's invitation to overrule *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018) and instead apply this Court's holding in *PPH* and conclude the Amendment to HF-594 violates the Due Process and Equal Protection clauses of the Iowa Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because: this brief contains 5,757 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 1997-2004 in size 14 Garamond.

/s/ Andrew Kramer
Andrew Kramer

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2021, I electronically filed the foregoing Brief of Amici Curiae 33 Iowa State Legislators with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the parties of record in this matter. Pursuant to Rule 16.317(1)(a), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

/s/ Andrew Kramer
Andrew Kramer

ADDENDUM

Written Consent of the Parties for 33 Iowa State Legislators to file this brief:

rom: rita.bettis@aclu-ia.org,
To: sam.langholz@ag.iowa.gov,
Cc: larewlaw@aol.com, Thomas.Ogden@ag.iowa.gov,
ject: Re: Amicus Brief - Planned Parenthood of the Heartland, Inc., et al v Kim Reynolds ex rel State of Iowa, et al No. 21-0856
Date: Mon, Nov 1, 2021 11:18 am

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nk you for your email, Jim. Appellees consent to the amicus brief.

R

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ouns: she/her/hers

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Mon, Nov 1, 2021 at 11:16 AM Langholz, Sam <Sam.Langholz@ag.iowa.gov> wrote:
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ppellants consent to the filing of this brief.

st,

m

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rom: James C Larew <larewlaw@aol.com>
nt: Monday, November 1, 2021, 11:13 AM
o: Langholz, Sam; Rita Bettis
ubject: Amicus Brief - Planned Parenthood of the Heartland, Inc., et al v Kim Reynolds ex rel State of Iowa, et al o. 21-0856

ounsel:
e represent members of the Iowa House and Senate who seek the consent of the parties to the above-matter to file amicus brief on their behalf.
ould each of you kindly provide the consent of your respective clients to our filing an amicus brief, by responding this email, so that we do not need to file a formal motion with the court seeking leave of the parties to so-file?
hank you in advance for your anticipated prompt cooperation.
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