IN THE SUPREME COURT OF IOWA
No. 21–0856

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

Appellees,

vs.

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

Appellants.

Appeal from the Iowa District Court for Johnson County
Mitchell E. Turner, District Judge

APPELLANTS' REPLY BRIEF

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I. The Act doesn't violate the single-subject requirement of the Iowa Constitution because it embraces one subject and matters properly related to that subject.

Planned Parenthood largely ignores the text, constitutional history, and this Court's longstanding precedent in rejecting the proper deferential approach to the single-subject requirement of the Iowa Constitution.[1] Instead, Planned Parenthood rests largely on three easily distinguishable cases. It continues to improperly focus on the legislative process. And it seeks support by asserting a purported violation of the "purpose" of the requirement. The Court need not linger long over these distractions. Consistent with article III, section 29, as historically interpreted by this Court, the Act embraces "one subject, and matters properly connected therewith." Iowa Const. art. III, § 29.

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[1] Amicus League of Women Voters at least briefly ventures into the constitutional history. Amicus Br. of League of Women Voters at 11. But its citations to complaints of individual constitutional convention delegates about being exhausted after working until late at night provide no help to its cause. *See id.* If anything, it shows that even the constitutional convention had similar long hours and late nights as during the legislative process here.

To be fair, Planned Parenthood does start with an analysis of whether the two provisions in the Act are part of one general subject. Appellees' Br. at 39. But it goes off course almost immediately by improperly rejecting the policy choices embedded in the Legislature's definition of the subject. "Neither the wisdom of the statute nor the authority of the legislature" is involved in considering a single-subject challenge. *State v. Social Hygiene, Inc.*, 156 N.W.2d 288, 289–91 (Iowa 1968) (agreeing that the Legislature could include "any article or thing designed or intended for prevention of conception" within the subject of suppressing "the circulation, advertising, and vending of obscene and immoral literature and articles of indecent and immoral use").

Planned Parenthood finds the two provisions in the Act "at odds" by substituting its own views that the waiting period is "state interference in individual medical decision-making" while calling the other provision it views more favorably a "protect[ion] . . . from

state interference." Appellees' Br. at 39.[2] Those characterizations with embedded policy biases don't reflect the proper deferential searching approach of a court "for . . . a single purpose toward which" the Act's provisions relate. *Miller v. Blair*, 444 N.W.2d 487, 490 (Iowa 1989). And they camouflage the common subject of "medical procedures" explicitly identified by the Legislature in the Act's title or any of the other possible subjects, such as the protection of human life. *See* Appellants' Br. at 36.

Planned Parenthood then points to three cases in which this Court found a single-subject violation, contending that they "involved provisions more plausibly related to their underlying acts than" the provisions here. Appellees' Br. at 41. Yet Planned Parenthood's formulation of its comparison highlights the distinguishing feature between all three of these cases and the Act here. All three involved larger "underlying" bills with many

[2] And in any event, the views are mistaken. For example, even the provision regulating when a court may order withdrawal of life-sustaining procedures may be an interference in private medical decisions if it prevents a private party from seeking the relief it desires from the court. *See* Act of June 29, 2020 (House File 594), ch. 1110, § 2, 2020 Iowa Acts 298 (codified at Iowa Code § 144F.1).

provisions, nearly all relating to one topic, and then one or more outlier provisions that did not relate to that topic.

In *State v. Taylor*, 557 N.W.2d 523, 526 & n.1 (Iowa 1996), it was a larger juvenile justice bill with a challenged adult criminal weapons provision. While *Giles v. State*, 511 N.W.2d 622, 625 (Iowa 1994), and *Western International v. Kirkpatrick*, 396 N.W.2d 359, 364–65 (Iowa 1986) both involved technical code corrections bills, each with a challenged substantive provision included. And in all three cases, the Legislature titled the bills without reference to the outlier provisions. *See Taylor*, 557 N.W.2d at 527; *Giles*, 511 N.W.2d at 625; *Western Int'l*, 396 N.W.2d at 361.

It's not so surprising then that the Court held there was a violation of the single-subject requirement (and the title requirement, for that matter). But that doesn't mean that the Legislature cannot choose a broad subject—like the regulation of medical procedures here. After all, despite the impropriety of putting a criminal provision in a juvenile justice bill, we know it's not a single-subject violation to enact the entire criminal code. *See Cook v. Marshall Cty.*, 93 N.W. 372, 377–78 (Iowa 1903). It's the

mismatch of an outlier provision in a bill with the bulk of other bill's provisions—and even the bill's title—that shows the bill is about a different topic.

That mismatch isn't present here. There are just two provisions, both about regulation of medical procedures. The analysis might be different if there were a dozen other provisions all about the termination of life-sustaining procedures in different contexts and then one abortion-related provision stuck in. But when there are only two provisions, and they share the common connection, there's no basis to conclude that the bill is actually only about something else.

Planned Parenthood also turns to decisions interpreting the single-subject requirements of the Missouri and Oklahoma Constitutions for support. Appellees' Br. at 43–44 & n.14. But these provisions are not "nearly identical to Iowa's" as Planned Parenthood asserts. *Id.* at 44 n.14. Unlike Iowa's Constitution that was amended to be more deferential, Missouri's and Oklahoma's Constitutions both strictly require "one subject" without permitting "matters properly connected therewith." *See* Mo. Const. art. III,

§ 23; Okla. Const. art. V, § 57. Their single-subject requirements also both contain express exceptions—for appropriations bills (in both) and for codification and code revisions bills (in Oklahoma)—showing that without the exceptions even those sorts of bills would violate their requirements. *See* Mo. Const. art. III, § 23; Okla. Const. art. V, § 57. Just by the text of the provisions alone, it's clear these are much stricter requirements. And precedents interpreting them are thus of little value interpreting the Iowa Constitution.

With these arguments not providing a path to find a constitutional violation, Planned Parenthood again journeys into the legislative process. None of this terrain is relevant—and most has been adequately surveyed already. Appellants' Br. at 39–51. But a few points are so far off the trail that they warrant discussion.

Planned Parenthood doubles down on the district court's mistaken notion of deference to the germaneness ruling on the amendment in the House. It contends that by failing to follow "the House's [germaneness] determination, the State asks this Court to override the legislature's own understanding of these bills and their relationship to each other." Appellees' Br. at 40. Yet these are two

different questions—whether an amendment is germane to pending legislation versus whether the enacted Act is one subject and properly connected matters. And the ruling reflected the presiding officer's interpretation of a House Rule—not "the legislature's own understanding" about anything. The *Legislature's* understanding of the proper subject of the Act is reflected in the provisions that a majority of the House and the Senate approved adding and then approved again in final form. It's Planned Parenthood that seeks to override that understanding in this constitutional challenge.

And the ruling wasn't even on the germaneness question Planned Parenthood thinks it was. *See* Appellants' Br. at 42–43. Planned Parenthood quotes one legislator's statement on the Floor made just before requesting a germaneness ruling in an attempt to "flatly contradict[]" the House Journal.[3] Appellees' Br. at 26 n.4. But the House Journal is the official record of what the presiding

[3] The full statement merely says: "Thank you, Mr. Speaker. I'm very confused—um—on this amendment. Somehow, we ended up with an abortion amendment on a—a limitations on life-sustaining procedure. I'd ask the Speaker if this amendment is in fact germane because um it doesn't appear to even relate to anything in the bill." House Video, Consideration of H.F. 594 (June 13, 2020, at 10:20:36–10:21:06 PM), *available at* https://perma.cc/HCG3-JFWG.

officer decided. *See* Iowa Const. art. III, § 9; Iowa Code § 2.9; Mason's Manual of Legislative Procedure § 695 (2020 ed.) ("The journal is the official record of the actions of a legislative body."); *id.* § 700 ("The record contained in the journals of the houses of the legislature is binding."). And it tracks the House Rule that requires an amendment to an amendment to be germane to both the amendment and the underlying bill. *See* 88th Gen. Assemb. H. Rule 38, https://perma.cc/LQ72-4NVL. It doesn't matter if the legislator asking for the ruling thought the amendment was not germane for other reasons too. Again, more than anything, these nuanced distinctions show the perils of wandering far afield from the proper constitutional single-subject analysis.[4]

Yet Planned Parenthood goes even further, arguing that "[t]he Amendment [v]iolates the [p]urpose of the [s]ingle-[s]ubject

[4] Planned Parenthood makes a similar error in its selective interpretation of the legislative process by asserting that the underlying bill to which the amendment was attached was "an unquestionably uncontroversial bill" by citing a single senator's views. Appellees' Br. at 50. This assertion overlooks—even though it was pointed out in Appellants' Brief—that the House only approved the underlying bill without the amendment by a vote of 58 to 36. *See* Appellants' Br. at 49.

[r]ule." Appellees' Br. at 44. As a matter of logic, it's not clear how "a purpose" motivating a particular requirement could ever be violated. And this Court's precedents provide no support for finding a constitutional violation based on purposes behind the single-subject requirement. So it matters not that none of the purposes motivating the single-subject requirement are even implicated in the process that led to the enactment of this Act. *See* Appellants' Br. at 47–51.

Planned Parenthood also suggests the Court should find significance in the timing of the Legislature's amendment to the bill's title. Appellees' Br. at 48–49 & n.15. But it would be improper to amend the title of a bill to incorporate matters in an amendment *before* that amendment has even been adopted. The amendment itself contained the amendment to the title. App. 509. Sometimes, the title is even amended right before the bill is passed to ensure that it accurately reflects the final version of the bill. *See Carlton v. Grimes*, 23 N.W.2d 883, 897–98 (Iowa 1946). The bottom line is that Planned Parenthoods' creative title requirement—that they now introduce even though they didn't bring a title challenge—would

essentially preclude any amendments that change the subject of a bill. This isn't required by the Iowa Constitution. And if Planned Parenthood thinks it should be, it could direct its efforts to proposing a constitutional amendment to add such a requirement like at least 11 other states have done. *See* Appellants' Br. at 46–47. But Planned Parenthood's challenge based on current text of the Iowa Constitution fails. And the district court's contrary ruling should be reversed.

II. This Court's 2018 ruling that a 72-hour-waiting-period statute violates the equal-protection and due-process protections of the Iowa Constitution doesn't bar the State from defending a new 24-hour-waiting-period statute.

Planned Parenthood is correct that no Iowa precedent directly addresses whether issue preclusion can be used—as the district court did here—to bar the State from defending the constitutionality of a newly enacted state statute based on a ruling on the constitutionality of a different statute. Appellees' Br. 54–55. But this Court has repeatedly held that issue preclusion requires "identical" issues. *Employers Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 217, 22 (Iowa 2012); *see also* Appellants' Br. at 54–55. And

even Planned Parenthood tacitly concedes that the two statutes aren't identical. *See* Appellees' Br. at 53 (describing the statutes as "*virtually* identical" (emphasis added)). That's not good enough since "the issue must be precisely the same." *Estate of Leonard, ex rel., Palmer v. Swift*, 656 N.W.2d 132, 147 (Iowa 2003) (cleaned up).

While this Court hasn't yet addressed the question here, the Montana Supreme Court has. *See Planned Parenthood of Montana v. State*, 342 P.3d 684 (Mont. 2015); Appellants' Br. at 59–61. Planned Parenthood tries to distinguish *Planned Parenthood of Montana* by focusing on only one of its holdings—the use of issue preclusion on a second parental-notification statute that adjusted the applicable ages. Appellees' Br. at 55. Planned Parenthood suggests that preclusion wasn't appropriate only because the age change "went to the heart of the claims at issue." *Id.*

But the Montana Supreme Court rejected this argument explicitly in its second holding that issue preclusion also couldn't apply to another statute that required parental *consent,* which wouldn't make that statute any more likely to pass constitutional muster. *Planned Parenthood of Montana v. State*, 342 P.3d at 687.

The court explained that the differences—whether more or less restrictive—"highlights that the two laws are not identical." *Id.* at 687. So too here. And since issue preclusion is a common law doctrine—not based on any particular provision of the Iowa Constitution or Iowa statutes—there's no reason not to follow the Montana Supreme Court's thoughtful opinion.

Planned Parenthood also tries to characterize the preclusion it seeks as multiple individual "factual issues" that it should be able to use to obtain summary judgment that this new statute is unconstitutional. Appellees' Br. at 51–52 But this doesn't make any sense in a constitutional challenge to a statute, where the facts are "constitutional" or "legislative" facts bound up in the ultimate de novo constitutional holding by the Iowa Supreme Court and not subject to normal evidentiary procedures. *See Varnum v. Brien*, 763 N.W.2d 862, 881 (Iowa 2009). Indeed, though Planned Parenthood repeatedly references the "full trial record" as support for the preclusive effective of the fact findings here, the trial court's fact findings were not favorable to Planned Parenthood or followed by the Supreme Court in its 2018 decision.

At bottom, the State has a right to defend the constitutionality of its duly enacted statute on the merits. That question was not previously ruled on by this Court. And when the merits of that constitutional claim are considered, the Court should be able to consider all constitutional facts properly before it as well, without being bound by reasoning from a prior case. Issue preclusion should not apply here.

III. Issue preclusion doesn't bar the State from asking this Court to overrule its 2018 ruling because the Iowa Constitution doesn't require strict scrutiny of abortion regulations.

To be clear, this Court doesn't need to overrule *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018), to conclude that the district court improperly granted summary judgment based on issue preclusion because the issues aren't identical.[5] And the Court shouldn't consider the merits of the constitutional challenge to the 24-hour-waiting-period statute at this time because neither party filed for summary

[5] But if the Court concludes that the issues are identical, then this Court must address whether to overrule the 2018 ruling and reverse summary judgment on that basis. *See* Appellants' Br. at 65.

judgment on that basis. *See* App 40–46, 462–63. *Contra* Appellees' Br. at 69–79 (arguing the merits). The State seeks only reconsideration of the Court's holdings that abortion is a fundamental right under the Iowa Constitution protected by strict scrutiny, so that the district court and parties can have clarity on the proper standard to apply on remand.

While Planned Parenthood extols the virtues of stare decisis, it does not—and cannot—refute that stare decisis is at its weakest in constitutional cases. *See* Appellees' Br. 57–60; *State v. Kilby*, 961 N.W.2d 374, 386 (Iowa 2021) (McDonald, J., concurring) (explaining that "the Constitution's supremacy over other sources of law—including [the Court's] own precedents" means that "[t]here is no legitimate reason why a court may privilege a demonstrably erroneous interpretation of the Constitution over the Constitution itself."); *see also* Appellants' Br. at 70–71; Amici Br. of 60 Members of the Iowa Legislature at 11–14.

And *Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018), is a demonstrably erroneous interpretation of the Iowa Constitution. *See* Appellants' Br. at 67–

74. Planned Parenthood does little to argue that a right to abortion is "deeply rooted in this Nation's history and tradition." *State v. Seering*, 701 N.W.2d 655, 644 (Iowa 2005) (cleaned up). And Planned Parenthood even seems to suggest that no such requirement exists for finding a fundamental right. *See* Appellees' Br. at 67 (citing *Callender v. Skiles*, 591 N.W.2d 182, 190 (Iowa 1999)). But this Court has repeatedly—and more recently—recognized the deeply rooted requirement. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, 962 N.W.2d 37, 48 (Iowa 2021); *Hensler v. City of Davenport*, 790 N.W.2d 569, 581 (Iowa 2010); *Seering*, 701 N.W.2d at 644. That requirement wasn't satisfied in this Court's 2018 ruling or redeemed by Planned Parenthood here.

Planned Parenthood also accuses the State of giving "a distorted history of abortion in Iowa." Appellees' Br. at 65.[6] But it is Planned Parenthood that repeats questionable history. *See*

[6] Planned Parenthood doesn't provide a cite to any particular "distortion." But presumably it is referring to the State's accurate assertions that the Legislature banned abortions, unless necessary to save the mother's life, shortly after the adoption of the Iowa Constitution and that abortion remained illegal for more than one hundred years. *See* Appellants' Br. at 67–68 (citing *Planned Parenthood*, 915 N.W.2d at 247 (Mansfield, J., dissenting)).

Memphis Ctr. For Reprod. Health v. Slatery, 14 F.4th 409, 442–47 (6th Cir. 2021) (Thapar, J., concurring in judgment part and dissenting in part) (pointing out "the flaws in *Roe*'s historic analysis," following "generations of scholars [who] have done the same"); Br. of Amicus Curiae Joseph W. Dellapenna, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, at 1–30 (U.S. July 29, 2021), *available at* https://perma.cc/N4WM-Q7ER.

For example, Planned Parenthood contends that abortion wasn't illegal in Iowa before quickening. Appellees' Br. at 65 & n.23.[7] But the terms "quickening" and "quick," had various and now somewhat confusing meanings, yet were still rooted in the longstanding common law protection of unborn human life. *See* Br. of Amici Curiae Scholars of Jurisprudence John M. Finnis and Robert P. George in Support of Petitioners, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2021 WL 3374325, at *11–22

[7] In fact, the author of one of the articles on which Planned Parenthood relies, James Mohr, has been criticized as writing "highly selective examination of the evidence to support a partisan and distorted reading" of abortion history. Br. of Amicus Curiae Joseph W. Dellapenna, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, at 5–6 (U.S. July 29, 2021), *available at* https://perma.cc/N4WM-Q7ER.

(U.S. July 29, 2021); *Slatery*, 14 F.4th at 445–46 & n.10. And in any event, by 1878, this Court rejected the quickening distinction because it had no basis in the text of the criminal statute, holding that abortion was illegal "at any time during pregnancy." *State v. Fitzgerald*, 49 Iowa 260, 261 (Iowa 1878).

Planned Parenthood also suggests that these abortion policies weren't motivated by protection of unborn life, but rather "concerns about the dangers of abortion methods at the time, a belief that all married women had an enforceable *duty* to the State to reproduce, and fear that Catholics would 'overwhelm' the Protestant population." Appellees' Br. at 66. But in discussing the crime of abortion, this Court focused on the "the sacredness of human life and the personal safety of every human being." *State v. Moore*, 25 Iowa 128, 136 (Iowa 1868). And this matches the history in other states—both in courts and among proponents of the statutes. *See Slatery*, 14 F.4th at 446–47 & n.11. ("Supporters of anti-abortion statutes spoke openly about the importance of protecting the unborn child."); Br. of Amicus Curiae Joseph W. Dellapenna, at 23–26.

When properly considering the text, structure, history, and tradition of the Iowa Constitution, this Court should conclude that abortion is not a fundamental right. The 2018 ruling of the Court to the contrary is demonstrably erroneous. It should be overruled.

CONCLUSION

For these reasons, the district court's order granting summary judgment to Planned Parenthood and denying partial summary judgment to the State on the single-subject claims should be reversed. This Court should overrule *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018). And this case should be remanded to the district court for further consideration of the merits of the other claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 3,455 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Samuel P. Langholz*
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CERTIFICATE OF FILING AND SERVICE

I, Samuel P. Langholz, hereby certify that on the 30th day of November, 2021, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal with via EDMS.

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