ELECTRONICALLY FILED MAR 28, 2023 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
No. 22-2036

PLANNED PARENTHOOD OF THE HEARTLAND, INC.; EMMA GOLDMAN CLINIC; and JILL MEADOWS, M.D.,
Petitioners-Appellees,

v.

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

On Appeal from the Iowa District Court for Polk County
Case No. EQCE083074
The Honorable Celene Gogerty

APPELLEES' FINAL BRIEF

RITA BETTIS AUSTEN
American Civil Liberties Union
of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2316
Phone: (515) 243-3988
Fax: (515) 243-8506
rita.bettis@aclu.ia.org

CAITLIN SLESSOR
SAMUEL E. JONES
Shuttleworth & Ingersoll, PLC
115 3rd St. SE Ste. 500
PO Box 2107
Cedar Rapids, Iowa 52406-2107
Phone: (319) 365-9461

PETER IM*
DIANA SALGADO*
Planned Parenthood Federation
of America
1110 Vermont Ave., N.W., Ste. 300
Washington, D.C. 20005
Phone: (202) 803-4096
peter.im@ppfa.org
diana.salgado@ppfa.org

* *Admitted pro hac vice*

Fax: (319) 365-8443
CLS@shuttleworthlaw.com
SEJ@shuttleworthlaw.com

Attorneys for Petitioners-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES 6
STATEMENT OF ISSUES PRESENTED FOR REVIEW 15
ROUTING STATEMENT 17
STATEMENT OF THE CASE 18
STATEMENT OF THE FACTS 22
I. The Ban 22
II. Abortion in Iowa 24
III. District Court Proceedings 26
IV. *PPH IV* 27
V. State's Motion to Dissolve and District Court Ruling 28
ARGUMENT 29
I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE STATE'S MOTION BECAUSE THE BAN IS VOID. 29
A. Standard of Review, Preservation of Error, and Scope of Review 29
B. Because the Ban violated the Iowa Constitution when it was enacted, it is void. 31
II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE STATE'S MOTION TO DISSOLVE BECAUSE THE MOTION IS NOT PERMITTED UNDER IOWA LAW. 41
A. Standard of Review, Preservation of Error, and Scope of Review 41
B. The Iowa Rules of Civil Procedure do not permit a district court to grant an untimely motion to vacate a permanent injunction based on a change in the governing law. 42

i. The State's motion to dissolve is not permitted under Rules 1.1012–13. 43

ii. The narrow equitable tolling exception to Rules 1.1012–13 that this Court has recognized does not apply to the State's motion. 45

C. The district court did not have inherent authority to dissolve a permanent injunction based on a change in the governing law. 48

i. Courts of equity historically had no authority to vacate an injunction based on a change in the law. 48

ii. *Wilcox* and *Iowa Electric* predate the Rules of Civil Procedure, and they do not change the rule that courts do not have inherent authority to vacate injunctions based on a change in the governing law. 50

iii. The State's reliance on dicta from *Bear*, *Helmkamp*, and *Den Hartog* is misplaced. 57

iv. *Spiker* allows modification of injunctions for cases in which the injunction violates constitutional rights. 59

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE STATE'S MOTION BECAUSE THE BAN REMAINS UNCONSTITUTIONAL UNDER *PPH IV*. 61

A. Standard of Review, Preservation of Error, and Scope of Review 61

B. The Ban is unconstitutional under *PPH IV*, which left in place the undue burden test. 62

C. This Court should reject the State's invitation to change the standard for reviewing abortion restrictions under the Iowa Constitution because that issue is not properly before the Court. 65

IV. THE DISTRICT COURT'S DENIAL OF THE STATE'S MOTION TO DISSOLVE IS NOT A FINAL JUDGMENT FOR PURPOSES

OF APPEAL, SO THE COURT SHOULD DISMISS THIS APPEAL. 69

CONCLUSION 71

COST CERTIFICATE 73

CERTIFICATE OF COMPLIANCE 73

CERTIFICATE OF FILING AND SERVICE 73

TABLE OF AUTHORITIES

Cases **Page(s)**

Agostini v. Felton,
521 U.S. 203 (1997) 45

Almond v. R.I. Lottery Comm'n,
756 A.2d 186 (R.I. 2000) 37

Anderson v. Hadley,
63 N.W.2d 234 (Iowa 1954) 31

Baldwin v. City of Estherville,
915 N.W.2d 259 (Iowa 2018) 69

Bank of Am., N.A. v. Schulte,
843 N.W.2d 876 (Iowa 2014) 62

Bear v. Iowa District Court,
540 N.W.2d 439 (Iowa 1995) 57, 59

Beck v. Fleener,
376 N.W.2d 594 (Iowa 1985) 71

Behm v. City of Cedar Rapids,
922 N.W.2d 524 (Iowa 2019) 67

Bosch v. Bosch,
24 N.W. 517 (Iowa 1885) 49

Boyles v. Cora,
6 N.W.2d 401 (Iowa 1942) 57

Bryant v. Woodall,
363 F. Supp. 3d 611 (M.D.N.C. 2019) 34

Carter v. Carter,
957 N.W.2d 623 (Iowa 2021) 46

City of Chariton v. J. C. Blunk Const. Co.,
112 N.W.2d 829 (Iowa 1962) 47

City of Sioux City v. Freese,
611 N.W.2d 777 (Iowa 2000) 42

Clark v. Bd. of Dirs.,
24 Iowa 266 (1868) 64

Coger v. Nw. Union Packet Co.,
37 Iowa 145 (1873) 64

Crowell v. State Pub. Def.,
845 N.W.2d 676 (Iowa 2014) 71

Democratic Senatorial Campaign Comm. v. Pate,
950 N.W.2d 1 (Iowa 2020) 67

Den Hartog v. City of Waterloo,
926 N.W.2d 764 (Iowa 2019) 30, 42, 58, 59

Denby v. Fie,
76 N.W. 702 (Iowa 1898) 50, 51

Dobbs v. Jackson Women's Health Organization,
597 U.S. ___, 142 S.Ct. 2228 (2022) 19

Edwards v. Beck,
786 F.3d 1113 (8th Cir. 2015) 27, 33

Gail v. W. Convenience Stores,
434 N.W.2d 862 (Iowa 1989) 61

Grayson-Robinson Stores, Inc. v. Oneida, Ltd.,
75 S.E.2d 161 (Ga. 1953) 38

Guam Soc'y of Obstetricians & Gynecologists v. Ada,
962 F.2d 1366 (9th Cir. 1992) 33

Handeland v. Brown,
216 N.W.2d 574 (Iowa 1974) 35

Helmkamp v. Clark Ready Mix Co.,
249 N.W.2d 655 (Iowa 1977) 58

In re Marriage of Fairall,
403 N.W.2d 785 (Iowa 1987) 44

In re Marriage of Rhinehart,
780 N.W.2d 248, 2010 WL 446560 (Iowa Ct. App. 2010) 47

In re N.G.,
115 N.E.3d 102 (Ill. 2018) 38

In re Ralph,
1 Morris 1 (Iowa 1839) 63

Iowa Elec. Light & Power Co. v. Inc. Town of Grand Junction,
264 N.W. 84 (Iowa 1935) 32, 51, 54, 55

Isaacson v. Horne,
716 F.3d 1213 (9th Cir. 2013) 27, 33

Jackson v. Gould,
65 N.W. 406 (Iowa 1895) 50, 53

Jane L. v. Bangerter,
102 F.3d 1112 (10th Cir. 1996) 33

Jefferson v. Jefferson,
153 So. 2d 368 (La. 1963) 39

Johnston v. Kirkville Indep. Sch. Dist.,
39 N.W.2d 287 (Iowa 1949) 56, 57

Keokuk Junction Ry. Co. v. IES Indus., Inc.,
618 N.W.2d 352 (Iowa 2000) 42

Krebs v. Town of Manson,
129 N.W.2d 744 (Iowa 1964) 43

Kreft v. Fisher Aviation, Inc.,
264 N.W.2d 297 (Iowa 1978) 45

Legis. Rsch. Comm'n v. Fischer,
366 S.W.3d 905 (Ky. 2012) 39

McCollum v. McConaughy,
119 N.W. 539 (Iowa 1909) 38

McGregor v. Gardner,
16 Iowa 538 (1864) 50

McQuistion v. City of Clinton,
872 N.W.2d 817 (Iowa 2015) 69

Memphis Ctr. for Reprod. Health v. Slatery,
No. 3:20-CV-00501, 2020 WL 4274198 (M.D. Tenn. July 24, 2020) 33

MKB Mgmt. Corp. v. Stenehjem,
795 F.3d 768 (8th Cir. 2015) 27, 33

Moore v. Langton,
167 A.2d 558 (R.I. 1961) 37

Perkins v. Bd. of Supervisors of Madison Cnty.,
636 N.W.2d 58 (Iowa 2001) 30

Phillips v. Catterson,
17 N.W.2d 517 (Iowa 1945) 52

Planned Parenthood of Se. Pa. v. Casey,
505 U.S. 833 (1992) 18

*Planned Parenthood of the Heartland v. Iowa Bd. of M*ed*.,*
865 N.W.2d 252 (Iowa 2015) 18, 26, 33

Planned Parenthood of the Heartland v. Reynolds,
915 N.W.2d 206 (Iowa 2018) .... *passim*

Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State,
975 N.W.2d 710 (Iowa 2022) .... *passim*

Planned Parenthood S. Atl. v. State,
882 S.E.2d 770 (S.C. Jan. 5, 2023) 39

Planned Parenthood S. Atl. v. Wilson,
527 F. Supp. 3d 801 (D.S.C. 2021) 33

Preterm-Cleveland v. Yost,
394 F. Supp. 3d 796 (S.D. Ohio 2019) 34

Racing Ass'n of Cent. Iowa v. Fitzgerald,
675 N.W.2d 1 (Iowa 2004) 67

Recker v. Gustafson,
271 N.W.2d 738 (Iowa 1978) 71

Robinson v. Marshall,
No. 2:19-cv-365-MHT, 2019 WL 5556198 (M.D. Ala. Oct. 29, 2019) ... 34

Roe v. Wade,
410 U.S. 113 (1973) 18

Security Sav. Bank of Valley Junction v. Connell,
200 N.W. 8 (Iowa 1924) 21, 32, 34

Shaw v. Addison,
18 N.W.2d 796 (Iowa 1945) 46, 47, 52

SisterSong Women of Color Reprod. Just. Collective v. State,
2022 WL 16960560 (Ga. Super. Nov. 15, 2022) 37, 38, 40

SisterSong Women of Color Reprod. Justice Collective v. Kemp,
472 F. Supp. 3d 1297 (N.D. Ga. 2020) 34

Sojourner T. v. Edwards,
974 F.2d 27 (5th Cir. 1992) 33

Spiker v. Spiker,
708 N.W.2d 347 (Iowa 2006) 59, 60, 61

State ex rel. Stenberg v. Murphy,
527 N.W.2d 185 (Neb. 1995) 39

State v. Abodeely,
179 N.W.2d 347 (Iowa 1970) 45

State v. Bates,
305 N.W.2d 426 (Iowa 1981) 32

State v. Musser,
721 N.W.2d 734 (Iowa 2006) 67

State v. O'Neil,
126 N.W. 454 (Iowa 1910) 38

State v. Schultz,
604 N.W.2d 60 (Iowa 1999) 42

Stover v. Cent. Broad. Co.,
78 N.W.2d 1 (Iowa 1956) 71

Swift v. Swift,
29 N.W.2d 535 (Iowa 1947) 52

Sys. Fed'n No. 91, Ry. Emps.' Dep't, AFL-CIO v. Wright,
364 U.S. 642 (1961) 45, 60

Taylor v. Place,
4 R.I. 324 (1856) 37

Utter v. Franklin,
172 U.S. 416 (1899) 56

Varnum v. Brien,
763 N.W.2d 862 (Iowa 2009) 63, 69

Wilcox v. Miner,
205 N.W. 847 (Iowa 1925) 51, 53, 54

Windus v. Great Plains Gas,
122 N.W.2d 901 (1963) 44, 52

Statutes

Ga. Const. Art. I, § 2, ¶ 5 .... 36, 37

Iowa Code § 146C 22, 23, 25

Iowa Code § 148.6(2)(c) 22

Iowa Code § 3154 (1873) 50

Iowa Code § 726.2 23

Iowa Code §§ 709.1 *et seq.* 23

Iowa Code §§ 12787–800 (1924) 51

Iowa Code §§ 12787–800 (1935) 51

Iowa Code §§ 12787–800 (1939) 47, 51

Iowa Const. Art. I, § 1 69

Iowa Const. Art. XII, § 1 .... 20, 31, 32

Iowa Const. Art. XII, § 1 (1857) 34

R.I. Const. Art. IV, § 1 (1842) 36

R.I. Const. Art. VI, § 1 36

Tex. Const. Art. I, § XXIX 36

Rules

Iowa R. App. P. 6.1101(2)(a), (d) 17

Iowa R. App. P. 6.1205 64

Iowa R. App. P. 6.903(2)(g)(3) 31

Iowa R. App. P. 6.907 42

Iowa R. Civ. P. 1.101 .... 43, 52

Iowa R. Civ. P. 1.1012 45

Iowa R. Civ. P. 1.1013 44

Iowa R. Civ. P. 252 cmt. (1943) 47

Other Authorities

16A Am. Jur. 2d *Constitutional Law* § 194 36

Heidi S. Alexander, Note, *The Theoretic and Democratic Implications of Anti-Abortion Trigger Law*s, 61 Rutgers L. Rev. 381 (2009) 41

Jonathan F. Mitchell, *The Writ-of-Erasure Falla*cy, 104 Va. L. Rev. 933 (2018) 39, 40

Note, *Finality of Equity Decrees in the Light of Subsequent Even*ts, 59 Harv. L. Rev. 957 (1946) 49, 55

Restatement (Second) of Judgments § 73 (Am. L. Inst. 1982) 53, 55

William J. Aceves, *The Problem with Dobbs and the Rule of Legali*ty, 111 Geo. L.J. Online 75 (2022) 41

William Michael Treanor & Gene B. Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 Colum. L. Rev. 1902, 1955 (1993).. 41

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1) **Whether a law that clearly violates the Iowa Constitution at the time of enactment is void under Article XII, § 1 of the Iowa Constitution, which provides that any law inconsistent with it "shall be void."**

Iowa Const. Art. XII, § 1
Sec. Sav. Bank of Valley Junction v. Connell, 200 N.W. 8 (Iowa 1924)

2) **Whether the Iowa Rules of Civil Procedure permit a district court to grant an untimely motion to vacate a permanent injunction based on a change in law.**

Iowa R. Civ. P. 1.1012
Iowa R. Civ. P. 1.1013
Shaw v. Addison, 18 N.W.2d 796 (Iowa 1945)

3) **Whether Iowa law otherwise grants a district court inherent authority to vacate a permanent injunction more than a year after it was entered because of a subsequent change in law.**

Denby v. Fie, 76 N.W. 702 (1898)
Iowa Elec. Light & Power Co. v. Inc. Town of Grand Junction, 264 N.W. 84 (Iowa 1935)
Wilcox v. Miner, 205 N.W. 847 (Iowa 1925)
Bear v. Iowa District Court, 540 N.W.2d 439 (Iowa 1995)
Helmkamp v. Clark Ready Mix Co., 249 N.W.2d 655 (Iowa 1977)
Den Hartog v. City of Waterloo, 926 N.W.2d 764 (Iowa 2019)
Spiker v. Spiker, 708 N.W.2d 347 (Iowa 2006)

4) **Whether this Court's adoption in *Planned Parenthood of the Heartland, Inc. v. Reynolds* ("*PPH IV*"), 975 N.W.2d 710 (Iowa 2022), of the undue burden test—under which pre-viability abortion bans are unconstitutional—constitutes a change in law justifying dissolution of an order permanently enjoining such a ban.**

   Planned Parenthood of the Heartland, Inc. v. Reynolds, 975 N.W.2d 710 (Iowa 2022)

ROUTING STATEMENT

As set forth in their motion to dismiss, Appellees respectfully request that the Court dismiss this appeal. However, should the Court allow the appeal to proceed either as of right or through writ of certiorari proceedings, it should retain this appeal rather than direct it to the Court of Appeals, because the Appellants' novel and unfounded procedural and substantive arguments have broad implications for the rule of law in Iowa and implicate significant democratic interests. *See* Iowa R. App. P. 6.1101(2)(a), (d).

STATEMENT OF THE CASE

Iowa Code § 146C ("the Ban"), would ban abortions at approximately six weeks into a pregnancy, as measured from the first day of the last menstrual period ("LMP"), before many people know they are pregnant. Because 98% of abortions in Iowa occur after six weeks LMP, the Ban would effectively end access to abortion in Iowa. When the Ban was enacted, the right to abortion was protected by the Iowa Constitution under *Planned Parenthood of the Heartland v. Iowa Board of Medicine* ("*PPH I*"), 865 N.W.2d 252 (Iowa 2015), and by the federal constitution under *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). In other words, at the time of enactment, the Legislature and Governor knew the Ban was unconstitutional and could not survive a constitutional challenge under existing, binding precedent.

And the Ban was promptly challenged and enjoined. Petitioners-Appellees Planned Parenthood of the Heartland, Inc. ("PPH"); the Emma Goldman Clinic ("EGC"); and Jill Meadows, M.D. (collectively, "Appellees") filed suit, arguing that the Ban was unconstitutional because it did not satisfy the undue burden standard under *PPH I*. Defendants-Appellants Governor Kim Reynolds and the Iowa Board of Medicine (collectively, "the State") *stipulated* to a temporary injunction. While the case

was pending in district court, this Court held that abortion restrictions are subject to strict scrutiny under the Iowa Constitution. *Planned Parenthood of the Heartland v. Reynolds* ("*PPH II*"), 915 N.W.2d 206 (Iowa 2018). In January 2019, the district court entered an order permanently enjoining the Ban, thereby closing the case. The State chose not to appeal.

In June 2022, this Court overruled *PPH II*'s holding with respect to strict scrutiny but left in place the *Casey* undue burden standard. *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State* ("*PPH IV*"), 975 N.W.2d 710, 716 (Iowa 2022), *reh'g denied* (July 5, 2022). Later the same month, the United States Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, 142 S.Ct. 2228 (2022), overruling *Roe* and *Casey*.

In August 2022, more than three years after the district court entered the permanent injunction, the State filed a motion to dissolve it. Even though *PPH IV* left in place the *Casey* undue burden standard, under which laws that ban abortion previability—and certainly bans on abortion at six weeks LMP—are unconstitutional, the State asserted that the law had changed such that the district court should not only disregard the Iowa Rules of Civil Procedure to reopen the case, but also apply rational basis review to dissolve the permanent injunction.

Following briefing and argument, in December 2022, the district court properly denied the State's motion. It concluded that because the Ban was unconstitutional when it was passed, it is void under the Iowa Constitution. It also held that the State's motion was untimely under Iowa Rules of Civil Procedure 1.1012 and 1.1013, which govern modification or vacatur of final judgments, and that the court did not have "inherent authority" to dissolve the injunction. Finally, the district court concluded that, even if it did have the authority to vacate the injunction, the State had failed to show a material change in law that would warrant vacatur because the Ban does not pass the undue burden test that *PPH IV* left in place.

The State filed a notice of appeal. But as detailed in Appellees' motion to dismiss, the denial of a motion to dissolve an injunction does not trigger an appeal as of right, so this purported appeal is not properly before this Court. If the Court chooses not to dismiss the case, it should construe the case as a petition for a writ of certiorari, and it should deny the petition.

As a threshold matter, because the Ban was unconstitutional at the time it was passed, it is void as though it had never been passed. The Iowa Constitution provides, "This constitution shall be the supreme law of the state, and any law inconsistent therewith, *shall be void*." Iowa Const. Art. XII, § 1. This provision prevents the Legislature from engaging in political theater by

enacting laws that have no effect and keeps courts from imposing the consequences of laws passed by previous Iowa legislatures on future electorates. Under this provision and this Court's precedent in *Security Sav. Bank of Valley Junction v. Connell*, 200 N.W. 8, 10 (Iowa 1924), the Ban is void. On this basis alone, this Court should affirm the district court's ruling—or deny the petition for a writ of certiorari.

With respect to vacatur, the State concedes on appeal that no provision of the Iowa Rules of Civil Procedure authorizes its motion, but asserts that district courts have inherent authority to vacate injunctions that they have issued. This is not consistent with the historical practice of Iowa courts of equity, and none of the cases the State cites are apposite. To the contrary, this Court has repeatedly recognized the narrowness of the exceptions to the strictures of Rules 1.1012 and 1.1013. This is also an independent basis on which this Court may affirm the district court's ruling or deny the petition for a writ of certiorari.

Finally, even if the motion were procedurally proper and the Ban were not void, there was no basis to grant the State's motion because there has been no predicate change in the governing law that would warrant dissolving the injunction. The State asserts that under *PPH IV*, rational basis, not undue burden, is the "governing standard," but that is not so. *PPH IV* unequivocally

left in place the undue burden standard for evaluating abortion restrictions under the Iowa Constitution. The Ban does not satisfy that standard—even the State does not argue otherwise. Further, this Court should decline the State's invitation to address what standard would apply absent *PPH IV* and to apply that standard to the Ban. Not only did the State fail to preserve error on this point below, but the district court never had an opportunity to develop a factual record or hear fully briefed legal arguments on this question. Therefore, it is not properly before this Court on appeal.

STATEMENT OF THE FACTS

I. The Ban

Governor Reynolds signed the Ban into law on May 4, 2018. Under its terms, when a patient seeks an abortion, the provider must first perform an ultrasound to detect embryonic or fetal cardiac activity. Iowa Code § 146C.2(1). If any such activity is detected, the provider is prohibited from proceeding with the abortion. A provider who violates the Ban may lose their license. Iowa Code §§ 146C.2(5), 148.6(2)(c).

Embryonic cardiac activity is detectable as early as six weeks LMP. *See* App. 67 ¶7. At that point, many people do not yet realize they are pregnant. App. 66–67 ¶6. The LMP method of dating a pregnancy counts from the first day of the last menstrual period, weeks before implantation. App. 67 ¶6. By

the time a person misses a period and has reason to suspect a pregnancy, the pregnancy is almost always more than four weeks LMP and, in many cases, at or beyond six weeks LMP. *Id.* Even those patients who realize they are pregnant before six weeks LMP may not have time to confirm the pregnancy, decide to terminate, research their options, pull together financial resources, and find time to travel to a clinic to get an abortion. *Id.* Undisputed evidence in the record shows that 98% of abortions in Iowa occur after six weeks LMP, App. 68 ¶9; *id.* at 83 ¶4, so the Ban would effectively prohibit virtually all abortions.

The Ban includes narrow exceptions for some cases of rape, incest, or medical emergency, but only if the victim reports the rape or incest within an arbitrary period (45 days for rape, 145 days for incest). Iowa Code § 146C.1(4).[1] Rape and incest victims often do not report abuse, sometimes out of shame or fear of repercussions for themselves or their families. App. 74 ¶23; *Id*. at 32 ¶¶25–26; *Id.* at 33 ¶29. Further, a survivor of rape or incest may not know whether the pregnancy is the result of rape or incest or the result of

[1] The Ban uses the word "rape," even though "rape" is not a crime defined in the Iowa Code, which uses the term "sexual abuse," Iowa Code §§ 709.1 *et seq.* The Ban also does not define "incest," which is defined in the criminal code as a sex act with "an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew," Iowa Code § 726.2. It is unclear whether this includes, for example, a stepsibling.

consensual non-incestuous sex. App. 29 ¶14; *id.* at 33 ¶28. In such a circumstance, it is unclear whether the Ban would permit an abortion. Further, the medical emergency exception would exclude abortions for patients in dangerous domestic violence situations, patients with severe depression or other psychiatric conditions exacerbated by an unwanted pregnancy, and patients whose pregnancies cause physical health risks that do not rise to the level of a medical emergency under the statute. App. 73 ¶21.

II. Abortion in Iowa

Appellees PPH and EGC provide a wide range of health care in Iowa, including cancer screenings, pregnancy care, contraception, adoption referral, miscarriage management, and abortion. App. 66 ¶3 (PPH); *id.* at 81–82 ¶3 (EGC). They provide two methods of abortion: medication abortion, which uses medication alone to end a pregnancy, and procedural abortion, in which the uterus is emptied using aspiration or instruments inserted through the cervix. App. 66 ¶3.[2] PPH provides both methods of abortion in Des Moines and Iowa City, and provides medication abortion in Ames, Cedar Falls,

[2] Both PPH and EGC provide only previability abortions. According to evidence in the record, PPH provides medication abortion through 10 weeks LMP and procedural abortion through 20.6 weeks (20 weeks and 6 days) LMP. App. 66 ¶3. EGC provides medication abortion through 10 weeks LMP and procedural abortion through 19.6 weeks LMP. App. 82 ¶3.

Council Bluffs and Sioux City. App. 66 ¶¶3–4. EGC provides both methods of abortion in Iowa City. App. 81–82 ¶3.

About one in four women will have an abortion in their lifetime. App. 69 ¶14. People seek abortions for medical, familial, economic, and personal reasons. *Id.* Some are already parents who decide to seek an abortion after considering their own welfare and the welfare of their families, while others decide they are not yet ready to become parents. App. 69–70 ¶15. Some patients suffer from complications in their pregnancy or from medical conditions caused or exacerbated by pregnancy and seek to protect their own health, while others get abortions to terminate pregnancies that are severely compromised. *Id.*[3] The Ban would force many Iowans to leave the state to get an abortion, which may force them to delay their abortions. And it could force people—particularly low-income pregnant people and victims of domestic violence—to carry their unwanted pregnancies to term, with all of the attendant medical risks that would entail. App. 71–73 ¶¶17–20.

---

[3] Under the Ban's exception for medical emergencies, a physician cannot terminate a pregnancy unless they certify that the fetus has a condition "incompatible with life." Iowa Code § 146C.1(4)(d). A physician may not be certain whether they are permitted to terminate a pregnancy that, if carried to term, would most likely result in a short, incapacitated, and painful life for the child. App. 74–75 ¶25.

III. District Court Proceedings

In May 2018, Appellees filed a petition challenging the Ban, alleging that it violated their patients' right to due process under Article I, § 9 of the Iowa Constitution; their patients' inalienable rights to liberty, safety, and happiness under Article I, § 1; and Appellees' and their patients' rights to equal protection under Article I, §§ 1 and 6. *See* App. 14–15 ¶¶37–42. They also filed a motion for temporary injunctive relief. When Appellees filed this case, this Court had held that abortion restrictions must satisfy the undue burden test in order to pass muster under the Iowa Constitution. *PPH I*, 865 N.W.2d at 263, 269. Accordingly, Appellees argued that they were entitled to a temporary injunction under the *Casey* undue burden standard, citing extensive federal court precedent striking down bans like the one at issue here. *See* App. 46–47. The State did not oppose Appellees' motion for a temporary injunction, but rather stipulated to it, stating that it was "in the interest of judicial economy." App. 52. On June 4, 2018, the district court entered a temporary injunction.

While the case was pending, this Court decided *PPH II*, in which it held that abortion restrictions are subject to strict scrutiny under the Iowa Constitution. 915 N.W.2d at 241. Following that ruling, Appellees moved for summary judgment, and on January 22, 2019, the district court granted their

motion. Although the district court applied the strict scrutiny standard under *PPH II*, it relied heavily on federal case law holding pre-viability abortion bans unconstitutional under the undue burden standard. *See* App. 140–41 (citing *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 773 (8th Cir. 2015) (six-week ban); *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015) (twelve-week ban); *Isaacson v. Horne*, 716 F.3d 1213, 1227 (9th Cir. 2013) (twenty-week ban)). The court further held that because the Ban violated the Iowa Constitution, it was void. *Id.* at 8. The State did not appeal.

IV. *PPH IV*

In June 2022, this Court decided *PPH IV*, which overruled *PPH II* and held that strict scrutiny does not apply to abortion restrictions. It made clear that "the *Casey* undue burden test we applied in *PPH I* remains the governing standard." 975 N.W.2d at 716. The Court reaffirmed the statements in *PPH II* that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free" and that the "life-altering obligation" of parenthood "falls unevenly on women." *Id.* at 746 (quoting *PPH II*, 915 N.W.2d at 237 (majority opinion), 249 (Mansfield, J., dissenting)). The opinion also reiterated that this Court "zealously guard[s] [its] ability to interpret the Iowa Constitution independently of the Supreme Court's interpretations of the Federal Constitution." *Id.* at 716.

V. State's Motion to Dissolve and District Court Ruling

In August 2022, more than three years after the district court entered the permanent injunction, the State filed a motion to dissolve it. The State did not point to any provision of the Iowa Rules of Civil Procedure that permits it to file such a motion. And even though this Court in *PPH IV* expressly left in place the *Casey* undue burden standard, the State asserted that rational basis review should apply. App. 163–168.

In December 2022, the district court properly denied the State's motion. It concluded that the motion was untimely under Iowa Rules of Civil Procedure 1.1012 and 1.1013, which govern modification or vacatur of final judgments. App. 295–97. The court also rejected the State's argument that it had "inherent authority" apart from the Rules to dissolve the injunction because none of the cases the State cited supported that proposition. App. 297–303. And the district court held that because the Ban was unconstitutional when it was passed, it is void. App. 303–04.

The district court also held that, even if the State's motion were procedurally proper, there was no predicate change in law to justify dissolving the injunction. App. 304–06. *PPH IV* left in place the *Casey* undue burden standard, under which courts have uniformly held pre-viability abortion bans unconstitutional. Under *PPH IV*, the Ban simply does not pass constitutional

muster. The district court did not consider whether it should change the standard; rather, it applied the law set forth by this Court. The State did not file a motion under Rule 1.904 of the Iowa Rules of Civil Procedure requesting an expanded ruling to include this issue.

The State filed a notice of appeal. It challenges the district court's ruling, but makes two important concessions. First, it agrees that there is no Iowa Rule of Civil Procedure that permits its motion to dissolve. Appellants' Br. at 38. And second, it does not challenge the district court's conclusion that the Ban fails the undue burden standard.

Appellees filed a motion to dismiss the appeal because the district court's denial of a motion to dissolve an injunction is not a final judgment that triggers an appeal as of right. As a result, Appellees argued that the Court should dismiss the appeal or in the alternative, construe the appeal as a petition for a writ of certiorari. Appellees' motion is pending, and the Court has ordered that it be heard at the same time as the merits.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE STATE'S MOTION BECAUSE THE BAN IS VOID.

A. Standard of Review, Preservation of Error, and Scope of Review

"The dissolving of an injunction rests largely in the sound discretion of the court, dependent upon the circumstances of the particular case." *Den*

Hartog v. City of Waterloo, 926 N.W.2d 764, 769 (Iowa 2019) (alteration and internal quotation omitted)). It is reviewed for abuse of discretion. The district court's underlying ruling on the interpretation of Article XII, § 1 of the Iowa Constitution, as well as the constitutionality of the Ban, are legal questions reviewed de novo. *See PPH IV*, 975 N.W.2d at 721 ("Constitutional claims are reviewed de novo.").[4]

As for preservation of error, the State did not appeal the district court's ruling that the Ban was "unconstitutional and therefore void," Ruling on Mot. for Summ. J. at 8 (citing Iowa Const. Art. XII, § 1).[5] While the State attempts to characterize the district court's holding as an improper "repeal" of the Ban, Appellants' Br. at 45, its brief fails to engage with the district court's interpretation of Article XII, § 1, and *Security Sav. Bank*. *See* Iowa R. App. P.

---

[4] If, as Appellees request in the alternative in their motion to dismiss, the Court construes this appeal as a petition for a writ of certiorari, its review of the constitutional issues is de novo, but its review of all other issues in the appeal is for correction of errors at law. *See Perkins v. Bd. of Supervisors of Madison Cnty.*, 636 N.W.2d 58, 64 (Iowa 2001) ("Although our standard of review concerning certiorari actions is generally limited to errors at law, our review in this case is de novo as to the constitutional challenges raised.").

[5] The State attempts to evade the consequences of its failure to appeal the district court's 2019 ruling. As set forth in greater detail in Appellees' pending motion to dismiss, permitting a losing party to appeal from the denial of a motion to modify or vacate an injunction would allow a party to resurrect a settled issue by raising it in such a motion, then appealing the denial of that motion.

6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

The State has failed to preserve error on the question of whether the Ban passes the undue burden test. The district court clearly held that it did not, and the State does not challenge this holding on appeal. *See Anderson v. Hadley*, 63 N.W.2d 234, 236 (Iowa 1954) (arguments not presented on appeal are waived).

B. Because the Ban violated the Iowa Constitution when it was enacted, it is void.

While the State devotes most of its brief to claiming an equitable power not found in the Iowa rules or case law and arguing that the district court erred in applying this Court's most recent binding precedent, it completely ignores Article XII, § 1, which provides, "This constitution shall be the supreme law of the state, and any law inconsistent therewith, *shall be void*." Iowa Const. Art. XII, § 1 (emphasis added). It also ignores *Security Sav. Bank*, on which the district court relied to conclude that the Ban is void. App. 303–04. In that case, this Court explained that an unconstitutional legislative act "is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, *as inoperative as though it had never been passed*. Where a statute is adjudged to be unconstitutional *it is as if it had never been*." 200 N.W. at 10 (emphases added) (internal quotation omitted);

cf. State v. Bates, 305 N.W.2d 426, 427 (Iowa 1981) ("[A] constitutional amendment generally will not act to validate existing statutes or other enactments which were invalid prior to its adoption.").[6]

When the Ban was passed in 2018, the right to abortion was protected by the Iowa Constitution under *PPH I*, which this Court decided in 2015. In *PPH I*, this Court recognized that the Iowa Constitution's protections for abortion were at least coextensive with the *Casey* undue burden test. 865 N.W.2d at 263–64. The Legislature passed the Ban anyway, knowing full well that it would not survive a constitutional challenge because, as the district court properly held, it imposes an undue burden on patients seeking abortion. In fact, the State seemed to recognize as much at the time because it stipulated to Appellees' motion for a temporary injunction. On appeal, it does not argue that the Ban satisfies the undue burden standard. Nor could it credibly do so. Every single court that has considered a pre-viability abortion ban under an undue burden standard has concluded that the ban is unconstitutional. *See,*

---

[6] In its opening brief, the State asserts conclusorily that "'it makes no possible difference' that the district court previously declared Iowa's fetal heartbeat law to be 'void.'" Appellants' Br. at 37 (quoting *Iowa Elec. Light & Power Co. v. Inc. Town of Grand Junction*, 264 N.W. 84, 90 (Iowa 1935)). *Iowa Electric* was actually making the opposite point: the Court held that it "ma[de] no possible difference" the statute at issue was previously enjoined because it was "a valid exercise of its constitutional prerogative and sovereign power." 264 N.W. at 90. That is not the case here.

e.g., *MKB Mgmt. Corp.*, 795 F.3d at 773 (six-week ban); *Edwards*, 786 F.3d at 1117 (twelve-week ban); *Isaacson*, 716 F.3d at 1227 (twenty-week ban); *Jane L. v. Bangerter*, 102 F.3d 1112, 1117–18 (10th Cir. 1996) (twenty-week ban); *Sojourner T. v. Edwards*, 974 F.2d 27, 31 (5th Cir. 1992) (total ban); *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1368–69, 1371–72 (9th Cir. 1992) (total ban); *Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801, 810 (D.S.C. 2021) (six-week ban); *Memphis Ctr. for Reprod. Health v. Slatery*, No. 3:20-CV-00501, 2020 WL 4274198, at *15 (M.D. Tenn. July 24, 2020) (six-week ban); *SisterSong Women of Color Reprod. Justice Collective v. Kemp*, 472 F. Supp. 3d 1297, 1312 (N.D. Ga. 2020) (six-week ban); *Robinson v. Marshall*, No. 2:19-cv-365-MHT, 2019 WL 5556198, at *3 (M.D. Ala. Oct. 29, 2019) (total ban); *Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796, 800–04 (S.D. Ohio 2019) (six-week ban); *Bryant v. Woodall*, 363 F. Supp. 3d 611, 630–32 (M.D.N.C. 2019) (twenty-week ban).[7] Far from being "ambiguous," or "unworkable," Appellants' Br. at 57, the undue burden standard clearly dictates that the Ban is unconstitutional. *Cf. PPH II*, 915 N.W.2d at 247–49 (finding significant other courts' holdings

---

[7] Because these cases were decided under the federal undue burden standard, they were abrogated by *Dobbs*.

under the undue burden standard on statutes similar to the one challenged) (Mansfield, J., dissenting).

Therefore, under the Iowa Constitution, because the Ban was void when it was passed, it remains void as if it had never existed.[8] This is consistent with both the text of Article XII, § 1, and the intent of the framers of the Iowa Constitution who included this provision in the 1857 Iowa Constitution. Iowa Const. Art. XII, § 1 (1857). As one delegate to the constitutional convention explained, the drafters of the Constitution "not only assume the right to legislate in an ordinary capacity, but to lay down the fundamental laws to which the legislation of the territory must be made to conform, *or it will be null and void*." Debates of the Const. Convention of the State of Iowa, Vol. II at 712 (Feb. 24, 1857) (emphasis added) (statement of Mr. Clark). And in discussing the Bill of Rights' guarantee of a litigant's right to introduce testimony in court regardless of the race of the witness, another delegate explained that "any law which seeks to deprive the party of this right, infringes upon the constitutional rights of the people, *and is, therefore, void*." *Id.* at 652 (Feb. 23, 1857) (emphasis added) (statement of Mr. Clarke).

[8] If there were any doubt that the Ban was void when enacted in 2018, there can be no doubt that it was rendered void by the effect of the district court's unappealed 2019 declaration to that effect. *See Sec. Sav. Bank*, 200 N.W. at 10 ("Where a statute is *adjudged* to be unconstitutional it is as if it had never been." (emphasis added) (internal quotation omitted)).

Amici cite holdings from other jurisdictions and engage in broad generalizations about "Anglo-American jurisdictions" and the "American tradition." *See generally* Br. of Indiana and 18 Other States as Amici Curiae in Support of Appellants ("State AGs' Brief"). But this Court is not bound by the holdings of other state courts, particularly on an issue of Iowa constitutional law. *See PPH IV*, 975 N.W.2d at 716 (noting that the Court "zealously guard[s] [its] ability to interpret the Iowa Constitution"); *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974) ("[W]e have no obligation to adopt a rule just because it has generally been adopted elsewhere. Although cases from other states may be persuasive authority, they have no greater cogency than the reasoning by which they were decided."). And amici attempt to manufacture a national consensus where one does not exist. In fact, according to *American Jurisprudence*,

> The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law but is wholly void and ineffective for any purpose. Since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed and never existed; that is, it is void ab initio. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

16A Am. Jur. 2d *Constitutional Law* § 194.

Moreover, the Iowa Constitution is not unique in its inclusion of Article XII, § 1. Three other states include a comparable constitutional provision: Rhode Island, Texas, and Georgia.[9] The Iowa constitutional provision appears to be taken verbatim from the 1842 Rhode Island Constitution. R.I. Const. Art. IV, § 1 (1842).[10] The Rhode Island Supreme Court has consistently interpreted this provision to mean what it says: that unconstitutional laws are null and void. *See, e.g.*, *Almond v. R.I. Lottery Comm'n*, 756 A.2d 186, 197 (R.I. 2000) ("[A]cts must be conformable to [the Rhode Island Constitution] or else they will be void." (emphasis omitted) (citation omitted)); *Moore v. Langton*, 167 A.2d 558, 569 (R.I. 1961) (explaining that because a statute is unconstitutional, it is a "nullity" and "there is nothing for [a section purporting to repeal it] to operate upon"). This is consistent with its holdings at the time the Iowa Constitution was ratified. *See Taylor v. Place*, 4 R.I. 324, 364 (1856) ("It is the *constitution* which speaks through us, and not we alone, when we

---

[9] *See* R.I. Const. Art. VI, § 1 ("This Constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void."); Tex. Const. Art. I, § XXIX ("[A]ll laws contrary [to the Bill of Rights] shall be void."); Ga. Const. Art. I, § 2, ¶ 5 ("Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them."). The attorneys general of Texas and Georgia signed onto the State AGs' Brief, but they do not address the interpretation of their state constitutions therein.

[10] The provision is identical to Article VI, § 1, of the current Rhode Island Constitution.

declare, as we now do, that the [statute] is *unconstitutional* and *void*." (emphases in original)).

Georgia also has a comparable constitutional provision pursuant to which a trial court recently held that a 2019 six-week abortion ban was void ab initio. *See SisterSong Women of Color Reprod. Just. Collective v. State*, 2022 WL 16960560 (Ga. Super. Nov. 15, 2022), *petition for supersedeas granted pending appeal*, No. S23M0358 (Ga. filed Nov. 15, 2022).[11] In Georgia, as in Iowa, "an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it had never been passed." *Grayson-Robinson Stores, Inc. v. Oneida, Ltd.*, 75 S.E.2d 161, 163–64 (Ga. 1953) (internal quotation omitted). Although the *SisterSong* injunction has been stayed, the trial court explained that "the proper legal milieu in which to assess the [ban]'s

[11] The Georgia Constitution declares void statutes violating either the federal or state constitution, Ga. Const. Art. I, § 2, ¶ 5, so *SisterSong* addressed whether the six-week ban remained void after *Dobbs* because it violated the federal constitution under the *Roe* and *Casey* framework. The text of article XII, § 1, is limited in focus to the supremacy of the *Iowa* Constitution over statutes inconsistent therewith: in *McCollum v. McConaughy*, 119 N.W. 539, 541 (Iowa 1909), this Court ruled that when it declares that a statute violates the U.S. constitution, and the U.S. Supreme Court subsequently rules in a manner that shows that the statute does not violate the U.S. constitution, the statute then becomes "valid and enforceable." *See also State v. O'Neil*, 126 N.W. 454, 454 (Iowa 1910). Here, the Ban is void ab initio because it violates the Iowa Constitution, not the U.S. Constitution.

constitutionality is not our current post-*Roe Dobbsian* era but rather the legal environment that existed when [the statute] was enacted." 2022 WL 16960560 at *3. At that time, it was "unequivocally unconstitutional for governments—federal, state, or local—to ban abortions before viability" under the *Casey* undue burden standard, so the ban "did not become the law of Georgia when it was enacted and it is not the law of Georgia now." *Id.*

Even in states without express constitutional provisions to that effect, courts have held that unconstitutional laws are void. *See, e.g.*, *In re N.G.*, 115 N.E.3d 102, 123 ¶ 50 (Ill. 2018) ("When a statute is found to be facially unconstitutional in Illinois, it is said to be void ab initio; that is, it is as if the law had never been passed."); *Legis. Rsch. Comm'n v. Fischer*, 366 S.W.3d 905, 917 (Ky. 2012) ("[A] decision by a court of last resort that a statute is unconstitutional has the effect of rendering such statute absolutely null and void." (alterations, internal quotation omitted)); *State ex rel. Stenberg v. Murphy*, 527 N.W.2d 185, 192 (Neb. 1995) ("[A]n unconstitutional statute is a nullity, void from its enactment, and is incapable of creating any rights or obligations."); *Jefferson v. Jefferson*, 153 So. 2d 368, 370 (La. 1963) ("[W]hen a law is stricken as void, it no longer has existence as law; the law cannot be resurrected thereafter by a judicial decree changing the final judgment of unconstitutionality to constitutionality as this would constitute a

reenactment of the law by the Court." (citations omitted)). This principle has been used to conclude that abortion bans enacted before *Dobbs* remain void even after *Dobbs*. *See Planned Parenthood S. Atl. v. State*, 882 S.E.2d 770, 790 (S.C. Jan. 5, 2023) (Beatty, C.J., concurring) ("[B]ecause South Carolina's Act was unlawful on the day it was passed in 2021, it was and remains void ab initio as a matter of South Carolina law.").[12]

Indeed, it seems that because the Legislature knew the Ban was unconstitutional and would not take effect, the Ban did not undergo the degree of scrutiny that accompanies the enactment of legitimately passed, constitutional statutes. For example, as noted above, note 1, the Ban's exception for "rape" does not match the Iowa statutes criminalizing that conduct, leaving it unclear how that exception would apply. *See* App. 31 ¶22. It is difficult to imagine such a glaring oversight in a statute that the Legislature actually believed would go into effect.

---

[12] The State AGs' Brief cites extensively to Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933 (2018) in which Mitchell argues that unconstitutional laws are not void under the *federal* constitution, but explicitly contrasts this with "state constitutions that explicitly empower their judiciaries to pronounce statutes 'void.'" *Id.* at 953. He acknowledges that Georgia courts "regard[] judicial pronouncements of unconstitutionality as a formal revocation of the underlying statute," so "[a] 'void' statute cannot be amended because it is a legal nullity, even when the amending statute would have cured the constitutional defects." *Id.* The same is true in Iowa.

Rather, because it was clear the Ban would not go into effect, the Legislature escaped "the sharp glare of public attention that [would] undoubtedly and properly attend such an important and consequential debate," instead engaging in what amounted to "an essentially symbolic vote for legislators." *SisterSong*, 2022 WL 16960560, at *3 & n.9. It had been 45 years since *Roe* made clear the Ban was unconstitutional, so there was no way for the Legislature—or the citizens of Iowa—to consider and debate the real consequences of such a ban. Holding that such laws are void would prevent judges from reviving unconstitutional statutes passed by previous Iowa legislatures and foisting the consequences of those laws on future electorates. *See* William J. Aceves, *The Problem with Dobbs and the Rule of Legality*, 111 Geo. L.J. Online 75, 81, 102–04 (2022) (discussing the negative consequences of allowing bans that were unconstitutional when passed to take effect post-*Dobbs*); Heidi S. Alexander, Note, *The Theoretic and Democratic Implications of Anti-Abortion Trigger Laws*, 61 Rutgers L. Rev. 381, 403–06 (2009) (arguing that in passing a "trigger" law, the past "legislature s[ought] to force their current desires on future citizens, therefore usurping the future majority's right to govern itself"). William Michael Treanor & Gene B. Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 Colum. L. Rev. 1902, 1955 (1993) ("When courts overrule a prior

decision, they should be able to judge statutes passed before the new decision under the constitutional principles that had been in place prior to the overruling decision.”).

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE STATE’S MOTION TO DISSOLVE BECAUSE THE MOTION IS NOT PERMITTED UNDER IOWA LAW.

Even if this Court does not conclude that the Ban is void, it should affirm the district court’s ruling (or if the appeal is construed as a petition for a writ of certiorari, deny the petition) because there is no authority under Iowa law for a court to modify an injunction it entered over a year earlier because of a change in the governing law. Appellees maintain that there was no relevant change in law: under the undue burden standard announced in *PPH IV*, the Ban remains unconstitutional. *See* above, Part III(B). But even if there were a change in law, the district court properly held that it did not have the authority to vacate the injunction because the Iowa Rules of Civil Procedure do not permit it to do so, and the district court does not have inherent authority to modify or vacate injunctions that it has issued.

A. Standard of Review, Preservation of Error, and Scope of Review

The district court’s denial of the State’s motion to dissolve is reviewed for abuse of discretion. *See Den Hartog*, 926 N.W.2d at 769. The district court’s underlying interpretation of the Rules of Civil Procedure is reviewed

for correction of errors at law. *See City of Sioux City v. Freese*, 611 N.W.2d 777, 779 (Iowa 2000) (construction of rules of civil procedure reviewed for correction of errors at law). The same is true for its procedural ruling with respect to courts' inherent authority to dissolve injunctions. *See State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999) ("We review procedural errors by the district court for correction of errors at law.").[13]

The State has conceded that there is no Rule of Civil Procedure that permits its motion to dissolve. Appellants' Br. at 38. Error was preserved on the issue of whether courts have inherent authority to dissolve injunctions.

B. The Iowa Rules of Civil Procedure do not permit a district court to grant an untimely motion to vacate a permanent injunction based on a change in the governing law.

The district court correctly held, and the State concedes, that "there is no specific rule that allows for permanent injunctions to be dissolved under

[13] Although this Court typically reviews de novo issues in actions that sound in equity, *see* Iowa R. App. P. 6.907 ("Review in equity cases shall be de novo."); it reviews grants of summary judgment in equity cases for correction of errors of law. *See Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 355 (Iowa 2000). This is because it "cannot find facts de novo in an appeal from summary judgment." *Id.* (internal quotation omitted)). The same reasoning holds true for the district court's denial of the State's motion to dissolve the injunction. And as addressed above in note 4, if this Court construes the State's appeal as a petition for a writ of certiorari, it reviews the district court's rulings for correction of errors at law.

the Iowa Rules of Civil Procedure." App. 296; *id.*[14] "The Rules of Civil Procedure have the force and effect of statute," *Krebs v. Town of Manson*, 129 N.W.2d 744, 746 (Iowa 1964) (citation omitted), and they govern practice in the district courts, *see* Iowa R. Civ. P. 1.101 ("The rules in this chapter shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise or statutes not affected hereby provide different procedure in particular courts or cases."). Parties reasonably rely on the consistent application of procedural rules to set expectations and to make decisions, both before and during litigation. *See Windus v. Great Plains Gas*, 122 N.W.2d 901, 908 (Iowa 1963) ("Procedural rules are not always merely technical. They represent the best means of trying lawsuits by orderly procedures so that all may know what may and what may not be done, as found by the experience of courts and lawyers over the years.").

i. The State's motion to dissolve is not permitted under Rules 1.1012–13.

The district court properly held that, "[c]onsidering the plain language in 1.1012 and 1.1013, there is no applicable authority to support a motion to modify or vacate a permanent injunction more than one year after judgment

[14] Through this concession, the State attempts to divorce the inherent authority issue from the requirements of the Rules of Civil Procedure. But as explained below, Part II(B)(ii), this Court has consistently interpreted district courts' authority to modify or dissolve injunctions in light of the Rules.

based on a change in law." App. 297. Rule 1.1012 of the Iowa Rules of Civil Procedure governs motions to vacate a final judgment, including injunctions. *See In re Marriage of Fairall*, 403 N.W.2d 785, 788 (Iowa 1987). "A petition for relief under rule 1.1012 . . . must be filed and served in the original action within one year after the entry of the judgment or order involved." Iowa R. Civ. P. 1.1013. This is a jurisdictional requirement; Iowa courts are without power to entertain a petition filed after one year. *See Fairall*, 403 N.W.2d at 788. The State cannot overcome this jurisdictional bar.

And even if the timing requirement were satisfied, Rule 1.1012 does not permit vacatur based on a change of law. Indeed, it permits a court to correct, vacate, or modify a final judgment or order only where there has been:

> 1.1012(1) Mistake, neglect or omission of the clerk.
> 1.1012(2) Irregularity or fraud practiced in obtaining it.
> 1.1012(3) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record.
> 1.1012(4) Death of a party before entry of the judgment or order, and its entry without substitution of a proper representative.
> 1.1012(5) Unavoidable casualty or misfortune preventing the party from prosecuting or defending.
> 1.1012(6) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 1.1004.

Iowa R. Civ. P. 1.1012. Nothing in this section indicates that a change in law could support a motion to vacate, nor does the State suggest that Rule 1.1012 provides such a basis to vacate an injunction.[15]

ii. The narrow equitable tolling exception to Rules 1.1012–13 that this Court has recognized does not apply to the State's motion.

The State argues that the district court should have ignored the Rules and held that it has wide-ranging authority to modify or vacate injunctions. But this Court's cases recognizing a narrow, equitable exception to Rules 1.1012–13 show that the district court was correct not to cast aside the requirements of the Rules. This Court has established an equitable exception to the Rules in "a string of cases that treat a petition to set aside a judgment on the ground of fraud not discovered until past the one-year period allowed by rules 1.1012 and 1.1013 as being a collateral attack on the judgment."

[15] Below, the State attempted to rely on federal cases interpreting Rule 60(b) of the Federal Rules of Civil Procedure, which provides much broader grounds on which a trial court may issue relief from a final judgment than Iowa Rule 1.1012. As the district court concluded, those cases are inapposite, and "any arguments citing vacated judgments from federal courts are of little use" in this case." App. 297; *see also Kreft v. Fisher Aviation, Inc.*, 264 N.W.2d 297, 305–06 (Iowa 1978) (Uhlenhopp, J., concurring specially) (confirming that Iowa Rule 1.1012 is more stringent than Federal Rule 60(b)); *State v. Abodeely*, 179 N.W.2d 347, 351 (Iowa 1970) (federal procedural rules do not bind state courts). On appeal, the State continues to cite *System Federation No. 91, Railway Employees' Dep't, AFL-CIO v. Wright*, 364 U.S. 642 (1961) and *Agostini v. Felton*, 521 U.S. 203 (1997), which both address motions to vacate under Rule 60(b) and are thus inapplicable here.

Carter v. Carter, 957 N.W.2d 623, 645 (Iowa 2021), *reh'g denied* (Apr. 29, 2021), *as amended* (Apr. 29, 2021). But this is the proverbial exception that proves the rule: the Court's narrow application of the exception shows that it has endeavored to prevent it from swallowing the Rules.

The Court first recognized this exception to Rule 1.1013's one-year time period in *Shaw v. Addison*, 18 N.W.2d 796 (Iowa 1945), decided shortly after the Rules were promulgated in 1943. In that case, the party seeking modification characterized its motion as "a petition in a suit in equity seeking to vacate the judgment under the broad general powers of a court of equity, independently of" the predecessors to Rules 1.1012 and 1.1013.[16] *Id.* at 801. The court held for motions to vacate after the statutory limit, "while the proceeding is in equity we have [] uniformly held that the grounds alleged for the relief must be found among those specified in the statutory provisions . . . authorizing the relief." *Id.*

Citing *Shaw*, this Court has equitably tolled the one-year deadline in cases of fraud, which is listed in Rule 1.1012. *See City of Chariton v. J. C. Blunk Const. Co.*, 112 N.W.2d 829, 837 (Iowa 1962). And the Court of

---

[16] Before 1943, the rules governing civil procedure were set forth in statutory provisions: Chapter 552 of the Iowa Code governed modification and vacatur of judgments. Iowa Code §§ 12787–800 (1939). The Rules "supersede[d] chapter 552 of the Code." Iowa R. Civ. P. 252 cmt. (1943).

Appeals has extended this equitable tolling doctrine to "other grounds for vacating the judgment," so long as those other grounds are also "'found among those specified' in Rule 1.1012." *In re Marriage of Rhinehart*, 780 N.W.2d 248, 2010 WL 446560 at *2 (Iowa Ct. App. 2010).

In this case, there is no allegation of fraud. The State argues that the district court should dissolve the injunction because of a purported change in law. But because Rule 1.1012 does not include a change in law as a basis for modifying or vacating a final judgment, such a change also cannot be the basis for modification under the equitable exception recognized in *Shaw* and its progeny.

The existence of this equitable doctrine undercuts the State's arguments about the nature of equitable relief. This Court has already set out a specific exception to Rules 1.1012–13. The line of cases applying the exception shows that Iowa courts have carefully monitored the boundaries of this equitable exception to prevent it from swallowing the rule. In stark contrast, the State asks this Court not to apply this carefully cabined exception to the Rules, but rather to cast the Rules aside altogether. This Court has not followed this approach, and it should not do so now.

C. The district court did not have inherent authority to dissolve a permanent injunction based on a change in the governing law.

Unable to find relief in the Iowa Rules of Civil Procedure or the narrow exception this Court has permitted, the State asserts that "[i]t has long been the law in Iowa" that courts have broad inherent authority to vacate or modify permanent injunctions based on a change in the substantive law that governs the injunctions. Appellants' Br. at 53. The district court correctly concluded that the State had "failed to show that the court ha[d] any inherent authority to dissolve the permanent injunction." App. 297. As explained further below, the historical rule at equity did *not* allow modification or vacatur of injunctions based on a change in law. And each of the cases on which the State relies gives way upon closer inspection.

i. Courts of equity historically had no authority to vacate an injunction based on a change in law.

The State asks this Court to consider cases decided before the Iowa Rules of Civil Procedure went into effect, contending that "what is true now was just as true then: a court's power to modify its own injunctions does not depend on a rule or statute." Appellants' Br. at 39. At oral argument before the district court, counsel for the State characterized this as a "rule as old as time" and "an inherent authority that Courts have exercised for centuries," App. 249. Iowa case law does not support these assertions. To the contrary,

courts of equity historically did *not* have the authority to vacate an injunction based on a change in law.

At equity, a party could file a "bill of review" seeking vacatur of an injunction, "a procedure going back at least as far as Lord Bacon's Ordinances in 1619." Note, *Finality of Equity Decrees in the Light of Subsequent Events*, 59 Harv. L. Rev. 957, 958 (1946); *see also Bosch v. Bosch*, 24 N.W. 517, 517 (Iowa 1885) ("[A] motion for a new trial may, under the statute, be filed in an action in equity . . . [but] must be regarded as of the same nature as a bill of review under the old practice." (internal quotation omitted)). Contrary to the State's contention, courts of equity did not have free-ranging authority to modify or dissolve injunctions. In *McGregor v. Gardner*, 16 Iowa 538, 547 (1864), this Court explained that "[b]ills of review may be brought, so all the authorities agree, in two classes of cases: 1st. For error apparent on the face of the decree . . . and, 2d. For new discovered facts and evidence," notably omitting changes in law. In *Jackson v. Gould*, 65 N.W. 406, 406 (Iowa 1895), the Court addressed the equitable tolling exception, *see* above, Part II(B)(ii), stating that "it is undoubtedly the law that in a proper case a defendant may have a bill of review, and secure a new trial of a suit of action, even after the expiration of the year given by statute for new trials. But such review can only be had for some of the reasons given in the Code by section 3154." Iowa Code

§ 3154 (1873) set forth many of the same bases for a new trial as Rule 1.1012, and like the contemporary Rule, it did not include a change in law as a basis for modification. And in *Denby v. Fie*, 76 N.W. 702, 703 (Iowa 1898), the Court was faced with an "action [] to modify a decree . . . because of a change in the law long after the decree was entered." It explained,

> [A]s a general rule, relief is granted because of fraud, mistake, or misconduct in obtaining the original decree . . . . There is no such claim in this case. On the contrary, it is conceded that the decree was properly granted, and relief is sought against it for the sole reason that there has been a modification of the law since the decree was passed. There are cases where a proceeding in the nature of a bill of review may be brought on account of new matter which has arisen since the decree was entered, but we do not think this is one of them.

Id. In short, case law shows that contrary to the State's position, Iowa courts of equity historically did not have inherent authority to vacate injunctions based on a change in law.

ii. *Wilcox* and *Iowa Electric* predate the Rules of Civil Procedure, and they do not change the rule that courts do not have inherent authority to vacate injunctions based on a change in the governing law.

The State contends that two early cases—*Wilcox v. Miner*, 205 N.W. 847 (Iowa 1925), and *Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction*, 264 N.W. 84 (Iowa 1935)—stand for the proposition that courts have inherent authority to modify an injunction. Appellants' Br. at 36–

40. The district court concluded that "[w]ith the promulgation of the current rules of civil procedure in 1943, it is hard to find precedential value in the two cases." App. 299.

Indeed, this Court decided *Wilcox* and *Iowa Electric* in 1925 and 1935, respectively, before the Iowa Rules of Civil Procedure were promulgated in 1943, 1943 Iowa Acts 278.[17] This Court has declined to give weight to interpretations of the code that predate the Rules. *See Windus*, 122 N.W.2d at 909 ("[T]he language of the former statutes, and the present rule on setting aside defaults, varies so much from the former statute on vacation of judgments, and the present Rule 252, that cases in which defaults were annulled are not in point."). *But see Swift v. Swift*, 29 N.W.2d 535, 538 (Iowa 1947); *Shaw*, 18 N.W.2d at 799. The Official Comment to Rule 1.101 provides that "[i]n general, the Rules have the force and effect of statutes." Iowa R. Civ. P. 1.101, official cmt. (citing *Phillips v. Catterson*, 17 N.W.2d 517 (Iowa 1945)). Accordingly, to the extent that *Wilcox* and *Iowa Electric* conflict with Rules 1.1012–13, the Rules control.

---

[17] The versions of the statutes in effect when *Iowa Electric* was decided in 1935 and when *Wilcox* was decided in 1925 were substantially identical. *Compare* Iowa Code §§ 12787–800 (1939) *with* Iowa Code §§ 12787–800 (1935) *and* Iowa Code §§ 12787–800 (1924).

If the Court assigns weight to *Wilcox* and *Iowa Electric*, it should read them as limited exceptions to the historical equitable rules governing bills of review. They do not stand for the broad proposition that courts have inherent authority to modify an injunction based on a change in law; in fact, neither discusses a court's "inherent" authority, and neither addresses the scope of the powers of courts sitting in equity.

As the district court noted, App. 300, in both cases the motions at issue complied with the one-year time limitation requirement, which as the State concedes, Appellants' Br. at 40, was already in effect. The State makes much of the fact that this Court "did not suggest in either case that the timing made a difference," *id.* , but because the motions were timely, there was no need to address that issue. Under the existing bill-of-review regime, the one-year limitation *did* make a difference: bills of review were available beyond the one-year time limit only for "the reasons given in the Code by section 3154," the precursor to Rule 1.1012. *Jackson*, 65 N.W. at 406. In light of *Jackson*, *Wilcox* and *Iowa Electric* cannot be read to permit vacatur of injunctions more than one year after entry because they do not address the one-year limit at all.

Further, in both cases, the change in circumstances at issue was the enactment of a "curative statute"—a *factual* change that resulted from a

legislative enactment—not a change in the governing law.[18] In *Wilcox*, the district court permanently enjoined a county treasurer from collecting taxes under a defective statute and "retained jurisdiction to make further orders" in the case. 205 N.W. at 847.[19] The Legislature then passed a "curative act . . . attempting to cure prior defects in the statute and to legalize the prior levy of taxes thereunder." *Id.* In other words, the new statute did not change the substantive law governing the injunction (i.e. the law under which the original statute was defective), but rather changed the factual circumstances that gave rise to the case. The county treasurer defendant filed a timely motion to modify the injunction. Notably, the parties did not dispute that the court does *not* "ha[ve] power to vacate or modify a decree in equity adjudicating vested private rights after the term at which it was entered in a proceeding." *Id.* at 848. Carving out an exception to this general rule, the Iowa Supreme Court

[18] Notably, the State does not request a modification to conform with a "valid legalizing act" of the Legislature here. If the current Iowa Legislature passed another six-week ban now, such a statute may be analogous to the legalizing acts in *Wilcox* and *Iowa Electric*, but the Court should not permit the State to circumvent this step.

[19] A court may expressly retain jurisdiction to modify an injunction. *Restatement (Second) of Judgments* § 73 cmt. a (Am. L. Inst. 1982) ("By its own terms . . . , a judgment may be expressly subject to future modification in the light of post-judgment change of conditions whose possibility is anticipated."). In this case, the district court did not expressly retain jurisdiction to modify the permanent injunction.

held that the trial court had jurisdiction to modify the injunction "to modify its previous holding to conform to a valid legalizing act." *Id.*

Similarly, in *Iowa Electric*, the trial court enjoined a municipal contract because the bidding process for it had not complied with the relevant statutory provisions. 264 N.W. at 84. The Legislature subsequently passed a "legalizing act . . . purporting to make legal and valid the contract." *Id.* at 85. The Court upheld the dissolution of the injunction based on the curative act. *Id.* As in *Wilcox*, this was in effect a factual change that did not change the governing law—the statutes addressing the bidding process. Further, *Iowa Electric* specifically noted that the curative act "was not an invasion by the Legislature of the powers vested in the judiciary and in violation of . . . the State Constitution," but rather was a "valid exercise of its constitutional prerogative and sovereign power." *Id.* at 90.

Even if *Wilcox* and *Iowa Electric* stood for the proposition that a change in *statutory* law could justify vacating an injunction regardless of the one-year time limit, courts at the time were more willing to vacate injunctions based on statutory changes than changes in judicial precedent. *See Finality of Equity Decrees*, 59 Harv. L. Rev. at 964 ("[T]he courts, while willing to grant relief from decrees where a change of law has been effectuated by statute, have had considerably more difficulty in reaching a similar result where the change of

law has come by judicial decision.”). Indeed, according to the Restatement, modifying or vacating an injunction in “a situation where a subsequent judicial decision changes the law that was applied in reaching an earlier judgment” would be “a very unsound policy” because “[i]f it were adopted it is not clear why all judgments rendered on the basis of a particular interpretation of law should not be reopened when the interpretation is substantially changed.” *Restatement (Second) of Judgments* § 73 cmt. c (Am. L. Inst. 1982).

In sum, both *Wilcox* and *Iowa Electric* dealt with a timely motion and a subsequent legislative act that changed the factual basis for the injunctions at issue, not the substantive law governing the injunction. Moreover, in *Wilcox*, the trial court expressly retained jurisdiction over the permanent injunction, and in *Iowa Electric*, the Court based its reasoning on the fact that the curative act was a constitutional exercise of legislative power. Accordingly, neither *Wilcox* nor *Iowa Electric* controls the outcome of this case, in which (1) the motion was untimely, (2) there were no curative acts or factual changes, and (3) the district court did not state that it was retaining jurisdiction when it issued the permanent injunction.[20]

---

[20] The State makes much of *Wilcox*’s citation to *Utter v. Franklin*, 172 U.S. 416 (1899). Appellants’ Br. at 37. Both *Wilcox* and *Utter* predate the Iowa Rules of Civil Procedure (*and* the Federal Rules of Civil Procedure). And

Finally, the State relies on *Johnston v. Kirkville Independent School District*, 39 N.W.2d 287 (Iowa 1949), Appellants' Br. at 39, in which an injunction was mooted during the pendency of the appeal because a new statute eliminated the factual basis for the injunction. Because the case was moot, this Court declined to decide it, but its decision stated, "Perhaps we should add that if, as seems unlikely, plaintiffs should attempt to enforce the injunction . . . , the trial court might and should dissolve the injunction." *Id.* at 288. As an initial matter, this is clearly dictum and not a holding, as the parties did not present or brief the issue of whether a motion to dissolve would be procedurally proper. But also, like *Wilcox* and *Iowa Electric*, *Johnston* involved a legislative act that changed the factual basis for the injunction, not the governing law. Moreover, a hypothetical motion to dissolve in *Johnston* would have been timely: the Court decided the appeal in October 1949, and the injunction was entered in February 1949, *id.* at 287. Thus, like *Wilcox* and *Iowa Electric*, *Johnston* does not change the rule that district courts do not have inherent authority to vacate injunctions based on a change in law.

Utter also dealt with "curative legislation," 172 U.S. at 420, not a change in judicial precedent that changed the rule of decision in the case.

iii. The State's reliance on dicta from *Bear*, *Helmkamp*, and *Den Hartog* is misplaced.

The State cites language in *Bear v. Iowa District Court*, 540 N.W.2d 439 (Iowa 1995), that "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." Appellants' Br. at 30 (citing *id.* at 441). But, as the district court held, this statement is clearly dictum. App. 299. *Bear* did not even involve a motion for modification. In that case, the district court found a person bound by a 1981 injunction in contempt because she violated the injunction 13 years later. *Id.* at 440. On appeal, this Court correctly rejected her argument that the injunction was no longer binding. *Id.* at 441. It did include language about modifying or vacating the injunction, but that language had no bearing on the holding of the case. *See Boyles v. Cora*, 6 N.W.2d 401, 413 (Iowa 1942) (defining "*obiter dictum*" as "passing expressions of the court, wholly unnecessary to the decision of the matters before the court").

The district court also correctly concluded that *Helmkamp v. Clark Ready Mix Co.*, 249 N.W.2d 655 (Iowa 1977), too, did not involve a change of law. App. 298. In that case, a defendant corporation enjoined from operating a plant that was a nuisance to nearby homes made extensive improvements to the facility; as a result, the district court granted its motion

to dissolve the injunction. 249 N.W.2d at 656. This Court held that "[t]he law is clear that a court may so modify or vacate an injunction, otherwise the party restrained might be held in bondage of a court order no longer having a *factual basis*." *Id.* (emphasis added). At no point did the Court address modification or vacatur of an injunction based on a change in law. The State makes much of language in the case about changed "conditions," Appellants' Br. at 33 (quoting *id.*), but that language clearly refers to changes in factual circumstances.

The State's reliance on *Den Hartog* is also unavailing. Appellants' Br. at 50. In *Den Hartog*, a municipality attempted to sell land in a manner violating relevant statutory requirements, and the district court granted an injunction precluding the sale. 926 N.W.2d at 766. When the municipality came into compliance with the statutory requirements, the district court dissolved the injunction, and this Court upheld the dissolution. *Id.* The *Den Hartog* court quoted the statement in *Bear* that courts have authority to vacate injunctions if "there has been a substantial change in the facts or law." *Id.* at 770 (quoting *Bear*, 540 N.W.2d at 441). But like *Helmkamp*, *Den Hartog* involved a change in *facts*, not a change in law. Therefore, any statements about modifications based on changes in law are necessarily dicta. *Bear*,

Helmkamp, and *Den Hartog* did not change the rule that courts cannot vacate injunctions based on a change in law.[21]

iv. *Spiker* allows modification of injunctions for cases in which the injunction violates constitutional rights.

The State is left with *Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006), but it misreads that case too. There, a custodial parent sought to modify a grandparent visitation order more than two years after its entry because the provision of the grandparent visitation statute on which the order was based had been held to be unconstitutional. *Id.* at 350, 355 n.2. The parties disagreed about whether the visitation order was a "final" judgment that barred modification of the order under the doctrine of claim preclusion. *Id.* at 354.

The *Spiker* court acknowledged that "[t]here is no specific statutory authority for courts to modify grandparent visitation decrees," but ultimately permitted modification because a child custody order was involved. *Id.* It noted its "general view that courts have inherent authority to modify decrees concerning custody and visitation of children based on a substantial change in circumstances," and held that a "relaxation of the res judicata standard in child custody cases is required because [the court's] goal in such cases is always to

[21] The State also cites law review articles and cases from other states, Appellants' Br. at 35, but these do not address Iowa law, nor rules or statutes from those states that are similar to Rules 1.1012 and 1.1013.

serve the best interests of the child, which may require court supervision and modification throughout the child's minority." *Id.* at 355, 356.[22]

Beyond the context of child custody proceedings, the Court explained that "a court should have the power to modify [the injunction], particularly because its enforcement is violating [the parent]'s fundamental *constitutional* right to direct the upbringing of her children, rather than a mere statutory right." *Id.* at 358 (emphasis in original).[23] Thus, consistent with the district court's ruling, App. 302, *Spiker* is best understood as carving out a narrow exception to the general rule against modifying injunctions due to the strong policy interest in terminating injunctions that violate individual constitutional rights. And *Spiker* expressly acknowledged that Rule 1.1012 applied to suits in equity, 708 N.W.2d at 355 n.2, reiterating the general rule that a motion to modify an injunction after one year is untimely. The exception acknowledged

---

[22] The State attempts to draw a false equivalence between the children's interests in *Spiker* and its interest in fetal life. Appellants' Br. at 26. *Spiker*'s holding was based on a clear understanding that the circumstances of children's lives often change. In contrast, the contours of pregnant Iowans' constitutional rights do not change in the same way.

[23] *Spiker* relies heavily on *System Federation*, a U.S. Supreme Court case that held that under Rule 60(b), changes in law or fact justify modification of an injunction. 364 U.S. at 644. That *Spiker* ultimately lands on a narrower rule shows that this Court considered the broader federal rule, but chose to apply it only in the narrow context of injunctions that violate constitutional rights. This is consistent with the fact that unlike in federal court, Iowa has no rules or case law granting courts broad authority to modify injunctions based on a change in law.

in *Spiker* strikes a balance between the need for finality of judgments—upheld by the historical bill-of-review rule that courts cannot modify or vacate injunctions based on a change in law—and the need to vindicate individual rights. *Cf. Gail v. W. Convenience Stores*, 434 N.W.2d 862, 863 (Iowa 1989) ("The res judicata consequences of a final, unappealed judgment on the merits are not altered by the fact the judgment may have . . . rested on a legal principle subsequently overruled in another case.").

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE STATE'S MOTION BECAUSE THE BAN REMAINS UNCONSTITUTIONAL UNDER *PPH IV*.

If this Court concludes that the Ban is not void and that the district court had inherent authority to dissolve the injunction, it should still affirm the district court's ruling because the State has not identified a relevant predicate change in law that warrants dissolution of the injunction. *See* App. 304. *PPH IV* left in place the undue burden standard, which the Ban does not satisfy, *see* above, Part I(B).

A. Standard of Review, Preservation of Error, and Scope of Review

The district court's denial of the State's motion to dissolve is reviewed for abuse of discretion. The predicate issue of whether the Ban is unconstitutional is subject to de novo review. Error was preserved on whether *PPH IV* left in place the undue burden standard.

But the State did *not* preserve error on the question of what standard applies to abortion restrictions absent the undue burden standard. The State briefed that issue below, but the district court did not rule on it, holding instead only that *PPH IV* left undue burden in place. The State did not file a motion to enlarge the ruling pursuant to Rule 1.904(3) of the Iowa Rules of Civil Procedure. As a result, it failed to preserve error on this issue. *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 884 (Iowa 2014) ("To preserve error on even a properly raised issue on which the district court failed to rule, 'the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.'" (internal quotation omitted)).

B. The Ban is unconstitutional under *PPH IV*, which left in place the undue burden test.

The *PPH IV* Court unequivocally stated that "the *Casey* undue burden test we applied in *PPH I* remains the governing standard." 975 N.W.2d at 716. It overruled *PPH II*, but qualified its holding, stating, "[A]ll we hold today is that the Iowa Constitution is not the source of a fundamental right to an abortion necessitating a strict scrutiny standard of review for regulations affecting that right." *Id.* The Court expressly declined to consider whether the rational basis standard applied. *Id.* at 745. In fact, two justices specifically *dissented* on this point, stating that they would direct the trial court on remand to apply rational basis. *Id.* at 746 (McDermott, J., concurring in part and

dissenting in part). It cannot be the case, therefore, that after *PPH IV*, a rational basis standard applies.

Contrary to the State's arguments, *Dobbs* does not change that the undue burden test remains the appropriate test to apply in Iowa. Indeed, in *PPH IV*, this Court noted that U.S. Supreme Court decisions could *inform* how it should rule, but made clear that it "zealously guard[s] [its] ability to interpret the Iowa Constitution independently of the Supreme Court's interpretations of the Federal Constitution." *Id.* at 716, 745–46.[24]

This Court's treatment of *PPH IV* both before and after the Supreme Court's decision in *Dobbs* confirms that this Court was not adopting the rational basis test. First, it chose not to wait for the Supreme Court's *Dobbs* opinion before issuing its decision reiterating the undue burden standard, even though Mississippi had argued for overruling *Casey* many months before—not to mention that Justice Alito's draft opinion had already been leaked. And after *Dobbs*, the State petitioned the Court for rehearing in an effort to

---

[24] Starting with *In re Ralph*, 1 Morris 1 (Iowa 1839), the first reported case of the Supreme Court of the Territory of Iowa, this Court has maintained a long tradition of recognizing individual rights beyond those recognized by the U.S. Supreme Court. *See Varnum v. Brien,* 763 N.W.2d 862, 877 n.4 (Iowa 2009) ("[T]his court has, for the most part, been at the forefront in recognizing individuals' civil rights."); *Coger v. Nw. Union Packet Co.*, 37 Iowa 145 (1873) (forbidding racial segregation in public accommodations); *Clark v. Bd. of Dirs.*, 24 Iowa 266 (1868) (forbidding racial segregation in education).

convince the Court to establish rational basis as the new standard of review in abortion rights cases. State Pet. for Reh'g, *PPH IV* (No. 21-0856). This Court summarily rejected this invitation to set a new and lower standard of review. Order on Pet. for Reh'g., *PPH IV* (No. 21-0856).[25] Although the decision on a petition for rehearing is discretionary, *see* Iowa R. App. P. 6.1205, the fact that the State believed such a petition was necessary shows that—contrary to the position it has taken in this case—it understood then that *PPH IV* did not adopt a rational basis standard.

Rather, it understood what this Court clearly stated: that following *PPH IV*, an abortion restriction that imposes an undue burden under *Casey* violates the Iowa Constitution. The Ban puts in place not just a substantial—but a complete—obstacle in the path of Iowans seeking pre-viability abortion after all but the earliest stages of pregnancy. There can be no doubt, therefore, that it imposes an undue burden. *See* above at 33; *see also* App. 306. The State has

[25] This was no oversight. The justices certainly were—and are—aware of the importance of the issues raised. *See PPH II*, 915 N.W. 2d at 249–50 (Mansfield, J., dissenting) ("The fact that there are two profound concerns—a woman's autonomy over her body and human life—has to drive any fair-minded constitutional analysis of the problem. . . . *Casey*'s undue burden standard was not an unprincipled decision by Justices O'Connor, Kennedy, and Souter 'to deviate downward' in constitutional jurisprudence. It was an effort to recognize the unique status of this particular constitutional conflict between a woman's autonomy and respect for human life.").

failed to identify any predicate change in law that would warrant this Court to mandate that the district court dissolve the injunction against the Ban.

C. This Court should reject the State's invitation to change the standard for reviewing abortion restrictions under the Iowa Constitution because that issue is not properly before the Court.

The State asks this Court "in the alternative" to "complete the analysis the plurality left open and hold that *Casey*'s undue-burden test is no longer the test under Iowa law," Appellants' Br. at 66, but the question of the appropriate standard for reviewing abortion restrictions under the Iowa Constitution is not properly before this Court. As an initial matter, the State failed to preserve the issue. *See* above, Part III(A).

Moreover, the parties did not raise that issue before the district court during the development of the factual record when the law was enacted because they had no reason to do so: this Court had clearly articulated the applicable standard in *PPH I*, then in *PPH II*. Three years after the permanent injunction, this Court in *PPH IV* made another clear statement of the applicable standard: undue burden. Therefore, despite the State's invitation in its motion to dissolve to disregard this Court's precedent and apply rational basis scrutiny, the district court, again, correctly declined. It did not ask for further factual development or briefing on what standard applied.

Appellees have not been given an opportunity to address fully the question of what standard should apply in such cases. In *PPH IV*, this Court remanded this very question to the trial court, 975 N.W.2d at 745, but that case was dismissed without that question being briefed or considered.

For a complex issue of great public importance, the factual issues should be developed and the legal issues fully briefed in front of the district court before this Court passes on them. *Cf. id.* ("[W]e should not engage in 'freelancing under the Iowa Constitution without the benefit of an adversarial presentation.'"). The State interprets this Court's holding that abortion is not a fundamental right subject to strict scrutiny under the Iowa Constitution as mandating rational basis review. Appellants' Br. at 57–58. But even if a right is not recognized as fundamental, restrictions on it can be subject to a higher level of scrutiny than rational basis. *See, e.g.*, *PPH II*, 915 N.W.2d at 247, 249 (Mansfield, J., dissenting) (casting doubt on notion that right to abortion is fundamental but explaining that even so, "laws relating to abortion also implicate substantive due process rights"). In other contexts, this Court has applied an intermediate level of scrutiny. *See, e.g.*, *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 7 (Iowa 2020) ("[E]lection laws are weighed under a balancing approach, in which 'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are generally

not considered 'invidious.'" (citation omitted)); *State v. Musser*, 721 N.W.2d 734, 743 (Iowa 2006) (intermediate scrutiny applies to commercial speech and content-neutral regulations of speech). And because the rational basis standard is "not a toothless one in Iowa," *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 9 (Iowa 2004) (citation omitted), this Court should not apply it in the first instance because doing so would require resolving factual and legal issues not yet briefed. *See id.* at 8 & n.4 (in applying rational basis, courts consider whether the State's justification "has a basis in fact," which requires "examination of the credibility of the asserted factual basis for the challenged classification rather than simply accepting it at face value."); *see also Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 547 (Iowa 2019) (holding that a party bringing a rational-basis challenge may "produce evidence" to challenge the State's "claimed legitimate interest" (citation omitted)).

The parties have not briefed at the district court the factual impact of the Ban on Iowans. When the record was being developed in this case, no pre-viability abortion bans had been in effect in this country since 1973. Now that some abortion bans have gone into effect, the district court should hear testimony about their catastrophic effect on low-income women, women of color, and survivors of domestic violence and sexual assault.

The State also raises an unresolved factual dispute regarding the point in pregnancy at which the Ban would prohibit abortions. Appellants' Br. at 17 n.1. It asserts that using an abdominal ultrasound, embryonic cardiac activity is not detectable until seven or eight weeks LMP, but Appellees' evidence showed that embryonic cardiac tones were detectable at six weeks using a transvaginal ultrasound, App. 136, the method medically indicated in their practice. At the district court, the State relied on this discrepancy to request in the alternative that the district court reopen the case for "more factual development." App. 221.

And beyond these factual issues, the district court has not considered Appellees' claims under Article I, § 1, of the Iowa Constitution,[26] which include a claim for violation of Appellees' patients' inalienable rights to liberty, safety, and happiness and separately, their right to equal protection.

[26] The section provides, "All men and women are, by nature, free and equal, and have certain inalienable rights." Iowa Const. Art. I, § 1. No "mere appendage," the section was "purposefully placed at the beginning of the Bill of Rights," and "makes the point of emphasizing 'inalienable rights,' which . . . include[] rights that cannot be abrogated by the legislature, or this court." *Baldwin v. City of Estherville*, 915 N.W.2d 259, 285 (Iowa 2018) (Appel, J., dissenting). Iowa "equal protection law arises out of the confluence of article I, section 1 and article I, section 6. Article I, section 1 protects individuals' rights, while article I, section 6 prevents the government granting any citizen or class of citizens privileges or immunities not granted to all citizens on the same terms." *McQuistion v. City of Clinton*, 872 N.W.2d 817, 830 n.6 (Iowa 2015); *see also Varnum* 763 N.W.2d at 878 (citing Art. I, § 1, as textual basis for equal protection).

These claims were not briefed on summary judgment because *PPH II* provided clear, binding precedent which mandated judgment in Appellees' favor.[27]

Because these issues have not been fully developed or adjudicated—and moreover, they are not preserved for appeal—the State's request to resolve the applicable legal standard as rational basis review and dissolve the injunction should be rejected.[28]

IV. THE DISTRICT COURT'S DENIAL OF THE STATE'S MOTION TO DISSOLVE IS NOT A FINAL JUDGMENT FOR PURPOSES OF APPEAL, SO THE COURT SHOULD DISMISS THIS APPEAL.

As is fully laid out in their motion to dismiss, Appellees maintain that the instant appeal should be dismissed and thus the Court need not reach any of the arguments above. *See generally* Mot. to Dismiss Appeal as Untimely. Although the State opposed that motion, it uses its merits brief to rehash that

[27] Of particular importance, Article I, § 1 was amended to expressly include women in 1998. Iowa Const. amend. 45 (approved Nov. 3, 1998). This amendment incorporates the conception of equality between the sexes at that time, when abortion was unquestionably protected. *Cf. PPH II*, 915 N.W.2d at 254 (Mansfield, J., dissenting) (finding significant the timing of adoption of constitutional guarantees).

[28] If the Court concludes that the Ban is not void, that the State's motion is procedurally permissible, and that the district court should have revisited *PPH IV*'s undue burden standard, the appropriate procedural remedy would be to remand to the district court, but to keep in place the permanent injunction while the district court adjudicates the Ban's constitutionality.

opposition. Appellees again rely on *Den Hartog*, which as discussed above, Part II(C)(iii), involves a motion to dissolve an injunction based on a change in factual circumstances. Appellants' Br. at 49–53. But in *Den Hartog*, the district court *granted* the motion to dissolve, entering a new final order that of course triggers an appeal as of right under Rule 6.101(1)(b) of the Iowa Rules of Appellate Procedure.

Here, the district court *denied* the State's motion to dissolve and did *not* issue a new final judgment. *See* Mot. to Dismiss Appeal at 4. This Court has consistently held that such a ruling does not trigger an appeal. *See, e.g.*, *Beck v. Fleener*, 376 N.W.2d 594, 596 (Iowa 1985); *Recker v. Gustafson*, 271 N.W.2d 738, 739 (Iowa 1978); *Stover v. Cent. Broad. Co.*, 78 N.W.2d 1, 5 (Iowa 1956). None of the out-of-state cases the State cites, Appellants' Br. at 50–53, change this outcome under Iowa procedural law. And to the extent that they could be relevant, they appear to address only the argument that the district court has inherent authority—not the procedural issue of whether a denial of a motion to vacate an injunction gives rise to an appeal as of right.

Because this matter is not properly before the Court on appeal, for the reasons set forth in Appellees' motion to dismiss, the Court should dismiss the appeal. In the alternative, it should construe the State's appeal as a petition for a writ of certiorari under Iowa R. App. P. 6.107 and limit its review to the

question of whether the district court "exceeded its jurisdiction or otherwise acted illegally." *Crowell v. State Pub. Def.*, 845 N.W.2d 676, 682 (Iowa 2014). Under this more deferential standard of review, the Court should deny the petition for the same reasons that the State's arguments on appeal as-of-right fail.

CONCLUSION

For the foregoing reasons, Appellees request that this Court dismiss the appeal, construe it as a petition for a writ of certiorari and deny the petition, or affirm the district court's denial of the State's motion to dissolve the permanent injunction.

REQUEST FOR ORAL SUBMISSION

The Court has set oral argument on Appellees' motion to dismiss and on the merits of the appeal on April 11, 2023.

Respectfully submitted,

/s/ Peter Im
PETER IM (PHV PIN: PHV003304)*
DIANA SALGADO (PHV PIN: PHV001609)*
Planned Parenthood Federation of America
1110 Vermont Ave., N.W., Ste. 300
Washington, D.C. 20005
Phone: (202) 803-4096
peter.im@ppfa.org

diana.salgado@ppfa.org

/s/ Rita Bettis Austen
RITA BETTIS AUSTEN (AT0011558)
American Civil Liberties Union of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309–2317
Phone: (515)243-3988
Fax: (515)243-8506
rita.bettis@aclu-ia.org

/s/ Caitlin Slessor
CAITLIN SLESSOR (AT0007242)
Shuttleworth & Ingersoll, PLC
115 3rd St. SE Ste. 500, PO Box 2107
Cedar Rapids, Iowa 52406-2107
Phone: (319) 365-9461
Fax: (319) 365-8443
CLS@shuttleworthlaw.com

/s/ Samuel E. Jones
SAMUEL E. JONES (AT0009821)
Shuttleworth & Ingersoll, PLC
115 3rd St. SE Ste. 500, PO Box 2107
Cedar Rapids, Iowa 52406-2107
Phone: (319) 365-9461
Fax: (319) 365-8443
SEJ@shuttleworthlaw.com

** Admitted pro hac vice*

Attorneys for Petitioners-Appellees

COST CERTIFICATE

Appellees certify that they expended no funds for the printing of their response brief in this Court.

/s/ Rita Bettis Austen
Counsel for Petitioners-Appellees

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements and type-volume limitations of Iowa Rules of Appellate Procedure 6.903(1)(e) and 6.903(1)(g)(1) or (2) because it has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 13,730 words, excluding those portions of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

/s/ Rita Bettis Austen
Counsel for Petitioners-Appellees

CERTIFICATE OF FILING AND SERVICE

I certify that on March 28, 2023, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ Rita Bettis Austen
Counsel for Petitioners-Appellees

Dated: March 28, 2023