No. 22-2036

SUPREME COURT OF IOWA

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC, AND JILL MEADOWS, M.D.,

Plaintiffs-Appellees,

v.

KIM REYNOLDS EX REL. STATE OF IOWA, AND IOWA BOARD OF MEDICINE,

Defendants-Appellants.

Appeal from the Iowa District Court for Polk County
Celene Gogerty, District Judge

No. EQCE083074

Brief of Professor Derek T. Muller as *amicus curiae* in support of no party

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INTEREST OF *AMICUS CURIAE*[1]

Derek T. Muller is the Ben V. Willie Professor in Excellence and Professor of Law at the University of Iowa College of Law. He teaches and writes about federal courts, election law, and civil litigation, and he has an interest in the resolution of this case within the appropriate legal framework. He is the coauthor of a Federal Courts casebook, which includes a particular emphasis on the role of state courts in the federal system. ARTHUR D. HELLMAN, DAVID R. STRAS, RYAN W. SCOTT, F. ANDREW HESSICK, & DEREK T. MULLER, FEDERAL COURTS: CASES AND MATERIALS ON JUDICIAL FEDERALISM AND THE LAWYERING PROCESS (Carolina Academic Press, 5th ed. 2022).

SUMMARY OF ARGUMENT

Important questions about Iowa constitutional law and abortion are at issue in this appeal. But there is an important, separate question that is predicate to these issues; a question that has the potential for far-reaching impact in civil litigation, of *any* type, throughout the State of

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[1] The University of Iowa College of Law is not a signatory to the brief, and the views expressed here are those of *amicus curiae*. The University provides financial support for faculty members' research and scholarship activities, support that helped defray the costs of preparing this brief.

Iowa: When do Iowa courts have the power to modify injunctions based on changes in law?

The district court erred when it concluded that Iowa courts lack the inherent authority to modify permanent injunctions; indeed, under certain circumstances, it is the court's duty to do so.

It remains unclear the basis on which the district court's decision rests. In one heading, the district court wrote that the "State failed to show that the court has *any* inherent authority to dissolve the permanent injunction." *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 2022 WL 17885890, at *3 (Iowa Dist. Ct. Dec. 12, 2022) (emphasis added). But it then concluded that this Court's statements that *do* identify that authority could be disregarded because the Court's statements were not based on its own precedent. *Id.* at *4 (". . . [T]he support for the court's assertion regarding a substantial change in the law was not based on precedent . . . ."). Then, further into its order, the district court conceded that this Court's precedents rightly establish "the court's inherent authority" to modify injunctions but are "distinguishable," *id.* at *5, which is not a legal conclusion but a factual distinction. But then elsewhere, the district court suggested the "inherent authority" of the

Iowa courts is limited to a subset of "exceptional circumstances." *Id.* at *6.

This case, as demonstrated by the district court's conflicting analysis, presents a necessary and important opportunity for this Court to clarify the law; to make clear that Iowa courts hold an inherent equitable power to alter injunctive relief based on changes of facts or changes of law—even if that relief has been styled as "permanent" injunctive relief. The Iowa Rules of Civil Procedure do not strip the Iowa courts of this inherent power, and neither does the Iowa Constitution. Instead, the Constitution's structure—separating the powers of the three branches—suggests that this Court has the not only the authority to lift an injunction when this Court decides that it has erred in limiting the authority of the political branches; it in fact has the duty to do so. These are longstanding, uncontroversial, and widely accepted doctrines in this Court's precedents and in precedent across the country. This Court should take the opportunity to make that clear in this case.

ARGUMENT

I. Iowa courts retain the equitable power to alter injunctions based on changes in the law.

Iowa courts hold inherent authority to modify permanent injunctions due to changes in fact or law, whether those changes are attributable to the legislature or to the judiciary. And the reason is plain enough: As this Court held forty years ago, the "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." *Helmkamp v. Clark Ready Mix Co.*, 249 N.W.2d 655, 656 (Iowa 1977).

This inherent power, which dates back well beyond forty years, arises from the ongoing readiness that the issuing court must possess to exercise supervision and intervention on behalf of the party that was granted the equitable relief. *Spiker v. Spiker*, 708 N.W.2d 347, 356–57 (Iowa 2006) (quoting *Sys. Fed'n No. 91, Ry. Emp. Dept., AFL-CIO v. Wright*, 364 U.S. 642, 647 (1961)). In *Wilcox v. Miner*, 205 N.W. 847 (Iowa 1925), this Court affirmed a district court's modification of an injunction that had enjoined the levying of a tax, because the state legislature passed a law authorizing such a tax. *Id.* at 847–48. The Court rejected the plaintiff's claims that the defendant's request for such a modification

was an unauthorized attempt to relitigate issues that had already been settled by a final judgment, stating that the modification merely "conform[ed] the decree to the statute" that was passed after the injunction was first imposed. *Id.* at 848. Going further, the Court stated that altering the original injunction to make it "conform to a valid legalizing act" and "to give full effect" to that act was not only within the authority of the district court, but was its "duty." *Id.*

Ten years later, the Iowa Supreme Court again affirmed a district court's power to modify an injunction to bring it into conformity with an update in relevant law. In *Iowa Electric Light & Power Co. v. Incorporated Town of Grand Junction*, 264 N.W. 84 (Iowa 1935), this Court reconsidered its previous decision that enjoined a power company from carrying out a contract, because the Court had earlier held the contract was not valid under then-current state law. *Id.* at 84–85. When the Iowa legislature subsequently passed a law permitting the contract, a district court set aside the original injunction. *Id.* at 85. This Court affirmed the modification and explained that "'the [original] judgment . . . was res adjudicata only . . . of the legislation then existing.'" *Id.* at 90 (quoting *Utter v. Franklin*, 172 U.S. 416, 424 (1899)).

The longstanding authority of Iowa courts to modify injunctions due to changes in the law was again approved in *Spiker v. Spiker*. Affirming the district court's modification of a grandparent visitation order after the statute on which it was based was declared unconstitutional, the Supreme Court explained that there is "'no dispute'" that "'sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, *whether of law or fact*,'" have changed. *Spiker*, 708 N.W.2d at 357 (quoting *Sys. Fed'n*, 364 U.S. at 647; emphasis added in *Spiker*). *Accord Bear v. Iowa District Court of Tama County*, 540 N.W.2d 439, 441 (Iowa 1995) ("The court which rendered the injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law."). A development in the law is a sufficiently substantial "change in circumstances" to justify a modification, despite the fact that "[t]here is no specific statutory authority for courts to modify grandparent visitation decrees." *Spiker*, 708 N.W.2d at 354, 356.

This Court has repeatedly affirmed the necessity of modifying injunctions when a change in law puts the purpose or effects of the injunction at odds with the newer law, even without other statutory

authority empowering the judiciary to modify the injunction. If the law "'then existing'" changes, the injunction should change, too. *Iowa Electric*, 264 N.W. at 90 (quoting *Utter*, 172 U.S. at 424). This principle is true for both changes in statutory law, promulgated by the legislature, and in decisional law, promulgated by the courts. *See* 42 AM. JUR. 2D INJUNCTIONS § 288 ("A change in circumstances includes both a change in the applicable law, whether statutory or decisional, and a change in the facts of the case."). In *System Federation*, heavily relied upon by this Court in *Spiker*, the United States Supreme Court noted that "[t]here are many cases where a mere change in decisional law has been held to justify modification of an outstanding injunction." *Sys. Fed.*, 364 U.S. at 372–73 n.6 (citing and summarizing authority).[2] *See also Spiker*, 708

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[2] Iowa is hardly alone in recognizing this authority and its breadth. *See, e.g.*, *Material Service Corp. v. Hollingsworth*, 112 N.E.2d 703, 705 (Ill. 1953) (describing its power describing its power to modify injunctions as "broad," "inherent," and "essential," and finding "no reason why that power should be curtailed because the change in relevant circumstances is by judicial decision rather than by legislation."); *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis County*, 215 N.W.2d 814, 829 (Minn. 1974) ("[T]he courts have the inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to do so."); *Landolt v. Glendale Shooting Club, Inc.*, 18 S.W.3d 101, 105 (Mo. Ct. App. 2000) ("Clearly, 'a permanent injunction based on a condition subject to change may be vacated or modified in order to avoid

N.W.2d at 355 & 360 (quoting the RESTATEMENT (SECTION) OF JUDGMENTS § 73 for the proposition that "a judgment may be set aside or modified if . . . [t]here has been such a substantial change in the circumstances that giving continued effect to the judgment is unjust").

II. The Iowa Rules of Civil Procedure do not withdraw from Iowa courts their equitable power to alter injunctions.

This Court consistently characterizes the authority to modify permanent injunctions as one out of the court's inherent, common-law power. *Spiker* rejected the notion that a failure to file a petition within the time required of Iowa Rule of Civil Procedure 1.1013 could thwart the judicial power: "failure to comply with our rule governing modifications of final judgments does not deprive the court of its common-law power to modify judgments granting continuing relief and regulating future conduct upon a substantial change in circumstances." *Spiker*, 708 N.W.2d at 360 (citing the RESTATEMENT (SECOND) OF JUDGMENTS § 73). In other words, this authority does not derive from a statute granting it to courts, but it is a power inherent in the courts.

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unjust or absurd results when a change occurs in the factual setting or the law which gave rise to its existence.'" (quoting *Lee v. Rolla Speedway, Inc.*, 668 S.W.2d 200, 204–205 (Mo. Ct. App. 1984)).

True, the Federal Rules of Civil Procedure and rules in some other states expressly allow modifying a judgment if the judgment was "based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." FED. R. CIV. P. 60(a)(5). *See also In re Marriage of Hutchinson*, 974 N.W.2d 466, 474 (Iowa 2022) (identifying differences). But even if a party petitioning for modification of an injunction fails to meet the enumerated requirements of the Iowa Rules of Civil Procedure, this Court has expressly held, just last year, that Iowa courts retain a common-law power to modify the injunction. *See id.* at 474–75 ("[W]e have historically allowed parties to bring an independent action in equity as a common-law exception to the explicit deadline in Iowa Rule of Civil Procedure 1.1013.").

Courts retain this power because "the power of courts of equity to issue writs of injunction is inherent, *existing irrespective of constitutional or statutory provisions specifically confirming it*." *Harvey v. Prall*, 97 N.W.2d 306, 310 (Iowa 1959) (emphasis added). Indeed, when this Court recently amended a related Iowa Rule of Civil Procedure on the power to reconsider or amend a ruling, this Court went out of its way to assure the lower courts that the amended rule "is not intended to affect prior case

law concerning a court's inherent authority to reconsider." Court Order Nov. 18, 2016, Comment to Amendment to Rule 1.904.

III. The state constitution's provision that "any law inconsistent therewith, shall be void" does not withdraw this equitable power from the courts.

Article XII, Section 1 of the Iowa Constitution states that "[t]his Constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void." To put it simply, the district court relied on this Court's decision in *Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206 (Iowa 2018) ("*PPH II*"), when it found S.F. 359 unconstitutional. *Planned Parenthood*, 2022 WL 17885890, at *1–*2. *PPH II* is no longer good law construing the Iowa Constitution. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710 (Iowa 2022) ("*PPH IV*") (overturning *PPH II*). Thus, *PPH II* cannot act as a basis today to render—or to continue to render—any law "void."

This Court has not required re-enactment of a law once the legal basis for enjoining the statute in the first place has changed. *See State v. O'Neil*, 126 N.W. 454, 454 (Iowa 1910) ("It is, of course, well settled that a statute which has been held unconstitutional either in toto or as applied to a particular class of cases is valid and enforceable without re-

enactment when the supposed constitutional objection has been removed, or has been found not to exist."); *McCollum v. McConaughy*, 119 N.W. 539, 541 (Iowa 1909) (acknowledging that "an unconstitutional statute is, so far as it is unconstitutional, without force from the time of its enactment," but finding that "the supposed unconstitutionality may thus be found not to exist" in a later case and permitting the statute to be enforced); *Blair v. Ostrander*, 80 N.W. 330, 331 (Iowa 1899) (Congress's legislation removed a constitutional obstacle to an existing Iowa law, "confer[red] authority" upon Iowa, and "there does not appear to have been any more reason for requiring the re-enactment of the state law in order to give it effect" than a similar case in another state).

The United States Supreme Court, and an "overwhelming majority" of other courts, both state and federal, have generally assumed that a statute once declared unconstitutional is "revived" when the initial decision striking it down is reversed. William Michael Treanor & Gene B. Sperling, *Prospective Overruling and the Revival of 'Unconstitutional' Statutes*, 93 COLUM. L. REV. 1902, 1908–09, 1915 (1995). Likewise, Iowa has consistently rejected the notion that laws must be re-enacted before being enforced. Such laws are enforceable upon being declared

constitutional, and the Iowa Constitution does not prevent a court from exercising its power to modify or vacate injunctions.

IV. It is the duty of the Iowa courts to revisit an injunction when the judicial decision on which that injunction was based has changed.

It was not only "within the power of the [district] court to modify" its injunction based on the change in law; it was, as this Court held 100 years ago, "its duty" to do so. *Wilcox*, 205 N.W. at 848. That duty exists regardless of how or why the law changed, but a district court's obligation to reconsider an injunction is highest in case like this: where the original ruling restrained the action of the elected branches of government based on a reading of the Constitution that this Court has now declared to be incorrect. Indeed, the separation of powers compels no less. The legislature enacted a statute, and the governor signed it. It would be an affront to the constitutional framework—and to the very purpose and power judicial review—if a duly enacted law could be forever enjoined based on an erroneous ruling.

Enjoining the enforcement of a duly enacted law is not something that the judiciary takes lightly, and for good reason. That same respect for the elected branches dictates that when the constitutional reasoning for

the injunction has been undermined—that is, once this Court declares that the judicial basis for a district court's order was constitutionally unsound—then it is the duty of the Iowa courts to revisit that injunction. Allowing it to stand, regardless of how wrong it may now be, would turn the power of judicial review into the power of judicial veto—something that neither the text, structure, nor history of the Constitution allows.

CONCLUSION

Amicus respectfully submits that this Court provide clear guidance to litigants and to lower courts as to the scope of the Iowa courts' inherent authority to modify injunctions. Iowa courts hold a common-law power to modify injunctions when a change in law puts the injunction at odds with the new law. This power does not depend on any statute, and this power has been exercised even when a request for an injunction fails to meet the statutory requirements. This particular ruling from the district court should be reversed, and this conclusion should be a predicate conclusion of this Court before it addresses the merits of the case, however it may do so.

Respectfully submitted,

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February 20, 2023

CERTIFICATE OF COMPLIANCE

The undersigned certifies that:

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 4,475 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and the type-style requirements of Rule 6.903(1)(f) because it uses proportionally spaced Century Schoolbook 14-point type face throughout.

/s/ Ryan Koopmans

Counsel for Amicus Curiae

Dated: February 20, 2022