IN THE SUPREME COURT OF IOWA

SENATOR ROBY SMITH, SENATOR JIM CARLIN, SENATOR CHRIS COURNOYER, SENATOR ADRIAN DICKEY, SENATOR JASON SCHULTZ, SENATOR DAN ZUMBACH, FORMER SENATOR ZACH WHITING, REPRESENTATIVE BROOKE BODEN, REPRESENTATIVE BOBBY KAUFMANN, REPRESENTATIVE CARTER NORDMAN, and REPRESENTATIVE JEFF SHIPLEY,
Plaintiffs,
v.
IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant.

No. 22-0401

FINAL BRIEF OF AMICI CURIAE REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE and REPUBLICAN PARTY OF IOWA

Petition for Writ of Certiorari to the Iowa District Court for Polk County
Hon. Sarah Crane, District Judge
Case No. CVCV061476

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IDENTITY OF AMICI CURIAE AND THEIR INTEREST IN THE CASE

Amici curiae are the Republican National Committee (RNC), National Republican Senatorial Committee (NRSC), National Republican Congressional Committee (NRCC), and the Republican Party of Iowa (RPI). The RNC is a national political committee. It manages the Republican Party's business at the national level, supports Republican candidates at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The NRSC and NRCC are national political committees that work to elect Republicans to the U.S. Senate and House of Representatives, respectively. The RPI is a state-level political party that works to promote Republican values and to assist Republican candidates in winning election to partisan federal, state, and local office. Amici intervened, as they often do nationally, in the challenge to two election related bills launched by LULAC Iowa that spurs this original certiorari proceeding. Political candidates and the committees that support them have a clear interest in protecting their candidates, voters, and resources from upheavals in Iowa election law. And they are well suited to explain to the Court the real-world consequences of intrusive discovery in election law litigation.

SUMMARY OF THE ARGUMENT

Iowa legislators challenge a district court discovery order to produce communications with constituents. The order comes from litigation about the constitutionality of two election bills. The plaintiff in that litigation says the bills were passed for partisan purposes and claims they can be invalidated on that basis. The same order requires amici to produce confidential communications about political strategy and the effects of the election bills. Because amici's objections to this order on First Amendment and other grounds are not yet ripe, they have not yet brought the part of the discovery order that applies to them before this Court for review.

The Court should reverse. The district court's order does not properly address the constitutional concerns raised when litigants demand the production of confidential legislative communications. The order also ignored a 2019 decision of this Court and a 2021 decision of the U.S. Supreme Court that both reject the notion that the intent of legislators has any bearing on whether a law is constitutional.

ARGUMENT

I. A judicial proceeding cannot be used to interfere with the actions of legislators taken in the performance of their legislative duties. The district court ordered legislators to produce confidential communications and other documents related to bills passed by the legislature. Should the district court have permitted the discovery?

The legislators were ordered to produce communications with persons outside the legislature, documents reflecting the state interests or other justifications for enacting the challenged election bills, and documents showing the presence or absence of voter fraud in Iowa. The district court's order did not properly weigh the constitutional interests implicated by these discovery demands.

The text of our constitution will be the beginning. But it alone cannot answer every question. The text must be placed in its historical context with an understanding of the legal traditions and principles surrounding it. *McCulloch* v. *Maryland*, 4 Wheat. 316, 407 (1819) ("A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind.")

"Historical practice is of particular importance in resolving separation-of-power questions." *State* v. *Tucker*, 959 N.W.2d 140, 148 (Iowa 2021). "[T]he way the framework [of the Constitution] has consistently operated

fairly establishes that it has operated according to its true nature." *Id.* (citing *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610 (1952) (Frankfurter, J., concurring)). "Thus, a history of deliberate practice among the different departments of the government can evidence a constitutional settlement among them regarding the constitutional division of powers." *Id.*

Many doctrines are not stated in the constitution "but are nevertheless implicit in its structure and supported by historical practice—including, for example, judicial review, intergovernmental tax immunity, executive privilege, executive immunity, and the President's removal power." *Franchise Tax Board of Cal.* v. *Hyatt*, 139 S.Ct. 1485, 1498-99 (2019) (internal citations omitted). Legislative immunity is no different.

Courts have the authority and duty to review the acts of the legislature when they determine what law controls the outcome of a particular case. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). But this is a far cry from questioning how or why the legislature passed the law. *Planned Parenthood of the Heartland, Inc.* v. *Reynolds ex rel. State*, 975 N.W.2d 710, 727-28 (Iowa 2022) ("[J]ust as we would bristle at the legislature telling us how we should conduct our business internally, so should we be hesitant to pass judgment on how the legislature conducts theirs.") Examining the constitution's text, history, and structure teaches that the judiciary cannot invade the deliberative and communicative work of the legislature.

A. The Iowa Constitution creates a strong and independent General Assembly.

We begin with first principles. "All political power is inherent in the people." Iowa Const., Art. I, § 2. "Political power consists of the three great attributes of sovereignty, namely: legislative, executive and judicial authority…[t]hese powers, then, are supreme in the people in the first instance." *Stewart* v. *Board of Sup'rs of Polk Cnty*., 30 Iowa 9, 18 (1870). Iowa's constitution vests "[t]he legislative authority of this state" in a General Assembly. Iowa Const., Art. III, 2nd Div., § 1. "By this section [the people] vest it *all* in the general assembly. Subsequently, in the same instrument, they withdraw some portions of this authority and impose certain restrictions upon the exercise of the authority granted." *Stewart*, 30 Iowa at 18 (emphasis original).

The General Assembly has broad authority. The constitution grants to each house the power to "determine its rules of proceedings." Iowa Const., Art. III, 2nd Div., § 9. Each alone has the power to judge "the qualification, election, and return of its own members." Iowa Const., Art. III, 2nd Div., § 7. Only they can "punish members for disorderly behavior" or "expel a member." Iowa Const., Art. III, 2nd Div., § 9. And it grants each chamber "all other powers necessary for a branch of the general assembly of a free and independent state." Iowa Const., Art. III, 2nd Div., § 9. The choice of this language is worth considering.

The words evoke the stirring conclusion to one of our great charters: "That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES…" The Declaration of Independence para. 32 (1776). Our Framers created a legislative body in the best traditions of American political thought. Nothing defines those traditions like the separation of powers.

"The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted." Iowa Const., Art. III, 1st Div., § 1. The separation of powers includes prohibiting "one department of the government from impairing another in the performance of its constitutional duties." *Tucker*, 959 N.W.2d at 148. It "requires we leave intact the respective roles and regions of independence of the coordinate branches of government." *King* v. *State*, 818 N.W.2d 1, 16 (Iowa 2012).

The constitutional design of separate branches is not merely about the bureaucratic organization of state government. Instead, it is a "safeguard against tyranny." *Tucker*, 959 N.W.2d at 148. It serves as "a structural safeguard…a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict." *Plaut* v. *Spendthrift Farms, Inc.*, 514 U.S. 211, 239 (1995).

The Iowa Constitution teaches us that the branches should exercise great caution against interfering with the operations of the others. This constitutional lesson is reinforced by the statutes and rules that protect legislative independence.

B. The General Assembly is protected by statutes and legislative rules.

Iowa law protects legislators from being questioned for their legislative acts by the judicial system. "A member of the general assembly shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee." Iowa Code § 2.17. This provision draws its lineage from the U.S. Constitution's protection of Members of Congress: "The Senators and Representatives… for any Speech or Debate in either House…shall not be questioned in any other Place." U.S. Const., Art. I, § 6, cl. 1.

The Court has not had a case involving Iowa Code § 2.17. Although this Court has the independent duty to determine its meaning, *State* v. *Wright*, 961 N.W.2d 396, 402-03 (Iowa 2021), federal decisions construing the Speech or Debate Clause would be the logical starting point for this analysis. *State* v. *Gaskins*, 866 N.W.2d 1, 6-7 (Iowa 2015) (describing duty of state courts construing state constitutional provisions similar or identical to U.S. Constitution), *State* v. *Short*, 851 N.W.2d 474, 490 (Iowa 2014) ("[O]ur independent authority to construe the Iowa Constitution does not mean that

we generally refuse to follow the United States Supreme Court decisions…What is required under the Iowa Constitution…[is] our best, independent judgment of the proper parameters of state constitutional commands.")

The U.S. Supreme Court reads the Speech or Debate Clause broadly. "Rather than giving the clause a cramped construction, the Court has sought to implement its fundamental purpose of freeing the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator." *Gravel* v. *United States*, 408 U.S. 606, 618 (1972). Not limited to words spoken during debate, the Clause protects all legislative action that is "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Id.* at 625. The coverage of the Clause "must be no less extensive than the legislative process it is designed to protect, for the Clause insures for Congress 'wide freedom of speech, debate, and deliberations without intimidation or threats from the Executive Branch, or I might suppose, from the judiciary." *Doe* v. *McMillan*, 412 U.S. 306, 332 n.1 (1973) (Blackmun, J., concurring).

Iowa Code § 2.17's protections are complemented by those given the Legislative Services Agency, "a nonpartisan, central legislative staff agency under the direction and control of the legislative council." Iowa Code

§ 2A.1(1). The LSA's staff provide bill drafting, research, and fiscal information to legislators, along with other vital staff work to allow the legislature to function. Iowa Code § 2A.2. LSA employees enjoy a broad privilege against production of documents or testimony. They "shall not be compelled to give testimony or to appear and produce documentary evidence in a judicial or quasi-judicial proceeding if the testimony or documentary evidence sought relates to a legislative duty or act concerning the consideration or passage or rejection of proposed legislation performed by the [individual]." Iowa Code § 2A.3(3). "An order or subpoena purporting to compel testimony or the production of documentary evidence" about the legislative process "is unenforceable." *Id.*

This code section serves no purpose if a litigant can get the same information by subpoenaing a legislator. The *only* reason for this statute is if there is a preexisting legislative privilege. "The legislature is presumed to know the state of the law, include case law, at the time it enacts a statute." *Iowa Farm Bureau Fed'n* v. *Envtl. Prot. Comm'n*, 850 N.W.2d 403, 434 (Iowa 2014). "We generally read legislation in a manner to avoid rendering portions of a statute superfluous or meaningless." *Beverage* v. *Alcoa, Inc.*, 975 N.W.2d 670, 675 (Iowa 2022). A statute that protects legislative staff from civil discovery demands without some other authority that protects legislators would be nonsensical.

That protection exists in rules adopted by both the House and Senate. Both chambers incorporate the rules of practice in Mason's Manual of

Legislative Procedure. See Rule 5, Iowa House of Representatives Rules (89th G.A.), Rule 3, Iowa Senate Rules (89th G.A.). The manual asserts a broad legislative immunity to judicial supervision of legislative actions. Mason's Manual of Legislative Procedure 420 (National Conf. of State Legis., 2020). After reciting the history of the Speech or Debate clause in the U.S. Constitution, the manual states that "legislators are immune from being questioned outside their chambers for their participation in the sphere of legitimate legislative activity." *Id.* "Legislators are immune from suit and other civil processes when acting within the sphere of legitimate legislative activity." *Id.* at 421. This exercise of rulemaking power by the legislature prohibits the use of the civil discovery process against legislators. But even without these rules, the principle of legislative independence runs throughout American law.

C. Legislative independence is deeply rooted in our legal traditions.

The "privilege of legislators to be free from…civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries" and is why the Speech or Debate Clause exists in the U.S. Constitution. *Tenney* v. *Brandhove*, 341 U.S. 367, 372 (1951). Legislative immunity protects legislators from anything that would distract them from their legislative duties. *Id.* at 373 ("In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the

fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense." (citing II Works of James Wilson 38 (Andrews ed. 1896)).

The district court understood *Tenney* at too granular of a level. It said the case did not apply "as LULAC does not seek any civil liability against the Legislators." (Order Regarding Motion to Compel Discovery 3.) But *Tenney* is not just about civil liability, it is about the independence of the legislative branch. It is the distraction to legislators and the possible chilling effect to the discharge of their duties that justifies the immunity, not the legal theory by which it is advanced. *Sup. Ct. of Va.* v. *Consumers Union of the US, Inc.*, 446 U.S. 719, 732-33 (1980). It "may be asserted even against claims that seek only declaratory or prospective injunctive relief." *Cushing* v. *Packard*, 30 F.4th 27, 37 (1st Cir. 2022). Immunity "exists to protect those engaged in legislative activities from the burdens of defending against a suit and not merely from being held liable in one." *Id.* (citing *Tenney*, 341 U.S. at 377.)

Even discovery demands, without a claim for damages, interferes with the independence of the legislators. The discovery demand, backed by the court's contempt power to enforce it, has no less of a potential effect of interference on a legislator than a declaratory judgment. *Schiltz* v. *Com. of Va.*, 854 F.2d 43, 45 (4th Cir. 1988), overruled on other grounds by, *Berkley* v. *Common Council of City of Charleston*, 63 F.3d 295 94th Cir. 1995). It is the interference, not the procedural mechanism by which it is brought to bear, that is prohibited. "[O]nce it is determined that Members are acting within the

'legitimate legislative sphere' the Speech or Debate Clause is an absolute bar to interference." *Eastland* v. *U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975) (citing *Doe*, 412 U.S. at 314).

The immunity of legislators also does not depend on their motive or intent. The immunity "would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives." *Tenney*, 341 U.S. at 377. It is "not consonant with our scheme of government for a court to inquire into the motives of legislators." *Id.* Legislative immunity applies even when the allegation is the legislator singled out the plaintiff for investigation "to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights." *Id.* at 371.

The Iowa Supreme Court's sole decision on legislative immunity is in harmony. Although this Court has not had occasion to apply *Tenney* to state legislators, it has decided the subsidiary question of whether such immunity exists for local officials. In *Teague* v. *Mosley*, 522 N.W.2d 646 (Iowa 1996) the Court looked to the U.S. Supreme Court's body of cases on legislative immunity, largely under the Speech or Debate Clause, to decide whether county supervisors could be sued for their alleged failure to "provide a safe environment" at the county jail. *Id.* at 647. The Court found that absolute legislative immunity foreclosed this possibility. *Id.* at 649.

Citing *Tenney* and *Sup. Ct. of Va.*, the Court noted that the U.S. Supreme Court had not yet ruled whether legislative immunity also applied to local legislators. *Id*. But because legislative immunity was so well established, and the reasons for it applied with no less force at the local level, it did not hesitate to give the same protections enjoyed by Members of Congress to county supervisors. "Because government officials are engaged by definition in governing, their decisions will often have adverse effects on other persons." *Id.* (citing *Forrester* v. *White*, 484 U.S. 219, 223 (1988)). "[E]xposing government officials to the same legal hazards faced by other citizens may detract from the rule of law instead of contributing to it." *Id.* (citing *Forrester*). "This rationale, we believe, is applicable to county supervisors, and we adopt a rule of absolute immunity for actions taken in connection with their official [legislative] duties." *Id.*

The willingness of the Court to extend *Tenney* beyond U.S. Supreme Court precedent is worth pondering. The Court thought the principle of legislative immunity was so plainly a part of the legal landscape that it readily applied it to local officials, even though the high court had not yet done so.[1] *Teague* is not just an ordinary precedent about an ordinary point of law. It is rather an application of such a well-established principle that this Court didn't hesitate to apply it in a circumstance that had not yet been addressed by the U.S. Supreme Court. Compare *Savala* v. *State*, 2022 WL 17543461, at *2

[1] This Court's prediction was proven correct two years later. *Bogan* v. *Scott-Harris*, 523 U.S. 44 (1998) (adopting legislative immunity for local officials).

(Iowa Dec. 9, 2022) ("We decline Savala's request to chart new federal constitutional waters by [finding the Fourteenth Amendment incorporates the Seventh Amendment's right to civil jury trial]; that endeavor is best left to the Supreme Court.")

Teague answers the question here. The General Assembly creates and defines the powers of cities and counties. *Charles Hewitt & Sons* v. *Keller*, 223 Iowa 1372, 1377, 275 N.W. 94, 97 (1937). If the legislature wished, it could blot every one of them out of legal existence. *City of Clinton* v. *Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (1868) (Dillon, C.J.) ("Municipal corporations owe their origins to, and derive their powers and rights wholly from, the legislature. It breathes into them life, without which they cannot exist. As it creates, so it may destroy.") It simply cannot be the case that county supervisors enjoy more protection from scrutiny of their legislative activities than do members of the General Assembly.

The legislators cited and discussed *Teague*. The district court could have relied on *Teague* alone to reject the discovery demands. But the district court inexplicably did not spare a single word for it. Not one.

The district court's misadventure with this Court's precedents was not limited to *Teague*. The legislators also cited *Des Moines Reg. and Trib. Co.* v. *Dwyer*, 542 N.W.2d 491 (Iowa 1996). In *Dwyer* the Court considered a public records request made to the Secretary of the Senate and an administrator in the executive branch for call detail records of state senators. *Id.* at 494. In response the Senate adopted a rule prohibiting release of the records. *Id.*

The Court recognized the profound separation-of-powers question posed by the request. Recognizing the legislature's constitutional power to "determine its rules of proceedings," Iowa Const., Art. III, 2nd Div., § 9, the Court held the issue was one of "recognizing and respecting the prerogatives of the Iowa Senate as committed to it by the Iowa Constitution." *Dwyer*, 542 N.W.2d at 496. Although the law's general grant of access to public records could be read to apply to the legislature, the statute "does not, nay cannot precede our authority and duty to first determine what rights are exclusively given to the legislature by our Constitution." *Id.*

The Court recognized the legislature's wide authority over its own rules. "The words in which the grant of power to the Senate to adopt rules of procedure is couched are about as broad and comprehensive as the English language contains, and this court is without the right to ingraft any limitation thereon." *Id.* at 498 (citing *Witherspoon* v. *State ex rel. West*, 103 So. 134, 138 (Miss. 1925)). While rules of proceeding cover debate on bills and the method of voting, they also "extend[] to the determination of the propriety and effect of any action…taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the Constitution." *Id.*

Interaction with the public is vital to the lawmaking process. "The Iowa Constitution vests the general assembly with the authority to pass rules of law for the government and regulation of people or property." *Id.* "Public communication with senators is an integral part of the senate's performance

of its constitutionally granted authority to enact laws." *Id.* at 499. "[I]n order to give to the will of the people the influence it ought to have, and the information which may enable them to exercise it usefully…their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive…" *Id.* (citing 8 Works of Thomas Jefferson 322-23 (Ford ed. 1904)).

The interaction between legislators and their constituents must not be chilled. "We do not think it advances the public interest for a person who has spoken to a [county official] on the telephone to be susceptible to inquiries, from the press or otherwise, regarding the nature and substance of the conversation." *Id.* (citing *N. Jersey Newspaper Co. v. Freeholders*, 584 A.2d 275, 276 (N.J. App.Div. 1990)). "We can think of little else which would have a more chilling effect on the free and open communication on which elected officials should be able to rely." *Id.* The balancing of these concerns must take place in the legislature, not the judiciary. *Id.* at 501 ("The weighing of these factors is indigenous to the political process and is distinctly within the province of the senate. As elected representatives involved with the political process, senators are conditioned to decide political questions.")

Dwyer is a vigorous defense of legislative independence and the separation of powers. It is one of this Court's most important constitutional cases. It should have been central to the district court's determination that the discovery demands to the legislators were inappropriate. Instead, the

district court dismissed *Dwyer* as simply "an open records case" dealing merely with the privacy concerns of third parties. (Order Regarding Motion to Compel Discovery 12.) It went unmentioned in the court's analysis of the broader legal questions. *Dwyer*'s rationale contradicts the discovery demands placed on the legislators. Like *Teague*, it should have been enough authority for the district court to simply deny the motion to compel.

The legislature's constitutional role is alone reason to reverse the district court's order. But the order is flawed for a second reason. This Court has held that legislative motivation is not the basis to find a statute unconstitutional. But the district court did not follow (or, again, even discuss) this authority when ordering the production of confidential legislative materials.

II. The intent of individual legislators is never relevant to whether a statute is constitutional. The district court ordered legislators to produce confidential documents about their intent when passing two election bills. Should the district court have ordered the production of confidential documents?

The judiciary does not review the wisdom of laws. "We may pass on the power of the legislature, but not its judgment or discretion, in the exercise of legislative authority. Except for limitations imposed by either the federal or state constitutions, the general assembly may legislate without restriction." *Frost* v. *State*, 172 N.W.2d 575, 583 (Iowa 1969). "Perhaps no canon of statutory construction is more firmly established than the one prohibiting courts from meddling with the general assembly's exclusive power of determining what laws it should enact." *Id.* at 584.

A. Intent of legislators is never relevant to the court's evaluation of the constitutionality of the election bills.

The ostensible purpose of the discovery demands to legislators is to establish that the election bills were "motivated by partisan efforts to restrict access to the voting process." (Motion to Compel 6.) The district court did not question this reasoning. (Order Regarding Motion to Compel Discovery 6.) ("The claim at issue in Count IV is not based on the interpretation of the statutes, but instead, a claim against the law-making process itself. Therefore, legislative intent is relevant to this type of claim.")

But the district court got it wrong. "[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *AFSCME Iowa Council 61* v. *State*, 928 N.W.2d 21, 37 (Iowa 2019) (*AFSCME*). The analysis will be "bound by the 'familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.'" *Id.* (citing *Bailey* v. *Callaghan*, 715 F.3d 956, 960 (6th Cir. 2013)).

There is no exception to this rule for claims of partisan motivation. "As unfortunate as it may be, political favoritism is a frequent aspect of legislative action." *AFSCME*, 928 N.W.2d at 37 (citing *Hearne* v. *Board of Educ.*, 185 F.3d 770, 775 (7th Cir. 1999)). "There is no rule whereby legislation that otherwise passes the proper level of scrutiny…becomes constitutionally defective because one of the reasons the legislators voted for it was to punish those who opposed them during an election campaign." *AFSCME*, 928 N.W.2d at 37. "Indeed one might think that this is what election campaigns are all about: candidates run a certain platform, political promises made in the campaign are kept (sometimes), and the winners get to write the laws." *Id.*

"The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted." *United States* v. *O'Brien*, 391 U.S. 367, 382-83 (1968). This is the Iowa rule as well. "We too apply the *O'Brien* principle and

decline to consider alleged motives to red circle AFSCME." *AFSCME*, 928 N.W.2d at 42. Such a claim lacks "judicially discoverable and manageable standards for resolving the issue," is "impossible[] [to] decid[e] without an initial policy determination of a kind clearly for nonjudicial discretion," and could not be resolved without the Court "expressing a lack of the respect due coordinate branches of government." *State ex rel. Dickey* v. *Besler*, 954 N.W.2d 425, 435 (Iowa 2021) (describing elements of political question doctrine).

All election laws "naturally impose some burdens on voters." *LULAC of Iowa* v. *Pate*, 950 N.W.2d 204, 209 (Iowa 2020). The election bills will face "a deferential standard of review." *Id.* The Court will "uphold legislative classifications based on judgments the legislature could have made, without requiring evidence or 'proof' in either a traditional or a nontraditional sense." *Planned Parenthood of the Heartland, Inc.* v. *Reynolds*, 962 N.W.2d 37, 48 (Iowa 2021).

The legislators cited *AFSCME*. But the district court did not refer to it in its order. Rather, it relied on a federal district court case to guide its analysis of the legislative intent issue without recognizing that the case was contradicted by a later decision of the U.S. Supreme Court.

B. The district court relied on an irrelevant federal district court decision that contradicts later U.S. Supreme Court precedent.

Instead of following this Court's recent on-point precedent, the district court cited a federal district court decision for the proposition that the legislature's intent was "relevant and extremely important as direct evidence." (Order Regarding Motion to Compel Discovery 6-7) (citing *Bethune-Hill* v. *Virginia State Bd. of Elections*, 114 F.Supp.3d 323 (E.D. Va. 2015)). But the district court didn't recognize that *Bethune-Hill* conflicts with later U.S. Supreme Court authority rejecting the notion that individual legislators' intent can be imputed to the challenged legislation. *Brnovich* v. *Democratic Nat'l Comm.*, 141 S.Ct. 2321, 2350 (2021). This idea, taken from employment law, "rests on the agency relationship that exists between an employer and a supervisor, but the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents." *Id.* "Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools." *Id. Bethune-Hill* does not justify the discovery demands placed on the legislators.

AFSCME, not a federal district court case that has been undermined by the U.S. Supreme Court, controls whether legislative intent has any bearing on the constitutionality of the challenged election bills. Because legislative

intent will never figure into that analysis, the district court should have denied the effort to discover documents about it.

CONCLUSION

The Court should reverse the district court with instructions to deny the motion to compel.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 5003 words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Equity, 14-point type.

No party's counsel authored this brief in whole or in part, nor did any party or its counsel contribute money to fund the preparation or submission of this brief.

/s/ Alan R. Ostergren
Alan R. Ostergren