IN THE SUPREME COURT OF IOWA
No. 23–1145

PLANNED PARENTHOOD OF THE HEARTLAND, INC.;
EMMA GOLDMAN CLINIC; and SARAH TRAXLER, M.D.,

Petitioners-Appellees,

vs.

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

Respondents-Appellants.

Appeal from the Iowa District Court for Polk County
Joseph Seidlin, District Judge

RESPONDENTS-APPELLANTS' FINAL BRIEF

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case, because it presents substantial constitutional questions about the validity of a statute, substantial issues of first impression, fundamental and urgent issues of broad public importance, and substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f).

STATEMENT OF THE CASE

I. Nature of the Case.

This appeal is an interlocutory review of a district court ruling that granted Petitioners' emergency motion for a temporary injunction. (Dkt. 26, App. 210.) That ruling enjoined the State from enforcing its statute that prohibits doctors from aborting unborn life after detecting a fetal heartbeat. (Dkt. 22 at 14, App. 208.)

That ruling was error. The State of Iowa has a vital interest in protecting unborn human life at all stages of development. The injunction precluding enforcement of Iowa's Fetal Heartbeat Statute undermines that interest, ignores recent developments in State and federal law, and misapplies this Court's recent abortion precedents.

Respondents Governor Kim Reynolds ex rel. State of Iowa and the Iowa Board of Medicine ("State") ask this Court to confirm that the appropriate standard to review laws that protect unborn human life is rational basis. It should explicitly adopt this test, uphold the Fetal Heartbeat Statute, dissolve the district court's injunction, and render judgment for the State.

The district court enjoined enforcing the Fetal Heartbeat Statute because it found Petitioners likely to succeed under the *Casey* undue-burden test. (*Id.* at 6–12, App. 200–06); *see Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878–79 (1992) (plurality op.). It stated that the plurality opinion in *Planned Parenthood of the Heartland, Inc. v. Reynolds* ("*PPH 2022*"), 975 N.W.2d 710, 716 (Iowa 2022), bound it to apply that test. (Dkt. 22 at 8., App. 202) But that was wrong.

PPH 2022 held that abortion was not a fundamental right protected by Iowa's Constitution. *See PPH 2022,* 975 N.W.2d at 715–16 (plurality op.) ("[W]e hold today [ ] 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."). Thus, because no "fundamental right [was] at issue," Petitioners' "claims [should have been] reviewed under the rational basis test." *State v. Doe*, 927 N.W.2d 656, 662 (Iowa 2019) (quoting *King v. State*, 818 N.W.2d, 1, 25 (Iowa 2012)); *see id.* at 735–44.

The district court agreed that if "there was no fundamental right to an abortion, there would have been no reason to direct that

undue burden remained the governing standard; the standard would have defaulted to the rational basis test." (Dkt. 22 at 10, App. 204.) But it wrongly held that *PPH 2022*, which recognized there is no fundamental right to an abortion, required it to apply that *Casey* undue-burden test. It was not bound to apply that test and should have, as it recognized, instead applied rational basis.

The district court also erred on the other preliminary-injunction factors. It found Petitioners would suffer irreparable harm without an injunction. (Dkt. 22 at 12–13, App. 206–07.) But the "State of Iowa" suffers "a form of irreparable injury" when its duly enacted statutes are enjoined. *Law v. Gast*, 643 F. Supp. 3d 914, 920 (S.D. Iowa 2022) (quoting *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020)). And the court compounded its error by collapsing its balance-of-harms analysis into its finding that Petitioners were likely to succeed on the merits. (Dkt. 22 at 13, App. 207.) The district court ignored the State's vital interest in protecting human life at all stages of development.

Beyond those issues, this case also presents this Court several ripeness and justiciability questions that should have prevented issuing an injunction. First, Petitioners' pre-enactment challenge to the Fetal Heartbeat Statute was premature. (*Id.* at 4–5, App. 198–99.) Second, Petitioners—each abortion providers—have no constitutional rights of their own at stake. So without third-party standing they cannot sue on behalf of women and hypothetical patients. (*Id.* at 5–6, App. 199–200.) Under Iowa law, they lack third-party standing and so their claims should be dismissed.

II. Course of Proceedings.

On June 16, 2023, this Court released two non-precedential opinions in *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State* ("*PPH 2023*"), 2023 WL 4635932 (Iowa June 16, 2023). Those opinions reflected an evenly divided Court—a Court divided over whether to lift a permanent injunction on an earlier, largely similar, fetal heartbeat bill enacted in 2018. The evenly divided Court affirmed that injunction by operation of law. *Id.*

One three-Justice opinion observed that the Legislature did not reenact the fetal heartbeat law during the 2023 legislative session despite the district court's denial of the motion to dissolve the injunction. *Id.* at *4. Those Justices were wary of "legislating from the bench" by allowing a "moribund" statute to go into effect. *Id.* at *1.

Governor Reynolds responded by convening the Legislature in a special session. *See* App. for Interloc., at *7–8 (July 21, 2023). The special session's sole purpose was to protect unborn life. The Legislature achieved its purpose by passing HF 732, codified at Iowa Code section 146E. On July 14, the Governor signed HF 732, and it went into immediate effect. *Id.* at *2.

But on July 12, before the Governor signed the Fetal Heartbeat Statute into law, Petitioners Planned Parenthood of the Heartland, Inc., Emma Goldman Clinic, and Sarah Traxler, M.D. ("Petitioners"), had sued. (Dkt. 1, App. 4.) They sought declaratory judgment and injunctive relief. (*Id.*) They moved for an emergency temporary injunction that same day. (Dkt. 2, TI Motion, App. 28.)

The district court heard that motion on July 14, the same day as the Fetal Heartbeat Statute's signing. (Dkt. 22 at 1, App. 195; Hearing Tr. 57:11–58:15, App. 242.) On July 17, the court ruled, finding the case was ripe, Petitioners had standing, and that a temporary injunction should issue to block the State from enforcing Iowa Code section 146E during the litigation. (Dkt. 22 at 14, App. 208.) It issued that injunction, which allowed the Iowa Board of Medicine to proceed with rulemaking. *Id.*

On July 21, Respondents timely applied for interlocutory review. On July 25, this Court granted that application.

STATEMENT OF THE FACTS

Petitioners seek to permanently enjoin enforcement of Iowa's Fetal Heartbeat Statute. Beyond the specific procedural context here, the relevant facts include the Fetal Heartbeat Statue's text and the legal context of Iowa's abortion jurisprudence.

I. Iowa's Fetal Heartbeat Statute.

The Fetal Heartbeat Statute prohibits physicians from performing abortions after they can detect a fetal heartbeat. Iowa Code § 164E.2(1)(a) (2023); Iowa Code § 146E.2(2)(*a*). "Abortion" means "the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus." Iowa Code § 146E.1(1). And "Fetal heartbeat" refers to "cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac." *Id.* § 146E.1(2).

The Statute includes exceptions that allow abortions after detection of a fetal heartbeat if there is a medical emergency, or if the mother was a victim of rape or incest. Iowa Code §§ 146E.2(2)(a), 146E.1(3)–(4). The "medical emergency" exception permits abor-

tions to "preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy." Iowa Code §§ 146E.1(4), 146A.1(6)(*a*).

To qualify for an exception for rape, the rape must be "reported within forty-five days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician." Iowa Code § 146E.1(3)(*a*). To qualify for an exception for incest, the incest must be "reported within one hundred forty days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician." Iowa Code § 146E.1(3)(*b*).

Abortions are almost entirely prohibited when a physician determines the probable postfertilization age of the unborn child is twenty or more weeks. They are permitted after that date if the woman has a new medical emergency "or the abortion is necessary to preserve the life of an unborn child." Iowa Code § 146E.2(2)(*b*).

II. Legal Context.

This Court has never adopted the *Casey* undue-burden test for laws protecting unborn life despite ample opportunities to do so. In *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.* ("*PPH 2015*"), this Court considered whether the Iowa Constitution protects a fundamental right to abortion. 865 N.W.2d 252, 261–62 (Iowa 2015). But the Court declined to answer that question. *See id.*

Rather than independently interpret the Iowa Constitution, the Court adopted an approach of co-extensivity and applied the federal *Casey* undue-burden test. *Id.* at 262–63, 269 ("Because the Board agrees the Iowa Constitution protect a woman's right to terminate her pregnancy to the same extent as the United States Constitution, we find the rule violates the Iowa Constitution.")

But the Court explained it was "not decid[ing] whether the Iowa Constitution provides [a right to abortion]." *Id.* at 262. So this Court did not independently adopt a standard under Iowa's Constitution. *See id.* Yet this Court did decline Planned Parenthood's request to adopt a standard protecting a broader right to abortion than found in *Casey*. *Id.*

Three years later, this Court found for the first time that the Iowa Constitution protected a fundamental right to abortion. *Planned Parenthood of the Heartland v. Reynolds ex rel. State* ("*PPH 2018*"), 915 N.W.2d 206, 220–21 (2018). Finding the right was "fundamental," this Court rejected the *Casey* undue-burden test and adopted a strict-scrutiny standard under the "well-settled" tiers of constitutional scrutiny. *Id.* at 238 ("It is well settled that '[i]f a fundamental right is implicated, we apply strict scrutiny.'") (quoting *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005)).

PPH 2018 agreed that the *Casey* undue-burden test is unworkable. *Id.* at 238–41. It held "the undue burden standard 'is essentially no standard at all,'" and "allows judges to impose their own subjective views of the propriety of the legislation in question." *Id.* at 239 (quoting *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 16 (Tenn. 2000), *superseded by const'l amendment*, Tenn. Const. art. I, § 36).

This Court held that the *Casey* undue-burden "test fails to 'offer an objective standard by which the effect should be judged.'" *Id.*

(quoting *Sundquist*, 38 S.W.3d at 16). As it observed, "[t]he inherently standardless nature of this [undue-burden] inquiry invites the district judge to give effect to his personal preferences about abortion." *Id.* at 240 (quoting *Casey*, 505 U.S. at 992 (Scalia, J., concurring in part and dissenting in part)). Nothing about *Casey*'s workability has since changed.

But soon after, this Court reversed course. *PPH 2022* overruled *PPH 2018*, holding the text, structure, and tradition of the Iowa Constitution did not create a fundamental right to abortion. 975 N.W.2d at 739–41. But a majority did not agree on a single standard of review. *Id.* at 744–45. *PPH 2022* explained that, at that time, "[t]he State [did] not take a position on whether the undue burden test or the rational basis test should replace *PPH* [*2018's*] fundamental rights/strict scrutiny standard." *Id.* So the Court concluded it "should not go where the parties do not ask us to go" or "engage in freelancing under the Iowa Constitution without the benefit of an adversarial presentation." *Id.* (cleaned up).

Indeed, *PPH 2022* did not affirmatively adopt a standard of review for laws protecting unborn life under the Iowa Constitution.

See id. And while the Court overruled the core holding of *PPH 2018*—correcting its prior holding that the due-process clause protected a fundamental right to abortion—it left undisturbed its analysis that held the *Casey* undue-burden test is unworkable. *See id.* So "[f]or now, this means that the *Casey* undue burden test we applied in *PPH* [*2015*] remains the governing standard." *Id.* at 716. And the Court presciently noted "the legal standard may also be litigated further." *Id.*

Moreover, *PPH 2022* recognized that the U.S. Supreme Court's imminent decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), stood to terraform the "federal constitutional landscape established by *Roe* and *Casey*." *PPH 2022*, 975 N.W.2d at 716 (plurality op.). The plurality also signaled it would look to *Dobbs* for guidance. *Id.* at 716 (plurality op.); *id.* at 745 ("We expect the opinions in [*Dobbs*] will impart a great deal of wisdom we do not have today," and it "may provide insights that we are currently lacking.")

One week later, that guidance came. *Dobbs* explicitly overruled *Roe v. Wade*, 410 U.S. 113 (1973). 142 S. Ct. at 2265. *Dobbs*

held that *Roe* was "egregiously wrong and deeply damaging" and "on a collision course with the Constitution from the day it was decided." *Id.* Further, the Supreme Court held, a right to abortion is neither "deeply rooted in this Nation's history and tradition" nor "implicit in the concept of ordered liberty." *Id.* at 2242 (cleaned up).

Because abortion was not a fundamental right, the U.S. Supreme Court held that the standard of review automatically reverted to rational basis. *Id.* at 2283–84. In acknowledging that reversion, the Court lambasted the *Casey* undue-burden test. *Id.* at 2272–2276. It catalogued the many ways the standard was unworkable. *Id.* And that unworkability was a substantial basis for departing from *stare decisis* and overruling *Casey*. *Id.*

Given the changes in Iowa and federal law, the State moved to dissolve the injunction placed on the 2018 Fetal Heartbeat bill. *PPH 2023*, 2023 WL 4635932, at *8 (Waterman, J.), *id.* at *9 (McDonald, J.). This Court evenly divided on dissolving the permanent injunction. *Id.* at *9. On the merits, three Justices believed the Court should adopt—or had adopted—the rational-basis standard. *Id.* at *8–25 (McDonald, J.). Although the other three Justices did

not join that opinion, they explained that in "future cases involving new abortion laws, the parties are free to argue for a change in the current undue burden standard, and this court will consider it." *Id.* at *8 (Waterman, J.).

ARGUMENT

I. The Iowa Constitution Tasks Courts With Reviewing Abortion Regulations Under the Rational Basis Test.

This Court "recognize[s] the State's vital interest in protecting unborn life." *PPH 2023*, 2023 WL 4635932, at *8. That principle confirms the State's role in protecting vulnerable unborn children. The Fetal Heartbeat Statute reflects this principle and advances the state's vital interest.

This Court should follow recent developments in both State and federal Constitutional jurisprudence and explicitly adopt the rational-basis test in reviewing statutes that advance the State's legitimate interest in protecting unborn human life. As with any other Constitutional right, because the Iowa Constitution does not protect a fundamental right to abortion, rational basis review applies.

This Court should decline Petitioners' invitation to adopt the *Casey* undue-burden test. Iowa has never independently adopted that test. And federal abortion precedent confirms it is unworkable. Even if this Court were to return to *PPH 2015*—despite its double abrogation by *PPH 2018* and *PPH 2022*—that case recognized a

right to abortion coextensive with the right under the U.S. Constitution. *PPH 2015*, 865 N.W.2d at 254. Because *Dobbs* now requires rational basis review of abortion regulations federally, under *PPH 2015* so does the Iowa Constitution here.

Every path leads to the same result. This Court should adhere to Iowa law and find the Fetal Heartbeat Statute passes the rational-basis test, reverse the district court's injunction order, and render judgment for the state.

Preservation of error. The proper standard to review the Fetal Heartbeat Statute is preserved for appellate review because it was "both raised and decided by the district court." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002); (Dkt. 19 at 14–33, App. 163–83; Dkt. 22 at 6–13, App. 200–07.) The district court declined to address Petitioners' likelihood of success under the Iowa Constitution's inalienable-rights clause, so that is not preserved on appeal. (Dkt. 22 at 12., App. 206.)

Standard of review. When reviewing constitutional challenges to statutes, this Court "must remember that statutes are cloaked with a presumption of constitutionality" and the "challenger bears

a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt." *PPH 2022*, 975 N.W.2d at 721 (quoting *Planned Parenthood of the Heartland, Inc. v. Reynolds* ("*PPH 2021*"), 962 N.W.2d 37, 45 (Iowa 2021)).

That burden is heavy in facial challenges because Petitioners must prove the statute is "totally invalid and therefore, 'incapable of any valid application.'" *Id.* at 736. (quoting *PPH 2018*, 915 N.W.2d at 232). With those burdens in mind, the Court reviews the constitutional claims presented here de novo. *Id.* at 721.

A. The Iowa Constitution does not recognize a fundamental right to an abortion, so the Court applies rational-basis review.

Iowa Courts review statutes under the rational-basis test unless a statute implicates a fundamental right. Because the Fetal Heartbeat Statute does not implicate a fundamental right, it should be reviewed only to determine whether it has a rational basis. This Court should explicitly say so and finally resolve the question about the applicable standard.

When statutes do not violate fundamental rights, Iowa Courts review challenges to their constitutionality under the rational-basis

test. *See Iowa State Educ. Ass'n v. State*, 928 N.W.2d 11, 16 (Iowa 2019); *King*, 818 N.W.2d at 27 ("Because in this particular case the allegations do not show a deprivation of a fundamental right, even if we assume there is a fundamental right to education at some level, we apply the rational basis test."); *State v. Groves*, 742 N.W.2d 90, 93 (Iowa 2007) ("If we determine a fundamental right is not implicated, we apply a rational basis review.").

That is so in substantive due-process challenges like this one—this Court applies strict scrutiny when it determines that a right protected by the Iowa Constitution is fundamental but applies rational basis if it does not. To make that determination, this Court follows a two-step inquiry. The first step is to "identify the nature of the individual right involved" and determine whether it is fundamental. *Groves*, 742 N.W.2d at 92. After the nature of the right is identified, "the second step is to apply the appropriate test." *Id.* at 93.

1. The district court misunderstood the effect of *PPH 2022*.

Because *PPH 2022* held abortion is not a fundamental right, the district court should have reviewed the Fetal Heartbeat Statute

for a rational basis. *See*, *e.g.*, *Groves*, 742 N.W.2d at 93. Instead, the district court interpreted *PPH 2022* as overturning *PPH 2018*'s adoption of the strict-scrutiny standard while preserving a fundamental right to abortion under the Iowa Constitution. (Dkt. 22 at 10, App. 204.) That is wrong.

PPH 2022 resolved the due-process test's first step by holding the Iowa Constitution does not protect a fundamental right to abortion. 975 N.W.2d at 735–742. *PPH 2022* only reserved ruling on the second step until the State requested that relief, the parties briefed the standard, and the U.S. Supreme Court clarified the "constitutional landscape." *Id.* at 744–745.

The Court should now complete the second step and hold that rational-basis review applies to abortion regulations under the Iowa Constitution.

i. *PPH 2022* directly stated there was no fundamental right to abortion under the Iowa Constitution.

In finding *PPH 2022* preserved a fundamental right to abortion, the district court overlooked *PPH 2022* sections IV.C–D. 975 N.W.2d at 732–42. Those sections overruled *PPH 2018*'s holding

that Iowa's due-process clause protects a fundamental right to abortion. *PPH 2022*, 975 N.W.2d at 740. The Court explained that textually "there is no support for *PPH [2018]*'s reading of the due process clause as providing a fundamental protection for abortion." *Id.* And "[h]istorically, there is no support for abortion as a fundamental constitutional right in Iowa." *Id.* Those statements contradict the district court's conclusion that *PPH 2022* preserved a fundamental right to abortion.

ii. *PPH 2022* showed there were no substantive constitutional guarantees to support a fundamental right to abortion.

Beyond those statements, *PPH 2022* also dismantled the reasoning on which *PPH 2018* sat a fundamental right to abortion. One basis *PPH 2022* stated for departing from *stare decisis* was that *PPH 2018* doctrinally stood "virtually alone" in finding a fundamental right to abortion in the due-process clause. *Id.* at 737.

In its textual analysis, *PPH 2022* observed the Iowa Constitution is silent on the topics of abortion and pregnancy. *Id.* at 739–40. Acknowledging that "constitutional interpretation should begin with the constitutional text itself," *PPH 2022* continued that the

"language of that [due process clause] provision does not support [*PPH 2018's*] ultimate holding" that the clause protects a fundamental right to abortion. *Id.*

Historical analysis shows abortion had been illegal in Iowa from just after our Constitution's enactment in 1857 until *Roe* more than a century later. *Id.* at 740–41. And *PPH 2022* buttressed its historical analysis with early precedent affirming the criminality of abortion "if the attempt be made at any time during pregnancy." *Id.* at 741 (quoting *State v. Fitzgerald*, 49 Iowa 260, 261 (1878)).

That historical and textual analysis adheres to other States' approaches to resolving the standard of review for laws that protect unborn life. Every other State supreme court to discover a fundamental right to abortion guaranteed by that State's constitution did so "based on one or more substantive constitutional guarantees," not the due process clause. *Id.* at 737. And "state courts focusing specifically on the due process clause have overwhelmingly found that the right to an abortion in the state constitution is no broader than the federal right (if it exists at all)." *Id.* at 738 (collecting cases).

And *PPH 2022* rejected *PPH 2018*'s "core reasoning," an embrace of the Iowa Supreme Court's role as the arbiter of political policy. "Constitutions—and courts—should not be picking sides in divisive social and political debates unless some universal principle of justice stands on only one side of that debate. Abortion isn't one of those issues." *Id.* at 741–42; *see PPH 2023*, 2023 WL 4635932, at *12 ("The dispute over the regulation of abortion in Iowa has many dimensions—cultural, political, medical, practical, moral, ethical, and legal. The judicial department's authority begins and ends with the legal dimension.") (Waterman, J.).

iii. *PPH 2022* summarily rejected *PPH 2018's* fundamental rights holding.

PPH 2022 described *PPH 2018*'s fundamental rights holding as textually, historically, doctrinally, rhetorically, and constitutionally unsound. *Id.* at 742. Altogether, the Court's analysis made a powerful case to support its holding that Iowa's due-process clause does not protect a fundamental right to abortion. *See id.* at 735–42. Given that holding, the default rational basis test should apply. The district court erred in applying its different test. (Dkt. 22 at 10, App. 204.)

Indeed, Justice McDermott's *PPH 2022* opinion explains both why the logical result of *PPH 2022*'s analysis is to abandon the *Casey* undue-burden test and what that abandonment means. His opinion set forth this Court's constitutional two-step analysis in determining the applicable standard of review. *PPH 2022*, 975 N.W.2d at 746–747 (McDermott, J., concurring in part and dissenting in part). It then observed that the majority held that "[a]bortion is not a fundamental right protected under the Iowa Constitution." *Id.* at 747. And from there it concluded that because the Iowa Constitution uses "coherent, well-established tiers of review," the Court should have applied, as it "routinely appl[ied]," rational basis review. *Id.* at 749.

But rather than take that final step, the Court remanded to "the district court to apply undue burden test" while inviting "'the legal standard [to] also be litigated further.'" *Id.*

The Court should now take that final step. *Casey* set a constitutional floor that, until it was overruled, precluded rational-basis review. Now that *Dobbs* has reversed *Casey*, this Court should make clear that it reviews laws that do not implicate a fundamental

right for a rational basis.

iv. Other courts interpret *PPH 2022* as overruling *PPH 2018's* fundamental rights holding.

Other courts looking to this Court for guidance also read *PPH 2022* as resolving the due-process analysis's first step. *See*, *e.g.*, *Planned Parenthood of Great Nw. v. Idaho*, 522 P.3d 1132, 1174 (Idaho 2023); *see also Doe v. Minnesota*, 2022 WL 2662998, at *58 (Minn. Dist. Ct. July 11, 2022). The Supreme Court of Idaho read *PPH 2022* to hold that "the due process clause in the Iowa Constitution does not include a fundamental right to abortion." *Planned Parenthood of Great Nw.*, 522 P.3d at 1174.

Relying in part on *PPH 2022*, the Supreme Court of Idaho held that reading a fundamental right to abortion into its constitution would inject a subjective policy preference from the court. *Id.* Echoing this Court's sentiments, that court announced that it "is the steward of the Idaho Constitution, not its editor." *Id.* And in reaching its ultimate holding, upholding Idaho's laws regulating abortion—including a six-week ban—under rational-basis review, that court read *PPH 2022* as overturning *PPH 2018*'s fundamental-

rights analysis. *Id.*; *id.* at 1196–97. And, indeed, even courts that disagree with the Court's conclusion agree that *PPH 2022* overturned *PPH 2018*'s fundamental-rights analysis. *See Doe v. Minn.*, 2022 WL 2662998, at *58 (refusing to follow *PPH 2022* because the trial judge had already held abortion to be a fundamental right).

v. Legal commentators interpret *PPH 2022* as holding the Iowa Constitution does not protect a fundamental right to abortion.

Beyond Justices of this Court and other States' courts, academics also read *PPH 2022* as holding that the Iowa Constitution does not protect abortion as a fundamental right. Those authors agree that *PPH 2022* found no fundamental right to an abortion under the Iowa Constitution—not merely a fundamental right protected by strict scrutiny. *See*, *e.g.*, Henry F. Fradella, *How State Courts Apply Lawrence v. Texas in Civil Contexts: A Mixed-Methods Content Analysis of Two Decades of Cases*, 32 Tul. J.L. & Sexuality 1, 87, 110 (2023) (*PPH 2022* "h[eld] that the Iowa constitutional guarantees of due process and equal protection do not encompass the decision to have an abortion as a fundamental right"); John Dinan, *The Constitutional Politics of Abortion Policy After Dobbs:*

State Courts, Constitutions, and Lawmaking, 84 Mont. L. Rev. 27, 46 (2023) (*PPH 2022* "h[eld] by a five-two margin that the court's 2018 decision should be overturned and declaring that the state constitution does not protect the right to an abortion."); Lettie Rose, *et al.*, *Abortion*, 24 Geo. J. Gender & L. 201, 225 (2023) (similar).

And less formal legal analysis also agrees that *PPH 2022* reversed this Court's previous holding that there is a fundamental right to abortion in Iowa's Constitution. *See*, *e.g.*, Scott Wilson, Sharon Van Dyck, *Dobbs and Minority Rule the View from Minnesota: Most Americans Support the Right to an Abortion, but in the Upper Midwest, Minnesota Is Isolated in Its Protection of That Right*, Bench & B. Minn., Nov. 2022, at 26, 28.

Justices of this Court, other State supreme courts, academics, and attorney commentators read *PPH 2022* as rejecting a fundamental right to abortion. That breadth of agreement demonstrates how out of step the district court's reading of *PPH 2022* was with a plain reading of the case. That court misunderstood that *PPH 2022* overruled the prior discovery of a fundamental right to abortion in the Iowa Constitution. And because there is no fundamental right,

the district court should have applied the rational basis test.

vi. Rational basis review would be unavailable if *PPH 2022* preserved a fundamental right to abortion.

PPH 2022 left open "the legal standard" to be "litigated further." 975 N.W.2d at 716 (plurality op.). The Court framed the step two question of which standard to apply as a dichotomy—undue burden or rational basis. *Id.* at 745; *see also PPH 2023*, 2023 WL 4635932, at *8 (Waterman, J.) ("In future cases involving new abortion laws, the parties are free to argue for a change in the current undue burden standard, and this court will consider it.").

But that framing makes no sense unless *PPH 2022* rejected a fundamental right to abortion—the Court could not apply rational-basis review if *PPH 2022* preserved a fundamental right to abortion under the Iowa Constitution. *See King*, 818 N.W.2d at 27 ("Because in this particular case the allegations do not show a deprivation of a fundamental right . . . we apply the rational basis test."); *see Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005) ("When social or economic legislation is at issue . . . the Constitution presumes that

even improvident decisions will eventually be rectified by the democratic process.").

State intrusions on fundamental rights trigger strict scrutiny; no Iowa case reviews an intrusion on a fundamental right under the rational-basis test. The Court's invitation for someone to propose a rational-basis standard confirms that *PPH 2018*'s fundamental-rights holding did not survive *PPH 2022*. Because there is no fundamental right to abortion under the Iowa Constitution, this Court should now clarify that abortion regulations are reviewed under the rational basis test.

vii. The district court erred in applying the *Casey* undue-burden test to the Fetal Heartbeat Statute.

Applying the *Casey* undue-burden test conflicts with this Court's precedents; it also conflicts with the general presumption of legislative validity. *See Baker v. City of Iowa City*, 867 N.W.2d 44, 57–58 (Iowa 2015) ("A statute is presumed constitutional and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.") (cleaned up).

The district court's decision to apply the *Casey* undue-burden test conflicts with *PPH 2022*'s direct statements, historical analysis, textual analysis, precedential analysis, and core reasoning, which commanded a majority of the Court. Beyond not applying the majority holding that the Iowa Constitution does not protect a fundamental right to abortion, the district court also misunderstood *PPH 2022*'s effects. For if there is no fundamental right, the standard to apply is rational basis. Had *PPH 2022* preserved a fundamental right to abortion, this Court would have said so. It did not—and it indeed rejected application of the standard of review that applies only when a fundamental right is at issue. Because the district court improperly applied the *Casey* undue-burden test below, the injunction should be vacated.

B. The *Casey* undue-burden test is unworkable, and this Court has never adopted it.

The *Casey* undue-burden test is a "jurisprudence of confusion." *Casey*, 505 U.S. at 993 (Scalia, J., concurring in part and dissenting in part); *PPH 2022*, 975 N.W.2d at 744–45. It "has proved to be unworkable." *Dobbs*, 142 S. Ct. at 2275. The Court's options are therefore an "unworkable" test and a rational one. *See Dobbs*,

142 S. Ct. 142 at 2275.

This Court now works from a clean slate and should hold explicitly that abortion laws in Iowa are reviewed for a rational basis. The slate is clean because the Court never adopted the *Casey* undue-burden test as a standard of review under the Iowa Constitution. *PPH 2015* applied the *Casey* undue-burden test because it held that the Iowa Constitution's protection of abortion rights was coextensive with the federal constitution's—and contemporary federal jurisprudence required that test. 865 N.W.2d at 262–63.

But *PPH 2018* rejected the *Casey* undue-burden test, astutely recognizing it was "inherently standardless." *PPH 2018*, 915 N.W.2d at 240. And so too did it explicitly reject the co-extensivity of the Iowa and federal constitutions' protections for abortion. *Id.* at 240–41.

That should have ended this Court's reliance on *Casey*. But the *PPH 2022* plurality employed the *Casey* undue-burden test as a stopgap—partly because *Casey* was the immediately preceding governing standard, partly because the State did not explicitly request

rational-basis review. *PPH 2022*, 975 N.W.2d at 716, 744–45 (plurality op.). But since *PPH 2018*, at most three Justices have held that standard to be required by the Iowa Constitution. *See PPH 2023*, 2023 WL4635932, at *2 (Waterman, J.).

That makes sense. Thirty years of confusion over the meaning, application, and boundaries of undue burden warn against its continued use. Even Chief Justice Roberts, who would have left *Casey*'s fate to a future case, recognized that its undue-burden analysis "always has been completely unreasoned, and fails to take account of state interests since recognized as legitimate." *Dobbs*, 142 S. Ct. at 2312 (Roberts, C.J., concurring in the judgment).

The *Casey* undue-burden test is a jurisprudential disaster whose questionable foundation has long since eroded. *See id.* at 2259 (majority op.). It is ambiguous. *Id.* at 2273. State courts, even those that favored abortion rights, rejected it. *See*, *e.g.*, *PPH 2018*, 915 N.W.2d at 240–41. And it was linked to an equally unreasoned viability line. This Court should not stick to such an incapable and unusable test.

1. The *Casey* undue-burden test had no reasonable foundation, no clear application, and no majority support.

Casey's undue-burden test was founded on *Roe*'s "ignored" or "misstated" history. *Dobbs*, 142 S. Ct. at 2249. The standard was "as doubtful in application as it is unprincipled in origin." 505 U.S. at 985 (Scalia, J. concurring in part and dissenting in part). The phrase "undue burden" was "plucked out of context from [the Court's] earlier abortion decisions." *Id.* at 988. And it eliminated language that respected legislative policy choices. *Id.*

The *Casey* undue-burden test was "an entirely new method of analysis, without any roots in" the Constitution; nor did it have majority support at the U.S. Supreme Court. *See Casey*, 505 U.S. at 965 (Rehnquist, C.J., concurring in part and dissenting in part).

From the beginning, it was ambiguous, and its carve-outs and subrules "created their own problems." *Dobbs*, 142 S. Ct. at 2272. Terms like "substantial obstacle," "unnecessary health regulations," and even "undue burden" itself only created more confusion. *See Casey*, 505 U.S. at 878.

The test wrongly regarded women as homogenous, identical

in abilities and circumstances. That abstraction, necessary to support rulings setting aside abortion regulations as substantial obstacles to abortion access, did not make sense. *See Dobbs*, 142 S. Ct. at 2273. The Court tried to clarify that a regulation is unconstitutional if it imposes a substantial obstacle "in a large fraction of cases in which [it] is relevant." *Casey*, 505 U.S. at 895. But that led to struggles over determining which populations served as numerator and denominator and when a regulation was "relevant." The Supreme Court now recognizes that approach was unworkable. *Dobbs*, 142 S. Ct. at 2273 (comparing *Whole Women's Health v. Hellerstedt*, 579 U.S. 582, 627–28 (2016) *with id.* at 666–667, and n.11 (Alito, J., dissenting)).

Each attempt to refine *Casey* further burdened this problematic jurisprudence. Each revision enticed parties to further probe the edges of this unworkable precedent, encumbering State and federal courts with the impossible task of applying an unusable test. And there was no sign the Court would, or could, arrive at a coherent standard. Ultimately, *Dobbs* resolved *Casey*'s unworkability

and ambiguities by eliminating it. The Court should not resurrect it.

2. The *Casey* undue-burden test caused confusion and disarray in the federal courts of appeals.

Judges struggled to apply the *Casey* undue-burden test and its progeny. They disagreed about whether the *Hellerstedt* cost-benefit test reflected the undue-burden framework; they disagreed about the legality of parental notification rules; they disagreed about bans on particular procedures; they disagreed about what time increase to reach a clinic was an undue burden; they disagreed about whether States could curtail discrimination through abortion based on the unborn child's race, sex, or disability. *Dobbs*, 142 S. Ct. at 2274 (collecting cases).

The *Casey* undue-burden test "poses a set of subjective questions that do not lend themselves to objective answers." *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 451 (6th Cir.) (Thapar, J., concurring in part and dissenting in part), *reh'g en banc granted, opinion vacated*, 18 F.4th 550 (6th Cir. 2021). The outcome was unavoidable; the test was "inherently standardless" and "in-

herently manipulable." *Casey*, 505 U.S. at 992, 985 (Scalia, J., concurring in part and dissenting in part).

It is no wonder that the Supreme Court concluded that "*Casey*'s 'undue burden' test has proved to be unworkable." *Dobbs*, 142 S. Ct. at 2275. This Court should not embrace a test rejected by its authors for being ambiguous, unworkable, and leading to further confusion for courts and litigants alike.

3. The *Casey* undue-burden test incorporated the atextual and ahistorical viability line that this Court should reject.

An inexplicable component of the *Casey* undue-burden test is its total ban on abortion regulations that affected pre-viability abortions. "That line never made any sense." *Dobbs*, 142 S. Ct. at 2310 (Roberts, C.J., concurring in part and dissenting in part). *Roe*'s defense of viability "boiled down to the circular assertion that the State's interest is compelling only when an unborn child can live outside the womb, because that is when the unborn child can live outside the womb." *Id.* at 2311.

Like the *Casey* undue-burden test more generally, the viability line "came out of thin air." *Id.* No participant in *Roe* asked the

Court to adopt the viability line. *Id.* And like *Casey*, that line emerged out of pure judicial fiat.

The U.S. Supreme Court's viability jurisprudence did not acknowledge the State's vital interest in protecting unborn life. Viability was "a relic of a time when [the Court] recognized only two state interests warranting regulation of abortion: maternal health and protection of 'potential life.'" *Id.* at 2312.

But today, courts recognize that States have many legitimate interests in protecting life, both born and unborn. For example, States' interests include "respect for and preservation of prenatal life at all stages of development;" "protection of maternal health and safety;" "elimination of particularly gruesome or barbaric medical procedures;" "preservation of the integrity of the medical profession;" "mitigation of fetal pain;" and "prevention of discrimination on the basis of race, sex, or disability." *Id.* at 2284.

Indeed, *Dobbs* illustrates the viability line's unworkability. Under *Casey*, any pre-viability ban—approximately twenty weeks—was per se unconstitutional. *Id.* at 2272. *Dobbs* recognized that it was "far better—for this Court and the country—to face up

to the real issue without further delay." *Id.* at 2283.

The Supreme Court now recognizes that it "seriously erred" in adopting the viability line. *Id.* at 2311. To invent that line in *Roe*, the U.S. Supreme Court exerted "raw judicial power," an approach that *Casey* likewise embraced. This Court should not repeat that court's mistake.

C. The Iowa Constitution does not protect a fundamental right to an abortion, so rational-basis review applies.

PPH 2022 held that neither the Iowa Constitution's due-process clause nor its equal-protection clause protects a fundamental right to an abortion. 975 N.W.2d at 739–741, 743–744 (citing Iowa Const. Art. I, sec. 6, sec. 9).

So Petitioners now allege a violation of the Iowa Constitution's inalienable-rights clause. *See* Iowa Const. Art. 1, sec. 1. The district court declined to address that argument, so it is not preserved on appeal. (*See* Dkt. 22 at 12, App. 206.) But should the Court reach that novel argument, it will fare no better than Petitioners' due-process assertions.

Article I, section 1 of the Iowa Constitution offers "little about the substance of [its] constitutional guarantees or how they should be applied in a given case." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 351 (Iowa 2015). While the inalienable rights clause is not "hortatory," the only review available for challenges brought under that clause is rational basis. *Garrison v. New Fashion Pork*, 977 N.W.2d 67, 84 (Iowa 2022).

D. The Fetal Heartbeat Statute passes rational-basis review.

Democratically enacted statutes are cloaked with a strong presumption of validity. *PPH 2022*, 975 N.W.2d at 721. Rational-basis review upholds them if they are "rationally related to a legitimate state interest." *Sanchez*, 692 N.W.2d at 817 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)).

This Court has already "recognized the State's vital interest in protecting unborn life." *PPH 2023*, 2023 WL 4635932, at *8 (Waterman, J.); *PPH 2022*, 975 N.W.2d at 746 ("Yet, we must disapprove of *PPH* [*2018*]'s legal formulation that insufficiently recognizes that future human lives are at stake—and we must disagree with the views of today's dissent that the state has no legitimate

interest in this area.") (plurality op.). As described above, those interests are many: respect for prenatal life, protection of maternal health and safety, elimination of gruesome medical procedures, preservation of the integrity of the medical profession, mitigation of fetal pain, and prevention of invidious discrimination. *Dobbs*, 142 S. Ct. at 2284. The Fetal Heartbeat Statute advances those interests by forbidding abortions after a detectable fetal heartbeat with exceptions for rape, incest, and maternal health. This Court can and should find the Fetal Heartbeat Statute survives review under the rational basis test and render for the state.

* * *

This Court should hold that rational basis review is the proper standard for laws that protect unborn life. The Court should then dissolve the district court's injunction as unlikely to succeed on the merits. Applying rational basis review here, the Court should find the Fetal Heartbeat Statue survives and render for the state.

II. Petitioners Lack Standing to Bring Their Claims, Which Were Not Ripe at Commencement.

Iowa law should preclude abortion providers from raising Constitutional claims on behalf of women seeking abortions. Courts

often treat cases touching on abortion differently than other cases. Courts have a "troubling tendency 'to bend the rules when any effort to limit abortion, or even to speak in opposition to abortion, is at issue.'" *Hellerstedt*, 136 S. Ct. at 2321 (Thomas, J., dissenting) (quoting *Stenberg v. Carhart*, 530 U.S. 914, 954 (2000) (Scalia, J., dissenting)). The U.S. Supreme Court now recognizes that abortion-specific exceptions led to many doctrinal distortions in ordinary rules. *Dobbs*, 142 S. Ct. at 2275. The general rule against third-party standing is one area of law affected by the "abortion distortion." *Id.* Iowa should follow the path charted by *Dobbs* and restore clarity in this jurisprudence.

The district court should not have allowed Petitioners to sue on behalf of unspecified women and hypothetical patients. Petitioners lack standing of their own and no derivative rights to vindicate. And Petitioners' action was not ripe at its commencement.

Preservation of Error. The questions of standing and ripeness are preserved for appellate review because they were "both raised and decided by the district court." *Meier*, 641 N.W.2d at 537; (Dkt. 19 at 38–44, App. 187–93; Dkt. 22 at 4–6, App. 198–200; Hearing

Tr. 44:24–49:1, App. 236.)

Standard of Review. Courts review questions of justiciability, such as standing and ripeness, for corrections of errors at law. *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 787 (Iowa 2021), *as amended* (Aug. 26, 2021).

A. Abortion providers do not have third-party standing to sue on behalf of third-party women and hypothetical patients.

A plaintiff may not assert the rights of other people to establish standing. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (plaintiff "must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties."). Courts are usually reluctant "to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties." *Id.* at 501. That "reflects two cardinal principles of our constitutional order: the personal nature of constitutional rights and prudential limitations on constitutional adjudication." *New York v. Ferber*, 458 U.S. 747, 767 (1982). So generally, courts reject claims asserted by third parties on behalf of an individual who may bring a claim herself. Although courts recognize an exception to the general

rule against third-party standing, it's a limited one. *Powers v. Ohio*, 499 U.S. 400, 410 (1991).

In Iowa, standing requires a complaining party to "(1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023) (quoting *DuTrac Cmty. Credit Union v. Hefel*, 893 N.W.2d 282, 289 (Iowa 2017)). As in federal courts, "to establish third-party standing [in Iowa], [a] litigant must have suffered and 'injury in fact' so as to give the litigant a sufficient concrete interest in the outcome of the dispute." *Godfrey v. State*, 752 N.W.2d 413, 424 (Iowa 2008) (citing *Powers*, 499 U.S. at 410–411).

A party asserting third-party standing must make two more showings: (1) a "close" relationship with the third party who possesses the right and (2) a hindrance to the right-possessor's ability to assert the right on her own. *Kowalski v. Tesmer*, 543 U.S. 125 (2004); *see Godfrey*, 752 N.W.2d at 424 ("Third-party standing normally requires a litigant to establish the parties not before the court, who have a direct stake in the litigation, are either unlikely or unable to assert their rights."); *Lewis v. Iowa Dist. Ct. for Des*

Moines Cnty., 555 N.W.2d 216, 219 (Iowa 1996). Petitioners cannot make that showing.

1. Petitioners do not have an injury in fact.

Because Petitioners have no injury in fact, they lack threshold standing to allege the rights of third parties. Petitioners pled only a facial constitutional challenge to the Fetal Heartbeat Statute. But they possess no constitutional right of their own to vindicate. *PPH 2021*, 962 N.W.2d at 44 ("[A]bortion providers lack a freestanding constitutional right to provide abortions.") (cleaned up). Petitioners' complaints about civil penalties, reputational harms to doctors, and effects on doctors' livelihoods, (Dkt. 2, Brief at 19–20, 25, App. 139–40, 145), are neither constitutional injuries nor grounds for invalidating the Fetal Heartbeat Statute.

Even if Petitioners had alleged injuries that could support a cause of action, they could support only an as-applied challenge. Without an injury, Petitioners' claims are improper to assert a facial challenge. *See Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 764 (Iowa 2019) ("A facial challenge is one in which no application of the statute could be constitutional under any set of facts.")

Petitioners also have no derivative right to vindicate. In *PPH 2021*, this Court considered whether the unconstitutional-conditions doctrine prohibited the State from barring abortion providers from receiving funding under certain federal grants. 962 N.W.2d at 44. This Court said no, "abortion providers have no constitutional right to perform abortions," so receiving grants did not require them to forgo any constitutional right. *Id.* at 57. There, as here, "[g]iven the 'deeply personal nature' of the rights" relating to abortion, "any possible right a provider may have by way of performing the procedure is no more than derivative of a woman's personal rights." *Id.* at 56 (quoting *PPH 2018*, 915 N.W. 2d at 234).

PPH 2021 explained that "[t]o assert a derivative claim, the plaintiff must first show that a state's regulation of the plaintiff's activities adversely affects the rights of another." *Id.* at 56–57. Despite that, this Court cautioned that "'like any general rule,' allowing an abortion provider to claim standing to vindicate the rights of a third party 'should not be applied where its underlying justifications are absent.'" 962 N.W.2d at 56.

So it is here, where *PPH 2022* made the putative fundamental

right evaporate. Iowa jurisprudence no longer misinterprets the Iowa Constitution as protecting a fundamental right to an abortion. 975 N.W.2d at 739–41. With no underlying fundamental right to protect, there is nothing from which Petitioners can derive a right to proceed.

Petitioners brought a facial constitutional challenge with no injury of their own and no derivative fundamental right to vindicate. They lack standing.

2. Petitioners do not have a close relationship with any women or hypothetical patients here.

Third-party standing requires a close relationship between a petitioner and the party whose rights they seek to vindicate. *Kowalski*, 543 U.S. at 130; *Iowa Movers and Warehousemen's Ass'n v. Briggs*, 237 N.W.2d 759, 772 (Iowa 1976). Classic examples of "close relationships" are parent-and-child and guardian-and-ward. *Id.* Those relationships are "close" because "the plaintiff's interests are so aligned with those of [the] right-holder that the litigation will proceed in much the same way as if the right-holder herself were present." *June Medical Servs. v. Russo*, 140 S. Ct. 2103, 2173 (2020) (Gorsuch, J., dissenting), *abrogated by Dobbs*, 142 S. Ct. 2228.

But abortion providers lack that close relationship to any woman on whose behalf they are suing. *Id.* at 2168 (Alito, J., dissenting). Petitioners here made no showing to the contrary. Women often meet the abortion provider the day of the procedure just before it takes place. *Id.* "[T]he surgical procedure itself takes 'two to three minutes.'" *Id.* Often, there is little to no follow-up, and "the great majority of women never return to the clinic." *Id.* The relationship is brief, procedural, and "very limited." *Id.*

Petitioners bear the burden to demonstrate standing. But they have brought forth no record establishing any "close relationship" with the women or hypothetical patients here. Indeed, they have made no showing that their relationships differ from the general description derived from the record in *Russo*. Petitioner-abortion providers are suing on behalf of women they have never met and hypothetical patients they have never treated. *See id.* at 2174 (Gorsuch, J., dissenting) (showing hypothetical relationships "cannot confer third-party standing"). Petitioners have no relationship with those women. *Id.* ("Normally, the fact that the plaintiffs do not even know who those women are would be enough to preclude third-

party standing.") They therefore have no standing.

3. The women and hypothetical patients here can sue on their own behalf.

A petitioner can assert third-party standing when the rights-bearing party cannot vindicate her own rights. But women here can sue on their own behalf. So this Court should find Petitioners do not have third-party standing.

Women face no obstacle to bringing their own lawsuits. *See*, *e.g.*, *id.* at 2168 & n.15 (Alito, J., dissenting) (collecting cases). They often sue pseudonymously. *Id.* And a woman's claim "will survive the end of her pregnancy under the capable-of-repetition-yet-evading-review exception to mootness." *Id.* at 2169. Indeed, this was the exact course the litigation followed in *Roe v. Wade*. 410 U.S. at 124–125.

Iowa follows a similar—if not more forgiving—discretionary standard. *In re T.S.*, 705 N.W.2d 498, 501–502 (Iowa 2005) ("An exception to the mootness doctrine exists 'where matters of public importance are presented and the problem is likely to recur.") (quoting *Iowa Freedom of Info. Council v. Wifvat*, 328 N.W.2d 920, 922 (Iowa 1983)). The "alleged 'obstacles' . . . are chimerical." *Russo*, 140 S. Ct.

at 2168 (quoting *Singleton v. Wulff*, 428 U.S. 106, 126 (1976) (Powell, J., dissenting)). Without those obstacles to bring suit, Petitioners struggle to demonstrate the necessity of third-party standing.

4. Conflicts of interest between abortion providers and their patients undermine third-party standing for these providers.

There are also significant potential conflicts of interest between Petitioners and the rights-bearing parties on whose behalf they purport to sue. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004) (no third-party standing when the interests of a parent and child were "not parallel and, indeed, [were] potentially in conflict"), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). Because Petitioners and the putative right holders here have conflicting interests, Petitioners lack third-party standing.

"[T]he law is always sensitive to potential conflicts when a party sues in a representative capacity." *Russo*, 140 S. Ct. at 2167 (Alito, J., dissenting). That is because the right holders need to tailor their case to their own interests. Conflicts in the relationship between the rights-asserting third-party and the rights-holding

party can undermine adequate representation of the right holder's interests. *Id.* So even a potential conflict bars third-party standing. *Newdow*, 542 U.S. at 15.

Here, the potential for conflicting interests between abortion providers and patients "is glaring." *Russo*, 140 S. Ct. at 2166 (Alito, J., dissenting). Abortion providers have financial interests in avoiding regulations and in staying in business. *Id.* Those financial incentives can diverge from women's interest in protecting their health. *Id.* That problem alone undermines Petitioners' claim to third-party standing. *Id.*; *Newdow*, 542 U.S. at 15.

Allowing parties "to invoke the right of a third party with blatantly adverse interests" is "an abortion-only rule," and it's another distortion specially engineered for this context. *Russo*, 140 S. Ct. 2170. And as shown above, Petitioners have no injury in fact, and they do not satisfy the requirements for third-party standing. This Court should reverse the district court's holding and reverse course on these "doctrinal innovations." *Dobbs*, 142 S. Ct. at 2275.

B. Petitioners' challenge was not ripe.

Petitioners' lawsuit—which predated the Fetal Heartbeat

Statute's enactment—was improper, and this Court should make clear that future lawsuits should not precede the legislative process's completion.

Related to standing, Petitioners' challenge was not ripe when they sued. *Cf. LS Power*, 988 N.W.2d at 329 ("Standing must exist at the commencement of the litigation.") (quoting *Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 234 n.9 (Iowa 2021)). Petitioners sued seeking to enjoin enforcement of the law before the Governor had signed the bill—before a law existed for them to challenge. (Dkt. 1, App. 4.)

When petitioners bring a facial constitutional challenge to a law that does not exist, they cannot have an "injury different from the population in general" or an "injury in fact that is fairly traceable to the defendant's conduct." *LS Power*, 988 N.W.2d at 329. Indeed, they simply cannot have an injury. The Governor might, for many reasons, choose not to sign a bill. Until she actually signs, a complaint about a bill is not "fit[] . . . for judicial decision." *Gospel Assembly Church v. Iowa Dept. of Revenue*, 368 N.W.2d 158, 160 (Iowa 1985) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–

49 (1967)).

It is also not a "hardship to the parties" to require Petitioners to wait to sue until a bill becomes law. *See id.* There is no "actual, present controversy" before the law exists. *State v. Tripp*, 776 N.W.2d 855, 859 (Iowa 2010). Petitioners swung before the pitch. And in so doing, they relied on this Court's prior quiescence to that strategy as justification. Litigants should not be permitted to challenge laws before they exist.

* * *

This Court should unwind abortion-specific doctrinal distortions and restore clarity to Iowa's third-party standing jurisprudence. It should follow *PPH 2021* and hold that abortion providers, with no derivative constitutional right to assert, may not pursue claims on behalf of hypothetical patients. And it should make clear that lawsuits seeking to enjoin statutes are only ripe after the bill has been signed into law. The State respectfully asks this Court reverse the district court's order on standing and ripeness and render judgment that the case be dismissed.

CONCLUSION

The State respectfully asks this Court to adopt the rational basis test for laws protecting unborn life and to find that abortion providers and clinics lack third-party standing to sue on behalf of pregnant women, and thus to dissolve the district court's injunction and render judgment for the State.

REQUEST FOR ORAL SUBMISSION

The State requests that this matter be set for oral arguments.

Respectfully submitted,

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CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 9,173 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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CERTIFICATE OF FILING AND SERVICE

I certify that February 1, 2024, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

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