IN THE SUPREME COURT OF IOWA
No. 23–0243

ESTATE OF LARRY JOE MCVAY, by THOMAS MCVAY, Executor, and THOMAS MCVAY, Individually,
Plaintiffs–Appellees,
v.
GRINNELL REGIONAL MEDICAL CENTER, GRINNELL REGIONAL MEDICAL CENTER d/b/a UNITYPOINT HEALTH-GRINNELL REGIONAL MEDICAL CENTER, CENTRAL IOWA HEALTH SYSTEM d/b/a UNITYPOINT HEALTH-DES MOINES, CENTRAL IOWA HOSPITAL CORPORATION d/b/a UNITYPOINT HEALTH-DES MOINES, IOWA HEALTH SYSTEM d/b/a UNITYPOINT HEALTH, and STEPHEN ELLESTAD, D.O.,
Defendants–Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POWESHIEK COUNTY CASE NO. LALA002564
THE HONORABLE SHAWN SHOWERS, PRESIDING

FINAL BRIEF OF APPELLANTS

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ROUTING STATEMENT

Defendants–Appellants respectfully request that the Supreme Court retain this case. *See* Iowa R. App. P. 6.1101(2). This matter involves review of the Iowa Supreme Court's COVID-19 Supervisory Orders. Specifically, Defendants–Appellants request clarification on whether the Supreme Court had authority to toll the statute of limitations through the Court's Supervisory Orders, thereby allowing Plaintiffs' claims to proceed despite missing the statutorily determined filing deadline. This issue was previously before the Court, but the Court, being evenly divided, declared the case affirmed by operation of law. *See Dickey v. Hoff*, No. 21-0859, 2022 WL 12127101 (Iowa Oct. 21, 2022). Defendants–Appellants believe the Court's Orders are best ruled upon by their author. This appeal should be retained because it presents substantial constitutional questions as to the validity of the Supreme Court's Supervisory Orders, presents urgent issues of broad public importance requiring prompt determination by this Court, and presents substantial issues of first impression not yet addressed by the Court. *See* Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

This matter involves claims of alleged medical negligence arising from medical care provided by the Defendants and the subsequent death of the Plaintiff–Decedent. It is undisputed that Plaintiffs brought their claims after the filing deadline established by the applicable statute of limitations. What is disputed, however, is whether the Iowa Supreme Court had authority to permit Plaintiffs' failure to abide by the statute. Specifically, this appeal involves review of the Iowa District Court for Poweshiek County's (the "district court") denial of Defendants' Motion for Summary Judgment. The district court found that the tolling provision of the Iowa Supreme Court's COVID-19 Supervisory Orders was constitutional, allowing Plaintiffs' claims to proceed after the deadline established by the legislature in the statute of limitations. Defendants appeal the district court's ruling.

STATEMENT OF THE FACTS

Plaintiffs allege medical malpractice against Defendant Dr. Stephen Ellestad, as well as claims of vicarious liability against several UnityPoint entities, for treatment provided to Plaintiff–Decedent on or about November 23 and 24, 2018, before his eventual death on November 25, 2018. App. 5–10 (02/05/21 Pet.).[1] Pursuant to Iowa Code section 614.1(9), Plaintiffs' two-year statute-of-limitations deadline to file their action was November 25, 2020. On May 22, 2020, the Iowa Supreme Court entered a Supervisory Order, which ostensibly tolled the statute of limitations for 76 days. Plaintiffs filed the Petition in this case on February 5, 2021—72 days later than allowed by the statute of limitations—while citing the Order for support of the Petition's timeliness. *See* App. 8–9 (02/05/21 Pet. ¶ 25). In other words, Plaintiffs filed their Petition in clear violation of the statute of limitations but within the timeline allowed by the tolling provision of the Supervisory Order.

[1] Plaintiffs' Petition contains two counts, both stemming from the underlying allegation of medical malpractice: (1) "Medical Negligence" and (2) "Adult Child Consortium." App. 9–10 (02/05/21 Pet.).

Defendants moved for summary judgment, arguing that the tolling provision of the Supreme Court's Orders was unconstitutional and that Plaintiffs' claims were in violation of the statute of limitations and, thus, must fail as a matter of law. App. 11–14 (10/25/22 Defs.' MSJ). Plaintiffs resisted. App. 15–33 (12/01/22 Pls.' Resist. MSJ). Defendants replied. App. 34–43 (12/08/22 Defs.' Reply). The District Court denied summary judgment to Defendants. App. 44–52 (01/11/23 MSJ Ruling). This interlocutory appeal follows.

ARGUMENT

Defendants–Appellants respectfully request that this Court honor the limitations of its own power and hold portions of its own Supervisory Orders unconstitutional. The tolling provision of the Supervisory Orders usurps the authority of the legislature in defining the statute-of-limitations period. This Court—pursuant to its own precedent—lacks authority to become a legislator. The Court's inherent common-law powers do not extend to areas where the legislature has acted, such as the statute of limitations in civil suits. Pursuant to the separation-of-powers doctrine and the Court's precedent, Defendants–Appellants respectfully request this Court reverse the ruling of the district court and dismiss this cause.

I. WHETHER THE DISTRICT COURT ERRED IN DENYING SUMMARY JUDGMENT BY FINDING THAT THE TOLLING PROVISION OF THE SUPREME COURT'S SUPERVISORY ORDERS WAS CONSTITUTIONAL

A. PRESERVATION OF ISSUE

The issue was raised and ruled upon by the District Court. Defendants moved for summary judgment on this issue. App. 11–14 (10/25/22 Defs.' MSJ). Plaintiffs resisted. App. 15–33

(12/01/22 Pls.' Resist. MSJ). Defendants replied. App. 34–43 (12/08/22 Defs.' Reply). The District Court denied summary judgment to Defendants. App. 44–52 (01/11/23 MSJ Ruling). This appeal follows.

B. STANDARD OF REVIEW

The standard of review for constitutional issues is de novo. *State v. Basquin*, 970 N.W.2d 643, 651 (Iowa 2022); *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255, 260 (Iowa 2002). The Court reviews rulings on summary judgment for correction of errors at law. *Kunde v. Est. of Bowman*, 920 N.W.2d 803, 806 (Iowa 2018). The Court reviews the record "in the light most favorable to the party opposing summary judgment." *Id.* In addition to the record on a motion for summary judgment, the Court may "take judicial notice of events and conditions which are generally known and matters of common knowledge within [the Court's] jurisdiction." *Knepper v. Monticello State Bank*, 450 N.W.2d 833, 835 (Iowa 1990).

C. THE DISTRICT COURT ERRED IN DENYING SUMMARY JUDGMENT BECAUSE THE SUPREME COURT DOES NOT HAVE CONSTITUTIONAL AUTHORITY TO TOLL THE STATUTE OF LIMITATIONS.

This is a case of alleged medical malpractice against the Defendants. App. 5–10 (02/05/21 Pet.). The Iowa Code establishes a two-year statute-of-limitations period for malpractice claims. Iowa Code § 614.1(9). On May 22, 2020, the Court issued a Supervisory Order in response to the ongoing COVID-19 pandemic. Paragraph 45 of the Order contains a tolling provision, which states as follow:

> **Tolling.*** Any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is hereby tolled from March 17, 2020 to June 1, 2020 (76 days). Tolling means that amount of time to the statute of limitations or similar deadline. The 76 days of tolling will apply if the deadline for commencing the action would otherwise expire *any time from March 17, 2020 to December 31, 2020*. In other words, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31, 2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2021 (the 76th day of 2021), inclusive, that deadline would become March 17, 2021, and thereafter there would be no tolling at all.

Iowa Supreme Court, May 22, 2020 Order, ¶ 45 ("In the Matter of Ongoing Provisions For Coronavirus/COVID-19 Impact On Court Services") (emphasis in original). This Order was a continuation of previous Orders on April 2, 2020, and May 8, 2020, both of which contained similar tolling provisions.[2] *Compare* Iowa Supreme Court, May 22, 2020 Order, ¶ 45, *with* Iowa Supreme Court, April 2, 2020 Order, ¶ 33, *and* Iowa Supreme Court, May 8, 2020 Order, ¶¶ 3–4.

Relying on this Order, Plaintiffs filed the Petition in this case 72 days after their statute-of-limitations deadline. *See* App. 8–9 (02/05/21 Pet. ¶ 25). Notably, Plaintiffs' Petition was filed in violation of the statute of limitations but within the timeline allowed by the tolling provision of the Supervisory Order. Plaintiffs cited the tolling provision of the Order in support of the Petition's timeliness. App. 8–9 (02/05/21 Pet. ¶ 25).

[2] The asterisk in the Order on May 22, 2022, corresponds to "paragraphs that are substantively identical to provisions in prior supervisory orders," as noted on the first page of said Order. Accordingly, the same rationale as discussed below extends to all such Orders.

Defendants filed a Motion for Summary Judgment, arguing that the claims were untimely and subject to dismissal because the tolling provision of the Order was unconstitutional. App. 11–14 (10/25/22 Defs.' MSJ). Also citing the Order on May 22, 2020, the district court denied Defendants' Motion for Summary Judgment premised on Plaintiffs' violation of the statute of limitations. App. 46–50 (01/11/23 MSJ Ruling, pp. 3–7). Specifically, the district court found that the Orders "[did] not violate the separation of powers doctrine due to the judicial branch's inherent common law power to adopt rules of practice and procedure that lies concurrent with that of the legislature." App. 50 (01/11/23 MSJ Ruling, p. 7). Thus, despite missing the deadline, Plaintiffs were allowed to proceed with their claims.

However, as detailed below, Defendants–Appellants believe the district court erred. The separation-of-powers doctrine demands otherwise. Plaintiffs missed the filing deadline established by the legislature in Iowa Code section 614.1(9) by 72 days. These claims continue only through the tolling provision of the Supreme Court's Orders, which stands opposed to the plain language of the statute of limitations.

Put simply, the Supreme Court does not have authority to toll the statute of limitations. The statute of limitations is legislative intent codified. As this Court has noted, "[c]ourts do not pass on the policy, wisdom, advisability or justice of a statute. The remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive *is with the legislature*." *City of Waterloo v. Selden*, 251 N.W.2d 506, 508 (Iowa 1977) (emphasis added). Thus, the Iowa Supreme Court lacked authority to amend the statute of limitations. Because the tolling provision of the Orders effectively amended the statute of limitations without involvement from the legislature, the tolling provision was and is unconstitutional. Defendants were entitled to relief from Plaintiffs' claims. For these reasons, and as discussed further below, the district court erred in denying the Defendants' Motion for Summary Judgment.

i. Under the separation-of-powers doctrine, the judiciary cannot usurp authority vested in the legislature.

The Constitution of the State of Iowa dictates the power each branch of government wields. "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, Three Separate Departments, § 1. The legislative authority is vested in the general assembly, i.e., the House and the Senate, while the judicial authority is vested in the Supreme Court and any inferior courts. Iowa Const. art. III, § 1 (legislative authority); Iowa Const. art. V, § 1 (judicial authority). The legislature is vested with the authority to pass laws. Iowa Const. art. III, § 1. The powers—and limitations—of the Supreme Court are likewise established by the Constitution:

> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Iowa Const. art. V, § 4.

The separation-of-powers doctrine is an essential fabric to the constitutional system and is violated when one branch utilizes the powers of another. *See State v. Phillips*, 610 N.W.2d 840, 842 (Iowa 2000) ("This principle is violated if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the constitution to another branch."); *State v. Barker*, 89 N.W. 204, 208 (Iowa 1902). Such a violation presents a unique danger to the public. The Supreme Court, quoting Montesquie's Dissertation on the Spirit of the Laws, recognized this danger over a century ago: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator." *Barker,* 89 N.W. at 208.

The duty of the legislature is to be "supreme in the field of legislation in the absence of clear constitutional prohibition . . . ." *Faber v. Loveless*, 88 N.W.2d 112, 114 (Iowa 1958). As such, the legislature is granted the authority to pass laws. Iowa Const. art. III, § 1. The legislature may pass any kind of legislation it sees fit so long as it does not infringe the state or federal

constitutions. *City of Waterloo v. Selden*, 251 N.W.2d 506, 508 (Iowa 1977). In addition, the Constitution vests the legislative department with the power "to provide for a general system of practice in all the courts of this state." Iowa Const. art. V, § 14. By contrast, the duty of the judiciary "is not to create rules or statutes, but interpret them." *Butler v. Woodbury Cnty.*, 547 N.W.2d 17, 20 (Iowa Ct. App. 1996). The judicial power granted to the courts under Iowa's Constitution "is the power to decide and pronounce a judgment and carry it into effect." *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255, 261 (Iowa 2002).

Nonetheless, the Supreme Court has been given authority to make certain rules when granted that authority from the legislature. For example, the Iowa legislature has permitted the Iowa Supreme Court to participate in rulemaking for Iowa courts in specific circumstances:

> 1. The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits.

> . . .
> 3. The following rules are subject to section 602.4202:
> a. Rules of civil procedure.
> b. Rules of criminal procedure.
> c. Rules of evidence.
> d. Rules of appellate procedure 6.101 through 3.105, 6.601 through 6.603, and 6.907.
> e. Rules of probate procedure.
> f. Juvenile procedure.
> g. Involuntary hospitalization of mentally ill.
> h. Involuntary commitment or treatment of persons with substance-related disorders.

Iowa Code § 602.4201. For the Court to amend the rules listed in subsection three, it must submit those recommendations to the legislative council for approval. Iowa Code § 602.4202(1). Even then, the Court is restricted by the legislature. Iowa Code § 602.4202(4) ("If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court.").

In addition to these powers, the judiciary also possesses inherent common-law powers. The Court has described its inherent powers as follows:

> It is fundamental to our system of government that the authority for courts to act is conferred by the constitution or by statute. Yet, it is equally

> fundamental that in addition to these delegated powers, courts also possess broad powers to do whatever is reasonably necessary to discharge their traditional responsibilities. This type of judicial authority is known as inherent power, and it is derived from the separation of powers between the three branches of government, as well as limited by it. Inherent powers are necessary for courts to properly function as a separate branch of government, *but cannot be used to offend the doctrine of separation of powers by usurping authority delegated to another branch of government.*

State v. Hoegh, 632 N.W.2d 885, 888 (Iowa 2001) (internal citations omitted) (emphasis added). As such, a court's inherent powers "may be controlled or restricted by statute"—and some may even be overridden by statute. *Id.* at 889. The Court has residual common-law authority to meet its independent constitutional and statutory authorities only where the legislature has not already acted. *See Iowa C.L. Union v. Critelli*, 244 N.W.2d 564, 569 (Iowa 1976) (en banc) ("Where the legislature *has not acted*, courts possess a residuum of inherent common-law power to adopt rules to enable them to meet their independent constitutional and statutory responsibilities." (emphasis added)). In sum, the judiciary possesses constitutional, statutory, inherent, and residual common-law

authority to regulate practice and procedure in its courts, *but this authority "must give way where the legislative department has acted."* *State v. Thompson*, 954 N.W.2d 402, 411 (Iowa 2021) (citing Iowa Const. art. V, § 14; Iowa Code § 602.4202(4); *Critelli*, 244 N.W.2d at 569).

The Supreme Court has recognized that it does not have the power to alter legislation based on its own will. In one instance, the Court, being asked to restrict the language of a statute, declined to do so, stating: "It is not the function of courts to legislate and they are constitutionally prohibited from doing so." *See Hansen v. Haugh*, 149 N.W.2d 169, 172 (Iowa 1967) (citing Iowa Const. art III, § 1). Thus, a court cannot use its inherent powers to develop rules that circumvent or conflict with statutes or rules established by the legislature. *See, e.g.*, *De Berg v. Cnty. Bd. of Ed. of Butler Cnty.*, 82 N.W.2d 710, 717 (Iowa 1957) ("It is our function to interpret legislative enactments, but not to establish new legislative provisions by judicial procedure, nor to nullify the clear intention of such enactments.").

The Iowa Supreme Court has recognized the legislature's supremacy in the field of legislation such that "neither the wisdom nor the advisability of any legislation presents a judicial question." *Faber v. Loveless*, 88 N.W.2d 112, 114 (Iowa 1958). This includes procedures relating to such legislation:

> Legislative power is authority to pass rules of law for the government and regulation of people or property. Where the legislative body has the power to enact a law as a necessary adjunct to such power, it has the legal right to adopt a procedure for the administration of such law.

Schneberger v. State Bd. of Soc. Welfare, 291 N.W. 859, 861 (Iowa 1940) (citations omitted). Thus, the authority to enact rules of law and procedures related thereto has been vested in the legislature.

Iowa courts do not have authority to enact rules that conflict with those enacted by the legislature. As the limitations are codified in Iowa Code section 614.1, the legislature has acted; thus, the legislature has exclusive control in determining the extent of the limitations they impose.

ii. The Supreme Court lacks both emergency-rulemaking powers and inherent common-law powers to amend the statute of limitations.

In publishing its Supervisory Orders amending the statute of limitations, the Iowa Supreme Court violated the separation-of-powers doctrine. None of the above-listed powers granted to the Court are applicable. It is well established in Iowa that the setting—and tolling—of statutes of limitations is a legislative function. *Harrington v. Toshiba Mach. Co.*, 562 N.W.2d 190, 192 (Iowa 1997) ("[T]he tolling of a statute of limitations is purely statutory, and we are not free to expand the concept to avoid hardships."). Given the legislature's supremacy in this area, the judiciary cannot use its inherent powers here.

The Supreme Court dealt with an analogous issue in *Root v. Toney*, and it ultimately recognized that its inherent powers do not allow it to circumvent or modify statutory time standards. *See Root v. Toney*, 841 N.W.2d 83 (Iowa 2013). In *Root*, the Supreme Court was confronted with a conflict between the language of its own supervisory order and the language of a statute. *Id.* at 87–90. To reduce judicial operating expenses, the Court issued a supervisory order, which reduced the public office hours of the Howard County clerk's office. *Id.* at 88. So, when a husband filed his notice of appeal 31 days after a

judgment, he argued that his appeal was timely pursuant to a statute granting one-day extensions to the 30-day deadline for appeals when the clerk's office is closed in whole or in part. *Id.* at 87–88; *see also* Iowa Code § 4.1(34) (2013). The wife argued that the appeal was late, citing the Supreme Court's subsequent supervisory order directing that "section 4.1(34) is not triggered to extend any deadlines" under this circumstance. *Root*, 841 N.W.2d at 87. In addressing the wife's argument, the Supreme Court concluded as follows:

> The problem with her position is that [the husband] was otherwise *entitled* to the one-day extension to file his notice of appeal under section 4.1(34), and the rule change, as interpreted in our supervisory order, thus effectively shortened his time to appeal by one day. *We may not change statutory terms under the guise of judicial construction. Specifically, the time allowed to file a notice of appeal cannot be reduced without legislative approval.*

Id. at 89–90 (citations omitted) (internal quotations omitted) (emphases added). As the Court saw it, "the supervisory order cannot trump the general assembly's authority to set the time to file a notice of appeal." *Id.* at 90.

The Court's inherent powers are likewise inapplicable to amend a statute-of-limitations deadline. The same logic that

applied to appeal deadlines in *Root* applies to petition deadlines here. *See Friedrich v. State*, 801 N.W.2d 628, 2011 WL 2112783, at *2 (Iowa Ct. App. 2011) (unpublished table opinion) ("We are simply not at liberty to read exceptions into [a statutory filing deadline] not otherwise provided by the legislature."). As the Supreme Court has said, "[t]he judicial department's constitutional, statutory, *inherent, and common law authority to regulate practice and procedure in its courts thus must give way where the legislative department has acted*." *State v. Thompson*, 954 N.W.2d 402, 411 (Iowa 2021). Here, the legislature clearly acted. The statute of limitations is, after all, a statute. The Court cannot change the statutory terms "under the guise of judicial construction." *Root*, 841 N.W.2d at 88. *See also In re Evan's Will*, 188 N.W. 774, 776 (Iowa 1922) ("It is a matter of legislative enactment, and a court is not privileged to amend the law. As it is written, it is written."). Therefore, the Court cannot use its inherent powers here.

Moreover, the *Root* Court was steadfast in the necessity of the legislature's involvement in this sort of rulemaking pursuant to Iowa Code sections 602.4201(3) and 602.4202. *See*

Root, 841 N.W.2d at 90. The Iowa Rules of Civil Procedure are included among the enumerated rules subject to the statutes' rulemaking procedures. *See* Iowa Code § 602.4201(3)(a). Pertinent to the present analysis, Iowa Rule of Civil Procedure 1.301 states as follows: "For all purposes, a civil action is commenced by filing a petition with the court. The date of filing shall determine whether an action has been commenced *within the time allowed by statutes for limitation of actions*, even though the limitation may inhere in the statute creating the remedy." Iowa R. Civ. P. 1.301(1) (emphasis added). The tolling provision of the Supervisory Orders is antithetical to this rule. According to the tolling provision of the Court's Orders, the deadlines established by statutes of limitation are no longer the operative dates; instead, the deadlines were ostensibly re-set by the Court. This sort of rulemaking cannot be done without the procedure set forth in Iowa Code section 602.4202. *See* Iowa Code §§ 602.4201(3)(a), 602.4202. And no rulemaking procedures were employed in promulgating the tolling provision. The legislature cannot be bypassed on the legislative path.

In the present case, Defendants are entitled to relief under the statute of limitations. The Iowa Supreme Court has recognized multiple policy considerations underlying the statute of limitations: (1) protecting the defendant from problems relating to defending stale claims; (2) freeing the defendant from the worry produced by the fear of litigation; (3) removing the burden of stale claims from the courts; and (4) removing the uncertainty of unsettled claims from the marketplace. *Est. of Kuhns v. Marco*, 620 N.W.2d 488, 491 & n.1 (Iowa 2000). Statutes of limitations are

> designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.

Harrington v. Toshiba Mach. Co., 562 N.W.2d 190, 192 (Iowa 1997) (quoting *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554, 94 S. Ct. 756, 766, 38 L. Ed. 2d 713 (1974)). As the husband in *Root* was entitled to his statutory relief, so too are these Defendants entitled to their statutory relief.

A recent decision from the Supreme Court used a similar analysis. *See State v. Basquin*, 970 N.W.2d 643 (Iowa 2022). The *Basquin* Court also addressed the COVID-19 Supervisory Orders, specifically how those Orders changed Iowa's traditional guilty-plea procedures. *Id.* at 652. Ultimately, the Court noted that those provisions "[fell] well within [the] court's constitutional and inherent powers, especially during a public health emergency caused by a global pandemic that shut down jury trials and severely limited in-person court operations." *Id.* at 654. To reach this conclusion, however, the Court operated in a place where the legislature *had not acted*. *Id.* at 656–57 ("In the instant case, the legislature has not enacted a statute prohibiting written guilty pleas to felonies."). It was only in the absence of a statute to the contrary that the Court's inherent common-law authority could be maintained. In the present case, however, because there *is* clear statutory authority precluding claims from beginning past a two-year deadline, the *Basquin* Court's opinion should lead this Court to the opposite conclusion.

These principles remain despite public-health emergencies. Defendants and Counsel are keenly aware of the difficulties caused by the COVID-19 pandemic. The Supreme Court's attempt to reduce person-to-person contact and other pandemic-related uncertainties through its Supervisory Orders was duly discussed in *Askvig v. Snap-On Logistics Co.*, 967 N.W.2d 558 (Iowa 2021) (distinguishing between deadlines in statutes of limitations from deadlines for judicial-review petitions and finding that the Court's tolling provisions did not apply to the latter). But these concerns are all but eliminated by the EDMS system. *See* Iowa R. Elec. P. 16.302 (requiring electronic filing in most situations). In fact, the Plaintiffs in this case utilized the EDMS system to make their initial filing on February 5, 2021, at 11:47am. App. 5 (02/05/21 Pet., p. 1). Pandemic-related considerations should not trump statutory protections afforded by the legislature when EDMS filing is ubiquitous and (in most cases) mandatory.

Further, these considerations do not allow the Supreme Court to legislate. Emergency powers are conferred to the political powers, not the courts. *See* Iowa Code § 29C.1(2)

(conferring emergency powers to political powers); § 29C.6 (outlining procedures for disaster emergencies and specifically vesting power in the political powers). No such powers are extended to courts. Thus, emergencies are not a time to suspend the Court's traditional rules, let alone alter the statutory requirements the Court is charged with interpreting.

Even during a pandemic—indeed, especially during a pandemic—the separation of powers must be maintained. Emergency situations are fraught with uncertainty. By unilaterally tolling the statute of limitations, the Court *added uncertainty* to would-be defendants by allowing would-be claims to linger. Defendants saw their statutory protections, which had until that time been cemented by the statute of limitations, shift under their feet. During emergencies, it is the duty of elected officials to set parameters for public safety. Respectfully, it is not the Court's role to take action in areas beyond its traditional guardrails where the legislature has not. As noted above, courts are explicitly prohibited from doing so.

iii. The legislature's inaction in the face of a global pandemic is indicative of its intent for the statute of limitations to remain in force.

The legislature previously enacted the statute of limitations. *See* Iowa Code § 614.1(9). Despite a global pandemic, the legislature did not enact legislation relating to civil statutes of limitations or otherwise toll the statute of limitations applicable in this case. It did, however, enact various other laws to address the unique issues presented by the pandemic. *See e.g.*, Iowa Code § 686D.1 *et seq.* ("COVID-19 Response and Back-to-Business Limited Liability Act"). In the absence of authority to the contrary, it follows that the legislature intended the two-year statute-of-limitations period to remain in force for medical-malpractice claims. *See* Iowa Code § 614.1(9); Iowa R. Civ. P. 1.301(1); *see also Harden v. State*, 434 N.W.2d 881, 884 (Iowa 1989) ("[T]he legislature will make specific provisions for tolling when it intends to do so."). If the legislature wanted to toll the statute of limitations considering the pandemic, it could have done so. But it did not. When the legislature *had acted* and chose not to act further, the intent of the legislature should be clear.

iv. Equitable tolling is inapposite.

Equitable-tolling doctrines such as the discovery rule and equitable estoppel are not available here. The discovery rule, for example, "is based upon the common sense notion that a potential claim should not be barred when the failure to bring a timely action arises from the plaintiff's lack of knowledge about key facts that are unknown to the plaintiff and cannot reasonably be discovered by the plaintiff even in the exercise of due diligence." *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 566–67 (Iowa 2018). This rule is applied when it would be unfair to charge a plaintiff with knowledge of facts which are "unknown and inherently unknowable." *Id.* at 567 (citations omitted). However, this is inapplicable under the facts of this case. Plaintiffs' knowledge of facts sufficient to bring this suit were established when Mr. McVay died on November 25, 2018. Plaintiffs had two years to bring their claims, but they waited two years *and 72 days* to bring them. Plaintiffs had clear knowledge of their claims within the statutory period sufficient to render the discovery rule inapplicable.

Equitable estoppel is another example of the equitable-tolling doctrine, and it is likewise inapplicable. Equitable

estoppel developed "to prevent a party from benefiting from the protection of a limitations statute when *by his own fraud* he has prevented the other party from seeking redress within the period of limitations." *Mormann*, 913 N.W.2d at 567 (internal quotations omitted) (citations omitted) (emphasis added). This too is inapplicable because Plaintiffs have not alleged that Defendants made false representations or otherwise engaged in fraudulent conduct. Plaintiffs were not prevented by Defendants from seeking redress within the period of limitations. Further, Defendants did not benefit at all from the tolling provision of the Supervisory Orders because of the uncertainty the Orders produced.

Here, Plaintiffs relied upon the conduct of the Iowa Supreme Court, not that of Defendants; and all the knowledge necessary to advance the claims came to light well before the statutory deadline. There is simply no equitable remedy upon which Plaintiffs can rely.

v. If the tolling provision of the Supervisory Orders is found to be unconstitutional, then summary judgment would be proper.

It is undisputed that the two-year statute-of-limitations period is applicable in this medical-malpractice case. *See* App. 15–20 (12/01/22 Pls.' Resist. MSJ, pp. 1–6). *See also* Iowa Code § 614.1(9) (establishing a two-year statute-of-limitations period for malpractice claims). It is likewise undisputed that, since Plaintiffs filed their Petition in violation of the statute of limitations but within the timeline allowed by the tolling provision of the Supervisory Orders, the timeliness of Plaintiffs' filing depends upon the Supervisory Orders. App. 15–20 (12/01/22 Pls.' Resist. MSJ, pp. 1–6). Thus, should this Court rule that the tolling provision of the Orders was unconstitutional, Plaintiffs' filings would be untimely and subject to dismissal. In that event, summary judgment on Plaintiffs' claims would be appropriate. *See* Iowa Code § 614.1(9).

CONCLUSION

The judiciary's authority—constitutional, statutory, inherent, and residual—must give way where, as in this case, the legislature acted. The authority of the legislature cannot be tread upon by the judiciary. Accordingly, the tolling provision of the Supreme Court's Supervisory Orders violated Iowa's separation of powers and should be held unconstitutional. For the reasons set forth above, Defendants respectfully request this Court reverse the ruling of the district court denying their Motion for Summary Judgment, dismiss Plaintiffs' claims against them, with prejudice, and for such other and further relief as may be just and equitable.

REQUEST FOR ORAL ARGUMENT

Defendants–Appellants respectfully request this case be heard in oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Bookman Old Style in size 14 font and contains 5,433 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Jeffrey R. Kappelman DATE: December 20, 2023

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on December 20, 2023, the undersigned did serve the Appellants' Proof Brief and Request for Oral Argument with the Iowa Supreme Court and upon counsel for the other parties appearing in this appeal through the EDMS system to:

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