IN THE SUPREME COURT OF IOWA
No. 24–0641

LS POWER MIDCONTINENT, LLC and
SOUTHWEST TRANSMISSION, LLC,

Appellees,

vs.

STATE OF IOWA; IOWA UTILITIES COMMISSION; and
ERIK M. HELLAND,

Appellants,

MIDAMERICAN ENERGY COMPANY and
ITC MIDWEST, LLC,

Intervenors–Appellants.

Appeal from the Iowa District Court
Polk County Case No. CVCV060840
Honorable Coleman McAllister, District Judge

STATE APPELLANTS' BRIEF

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ISSUES PRESENTED

I. Can a district court grant injunctive relief to remedy past injury in a lawsuit brought under article III, section 29 of the Iowa Constitution?

Important Authorities

In re Langholz, 887 N.W.2d 770 (Iowa 2016)
Jenkins v. Pedersen, 212 N.W.2d 415 (Iowa 1973)
Iowa Nat. Res. Council v. Van Zee,
261 Iowa 1287, 158 N.W.2d 111 (1968)
Universal Loan Corp. v. Jacobson, 237 N.W. 436 (Iowa 1931)

II. Can a district court enjoin agency action in a lawsuit brought under article III, section 29 of the Iowa Constitution, even though judicial review under the Iowa Administrative Procedure Act is the exclusive method by which to challenge agency action?

Important Authorities

Iowa Code § 17A.19
Lewis Investments, Inc. v. City of Iowa City,
703 N.W.2d 180 (Iowa 2005)
Black v. Univ. of Iowa, 362 N.W.2d 459 (Iowa 1985)
Salsbury Labs. v. Iowa Dep't of Envt'l Quality,
276 N.W.2d 830 (Iowa 1979)
Kerr v. Iowa Pub. Serv. Co., 274 N.W.2d 283 (Iowa 1979)

ROUTING STATEMENT

After this Court granted a temporary injunction against future enforcement of Iowa Code section 478.16, the district court on remand granted summary judgment to the plaintiffs and made the temporary injunction permanent. But in crafting the injunction, the district court improperly expanded the scope of relief, adding facets to it that contradict both *Jenkins v. Pedersen*, 212 N.W.2d 415, 420 (Iowa 1973) and *Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180, 185 (Iowa 2005).

Because the scope of relief is the primary issue in this appeal, the State Appellants therefore recommend transfer to the court of appeals. *See* Iowa R. App. P. 6.1101(3)(*a*).

STATEMENT OF THE CASE

Article III, section 29 of the Iowa Constitution is important "and not merely aspirational." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 334 (Iowa 2023). When it comes to that constitutional section, courts do "not hesitate to proclaim the supremacy of the Constitution" if they conclude the legislature contravened it when passing legislation. *Chi., Rock Island & Pac. Ry. Co. v. Streepy*, 224 N.W. 41, 43 (Iowa 1929).

But the proper remedy for adjudicated violations of article III, section 29 is still just an injunction—an established remedial tool with established limitations. "Courts must structure permanent injunctions [to] provide relief to the plaintiff without interfering with the legitimate and proper actions of the person against whom [the injunction] is granted." *Carroll Airport Comm'n v. Danner*, 927 N.W.2d 635, 654 (Iowa 2019) (cleaned up). "A permanent injunction should only be ordered to prevent damage likely to occur in the future; it is not meant to punish for past damage." *In re Langholz*, 887 N.W.2d 770, 780 (Iowa 2016).

The district court did not follow this Court's guidance about the nature of injunctive relief. Instead, it issued an "injunction" that exceeds the bounds of what injunctions are. The district court's order interferes with the State Appellants' legitimate actions in conducting franchise proceedings under Iowa Code chapter 478 without regard to the ROFR; it punishes for past damage Plaintiffs LS Power Midcontinent, LLC and Southwest Transmission, LLC (collectively "LS Power") contended could *never* be remedied after July 2022; it faults the litigants for relying on earlier courts' orders in conducting their affairs as the litigation progressed; and it grants relief against agency action that is unavailable except through the Iowa Administrative Procedure Act. (12/4/23 Dist. Ct. MSJ Ruling [D0136], at 18–21.)

The Court should reverse, excise the improper elements from the district court's injunctive relief, and impose only the remedy the State Appellants suggested below: an injunction *prospectively* prohibiting section 478.16 from applying to future electric transmission projects. (10/6/23 State's Proposed Language Regarding Remedies [D0133], at 5–10.)

FACTUAL AND PROCEDURAL BACKGROUND

A. General regulatory framework.

"Our nation's electric grid is interdependent." *LS Power*, 988 N.W.2d at 322. There are several levels to the regulatory framework.

Federally, "[t]he Federal Energy Regulatory Commission (FERC) regulates interstate, high-voltage transmission" and "oversees regional transmission organizations (RTOs)." *Id.* at 323. "Each RTO coordinates, controls, and monitors the power grid within its region of service," *id.*, and decides whether to erect new transmission lines, which points on the grid those lines will connect, and who will construct and maintain them. Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) are the RTOs with oversight over different parts of Iowa. (12/4/23 MSJ Order [D0136], at 3.) The crux of the dispute at this stage is about transmission projects in the MISO region.

At the state level, "[t]he Iowa Utilities Board (IUB) regulates the siting and construction of electric transmission lines" in Iowa. *Id.* Part of siting and construction includes determining whether

to grant a franchise under Iowa Code chapter 478. *See* Iowa Code §§ 478.1(1) (prohibiting transmission lines unless the Iowa Utilities Commission first grants a franchise); 478.2–.3 (setting forth franchise petition requirements). "Before granting the franchise," the Commission[1] must "make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest." *Id.* § 478.4.

B. Rights of first refusal for transmission lines.

Under a right of first refusal (ROFR), incumbent public utility transmission providers hold "priority status in choosing to construct new electric transmission lines in their respective service territories." *LSP Transmission Holdings, LLC v. Sieben (LSP II)*, 954 F.3d 1018, 1023 (8th Cir. 2020). For a time, ROFRs were a feature of federal regulation, appearing in RTO tariffs—governing documents that are "subject to the approval of FERC" for each RTO

[1] When the Court issued its opinion in the previous appeal, the acronym IUB was correct. But the Legislature has since changed the former Iowa Utilities Board's name to the Iowa Utilities Commission. 2024 Iowa Acts. ch. 1170, § 369(2).

and that establish "the terms by which" RTO "members build and operate grids." *LSP Transmission Holdings, LLC v. Lange (LSP I)*, 329 F. Supp. 3d 695, 701 (D. Minn. 2018), *aff'd*, *LSP II*, 954 F.3d at 1031. Approved tariffs have "the force and effect of law." *Est. of Pearson v. Interstate Power & Light Co.*, 700 N.W.2d 333, 342 (Iowa 2005); *accord City of Osceola v. Entergy Ark., Inc.*, 791 F.3d 904, 907–08 (8th Cir. 2015) (noting a tariff approved by and filed with FERC is equivalent to a federal regulation).

In 2011, "FERC directed RTOs to remove federal-level ROFRs" from their tariffs. *LS Power*, 988 N.W.2d at 323. Still, FERC's 2011 order "permits state-level ROFRs." *Id.* Several jurisdictions thus "enacted a state statutory ROFR" in response. *LSP II*, 954 F.3d at 1024. FERC then approved a MISO tariff that dispensed with federal ROFRs while incorporating state laws (including one in Minnesota, which is also in the MISO transmission region) providing for one. *Id.*

Iowa soon enacted a statutory ROFR as well. The Iowa Legislature enacted a ROFR in 2020; the law now appears at Iowa

Code section 478.16.[2] But the legislature's enactment drew legal challenge after the law took effect.

C. LS Power challenges the Iowa ROFR legislation.

LS Power filed this lawsuit in October 2020, seeking to prevent enforcement of the law on three constitutional grounds: two procedural (single-subject and title claims under article III, section 29 of the Iowa Constitution) and one substantive (an equal protection claim under article I, section 6). (10/14/2020 Petition [D0001], ¶¶ 36–53.) The procedural claims alleged defects in the legislative process leading to the enactment. (10/14/2020 Petition [D0001], ¶¶ 36–45.) The substantive claim alleged differential treatment, without a rational basis, caused by the statute's operation. (10/14/2020 Petition [D0001], ¶¶ 48–53.)

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[2] The Court observed that section 478.16 "more closely resembles a right of preemption" than a traditional ROFR. *LS Power*, 988 N.W.2d at 323 n.2. But because the two terms appear interchangeably in the caselaw, and because the parties (and courts reviewing this case) have used ROFR terminology throughout the litigation, continuing that terminology in this appeal ensures consistency. *See id.*

LS Power sought an emergency injunction, contending that assigning forthcoming transmission projects to an incumbent under the ROFR—even if "forthcoming" was months or years away—would make LS Power "irreparably deprived of an opportunity to compete." (11/13/2020 Br. in Support of Mtn. for Temp. Inj. [D0007 Attachment], at 35.)[3] The State moved to dismiss, contending LS Power lacked standing. (11/16/2020 State MTD [D0009], at 2–3.) MidAmerican Energy Company and ITC Midwest, LLC then sought to intervene as Defendants and join the motion to dismiss. (11/17/2020 Intervention Filings, D0010–D0017.) The district court granted intervention (1/11/21 Order, D0033) and eventually

[3] LS Power initially named as Defendants (and sought injunctive relief against) the State; the then-Iowa Utilities Board; Geri Huser, who was at that time the IUB's chair; and Glen Dickinson and Leslie Hickey, who are personnel of the Legislative Services Agency—the agency responsible for publishing and codifying the Iowa Code. *See* Iowa Code §§ 2B.6–.13. LS Power sought to restrain those with authority to enforce and administer section 478.16 (the State, IUB, and Chair Huser); and separately sought to prevent Dickinson and Hickey from codifying, publishing, and printing Iowa Code volumes containing section 478.16. (11/13/2020 Mtn. for Temp. Inj. [D0007], at 1.)

Erik Helland replaced Huser as the IUB's chair in 2023; after he began service, the district court substituted him as the proper official-capacity defendant. (9/29/23 Substitution Order, D0127.)

granted the motion to dismiss (3/25/21 Dismissal Order, D0051), leading to the first appeal in this case.

In May 2022, after the first appeal had been transferred to the court of appeals, LS Power filed a new motion for injunction, contending that not enjoining the law at that moment would amount to "forever foreclosing" LS Power from meaningful relief. (5/27/22 Temporary Injunction Br. in appellate case no. 21–0696, at 29.) The court of appeals denied an injunction and affirmed the district court's conclusion that LS Power lacked standing.

LS Power then sought further review and again sought an injunction from the Iowa Supreme Court while its further review application was pending. (7/18/22 Motion in 21–0696; 7/19/22 F.R. App. in 21–0696.) LS Power asserted that not enjoining the law at that moment would be a "death knell" and would make any later judgment in its favor "ineffectual" with respect to transmission projects appearing on a then-upcoming MISO agenda for possible approval. (7/18/22 Motion in 21–0696, ¶ 18.)

The Court denied an injunction in July (7/25/22 Single-Justice Order in 21–0696) but granted further review in November on the

standing question (11/3/22 Order Granting Further Review in 21–0696). After the Court expressly declined to enjoin the statute's enforcement, MISO approved five long-range transmission projects (LRTPs) in Iowa—Nos. 7, 8, 9, 12, and 13—and assigned them in July 2022 to intervenors ITC Midwest and MidAmerican Energy under MISO's FERC-approved tariff that incorporated state laws (like Iowa's) providing for a ROFR. (12/4/23 MSJ Order [D0136], at 6.) Those projects—five specific transmission lines or expansions appropriately condensed under the shorthand "Iowa LRTPs"—would later become the focus in the dispute about the scope of appropriate relief.

On further review, the Court found LS Power had standing when it filed suit in fall 2020, so it vacated the court of appeals decision and reversed the district court's dismissal ruling. *LS Power*, 988 N.W.2d at 333.

The Court also reconsidered whether to enjoin enforcement of section 478.16. It found LS Power was likely to succeed on its single-subject and title challenges to the legislation enacting the ROFR in 2020. *Id.* at 334–38. So the Court granted (in its March

2023 opinion) "a temporary injunction staying enforcement of section 478.16 pending resolution of this case." *Id.* at 340. The Court said nothing—including in response to the parties' briefing at rehearing—about what (if anything) that injunction meant for the Iowa LRTPs MISO approved in July 2022 after the Court declined to enjoin enforcement of the statute.

D. Remand to the district court.

Procedendo issued from the first appeal on May 30, 2023. (5/30/23 Procedendo, D0081.) Because the first appeal arose from a pre-answer motion to dismiss, *see LS Power*, 988 N.W.2d at 322, the normal course of proceedings after remand would be for the defendants to file an answer and for the parties to undertake discovery and schedule a future trial (as in most litigated matters), with appropriate pretrial deadlines in the schedule by which the parties would have to file dispositive motions.

But LS Power did not wait. Just three days after procedendo issued, LS Power moved for summary judgment. (6/2/23 MSJ, D0086.) It contended the appellate opinion essentially made the district court's decision on remand a formality—because the Court

concluded success was so likely that it temporarily enjoined the statute, and because the case "turns on legal issues." (6/2/23 MSJ Br. [D0084], at 2.) LS Power even asserted the appellate decision was essentially the end of the matter, signifying that "LS Power must win" with little to no further analysis (6/21/23 Resistance to Extension [D0095], at 5)—even though "the function of a preliminary injunction is not to determine the merits of the case." *Econ. Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 648 (Iowa 1995) (cleaned up).

The State highlighted the case's unusually rushed procedural posture and sought more time to (1) add to the record if necessary and (2) file a cross-motion for summary judgment, enabling the district court to decide the matter at once, rather than piecemeal. (6/16/23 Motion to Extend Schedule, D0092.) The district court accepted that suggestion and later heard argument on cross-motions for summary judgment. (12/4/23 MSJ Order [D0136], at 2.)

Recognizing that the scope of relief was a significant area of dispute, the district court ordered post-hearing briefing addressing the scope of relief and proposing language for the district court to

consider adopting. (12/4/23 MSJ Order [D0136], at 2.) In that briefing, the State observed that if the district court granted summary judgment for the defendants, the question of appropriate relief would be moot. (10/6/23 State's Proposed Language Regarding Remedies [D0133], at 1.)

But if the district court granted summary judgment for LS Power, the State proposed language enjoining prospective enforcement of section 478.16 while recognizing that injunctions generally do not "compel the undoing of an injury." *Iowa Nat. Res. Council v. Van Zee*, 261 Iowa 1287, 1292, 158 N.W.2d 111, 115 (1968). (10/6/23 State's Proposed Language Regarding Remedies [D0133], at 4–8.)

The State also proposed language confirming that injunctive relief could not reach agency actions—such as rules the agency had promulgated or franchise proceedings that might be pending. (10/6/23 State's Proposed Language Regarding Remedies [D0133], at 8–10.) Agency action is subject exclusively to judicial review under Iowa Code chapter 17A. *See* Iowa Code § 17A.19; *see also* Iowa Code § 17A.2(2) (defining agency action); *Salsbury Labs. v.*

Iowa Dep't of Envt'l Quality, 276 N.W.2d 830, 835 (Iowa 1979) (finding "no basis on which to conclude" chapter 17A's exclusivity contemplates "an exception for common-law writs such as . . . injunction").

And because judicial review exists to review agency action, another adequate remedy is available—which takes injunctive relief against those actions off the table. *See Lewis Invs.*, 703 N.W.2d at 185 ("[I]f a plaintiff has an adequate remedy at law, injunctive relief as an independent remedy is not available."); *Richards v. Iowa State Com. Comm'n*, 270 N.W.2d 616, 621 (Iowa 1978) ("Judicial review of the final agency action would provide . . . an adequate remedy.").

E. The district court's summary judgment ruling.

After reviewing the parties' proposed language about the scope of relief, the district court issued a summary judgment ruling predominantly in LS Power's favor.[4] The district court concluded

[4] While LS Power prevailed on its article III, section 29 claims, the district court granted summary judgment to two defendants:

the Legislature's enactment of section 478.16 violated both the title requirement and the single-subject requirement set forth in article III, section 29 of the Iowa Constitution. (12/4/23 MSJ Order [D0136], at 13.) It declined to reach LS Power's claim under article I, section 6. (12/4/23 MSJ Order [D0136], at 13.) And it proceeded to determine exactly what the consequences of its ruling should be.

The district court granted injunctive relief that, it said, "prevents substantial injury or damages" to LS Power. (12/4/23 MSJ Order [D0136], at 18.) But the district court's wording reveals that its injunction did more than prevent; it also aimed to rectify past injury LS Power claimed—even though that goes beyond the proper scope of most injunctive relief, *see Jenkins*, 212 N.W.2d at 420, and even though LS Power told this Court that such an injury could *never* be rectified after July 2022. The district court stated it entered an injunction "to return to the status quo" by

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Dickinson and Hickey. (12/4/23 MSJ Order [D0136], at 20.) The district court granted summary judgment to those two defendants because they were employed by the Legislative Services Agency—which has no role in enforcing or administering section 478.16. (12/4/23 MSJ Order [D0136], at 20.)

enjoining both the then-Board and the intervenors "from taking any additional action, or relying on prior actions, related to" Iowa LRTPs "that were claimed pursuant to, under, or in reliance on Iowa Code § 478.16" and accompanying administrative rules. (12/4/23 MSJ Order [D0136], at 21). The district court further delineated that the injunction encompassed each of the specific Iowa LRTPs. (12/4/23 MSJ Order [D0136], at 21.)

The district court emphasized that when crafting this injunctive relief, it was "mindful that Plaintiffs timely brought this action" in 2020, "well before the Iowa LRTPs were approved." (12/4/23 MSJ Order [D0136], at 18.) It expressed regret that a previous judge "wrongly dismissed" the petition and that the court of appeals "compounded th[e district c]ourt's error when they wrongly affirmed the dismissal." (12/4/23 MSJ Order [D0136], at 19.) It thus forbade further progress on the Iowa LRTPs or "reliance" on assignments made after this Court expressly declined to halt them, because the district court estimated LS Power *would have* received an injunction in time "[h]ad this Court made the correct decision initially." (12/4/23 MSJ Order [D0136], at 19.)

The district court also enjoined administrative rules the then-Board had promulgated under a mandate in section 478.16—even though those rules did not exist when LS Power filed its petition in 2020 and did not take effect until May 2022. (12/4/23 MSJ Order [D0136], at 21.) *See* Iowa Code § 478.16(7) ("The [IUC] shall adopt rules pursuant to chapter 17A to administer this section."); Iowa Admin. Code r. 199—11.14(1) ("The purpose of this rule is to implement the requirements of Iowa Code section 478.16.").

The district court reasoned that while the State contended agency action, like administrative rulemaking, is reviewable only through chapter 17A (and not actions brought directly under article III, section 29 of the Iowa Constitution), the district court's "broad equitable power" supersedes chapter 17A's statutory exclusivity when the district court concludes it "seems logical" and more efficient. (12/4/23 MSJ Order [D0136], at 16–17.) The district court noted (and the State acknowledged) that rules promulgated under a later-invalidated statute are "subject to being enjoined" (12/4/23 MSJ Order [D0136], at 17) as beyond the agency's rulemaking authority. But "subject to" is an important modifier in the

administrative law context, and the district court improperly took the extra step by *in fact* enjoining enforcement of rules outside chapter 17A.

The State Appellants moved to reconsider, emphasizing the forward-looking nature of injunctive relief and elaborating on the administrative paths that are the exclusive means to invalidate rulemaking or other agency actions (like an ongoing franchise proceeding). (12/19/23 Motion to Reconsider, Enlarge, or Amend [D0139], at 3–5.) The district court summarily denied the motion as "merely a rehashing of previous arguments." (3/19/24 Order [D0159], at 6.)

So the State, IUC, and Chair Helland appeal, because the district court granted overbroad relief against them.[5] But the State Appellants do not contest the district court's substantive conclusion under article III, section 29 in this appeal. No matter how this appeal ends, enforcement of section 478.16 will remain enjoined

[5] Because the district court granted summary judgment to original defendants Dickinson and Hickey, they are not parties to the appeal. *Cf.* Iowa R. App. P. 6.152(2) ("Parties not involved in the appeal may be omitted from the caption.").

and will not bear upon future electric transmission projects that either applicable RTO may plan or develop.[6] But the corollary facets of the district court's injunction here—both its attempt to compensate for past injury and its preemptive strike against agency actions that offer their own separate (and exclusive) mechanism for challenge—are inconsistent with Iowa law and must be excised.

[6] The ongoing dispute about the injunction's effect on the Iowa LRTPs distinguishes this case from *Vasquez v. Iowa Department of Human Services*, 990 N.W.2d 661, 667–68 (Iowa 2023). In *Vasquez*, the Department's decision *not* to appeal a substantive finding that an administrative rule was unconstitutional meant its appeal was moot because it had already committed to giving the plaintiffs the relief they sought (Medicaid reimbursement for gender-conforming surgeries to treat gender dysphoria). *Vasquez*, 990 N.W.2d at 668.

By contrast here, the Commission has not committed to giving LS Power the relief it seeks LS Power wants to return to the beginning of the MISO approval process. The Commission has not agreed to provide, nor can it provide, that relief. The State Appellants' decision not to appeal the issue of legislative compliance with article III, section 29 therefore does not moot this scope-of-relief appeal—much as a criminal defendant can appeal a conviction but challenge only the sentence imposed. *See State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020) (noting the appellant did "not challenge her guilty plea or the resulting conviction, only the sentence imposed").

ARGUMENT

I. An injunction intended to "return" to a previous status quo is overbroad, even in cases brought under article III, section 29 of the Iowa Constitution.

Error Preservation: The State preserved error by consistently contesting the scope of relief in the district court and obtaining the district court's ruling on that issue. *See Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 602 (Iowa 2019) (finding an issue preserved when the "defendants raised the issue" both in "resisting the motion for injunction" and in summary judgment briefing, and the district court "also explicitly ruled upon the issue" in both a temporary injunction order and a summary judgment order).

Standard of Review: Generally, the "standard of review for the issuance of injunctions is de novo." *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 180 (Iowa 2001). De novo review is appropriate "[b]ecause injunctions are equitable in nature." *City of Des Moines v. Ogden*, 909 N.W.2d 417, 422 (Iowa 2018). While the Court reviews *temporary* injunction decisions "for abuse of discretion," *LS Power*, 988 N.W.2d at 329, this injunction is now permanent and thus receives de novo review.

Argument Summary: The district court's conclusion that a different district court judge "got it wrong" in 2021 is an improper basis for the injunction it issued. The district court's ruling does not recognize the proper scope of injunctions, the details of administrative agencies, and the unavoidable passage of time in any appeal. Because this error drove the scope of relief the district court granted, the Court should modify the injunction.

A. Injunctions are forward-looking and do not generally address past events or have retroactive effect.

"An injunction operates in futuro. It is a preventive remedy granted against threatened [future] acts." *State ex rel. Iowa Air Pollution Control Comm'n v. City of Winterset*, 219 N.W.2d 549, 551 (Iowa 1974). In most cases, injunctive relief "is not to compel the undoing of an injury." *Iowa Nat. Res. Council v. Van Zee*, 261 Iowa 1287, 1292, 158 N.W.2d 111, 115 (1968). An injunction "looks to the future rather than to the past and is not used to punish wrongful acts already committed." *Jenkins*, 212 N.W.2d at 420. "It is quite fundamental that rights already lost and wrongs already committed are not subject to injunctive relief. . . . An injunction is

not corrective of past injuries." *Universal Loan Corp. v. Jacobson*, 237 N.W. 436, 437 (Iowa 1931).

Put simply, "[i]njunctive relief is prospective relief." *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 521 (7th Cir. 2021). Prospective relief necessarily means prospective-*only* relief. *See Lue v. Eady*, 773 S.E.2d 679, 689 (Ga. 2015) (declining to "nullify certain city council decisions" made at meetings alleged not to comply with open meetings law, because "[i]njunctive relief . . . does not provide a remedy for acts already completed"); *Verdun v. Scallon Bros. Contractors, Inc.*, 270 So. 2d 512, 513 (La. 1972) ("Injunction . . . cannot be employed to redress an alleged consummated wrong or undo what has already been done.").

Despite precedents both from Iowa and from other jurisdictions explaining the prospective nature of injunctive relief, the district court did not follow those principles. Instead, the district court issued an injunction attempting to "compel the undoing of an injury," *Van Zee*, 261 Iowa at 1292, 158 N.W.2d at 115, and that "looked to proof of damages already inflicted," *Jenkins*, 212 N.W.2d at 420.

But that is more like vacatur, which "in contrast, retroactively undoes or expunges a past . . . action." *Driftless Area*, 16 F.4th at 522. Injunctive relief, like the type sought here and the similar type available federally under *Ex Parte Young*, 209 U.S. 123, 159–60 (1908), "does not encompass retroactive remedies like vacatur." *Id.* An injunction cannot do what the district court ordered. *See Universal Loan Corp.*, 237 N.W. at 437 (relying on a prominent injunction law treatise, and noting injunctions are not meant "to restore parties to rights of which they have already been deprived").

Instead, what a permanent injunction does is prevent future injuries. *See In re Langholz*, 887 N.W.2d at 780. Here, LS Power asserted a qualitative deprivation of its ability to compete for transmission projects subject to bidding. *See LS Power*, 988 N.W.2d at 339 ("LSP is harmed by the loss of opportunity to compete for new projects.")

And while LS Power may have lost the battle to compete for the specific Iowa LRTPs MISO approved in 2022 after this Court expressly declined to enjoin the ROFR statute, it nevertheless won the war. With section 478.16's enforcement prospectively enjoined,

LS Power can compete for *all future* projects that are subject to bidding under applicable MISO and SPP tariffs. Its ability to compete is protected. A prospective-only injunction remedies the identified harm (deprivation of the ability to compete) by preventing future enforcement of the ROFR statute. Nothing more is required for the form of relief LS Power requested to be both effectual and constitutionally meaningful.

Some injunctions can "compel an affirmative act." *Alcor Life Extension Found. v. Richardson*, 785 N.W.2d 717, 729 (Iowa Ct. App. 2010). Injunctions that compel an affirmative act are "mandatory injunctions" and "are looked upon with disfavor." *Id.* For several reasons even beyond merely disfavoring mandatory injunctions, the district court's injunction in this case, and its intended effect, are not a proper mandatory injunction.

First, a mandatory injunction compels an affirmative *future* act rather than unwinding a past one. For example, the mandatory injunction in *Alcor Life* directed a decedent's relatives "to execute [an] application for a disinterment permit" so that the decedent's remains could be disinterred and placed with a cryonic suspension

organization. *Alcor Life*, 785 N.W.2d at 732. And a mandatory injunction in an earlier case directed a college to issue a chiropractic degree. *See Palmer Coll. of Chiro. v. Iowa Dist. Ct.*, 412 N.W.2d 617, 619 (Iowa 1987).

But here, the district court's injunction did not compel a future affirmative act. Instead, it sought to "return" to a previous status quo. (12/4/23 MSJ Order [D0136], at 21.) That aspect of its ruling clashes with any formulation of an injunction, whether prohibitive or mandatory, and is inconsistent with this Court's instruction that a permanent injunction "should only be ordered to prevent damage likely to occur in the future" and not "to punish for past damage." *In re Langholz*, 887 N.W.2d at 780.

And to the extent the district court intended to "reopen" the Iowa LRTPs for bidding, the district ignored that the State Appellants do not approve or assign transmission projects in the MISO region or decide whether a particular project must be competitively bid. Rather, MISO does so pursuant to a FERC-approved tariff. Accordingly, MISO and FERC are the only entities that could take affirmative action under a hypothetical mandatory

injunction affecting transmission project approval or assignment. LS Power runs into this Court's maxim that "[c]hoices have consequences." *Chicoine v. Wellmark, Inc.*, 2 N.W.3d 276, 286 (Iowa 2024). LS Power's choice to sue only the State Appellants and not include MISO or FERC means it must accept the limitations of (1) the relief it sought, (2) the forum it chose, and (3) the defendants it named.

Indeed, choices have consequences in yet another way relevant to this appeal. LS Power asserted before the court of appeals in May 2022 that without an injunction of the ROFR's enforcement before MISO made approvals or assignments, LS Power could "not get those [Iowa LRTPs] back." (5/27/22 Br. in Support of Inj. in 21–0696, at 30.) It also asserted before this Court that without an injunction in July 2022, it would have "no adequate legal remedy with respect to" the Iowa LRTPs. (7/18/22 Motion in 21–0696, ¶ 24.) LS Power recognized then that injunctive relief has its limits and would be forward-looking (from the time it was granted) rather than affecting past events.

On remand, LS Power changed its earlier position; its dire warnings of a door slamming shut became much less dire. LS Power's insistence in the previous appeal that its asserted injury with respect to the specific Iowa LRTPs *could never be* adequately remedied after July 2022 changed into a contention on remand that the injury was *automatically* remedied through later injunctive relief. But that is inconsistent with what LS Power represented to the Court in the previous appeal.

LS Power's change in position on remand approaches judicial estoppel. Although no party said the phrase "judicial estoppel" below, that doctrine can apply "to bar a party from taking inconsistent positions at different stages of the same case." *Chicoine v. Wellmark, Inc.*, 2 N.W.3d 276, 286 (Iowa 2024). LS Power need not be formally "estopped," though, because its earlier position was correct. The district court's injunctive relief could not reach back in time to undo the Iowa LRTPs, but can and does reach every future project approved under an applicable RTO tariff.

The Court should modify the district court's injunction to excise the improper relief—which is everything except the

prospective bar against enforcement of section 478.16 for future transmission projects.

B. The constitutional dimension of article III, section 29 does not justify treating potential injunctive relief more expansively than in other contexts.

As of 2022, "only thirteen statutes ha[d] been found to be invalid" under article III, section 29 of the Iowa Constitution. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710, 725 (Iowa 2022). The ROFR is now the fourteenth statute to be found invalidly enacted under article III, section 29. None of the previous thirteen involved or required unwinding completed events that took place under the law as it existed, were carried out by nonparties to the litigation, and occurred after courts expressly declined to issue an injunction. This case shouldn't be the first.

Instead, each of the previous thirteen cases featuring statutes invalidated under article III, section 29 involved government entities or officials *themselves* making or presiding over decisions that were subject to direct review and thus reversible in the same proceeding. *See, e.g.*, *State v. Taylor*, 557 N.W.2d 523, 527 (Iowa 1996) (reversing a criminal conviction on direct appeal); *Nat'l*

Benefit Accident Ass'n v. Murphy, 269 N.W. 15, 19 (Iowa 1936) (reversing the insurance commissioner's refusal to approve an insurer's amended articles of incorporation); *In re Breen*, 222 N.W. 426, 427–28 (Iowa 1928) (reversing a district court's suspension of a license to practice medicine).

Here, the State Appellants did not approve the Iowa LRTPs or assign them to a developer—and the State Appellants also have no power to force the relevant decisionmakers to undo or revisit their decision. So it is not a mere matter of "equity," "fairness," or "taint" driving the available relief.

True, laws passed in violation of article III, section 29 are "void and unenforceable." *Taylor*, 557 N.W.2d at 527; *accord* Iowa Const. art. III, § 29 (providing an act passed in violation of it "shall be void"). But the legal fiction of acting as though the statute never existed does not mean it never *actually* did. That's especially true when, as here, three courts expressly declined to enjoin the statute. All appellants here—intervenors included—thus acted in reliance not merely on the statute, but on judicial orders. There is no special circumstance here that justifies a unique retroactive injunction.

A prospective-only injunction here (that allows the Iowa LRTPs to move forward as approved and assigned under the ROFR, but that prohibits the ROFR from applying to any future projects under an applicable RTO tariff) would not materially undermine article III, section 29. LS Power prevailed. The injury it claimed was its right to compete—a qualitative right to compete, not a quantitative right to compete for specific or enumerated projects. A prospective-only injunction protects that right to compete—indefinitely, until circumstances materially change (as could be possible with future legislation). Limiting LS Power's injunctive relief to be effective only prospectively does not make LS Power's victory hollow.

The Iowa Constitution does not justify departing from traditional remedial principles. Bars required to close under a public health order during a pandemic, *see Riley Drive Ent'mt I, Inc. v. Reynolds*, 970 N.W.2d 289, 293 (Iowa 2022), would not have been "reopened" retroactively on already-elapsed days had enforcing the public health order been enjoined as unconstitutional.

A caucus taking place in 1988 and subject to challenge as unconstitutional, *see Martin-Trigona v. Baxter*, 435 N.W.2d 744, 745 (Iowa 1989), couldn't be "restarted" in 1989 or afterward, even if the caucus procedures were later found unconstitutional and enjoined from use in future caucuses.

Likewise, the district court's finding of an article III, section 29 violation here, and the further determination that the statute is void, cannot undo completed events through the guise of injunctive relief. Because the district court's injunctive relief language oversteps, it must be reversed to the extent it intends or attempts to undo the past.

II. Injunctive relief is not available to restrain agency action in lawsuits taking place outside of Iowa Code chapter 17A.

Error Preservation: The State preserved error by consistently contesting the scope of relief in the district court and obtaining the district court's ruling on that issue. *See Young*, 934 N.W.2d at 602.

Argument Summary: Judicial review under chapter 17A is the exclusive method to review or challenge agency action. *See* Iowa Code § 17A.19. Judicial review proceedings to challenge agency

action cannot be combined with original actions brought under other provisions of law. *See Black v. Univ. of Iowa*, 362 N.W.2d 459, 464 (Iowa 1985).

And the existence of another method to challenge agency action makes injunctive relief unavailable, because a party is "not entitled to injunctive relief" when it has another "adequate remedy at law." *Lewis Invs.*, 703 N.W.2d at 185. The district court's ruling did not follow any of these three tenets of administrative law, so the Court should reverse.

A. Judicial review under chapter 17A is statutorily the only way to challenge agency action, and judicial review cannot be combined with "original" actions brought under other provisions of law.

Chapter 17A's judicial review provisions are "the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such action." Iowa Code § 17A.19. If a litigant wants to contest or challenge agency action, "the exclusivity of the [chapter 17A] judicial review provisions can not be disregarded." *Kerr v. Iowa Pub. Serv. Co.*, 274 N.W.2d 283, 287 (Iowa 1979); *accord Genetzky v. Iowa State Univ.*,

480 N.W.2d 858, 860 (Iowa 1992) ("If agency action was involved, then Genetzky should have pursued his remedy under Iowa Code chapter 17A.").

"[T]he remedies provided by Iowa Code chapter 17A are exclusive [of] common law remedies"—like injunctions. *Walsh v. Wahlert*, 913 N.W.2d 517, 525 (Iowa 2018); *accord Salsbury Labs. v. Iowa Dep't of Envt'l Quality*, 276 N.W.2d 830, 835 (Iowa 1979) (concluding it would be inappropriate "if the provisions of section 17A.19 could be discarded . . . in favor of certiorari, declaratory judgment, or injunction"); *Grains of Iowa L.C. v. Iowa Dep't of Agric. & Land Stewardship*, 562 N.W.2d 441, 443–44 (Iowa Ct. App. 1997) (dismissing a petition for declaratory judgment that was "in effect, a lawsuit directed at agency action").

LS Power could sue to invalidate the statutory ROFR directly under article III, section 29 of the Iowa Constitution. After all, the ROFR was a legislative act, not an agency decision. *See Tindal v. Norman*, 427 N.W.2d 871, 874 (Iowa 1988) (allowing a lawsuit nominally aimed at an agency's decision when "the gist" of it was about "statutory validity," not about "any action taken pursuant

thereto"). But a lawsuit brought in that way cannot expand to address agency action. *See id.* at 872 (concluding if a person "seeks review of agency action, [chapter 17A]'s procedures must be adhered to"). The district court's decision to sweep agency action into its injunctive relief as a matter of efficiency or convenience contravenes an unambiguous statutory requirement set forth in section 17A.19.

Chapter 17A judicial review is fundamentally and qualitatively different. In judicial review matters, the district court "exercises only appellate jurisdiction," and has no original authority to declare parties' rights. *Black*, 362 N.W.2d at 462. A lawsuit that invokes the district court's original jurisdiction (like the one LS Power filed under the Iowa Constitution) can "not be piggybacked onto" matters appropriate for judicial review. *Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n*, 331 N.W.2d 862, 864 (Iowa 1983). "Different rules and procedures" apply to "judicial review proceedings as distinguished from original actions." *Black*, 362 N.W.2d at 463. That's why the two don't mix.

The exclusivity analysis is straightforward. Is a party seeking to block, undo, or otherwise challenge agency action? If so, the exclusive method to do so is judicial review, and that statutory exclusivity "can not be disregarded." *Kerr*, 274 N.W.2d at 287 "Agency action" includes:

> the whole or part of an *agency rule* or other statement of law, policy, order, decision, license, *proceeding*, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

Iowa Code § 17A.2(2) (emphasis added). This definition is crucial to judicial analysis. *See Allegre v. Iowa Bd. of Regents*, 319 N.W.2d 206, 208 (Iowa 1982) (finding a challenged event was "clearly agency action" and rejecting a plaintiff's argument "in view of the statutory definition"), *modified by Papadakis v. Iowa State Univ. of Sci. & Tech.*, 574 N.W.2d 258, 260 (Iowa 1997).

It does not matter that the intervenors in this case are not government agencies subject to chapter 17A. As in *Kerr*, the fact that parties interacting with an agency are not subject to chapter 17A provides no "justification for pursuing a remedy outside

[chapter 17A]" when the alleged wrongful acts fit the definition of agency action. *Kerr*, 274 N.W.2d at 287.

So the question becomes: are facets of the district court's injunctive relief addressing agency action? The answer is yes if "the action or inaction of the agency in question bears a discernible relationship to the statutory mandate of the agency." *Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 328 (Iowa 2015); *accord Papadakis*, 574 N.W.2d at 260. The answer is no if the agency's action or inaction bears "scant relation" to its statutory mandate. *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987). If the actions or inactions of the agency (here the Commission) are indeed "agency action" under the statutory definition, then their inclusion in the relief awarded in this original action is improper.

And sure enough, both franchise proceedings and agency rules are agency action.

B. Franchise proceedings are agency action.

Agency action includes any "proceeding." Iowa Code § 17A.2(2). Franchise proceedings are proceedings. And franchise proceedings bear a discernible relationship to the agency's

statutory mandate because the Legislature enacted "express statutory authorization" for the agency to conduct franchise proceedings. *Ghost Player*, 860 N.W.2d at 329; *see* Iowa Code § 478.1–.13 (requiring transmission operators to obtain a franchise and setting forth details about the franchise application process).

Franchise proceedings are reviewable, and the Court has reviewed them, under chapter 17A. *See Juckette v. Iowa Utils. Bd.*, 992 N.W.2d 218, 219 (Iowa 2023) (resolving a petition for judicial review of a franchise decision). Because franchise proceedings are agency action, they cannot be addressed in this lawsuit brought directly under the Iowa Constitution.

C. Rulemaking is agency action.

Agency action also includes the whole or part of an agency rule. Iowa Code § 17A.2(2). Rulemaking challenges under chapter 17A are common. *See City of Des Moines v. Iowa Dep't of Transp.*, 911 N.W.2d 431, 440 (Iowa 2018); *Iowa Med. Soc'y v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 837 (Iowa 2013); *Teleconnect Co. v. Iowa State Com. Comm'n*, 404 N.W.2d 158, 161 (Iowa 1987). Indeed, chapter 17A is expressly "meant to apply to all rulemaking." Iowa

Code § 17A.1(2). And judicial review is even available to challenge an agency's *refusal* to promulgate a rule that a person petitions it to adopt. *See Litterer v. Judge*, 644 N.W.2d 357, 361 (Iowa 2002).

Because rulemaking is agency action, the district court could not address agency rules in this original action brought under the Iowa Constitution.

D. Because judicial review is available to challenge agency action, another adequate remedy exists, so injunctive relief is unavailable.

"[I]f a plaintiff has an adequate remedy at law, injunctive relief as an independent remedy is not available." *Lewis Invs.*, 703 N.W.2d at 185. Judicial review is an adequate remedy. *See Richards*, 270 N.W.2d at 621. And statutory judicial review is also a remedy at law. Not only is the remedy adequate, it's exclusive. Iowa Code § 17A.19. Because another remedy—the judicial review remedy—exists to address agency actions like franchise proceedings or rulemaking, injunctive relief addressing those things was unavailable here, and the district court erred in including those facets of injunctive relief in its decision. *See Lewis Invs.*, 703 N.W.2d at 185.

CONCLUSION

The Court should perpetuate the stay it has already granted; remove the improper relief from the district court's ruling; and maintain only the prospective portions of the district court order.

REQUEST FOR ORAL ARGUMENT

The State Appellants request oral argument.

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 Century Schoolbook in size 14 and contains 7,194 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, David M. Ranscht, hereby certify that on the 25th day of July, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal with via EDMS.

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