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IN THE SUPREME COURT OF IOWA
Supreme Court No. 24–0885
Polk County No. CVCV057085

LEONARD GREGORY, DEE J. RADEKE, SEAN O'GEARY, JERRY NEWELL, JOHN HRBEK, CHAD WELSH, CLARENCE FENTON, JACK HAYS, and JOSEPH LAWRENCE,

Plaintiffs-Appellants,

ZACHARY ZIMPEL, PHILIP STACY, RICHARD CORTEZ, GENE COOK, DONTE GILMORE, and MELVIN DENNIS,

Plaintiffs,

vs.

STATE OF IOWA, IOWA STATE LEGISLATURE, and IOWA DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County
The Honorable Jeffrey Farrell, District Judge
The Honorable Lawrence McLellan, District Judge

AMENDED BRIEF FOR APPELLEES

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STATEMENT OF THE ISSUES

1. Did the district court correctly reject Plaintiffs' facial overbreadth challenge to an Iowa law that prohibits inmates from obtaining publications with pictures that are sexually explicit or feature nudity?

2. Did the district court abuse its discretion by declining to exclude the State's expert from testifying?

3. Did the district court correctly conclude that section 904.310A(1) does not cover movies and television?

4. Can Plaintiff Hays establish error?

ROUTING STATEMENT

This Court should retain the case. Though federal courts have rejected facial overbreadth challenges to a materially identical federal law, this Court has not ruled on a facial overbreadth challenge to Iowa's law. This case thus presents an issue of first impression likely to recur in the future. *See* Iowa R. App. P. 6.1101(*a*), (*c*).

NATURE OF THE CASE

Section 904.310A prohibits the State from providing inmates with publications containing pictures that are "sexually explicit or feature[] nudity." Iowa Code § 904.310A(1); Iowa Admin. Code r. 201–20.2(904). In 2018, a group of inmates sued to enjoin enforcement of the law. D0003, Petition (09/18/2018). Relevant here, they argued that the law violated the Iowa Constitution's First Amendment analog. D0003 at ¶ 12.

After five-and-a-half years of litigation and a four-day bench trial, the district court rejected the inmates' challenge. D0734, Bench Trial Order (04/25/2024). Applying *Turner v. Safely*, 482 U.S. 78 (1987), the district court held that section 904.310A(1) did not violate the Iowa Constitution because the law was rationally connected to the State's interest in rehabilitation and inmate and staff safety. D0734 at 26–27. It also cited testimony that inmates used sexually explicit materials to harass correctional officers. D0734 at 27.

Two other rulings are relevant to this appeal. Before trial, the district court declined to strike the State's expert because Plaintiffs could not show that they were prejudiced by the State's late disclosure. D0670, Ruling on Pending Motions at 3–4 (02/06/2024). And at trial, the district

court excluded evidence of the Department of Corrections' regulation of movies and television because the law covers only printed material. D0791, Trial Tr. at 78:8 (02/19/2024).

In this appeal, Plaintiffs argue that each of these rulings was reversible error. *See* Represented Appellants' Brief at 12; Hays Brief at 37.

STATEMENT OF THE FACTS

A. Section 904.310A(1) prohibits materials that are sexually explicit or feature nudity in prisons.

Before 2018, the State allowed inmates to pore over sexually explicit photos in designated "reading rooms." Iowa Code § 904.310A (2017). Inmates could also keep publications featuring nudity in their cells. *See* D0734 at 5.

In 2018, the Legislature amended section 904.310A to stanch the flow of explicit materials into prisons:

> Funds appropriated to the department or other funds made available to the department shall not be used to distribute or make available any commercially published information or material to an inmate when such information or material is sexually explicit or features nudity.

Iowa Code § 904.310A(1) (2018). The new law was materially identical to a 1997 federal law called the Ensign Amendment. *See* 28 U.S.C.

§ 530C(b)(6). The law also authorized the Department of Corrections to adopt implementing rules. Iowa Code § 904.310A(2).

DOC's rules define the law's scope. The law covers "commercially published information," which means "any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document." Iowa Admin. Code r. 201–20.2(904). In other words, it covers printed material—not movies or television.

The law prohibits publications that are "sexually explicit" or "feature[] nudity"—but only if they contain "pictorial depiction[s]" that fit those categories. Iowa Code § 904.310A(1); Iowa Admin. Code r. 201–20.2(904) (defining "sexually explicit" and "nudity" as "pictorial depictions").

"Sexually explicit" means "a pictorial depiction" of a "sexual act[]." Iowa Admin. Code r. 201–20.2(904). There are two carve-outs from this category. It "does not include material of a news or information type." *Id.* And "[p]ublications concerning research or opinions on sexual, health, or reproductive issues should be admitted unless the publications are otherwise a threat to legitimate institutional interests." *Id.*

"Nudity" means "a pictorial depiction where genitalia or female breasts are exposed." *Id.* The law is not a nudity ban. It prohibits only commercial publications that "feature[] nudity," which means that the publication contains nudity "on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues." *Id.* Again, there is a carve-out: "[p]ublications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition." *Id.*

DOC updated its institutional policies in response to the new law and rules. Relevant here, DOC has an "incoming publications" policy. *See* D0696, Defs. Ex. B, OP-MTV-02 (Nov. 2018) at 1,6; D0697, Defs. Ex. C, OP-MTV-02 (Mar. 2022) at 1, 6. Under that policy, inmates are not allowed to have publications that "compromise the security of the institution," or contain a minor "engaged in . . . any act that is sexual in nature." D0697 at 6. After 2018, those standards were updated to incorporate the amended section 904.310A(1). D0696 at 6.

When an inmate requests a publication, the request is reviewed by officials at the inmate's institution. D0697 at 3. If the publication might violate DOC policy, the publication "shall be sent to the Publication

Review Committee," which consists of three members. D0697 at 3. The committee determines if the publication complies with DOC policy then issues a "Decision Memo" with its decision to ensure uniformity across institutions. D0697 at 5. Inmates can appeal publication denials. D0697 at 6.

DOC's guidelines for incoming publications do not cover movies and television, which are governed by a separate policy with different standards that do not rely on section 904.310A. *See* Iowa Dep't of Corr., Policy No. OP-RA-03 at 1 (Sept. 2022), https://perma.cc/PNJ5-3F7K.

B. Plaintiffs sue to enjoin enforcement of the law.

Plaintiffs are inmates at prisons across the State. *E.g.*, D0791 at 22:15–16 (Newton), 75:16–17 (Iowa State Penitentiary), 110:14–15 (Anamosa). They are serving sentences for crimes ranging from murder to sexual abuse of a minor. *E.g.*, D0791 at 115:9–10, 39:9–14. Some are sex offenders. *E.g.*, D0791 at 39:9–14 (Hays), 65:1–19 (Cook).

In September 2018, shortly after section 904.310A was enacted, Plaintiffs sued to enjoin enforcement of the law. D0003. They claimed that the law violated the federal and State constitutions, including the Iowa Constitution's First Amendment analog. D0003 at ¶ 18 ("The Code

of Iowa §904.310A is unconstitutional."). The group of Plaintiffs grew when the district court granted Plaintiff Hrbek's and Plaintiff Lawrence's motions to intervene. D0283, Order on Pending Motions at 3 (01/29/2020).

Early in the case, the district court granted Plaintiffs' request for a temporary injunction. D0039, Order on Motion For Temporary Injunction (04/03/2019) (Rosenberg, J.). Although the court "agree[d] with the Defendants that there are legitimate governmental interests limiting inmates' access to sexually explicit material," it enjoined DOC from "prevent[ing] the distribution of materials to the Plaintiffs and other inmates similarly situated that features mere, non-sexually explicit, nudity," D0039 at 8, 10.

Following discovery, the State moved for summary judgment. D0302, Defs. MSJ (03/05/2020). The district court denied the State's motion "regarding the freedom of speech, substantive due process, equal protection, and search and seizure" claims. D0454, Order Re; MSJs at 15 (03/19/2021) (McLellan, J.).

In its summary-judgment ruling, the district court addressed "the scope of plaintiffs' challenge." D0454 at 5; *see also* D0375, Order Re:

Motions to Compel at 6 (06/30/2020) (district court "acknowledg[ing]" in an earlier ruling that "it must determine whether section 904.310A is applicable to the distribution of TV programming and/or movies"). It rejected Plaintiffs' argument that their lawsuit included a challenge to movie and television regulations, explaining that "the statute and regulation do not cover television or movies," but instead "include[] only printed materials." D0454 at 5–6. "Because plaintiffs limited their challenge to the new law and did not separately challenge television or movies," the district court explained, "their claims are limited to IDOC's ban on printed materials pursuant to the statute and regulations." D0454 at 6.

The State sought and was granted an interlocutory appeal but later dismissed the appeal. D0470, Order Granting Interloc. Appeal (05/10/2021); D0492, Procedendo (08/24/2022). After the State dismissed its appeal, the district court re-opened discovery and ordered the State to produce its policies to Plaintiffs. D0621, Order After Discovery Conference (11/02/2023). The district court also set a new trial date. D0504, Order (12/28/2022).

Sixty days before trial, the State disclosed Dr. Anthony Tatman, a DOC psychologist who oversees sex-offender treatment, as a non-retained expert. D0630, Defs. Designation of Expert Witnesses (12/21/2023). Plaintiffs moved to strike Dr. Tatman, arguing that his disclosure was untimely because of a deadline in a previous trial-scheduling order. D0636, ASP Plfs. Resistance and Objections to Defs. Initial Disclosure of Witnesses at 1 (12/29/2023). In response, the State argued that neither the trial-scheduling order nor the 90-day expert disclosure deadline applied. D0637, Reply to Plfs. Resistance at 1–2 (01/05/2024).

The district court rejected Plaintiffs' argument that the trial scheduling order set the deadline for disclosing non-retained expert witnesses. D0670 at 3–4 (Farrell, J.). Instead, it held that Rule 1.500(2)(*d*)(1)'s 90-day expert-disclosure deadline applied, and so the State's disclosure of Dr. Tatman was 30 days late. D0670 at 4. But the district court declined to impose "the most severe discovery sanction"—excluding Dr. Tatman—because "plaintiffs have not shown that they are materially prejudiced by the late disclosure." D0670 at 4. It noted that "plaintiffs appear prepared for this testimony" and that "[t]here is no

indication that they would have retained a rebuttal expert requiring a trial continuance.” D0670 at 5.

C. After a bench trial, the district court rejects Plaintiffs’ challenge.

The district court held a four-day bench trial. D0734 at 3. At the outset, the parties disputed whether Plaintiffs could offer evidence regarding DOC’s regulation of television and movies. D0791 at 78:12–79:5. Keeping with past rulings, the district court excluded the evidence because the statute did not cover that media and Plaintiffs “did not separately challenge television or movies.” D0791 at 78:8. The court allowed Plaintiffs to make offers of proof, however. *E.g.*, D0791 at 82:24–83:4.

Many Plaintiffs testified at trial. They candidly explained why they wanted access to the publications that section 904.310A(1) prohibits. For example, Hrbek agreed that he needed certain materials “to meet some sort of sexual need,” and stated that “[i]t’s better than grabbing a female staff member.” D0791 at 158:8–10; *see also* D0791 at 30:19–25 (Fenton: “[B]eing very blunt, to masturbate around here, . . . [prison officials] don’t provide you an outlet. These books are an outlet for these guys.”).

Plaintiffs testified to the value of nude photos in prisons, explaining that the photos are "trade[d] . . . almost like baseball cards." D0791 at 167:3–4. Yet despite all the allegations of prohibited publications, Plaintiffs "did not introduce" any "books or publications as exhibits in the case." D0734 at 33. Finally, Plaintiffs described the effect that explicit materials had on some staff members. *See, e.g.*, D0791 at 24:20–21 (recounting when an inmate "would masturbate in front of [a prison official]").

The State called three witnesses, who the district court allowed Plaintiffs to cross-examine at length. D0791 at 16:20–21. First was DOC Executive Officer Rebecca Bowker, who served on the Publication Review Committee. D0789, Trial Tr. at 18:23–24, 20:15–16 (02/21/2024). She explained the neutral standards that the committee applies, and how the policy allows "images of women in bikinis," "women in lingerie," and a "medical journal of nude genitalia." D0789 at 85:10–22.

Next was Dr. Tatman, a DOC psychologist who oversees the supervision and treatment of sex offenders in the Fifth Judicial District. D0789 at 89:17–23. Over multiple objections by Plaintiffs, the district court found Dr. Tatman qualified to testify. *E.g.*, D0789 at 98:21–23 ("I

do think Dr. Tatman is an expert. . . . He's been working with sex offenders for a number of years."), 108:22–24 (similar).

Dr. Tatman explained that the materials that section 904.310A(1) prohibits negatively impact rehabilitation because they function like "an addictive drug," D0734 at 10, and "fuel[] possible deviant fires," D0789 at 102:18–22. He also testified in detail about the "link between materials containing nudity and violence." D0734 at 26. For example, these materials are "correlated with attitudes of sexual violence and sexually aggressive behavior." D0789 at 170:19–23.

Last was Nicholas Lamb, the Deputy Director of Institutional Operations for DOC and former prison warden. D0734 at 10. He explained that explicit materials are "traded on a regular basis and there is no means to prevent non-sex offenders from trading or giving it to sex offenders." D0734 at 10. He saw firsthand how "disputes over porn have led to physical fights." D0734 at 10. And he testified to seeing "female staff being harassed when inmates show them sexually related materials." D0734 at 10.

The district court rejected Plaintiffs' challenge to section 904.310A. D0734. Its ruling exhaustively surveyed cases interpreting a materially

identical federal law and made findings of fact. D0734 at 4–28. Relevant here, it applied the four-factor test established by *Turner v. Safely* to analyze whether the statute violated Plaintiffs' free-speech rights under the federal and State constitutions. D0734 at 17–28. The district court held that the Legislature could have rationally concluded that section 904.310A(1) was related to governmental interests of "rehabilitation, safety for inmates, and safety for staff." D0734 at 26.

This appeal followed. Plaintiffs Gregory, Radeke, O'Geary, Newell, Hrbek, Welsh, Fenton, and Lawrence, requested and received pro bono representation on appeal ("Represented Plaintiffs" or "Represented Appellants"). Plaintiff Jack Hays elected to proceed on appeal pro se. After requesting several extensions of time to file his opening brief, Hays missed his ultimate April 28, 2025 filing deadline. On May 21, this Court issued Hays a Notice of Default, instructing him to file and serve his opening brief within fifteen days of that notice, which would have been by June 5. Hays filed his brief on June 11.

ARGUMENT

I. The district court correctly rejected Plaintiffs' facial challenge.

In the district court, Plaintiffs challenged section 904.310A based on a variety of federal and State constitutional provisions. D0734 at 17–33. While Hays continues those challenges on appeal (Hays Brief at 17–23, 30–32, 33–34, 37), Represented Plaintiffs invoke only Article I, Section 7 of the Iowa Constitution. Represented Appellants' Brief at 26.

A. Error Preservation and Standard of Review.

Plaintiffs preserved their facial overbreadth challenge because they raised the argument in the district court and the district court rejected it. D0734 at 17–28.

This Court "review[s] the judgment of a district court following a bench trial in a law action for correction of errors at law." *Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 418 (Iowa 2005). This Court reviews constitutional claims de novo. *State v. Milner*, 571 N.W.2d 7, 12 (Iowa 1997) (citing *State v. Huisman*, 544 N.W.2d 433, 436 (Iowa 1996)).

"The district court's factual findings in a bench trial are binding on appeal if supported by substantial evidence." *Walnut Creek Townhome Ass'n v. Depositors Ins. Co.*, 913 N.W.2d 80, 87 (Iowa 2018) (quotation

marks omitted). Plaintiffs do not contend that the district court's findings lacked substantial evidence.

B. Plaintiffs pursue only a facial overbreadth challenge on appeal.

It is important to understand what type of free-speech challenge Plaintiffs pursue in this appeal—and what type they do not. There are two types of free-speech challenges: as-applied and facial. *See Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 764 (Iowa 2019).

"[A]n as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts." *Bonilla*, 930 N.W.2d at 764 (citation omitted). For example, if an inmate brings an as-applied First Amendment challenge to a prison's publication regulations, courts analyze the challenge by "considering each of the contested materials in turn and asking whether a ban on that particular item" is valid. *Sisney v. Kaemingk*, 15 F.4th 1181, 1191 (8th Cir. 2021) (quotation marks, emphasis, and brackets omitted). Because an as-applied challenge depends on the plaintiff-specific facts, "[t]he fact that the statute may be [unconstitutional] as applied to other factual scenarios is irrelevant." *State v. Robinson*, 618 N.W.2d 306, 314 (Iowa 2000).

By contrast, a facial challenge attacks the validity of a law in *all* its applications. *See Iowa Supreme Ct. Att'y Disciplinary Bd. v. Neff*, 5 N.W.3d 296, 311 (Iowa 2024). In the speech context, the plaintiff must show that "the ratio of unlawful-to-lawful applications is lopsided enough to justify the strong medicine of facial invalidation for overbreadth." *Id.* at 313 (citation and ellipsis omitted). In short, a plaintiff must prove facial overbreadth.

"Facial challenges are disfavored." *LULAC of Iowa v. Pate*, 950 N.W.2d 204, 209 (Iowa 2020); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024) ("[F]acial challenges are disfavored."). They "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Singer v. City of Orange City*, 15 N.W.3d 70, 77 (Iowa 2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450–51 (2008)). And they "run contrary to the fundamental principle of judicial restraint." *Id.* at 77 (quoting *Wash. State Grange*, 552 U.S. at 450–51).

So it is not surprising that facial challenges are "hard to win." *NetChoice*, 603 U.S. at 723. "[Plaintiffs] bring[ing] a facial

challenge . . . must meet [this Court's] very high standards for such challenges." *Singer*, 15 N.W.3d at 76.

In the district court, Plaintiffs brought both facial and as-applied challenges to section 904.310A. D0734 at 33. But in this appeal, Represented Plaintiffs pursue only their facial challenge. They describe their appeal as an "appeal following a final order holding Iowa Code section 904.310A(1) . . . *facially constitutional* under the Iowa Constitution." Represented Appellants' Brief at 13 (emphasis added). They do not assert that the the district court erred by rejecting their as-applied challenge. Nowhere in their brief do they use the words "as applied" in the relevant sense. And the only test they describe is for a facial challenge. Represented Appellants' Brief at 58. Accordingly, Represented Plaintiffs have waived or forfeited their as-applied challenge. *See State v. Jackson*, 4 N.W.3d 298, 311 (Iowa 2024) ("A party forfeits an issue on appeal when the party does not include the issue in its main brief. A party forfeits an issue on appeal when the party fails to clearly identify an issue on appeal." (internal citations omitted)).

In contrast, Hays purports to bring as as-applied challenge. Hays Brief at 17. ("Code of Iowa § 904.310A (2018) is unconstitutional under

both Iowa and U.S. Constitutions facially and as applied."). But Hays brings an as-applied challenge in name only. He does not argue that "statute is unconstitutional as applied to a particular set of facts." *See Bonilla*, 930 N.W.2d at 764 (citation omitted). Instead, he talks generally of "legitimate art, literature, and other publications." Hays Brief at 32–33. That perfunctory argument does not avoid waiver and forfeiture of Hays's as-applied challenge. *See Jackson*, 4 N.W.3d at 311 ("A party forfeits an issue on appeal when the party fails to make more than a perfunctory argument in support of the issue. . . . And, with respect to state constitutional claims, a party forfeits an issue on appeal when the party fails to develop his state constitutional claim in any meaningful way." (internal citations omitted)).

Even setting aside forfeiture, Plaintiffs' as-applied challenge fails for one simple reason: they did not present evidence of the challenged publications. *See Sisney*, 15 F.4th at 1191 (explaining that the analysis requires consideration of particular items). The district court explained that "plaintiffs did not introduce the books or publications as exhibits in the case so the court cannot judge the constitutionality as applied without that context." D0734 at 33.

To be sure, Hays testified generally that he was denied "artwork dealing with the Grinnell College curriculum that was involved in our art history syllabus." D0791, at 38:3–7. But Hays did not identify or specifically describe any particular publication. *Id.* at 33:3–38:17. Without that information, it is impossible for this Court to review any as-applied claims. *See Kaden v. Slykhuis*, 651 F.3d 966, 969 (8th Cir. 2011); *see also Josselyn v. Dennehy*, 333 F. App'x 581, 586 (1st Cir. 2009) ("[W]ithout copies of the excluded material or even specific descriptions of it, it was impossible for the district court (and is equally impossible for this court) to determine whether the regulation is invalid as applied."); *George v. Smith*, 507 F.3d 605, 608 (7th Cir. 2007) (similar).

C. Section 904.310A(1) is not facially overbroad.

Plaintiffs' facial challenge is analyzed in three steps. This Court "first determine[s] what [the law] covers." *Neff*, 5 N.W.3d at 312 (citation omitted); *accord NetChoice*, 603 U.S. at 724. Next, it "decide[s] which of the laws' applications violate the First Amendment," if any. *NetChoice*, 603 U.S. at 725; *accord Neff*, 5 N.W.3d at 311–13. And finally, it weighs "the ratio of unlawful-to-lawful applications" and determines whether that ratio "is lopsided enough to justify the 'strong medicine' of facial

invalidation for overbreadth." *Neff*, 5 N.W.3d at 313 (cleaned up). For each of the three steps, Plaintiffs bear the burden. *See id*.

1. Section 904.310A(1) applies to commercially printed materials that are sexually explicit or feature nudity.

Start with the law's scope. It prohibits "commercially published information or material . . . when such information or material is sexually explicit or features nudity." Iowa Code § 904.310A(1). Because the law applies only to "commercially published" materials, it does not cover "private drawings[]" or personal photos. *See State v. Iowa Dist. Ct. for Jasper Cnty.*, No. 23-1556, 2025 WL 412547, at *3 (Iowa Ct. App. Feb. 5, 2025).

Regulations further limit the law's scope and are a necessary part of the overbreadth analysis. *See Neff*, 5 N.W.3d at 312 (explaining that involves considering "limiting construction[s]" (citation omitted)); Iowa Code § 4.4(1) (presumption of constitutional compliance); *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 n.5 (1982) ("In evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a[n] . . . enforcement agency has proffered.").

The law applies only to "[c]ommercially published information of materials" which means printed materials, such as books, magazines, or photographs—it does not cover movies or television. Iowa Admin. Code r. 201–20.2(904). Though Represented Plaintiffs reference an unadmitted affidavit that could be interpreted to suggest otherwise, Represented Appellants' Brief at 66, no DOC official testified at trial that section 904.310A(1) applies to movies or television.

DOC has separate policies for publications and recreational media. On one hand, DOC's "incoming publications" policy cites to section 904.310A(1) as its "Iowa Code Reference" and the law's relevant administrative rules as its "Administrative Code Reference." D0696 at 1; D0697 at 1. On the other, DOC's "recreation programs" policy covers movies and television. OP-RA-03 at 1. That policy does not refer to section 904.310A(1) or its implementing regulations, and the standards for approval are different than those for publications. *See, e.g.*, OP-RA-03 at 3 ("Videos shall not be shown in an institution that have a greater rating than PG-13.").

Next, section 904.310A(1) covers only commercially published materials that "[are] sexually explicit or feature[] nudity." Those

categories include only "pictorial depiction[s]," Iowa Admin. Code r. 201–20.2(904), so a book's text would not be covered.

Both categories also have carve-outs. The definition of "sexually explicit" "does not include material of a news or information type," and requires that "[p]ublications concerning research or opinions on sexual, health, or reproductive issues should be admitted unless the publications are otherwise a threat to legitimate institutional interests." *Id.* And the definition of "nudity" explains that "[p]ublications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition." *Id.*

Nor is the law a ban on nude photos. It is limited to commercial publications that "feature[] nudity," which means the material "contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues." *Id.*

DOC Executive Officer Bowker, who serves on the publication review committee, explained the types of printed photos that section 904.310A(1) permits. For example, "images of women in bikinis" and "women in lingerie" are allowed, "so long as their breasts and

genitalia are covered." D0789 at 85:1–17. And the exceptions permit inmates to access materials that contain nudity or are sexually explicit, such as "a medical journal of nude genitalia." D0789 at 85:19–22.

2. None of section 904.310A's applications violate the Iowa Constitution.

With the law's scope in mind, the next step is to determine whether any of section 904.310A(1)'s applications violate Article I, Section 7 of the Iowa Constitution. The district court correctly held that none do.

a. The *Turner* test applies here.

Because Article I, Section 7 imposes the same restrictions as the First Amendment, the district court correctly applied the *Turner* test to evaluate whether any application of section 904.310A(1) is unconstitutional. D0734 at 26–28.

In materially identical language to the First Amendment, Article I, Section 7 states that "[n]o law shall be passed to restrain or abridge the liberty of speech, or of the press." Iowa Const. art. I, § 7; *cf.* U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech, or of the press."). Nevertheless, Plaintiffs argue that Article I, Section 7's protections are different from the First Amendment.

Represented Appellants' Brief at 39–46; Hays Brief at 32–36. But that argument runs into a wall of precedent.

This Court has long held that "[t]he Iowa Constitution also protects free speech and imposes the 'same restrictions on the regulation of speech as does the Federal Constitution.'" *In re Adoption of S.J.D.*, 641 N.W.2d 794, 802 (Iowa 2002) (quoting *State v. Milner*, 571 N.W.2d 7, 12 (Iowa 1997)); *accord Bierman v. Weier*, 826 N.W.2d 436, 451 (Iowa 2013) (same); *Mall Real Est., L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 205 (Iowa 2012) (Waterman, J., dissenting) ("[T]he protection for the expressive conduct at issue is the same under the Iowa and Federal Constitutions."); *see also Des Moines Reg. & Trib. Co. v. Osmundson*, 248 N.W.2d 493, 498 (Iowa 1976) ("[T]he federal and state constitutional provisions, which contain almost identical language, impose the same limitation on abridgement of freedom of the press.").

That long line of precedent accords with the "substantial majority" of state courts that interpret their "nearly identical" free-speech protections "as being coextensive with that of the First Amendment to the federal constitution." *City of W. Des Moines v. Engler*, 641 N.W.2d 803, 805 (Iowa 2002).

The Court of Appeals has applied that longstanding rule, too. *See State v. Hill*, No. 12-2275, 2015 WL 3613313, at *3 (Iowa Ct. App. 2015) ("Our supreme court has generally viewed the federal and state constitutional provisions as coextensive. Accordingly, we will interpret the scope of the state constitutional provisions to track with the federal interpretations of the First Amendment." (internal citations omitted)).

So have federal courts interpreting this Court's precedent. *See Ackerman v. Iowa*, 19 F.4th 1045, 1062 (8th Cir. 2021) ("The parties have not identified any meaningful difference between the state and federal constitutional [First Amendment] protections."); *Sahr v. City of Des Moines, Iowa*, 666 F. Supp. 3d 861, 894 (S.D. Iowa) (interpreting the Iowa and federal speech protections as coextensive).

Plaintiffs do not ask this Court to overrule its longstanding precedent. Nor do they offer any good reason to depart from it. In a nutshell, Represented Plaintiffs' argument is that Article I, Section 7 is more protective of inmates' right to access explicit materials than the First Amendment because that section (1) applies to inmates and (2) covers nudity. *See* Represented Appellants' Brief at 40–43. And while Hays argues that "[u]nder the Iowa Constitutional right to 'equal

protection' alone, the Plaintiff's have greater protection under the Iowa Constitution," he does not address this Court's long line of free speech precedent. Nor does he ask the Court to overrule it. Hays Brief at 35.

And Represented Plaintiffs' arguments are not enough to distinguish Section 7 from the First Amendment because the same two characteristics are true of the First Amendment. The First Amendment applies to inmates. *See O'Lone v. Est. of Shabazz*, 482 U.S. 342, 348 (1987) ("Inmates clearly retain protections afforded by the First Amendment."). And the First Amendment protects nudity. *See Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 66 (1981) ("Nudity alone does not place otherwise protected material outside the mantle of the First Amendment." (brackets and quotation marks omitted)). The issue is not the scope of Section 7's protections, but instead how those protections apply in prisons.

Plaintiffs cannot point to anything in Section 7's text that shows that the Framers intended for State inmates to have more speech rights than the federal constitution guarantees. Represented Plaintiffs note that "[e]arly Iowa accounts recognize" the "importance of prisoners['] ability to have sufficient reading material." Represented Appellants'

Brief at 42. But that "reading material" was carefully selected by prison officials and certainly did not include nude pictures. *See* Warden's Office, *Report of the Warden of the Iowa Penitentiary to the Governor of the State of Iowa* at 8 (1862), https://perma.cc/VD35-K58N (explaining that reading material is "selected expressly to suit an institution of this kind"); Iowa Admin. Code r. 201–20.2(904) (defining "sexually explicit" and "nudity" as "pictorial depiction[s]").

Consider the views of Miss Robinson, a prison librarian in the early 1900s. *See* Patricia Newell Dawson, Univ. of Iowa Sch. of Library Sci., *History of Institutional Libraries in Iowa* at 25–27 (1968) (unpublished report), https://perma.cc/7LKR-VCVE. "Miss Robinson felt that good selection was the answer for the institutions with normal or near-normal people," *id.* at 23:

> What is needed are clean, manly stories with incident and action which, while they interest and entertain, shall also leave the reader with a higher appreciation of the value of human life, a keener relish for wholesome pleasure, a deeper sympathy with suffering, a saner outlook upon life, a greater love for state and county, and a deeper desire to play well his part therein.

Id. at 25. Pictures of "actual or simulated sexual acts" or exposed "genitalia or female breasts" do not fit that category. Iowa Admin. Code r. 201–20.2(904) (defining "sexually explicit" and "nudity").

Neither the text nor history Plaintiffs cite demonstrates that this Court should overrule its longstanding precedent that the Iowa Constitution imposes the same restrictions as the First Amendment.

* * *

Because "[t]he Iowa Constitution . . . imposes the same restrictions on the regulation of speech as does the Federal Constitution," *In re Adoption of S.J.D.*, 641 N.W.2d at 802 (quotation marks omitted), this Court should apply the test in *Turner v. Safely*, 482 U.S. 78, to evaluate whether any application of Section 904.310A(1) is unconstitutional. Represented Plaintiffs agree. Represented Appellants' Brief at 39 n.5 ("The Court should apply *Turner* if it declines to adopt a heightened scrutiny test.").

Hays instead ignores *Turner* completely and argues that this Court should apply strict scrutiny. Hays Brief at 34–36. But the Supreme Court in *Turner* expressly rejected the Eighth Circuit's application of strict scrutiny "in determining the constitutionality of prison rules." *Turner*,

482 U.S. at 81. Rather, a "lesser standard of scrutiny" "is necessary if "prison administrators . . . and not the courts, [are] to make the difficult judgments concerning institutional operations." *Id.* at 81, 89 (quoting *Jones v. N. Carolina Prisoners' Union*, 433 U.S. 119, 128 (1977)). In contrast, "[s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration," "distorting the decisionmaking process," and "unnecessarily perpetuat[ing] the involvement of the . . . courts in affairs of prison administration." *Id.* at 89 (internal citation and quotation marks omitted). Those policy considerations apply with equal force to State prison administration, making strict scrutiny likewise inappropriate.

In *Turner*, the Supreme Court laid out a four-factor test to analyze whether prison regulations that impact an inmate's free-speech rights violate the First Amendment. 482 U.S. at 89–90. *First*, "there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89 (quotation marks omitted). *Second*, "whether there are alternative means

of exercising the right that remain open to prison inmates." *Id.* at 90. *Third*, whether accommodating the inmates' request would "have a significant 'ripple effect' on fellow inmates or on prison staff." *Id. Fourth*, "the absence of ready alternatives is evidence of the reasonableness of a prison regulation." *Id.* This Court has since adopted *Turner*'s four-factor test to determine whether a law or regulation is reasonably related to penological interests. *See Bryson v. Iowa Dist. Ct.*, 515 N.W.2d 10, 11 (Iowa 1994), *overruled on other grounds by James v. State*, 541 N.W.2d 864 (Iowa 1995) (quoting *Turner*, 482 U.S. at 89).

b. Applying *Turner*, courts have uniformly rejected facial challenges to a materially identical federal law.

Dozens of courts have applied *Turner* to a federal law that is materially identical to section 904.310A(1). And they have uniformly upheld that materially identical law against facial overbreadth challenges.

Section 904.310A(1) mirrors the federal Ensign Amendment, which states that "no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity." 28 U.S.C. § 530C(b)(6); *cf.* Iowa Code

§ 904.310A(1) ("Funds appropriated to the department or other funds made available to the department shall not be used to distribute or make available any commercially published information or material to an inmate when such information or material is sexually explicit or features nudity").

The Ensign Amendment's implementing regulations define "nudity" and "features" in essentially the same way the State does. *Compare* 28 C.F.R. §§ 570.72(b)(2)–(3), *with* Iowa Admin. Code r. 201–20.2(904). Plaintiff Hays put it well: the State "merely copied the federal Ensign amendment." D0645, Motion to Deny Designated "Expert" at 1 (01/24/2024).

In the context of facial challenges, "[c]ourts uniformly hold that the Ensign Amendment and the Bureau of Prison's implementing regulations do not violate a prisoner's First Amendment rights." *Reynolds v. Rios*, No. 1:10-CV-00051, 2012 WL 273606, at *3 (E.D. Cal. Jan. 30, 2012) (italics omitted) (collecting cases); *see also, e.g.*, *Sisney*, 15 F.4th at 1199; *Amatel v. Reno*, 156 F.3d 192, 194 (D.C. Cir. 1998); *Brooks v. Bledsoe*, 682 F. App'x 164, 168–69 (3d Cir. 2017); *Jordan v. Sosa*, 577 F. Supp. 2d 1162, 1172 (D. Colo. 2008). The State is not aware of—nor do

Plaintiffs cite—any case sustaining a facial challenge to the Ensign Amendment.[1]

So when faced with challenges identical to the one Plaintiffs bring in this appeal, courts have "uniformly" rejected those challenges. *Reynolds*, 2012 WL 273606, at *3. Plaintiffs do not address those authorities. They thus fail to explain why this Court should interpret a materially identical statute and an identical right differently than the dozens of courts that have addressed the same question before. This Court should not blaze a new path when applying *Turner*.

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[1] Hays asserts that the Ensign Amendment—and by extension Section 904.310A(1)—are inconsistent with Iowa's Constitution because the Ensign Amendment was meant to "punish prisoners." Hays Brief at 13, 22–21. But this Court does not override statutory text based on legislator comments or statements of purpose. *See Donnelly v. Bd. of Trs.*, 403 N.W.2d 768, 771–72 (Iowa 1987); *see also Ambassador Books & Video, Inc. v. City of Little Rock, Ark.*, 20 F.3d 858, 863 (8th Cir. 1994) ("It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." (quoting *United States v. O'Brien*, 391 U.S. 367, 383 (1968))); *In re Hubbard*, 803 F.3d 1298, 1312 (11th Cir. 2015); *Bailey v. Callaghan*, 715 F.3d 956, 960 (6th Cir. 2013); *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 652 (7th Cir. 2013).

c. The district court correctly concluded that section 904.310A(1) satisfies *Turner*'s first factor.

Relying on that mountain of authority, the district court correctly concluded that section 904.310A(1) satisfied each of *Turner*'s factors. D0734 at 26–28.

The first factor asks whether there is a "rational connection between the prison regulation and the legitimate governmental interest." *Turner*, 482 U.S. at 89. It is essentially rational-basis review. *See Amatel*, 156 F.3d at 198–99 ("[*Turner*'s] standard is, if not identical, something very similar [to rational-basis review]."); *cf. Lime Lounge, LLC v. City of Des Moines*, 4 N.W.3d 642, 659 (Iowa 2024) ("Under the rational basis test, we must determine whether the ordinance in question is rationally related to a legitimate governmental interest." (citation omitted)).

The rational-connection inquiry asks, "not whether the regulation in fact advances the government interest, [but] only whether the legislature might reasonably have thought that it would." *Amatel*, 156 F.3d at 199. That tracks this Court's rational-basis inquiry in other contexts. *See Iowa State Educ. Ass'n v. State*, 928 N.W.2d 11, 16 (Iowa

2019) (asking if there is "any reasonably conceivable state of facts that could provide a rational basis for the classification" (citation omitted)).

Often, the connection between the regulation and the government's interest will be "a matter of common sense." *Sisney*, 15 F.4th at 1191 (quotation marks omitted); *see also Amatel*, 156 F.3d at 199 (explaining that *Turner* "scoured the record for evidence of a rational link between the asserted security interests and the marriage ban because common sense does not suggest any"); *Wolf v. Ashcroft*, 297 F.3d 305, 308–09 (3d Cir. 2002) ("[T]he connection may be a matter of common sense."). In those cases, the government need not put forth any evidence establishing the rationality of the connection. *See, e.g.*, *Sisney*, 15 F.4th at 1191. This reflects principle from rational-basis review that "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

If the connection is not a matter of common sense, "the prison must proffer some evidence to support the existence of such a connection." *Id.* (quotation marks omitted). This light burden does not require "sophisticated multiple regression analyses or other social science data."

Amatel, 156 F.3d at 199. "For judges seeking only a reasonable connection between legislative goals and actions, scientific indeterminacy is determinative." *Id*. As the district court correctly observed, "there is no need for factual proof to support the nexus, in part, because United States Supreme Court precedent requires the courts to accord substantial deference to the informed judgment of prison officials on matters of prison administration." D0734 at 19.

Following a four-day bench trial, the district court held that the Legislature could have rationally concluded that section 904.310A(1) advanced rehabilitation and inmate and staff safety. D0734 at 26–27. Also, the district court mentioned the State's evidence that the law was rationally connected to ensuring a non-hostile work environment. D0734 at 27. Each of those three grounds is independently sufficient to satisfy the first *Turner* factor.

Rehabilitation. The district court held that section 904.310A(1) was rationally connected to providing "rehabilitation benefits" to inmates. D0734 at 27. Common sense and trial testimony demonstrated that removing materials that are sexually explicit or feature nudity:

(1) prevents addiction, (2) removes fuel for deviant thinking, and (3) stops reinforcement of negative character traits.

The district court relied on testimony from Dr. Tatman, a psychologist who supervises sex-offender treatment for the State prison system. D0789 at 90:8–15. Dr. Tatman explained that in his profession, materials that are sexually explicit or feature nudity are "generally call[ed] pornography." D0789 at 95:16–19. Using that definition, Dr. Tatman explained that "[pornography] hinders rehabilitation" of sex offenders. D0789 at 102:15. He explained that this happens in two distinct ways: addiction and fueling deviant thoughts.

First, Dr. Tatman explained that "porn [i]s similar to an addictive drug." D0734 at 10. "Pornography, when viewed, provides a dopamine dump in the brain." D0789 at 114:6–7. "[A]n individual will need more and more novel experiences, new experiences, fun experiences, to reach the same level of dopamine dump or feel-good experience." D0789 at 114:14–18. "So they're going to continue to look and look and look and spending more and more time, which would then impact possibly work, expectations at home, relationships." D0789 at 114:23–25. And for some, Dr. Tatman continued, that leads to "[m]ore deviant porn." D0789 at

114:18. Importantly, Dr. Tatman's description of the addiction process applies to sex offenders across the State, not just those at Newton. Nor did he depart from his broad clinical definition of "pornography" when describing the addiction process.

It is rational for the Legislature to conclude that prohibiting materials that are sexually explicit or feature nudity—in Dr. Tatman's words, "pornography"—advances rehabilitation. After all, it is certainly within the State's interest in rehabilitation to take steps to ensure that inmates do not develop addictions in prison. Indeed, even without Dr. Tatman's testimony, courts have concluded that the same prohibition is supported by "common sense." *See, e.g.*, *Amatel*, 156 F.3d at 199.

It is also rational for the Legislature to apply the prohibition to all inmates. That is because "DOC holds sex offenders at all prisons in Iowa." D0734 at 10. In each prison, "porn is traded on a regular basis and there is no means to prevent non-sex offenders from trading or giving it to sex offenders." D0734 at 10; *see also Thornburgh v. Abbott*, 490 U.S. 401, 412 (1989) ("[M]aterial of this kind reasonably may be expected to circulate among prisoners."). Plaintiffs agreed "that materials containing nudity

or sexually explicit photos are routinely traded or shared in the prison," D0734 at 10—"almost like baseball cards," D0791 at 167:4.

"A blanket ban prevents non-sex offenders from trading or dealing the sexually explicit materials with sex offenders." *Sperry v. Werholtz*, 413 F. App'x 31, 41 (10th Cir. 2011); *see also Ramirez v. Pugh*, 486 F. Supp. 2d 421, 429 (M.D. Pa. 2007) (explaining why a sex-offender-only ban would be ineffective).

Second, Dr. Tatman explained that materials that are sexually explicit or feature nudity "hinder rehabilitation because it causes arousal and fuels deviant factors." D0734 at 10. Sex offenders may use these images to "reinforce[] problematic scripts." D0789 at 103:2–3. A "script" is a sex-offender's "internal dialogue of what is acceptable." D0789 at 103:4–5. Dr. Tatman explained that prison officials "just don't know" what sex offenders are "aroused to, and pornography . . . fuel[s] that arousal." D0789 at 102:12–14. "If we allow [sex offenders] to look at porn," he explained, "[sex offenders] are then fueling possible deviant fires that we don't know about, hindering the ability to really move forward." D0789 at 102:18–22. Thus, sex offenders are not allowed to possess

materials that feature nudity even when released on probation or parole. D0789 at 95:12–15.

Plaintiffs contend that Dr. Tatman's expert testimony on rehabilitation is irrelevant because he did not specifically testify to sex-offender treatment outside of the central treatment program at Newton. Represented Appellants' Brief at 53–54. The district court rejected that argument: "Each prison houses sex offenders, so it is reasonable to believe there may be some rehabilitation benefits even though they are not in a sex offender treatment program at that time." D0734 at 27.

The district court's point was this: preventing the harmful internal dialogue that can be spurred by explicit materials is rationally connected to a sex offender's rehabilitation, regardless of whether the inmate is in a formal treatment program. Just as it is rational to conclude that an alcoholic benefits from a sober environment even when not at a treatment facility, so too is it rational to conclude that a sex offender would benefit from an environment that prevents him from consuming materials that "reinforce[] problematic scripts," D0789 at 103:2–3, regardless of whether he is in treatment at Newton.

Courts agree. *See, e.g.*, *Amatel*, 156 F.3d at 199; *Fauconier v. Clarke*, 257 F. Supp. 3d 746, 756 (W.D. Va. 2017), *aff'd*, 709 F. App'x 174 (4th Cir. 2018) ("[D]efendants could rationally believe that there is a connection between sexually explicit and nude images and rehabilitation."); *Boyd v. Stalder*, No. 5:03-cv-01249, 2008 WL 2977363, at *3 (W.D. La. Aug. 1, 2008) ("[T]here is a valid, rational connection . . . between . . . rehabilitation concerns and a policy banning nudity and sexually explicit materials."). Relatedly, there is a "rational relationship between bans on sexually explicit materials and the rehabilitative goal of reducing the likelihood that sexual offenders will commit future sex crimes or violence against women." *Reynolds v. Quiros*, 25 F.4th 72, 89 (2d Cir. 2022) (quotation marks omitted). As Dr. Tatman explained, one of the problematic scripts is "rape fantasy." D0789 at 102:24.

Plaintiffs also claim that the State needed to "provide[] . . . data to indicate how many sex offenders are in Iowa's prisons" to "establish[] a valid, rational connection" to rehabilitation. Represented Appellants' Brief at 53. That argument asks this Court to conduct a policy review, not a rational-basis review. "[A]ll that *Turner* requires is that there be a

rational connection between the policy and the regulation," not that the decision be the most effective policy choice. *Reynolds*, 25 F.4th at 90; *see also Amatel*, 156 F.3d at 199 ("We do not think, however, that common sense must be the mere handmaiden of social science data or expert testimonials in evaluating congressional judgments.").

In support of their data requirement, Represented Plaintiffs cite *Ramirez v. Pugh*, 379 F.3d 122 (3d Cir. 2004), which remanded for a district court to do factfinding because it initially ruled "without any analysis or inquiry into the interests involved and the connection between those interests." *Id.* at 128. On remand, the district court rejected the same argument Plaintiffs make: "even though sex offenders may be a small percentage of the population"—"less than 3%"—"the government's interest in rehabilitating sex offenders is so strong that we cannot find it arbitrary or irrational to prevent the general inmate population from possessing *Playboy* and *Penthouse* for the sake of rehabilitating sex offenders." *Ramirez*, 486 F. Supp. 2d at 430.

Finally, the third way in which section 904.310A(1) is connected to rehabilitation is a matter of common sense: allowing inmates to consume pornography thwarts their character growth. *See* D0706, Defs' Post-Trial

Brief at 13 (03/05/2024). "[The Legislature] could rationally have seen a connection between pornography and rehabilitative values" because it "might well perceive pornography as tending generally to thwart the character growth of its consumers." *Amatel*, 156 F.3d at 199 (rejecting a challenge to the Ensign Amendment). Magazines like *Playboy* "treat[] women purely as objects of male sexual gratification." *Id*. Plaintiff Fenton's explanation for why he seeks this material illustrates the point: "My God, we're trying to see boobs." D0790, Trial Tr. at 32:8 (02/20/2024).

Allowing inmates to serve their time pouring over pictures that are sexually explicit or feature nudity hardly helps their rehabilitation. "Common sense tells us that prisoners are more likely to develop the now-missing self-control and respect for others if prevented from poring over pictures that are themselves degrading and disrespectful." *Amatel*, 156 F.3d at 199. Plaintiffs cannot establish that it is irrational for the Legislature to conclude that prohibiting materials that objectify women serves a rehabilitative purpose.

Inmate and Staff Safety. The district court also held that the Legislature could have rationally concluded that section 904.310A(1) was connected to "inmate and staff safety." D0734 at 26. And it correctly

observed that "many other courts" have reached the same conclusion. D0734 at 26. This connection occurs in two ways.

First, "Dr. Tatman testified that studies support a link between materials containing nudity and violence in prisons." D0734 at 26. Relying on "meta analyses"—which means "the study of studies" and are considered the "highest standard of research you can refer to," D0789 at 110:13–16—Dr. Tatman explained that "the consumption of pornography [is] significantly associated with increased verbal and physical aggression," D0789 at 111:3–6. For example, men who read *Playboy*—the very magazine Plaintiffs seek here, D0734 at 14—"expressed greater intent to commit rape should they be assured they would not get caught." D0789 at 112:9–12. "[P]ornography consumption effects [sic] nonsexual aggression and attitudes of sexual violence," and is "correlated with attitudes of sexual violence and sexually aggressive behavior." D0789 at 170:19–23.

Plaintiffs disagree with Dr. Tatman's expert conclusions, despite having no experience in the field (other than perhaps receiving sex-offender treatment themselves) and offering no evidence to the contrary. They quibble with Dr. Tatman's definition of "pornography," Represented

Appellants' Brief at 49; Hays Brief at 26–28, but Dr. Tatman explained that, as he used the term, "pornography" included the same materials covered by Section 904.310A(1). *See* D0789 at 95:16–19. The district court's factual finding confirms this: "Dr. Tatman testified that studies support a link between *materials containing nudity* and violence in prisons." D0734 at 26 (emphasis added).

Plaintiffs also emphasize Dr. Tatman's testimony that the studies he relied on found "associations and degrees of strength," but not that "A absolutely causes B." D0789 at 150:18–19, 16; Represented Appellants' Brief at 49; *see also* Hays Brief at 24–26 (challenging the validity of Dr. Tatman's empirical evidence). But that is just an accurate description of statistical evidence by a well-qualified social scientist. "[D]eciding whether associations are causal typically is not a matter of statistics alone, but also rests on scientific judgment." David H. Kaye & David A. Freeman, *Reference Guide on Statistics*, *in* Reference Manual on Scientific Evidence at 222 (Fed. Jud. Ctr., 3d. ed. 2011). The Legislature could rationally rely on the scientific judgment of Dr. Tatman and countless others that there is "a link between materials containing nudity and violence in prisons." D0734 at 26.

Plaintiffs also claim that the studies Dr. Tatman relied on had a "shaky theoretical foundation." Represented Appellants' Brief at 49, 48–49; *see also* Hays Brief at 24–26. To be sure, as Dr. Tatman acknowledged, the connection between sexually explicit materials is a subject of debate. D0789 at 131:11–17. But debate does not prove irrationality. "For [courts] seeking only a reasonable connection between legislative goals and actions, scientific indeterminacy is determinative." *Amatel*, 156 F.3d at 200–01; *see also Trowbridge v. Indiana Dep't of Correction*, 854 F. App'x 84, 86 (7th Cir. 2021) (discussing some of the same articles Plaintiffs relied on in their crosses). Even if the evidence was "far from definitive on the relationship between inmate aggression and the viewing of pornography, [the State] [is] not required to demonstrate extensive empirical support before making the common sense determination that these photographs may provoke violence." *Reynolds*, 25 F.4th at 88 (quotation marks and ellipsis omitted omitted).

Dr. Tatman's testimony is not the only evidence supporting the connection between section 904.310A(1) and safety. The district court found that Dr. Tatman's testimony was "corroborate[d]" by Deputy Director of Institutional Operations Lamb's experience with "specific

instances of inmates committing assaults or harassing female staff over porn." D0734 at 27. Lamb has "had offenders who have been caught with pornography that have committed sexual assaults." D0788, Trial Tr. at 16:1–4 (02/22/2024).

To be sure, Represented Plaintiffs question whether Lamb's definition of "pornography" is the same as Dr. Tatman's, and note that he has not personally observed "any issue since [he] been working here with the nudity." D0788 at 26:14–16; Represented Appellants' Brief at 50–51.

But even if this Court were to "impute [Lamb's] . . . experience . . . to all prisons controlled by the [State], and assume *arguendo* that none of the [State] prisons experienced security issues, . . . this in of itself would not render the [Section 904.310A(1)'s] prohibition[s] . . . irrational." *Ramirez*, 486 F. Supp. 2d at 434. "[P]rison officials need not prove the banned material actually caused problems in the past, or that the materials are 'likely' to cause problems in the future." *Id.* at 434 (quoting *Mauro v. Arpaio,* 188 F.3d 1054, 1060 (9th Cir. 1999) (en banc)). Establishing a "potential danger" is enough. *Id.*

Once again, courts agree. *See, e.g.*, *Reynolds*, 25 F.4th at 89 (collecting cases and recognizing a "reasonable belief that the

pornography ban would improve safety and security in the prison by reducing the amount of inmate-on-inmate sexual violence"); *Prison Legal News v. Ryan*, 39 F.4th 1121, 1132 (9th Cir. 2022) ("[I]t is rational for prison officials to restrict sexually explicit materials to mitigate prison violence and advance related interests.").

Second, the district court held that the Legislature could rationally conclude that prohibiting materials that are sexually explicit or feature nudity advances prison safety because it removes a cause for conflict amongst inmates. D0734 at 27. Lamb testified that he has had inmates who "committed sexual assaults or other violent assaults against other offenders fighting over pornography." D0788 at 16:1–4. Elsewhere, the district court highlighted Lamb's testimony that "he has had to discipline inmates because disputes over porn have led to physical fights." D0734 at 10.

Other courts have recognized the connection between sexually explicit materials and safety, too. *See Thornburgh*, 490 U.S. at 412 ("[M]aterial of this kind reasonably may be expected to circulate among prisoners, with the concomitant potential for coordinated disruptive conduct."); *Prison Legal News*, 39 F.4th at 1135 (recognizing that "the

bartering of sexually explicit materials . . . could in turn lead to fights between inmates" (quotation marks omitted)).

Just as it is rational to take a toy from children who are fighting over it to prevent conflict, so too is it rational for the Legislature to remove explicit materials that cause violent conflicts. *See Murphy v. Mo. Dep't of Corr.,* 372 F.3d 979, 986 (8th Cir.2004) (holding that a prison "regulation that allows for censorship of incoming items that are likely to incite violence is related to the institutional needs of maintaining a controlled and secure environment").

Non-hostile Work Environment. Section 904.310A(1) is also rationally connected to a governmental interest in maintaining a non-hostile work environment. Though the district court did not specifically use this term, it recognized the interest by highlighting instances of assault and harassment of female staff in its discussion of the law's relationship to safety. *See, e.g.*, D0734 at 27 ("Mr. Lamb discussed specific instances of inmates committing assaults or harassing female staff over porn."); *see also* D0706 at 14; D0305, Defs. App'x at 43 (03/06/20) (former Warden explaining that DOC advocated for the law "to prevent the harassment of staff").

Maintaining a non-hostile work environment is a legitimate governmental interest. *See Mauro*, 188 F.3d at 1059 ("[T]here is no doubt that . . . that reducing sexual harassment in particular . . . is legitimate."); *accord Reynolds*, 25 F.4th at 85.

Inmates use sexually explicit materials to harass female staff. Lamb testified that inmates "harass female staff by posting explicit materials in the cell" where they are "easily viewed by female staff." D0788 at 17:8–11. And inmates will "show certain publications to female staff and make unwanted, unprofessional comments towards those female staff in a sexual manner." D0788 at 17:11–14. This problem is not unique to Iowa. *See, e.g.*, *Reynolds*, 25 F.4th at 85–86; *Trowbridge*, 854 F. App'x at 85.

Plaintiff Fenton's testimony illustrates the point. He explained: "[W]e're trying to see boobs. . . . If you're offended by it, then seek employment elsewhere. You know, if you want to be a female CO or a male CO, then you're going to see that stuff. And it will happen." D0790 at 32:8–13.

The Legislature could rationally conclude that taking away a mechanism of harassment creates a better work environment. "Common

sense dictates that, if the possession and display of these sexually explicit pictorial materials by inmates created an offensive and hostile workplace environment for staff, banning such materials is a rational means of rectifying and improving that workplace environment." *Reynolds*, 25 F.4th at 86.

* * *

Turner also requires that the legitimate governmental objective be "neutral." 482 U.S. at 90. Plaintiffs do not mention or contest this requirement in their briefs, so any argument that the objective is not neutral is forfeited.

In this context, "neutral" "means no more than that 'the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression.'" *Amatel*, 156 F.3d at 197 (quoting *Thornburgh*, 490 U.S. at 415); *see id.* at 197 (calling this a "rather thin neutrality requirement"). For example, prohibiting speech "solely on the basis of their potential implications for prison security" satisfies the requirement. *Thornburgh*, 490 U.S. at 415–16.

Section 904.310A(1) meets that requirement because it distinguishes between materials based on their implications for rehabilitation, prison security, and a non-hostile work environment. *See Reynolds*, 25 F.4th at 91–92 (reaching the same conclusion for a similar law for the same three governmental interests); *Amatel*, 156 F.3d at 196–97 (same for Ensign Amendment).

d. The district court correctly concluded that Section 904.310A(1) satisfies *Turner*'s other factors.

The district court correctly concluded that *Turner*'s remaining three factors are satisfied. D0734 at 27–28.

The second factor asks whether there is an "alternative means of exercising the right." *Turner*, 482 U.S. at 90. In *Thornburgh*, the Supreme Court explained that the relevant right "must be viewed sensibly and expansively." 490 U.S. at 417. After all, "if the 'right' at stake is defined in terms of the materials excluded by the ban, any regulation will come up short." *Amatel*, 156 F.3d at 201. Even broadly defining the right as the "right to receive sexually explicit communications," section 904.310A(1) leaves open ample alternative means of receiving such communications. *Reynolds*, 25 F.4th at 92 (engaging in similar analysis based on similar exceptions).

Here, because "the regulations at issue in the present case permit a broad range of publications to be sent, received, and read, this factor is clearly satisfied." *Thornburgh*, 490 U.S. at 418. As the district court explained, "DOC allows inmates to receive a broad range of publications," and "[t]hey can receive mail and photos from family members and other people outside the prison." D0734 at 27. For example, because section 904.310A(1) is limited to "pictorial depiction[s]," no application of the law prevents inmates from reading explicit material. Iowa Admin. Code r. 201–20.2(904). Inmates can also obtain "images of women in bikinis" and "women in lingerie," "so long as their breasts and genitalia are covered." D0789 at 85:1–17. And they could request "medical, educational, or anthropological content." Iowa Admin. Code r. 201–20.2(904).

Plaintiffs do not engage with the district court's rationale. Instead, they incorrectly define the right at stake by calling the law a "complete prohibition" or "ban." Represented Appellants' Brief at 56; Hays Brief at 15, 23, 32–33, 35 & n.13. Represented Plaintiffs also rely on an affidavit that was never admitted into evidence to assert that the law is broader than it really is. Represented Appellants' Brief at 56. But as explained earlier, the regulations and DOC policies make clear that the law does

not apply to movies or television. *See* Iowa Admin. Code r. 201–20.2(904). And rather than addressing the mountain of authority holding that the materially identical Ensign Amendment satisfies the alternative-means requirement, Represented Plaintiffs instead cite a lone dissenting opinion that relies on a now-vacated Ninth Circuit decision. Represented Appellants' Brief at 56 (citing *Amatel*, 156 F.3d at 212 (Wald, J., dissenting)).

The third factor is whether accommodating Plaintiffs' request would "have a significant 'ripple effect' on fellow inmates or on prison staff." *Turner*, 482 U.S. at 90. This factor is "in part a restatement of the deferential balancing called for under the first factor." *Amatel*, 156 F.3d at 201; *accord Ramirez*, 486 F. Supp. 2d at 435.

Here, "the class of publications to be excluded is limited to those found potentially detrimental to order and security," *Thornburgh*, 490 U.S. at 418, as well as to rehabilitation and the work environment. "[T]he likelihood that such material will circulate within the prison raises the prospect of precisely the kind of 'ripple effect' with which the Court in *Turner* was concerned." *Id.*; *accord Ramirez*, 486 F. Supp. 2d at 435. The district court made the factual finding that "prisons cannot effectively

control the dissemination of materials throughout the prison." D0734 at 27. "If DOC allowed materials containing nudity to some inmates" by accommodating Plaintiffs' request, "it follows that those materials will be made accessible to other inmates as well." D0734 at 27–28. The materials would become like a highly sought-after "baseball cards," D0791 at 167:3–4, attaining greater value and causing more disruption among the inmates. This establishes a ripple effect under *Thornburgh*.

Plaintiffs respond by repeating their claim that allowing inmates to obtain materials that are sexually explicit or feature nudity is not problematic. Represented Appellants' Brief at 56; Hays Brief at 28. But those arguments fail here for the same reasons they did on the first factor: the deference afforded to prison officials and the Legislature to make decisions regarding policy and prison administration. "As every[[2]] federal appeals court to have considered prison restrictions on nude or sexually explicit photographs since *Turner* has concluded, such

[2] Though the Third Circuit remanded a challenge to the Ensign Amendment for a more thorough analysis, *Ramirez*, 379 F.3d at 131, the district court on remand thoroughly rejected the challenge, *Ramirez*, 486 F. Supp. 2d at 427–37.

restrictions fall with the 'broad limits' of appropriate deference. *Gray v. Cannon*, 974 F. Supp. 2d 1150, 1160 (N.D. Ill. 2013).

The fourth factor is "the absence of ready alternatives" to the prison regulation. *Turner*, 482 U.S. at 90. "[I]f an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." *Id.* at 91. "The burden is on the prisoner challenging the regulation, not on the prison officials, to show that there are obvious, easy alternatives to the regulation." *Mauro*, 188 F.3d at 1062.

Plaintiffs suggest two alternatives. Each fails because it imposes more than a *de minimis* cost. First is "the previous reading room regulations." Represented Appellants' Brief at 57; Hays Brief at 22. Under that regime, Bowker explained that certain publications "could only be read by the incarcerated individual in these reading rooms." D0789 at 21:20–21.

But "creating a specific reading room would obviously present administrative difficulty and cost and cannot be characterized as *de minimis*." *Murchison v. Rogers*, 779 F.3d 882, 892 (8th Cir. 2015)

(quotation marks omitted); *accord Sisney*, 15 F.4th at 1193 ("[M]onitored reading rooms are not 'obvious, easy alternatives.'" (quoting *Thornburgh*, 490 U.S. at 418–19). As Bowker testified, "[i]t's very difficult to take an inmate from one place to another place just to let them read a book." D0789 at 22:3–5; *see also* D0789 at 86:9–12 (space and staffing issues); D0789 at 86:21 (burden of strip-searching inmates).

Moreover, Plaintiffs "do not explain how such an alternative . . . would address the broader penological interests regarding the workplace and the safety and security of the prison, as well as the rehabilitation of sex offender inmates, created by the possession and/or display of these pictorial materials." *Reynolds*, 25 F.4th at 94; *see also Mauro*, 188 F.3d at 1062 ("[C]onfining sexually explicit materials to a reading room would not prevent the sexual harassment of female detention officers.").

Plaintiffs' only other alternative is "some sort of individualized determination of the material consistent with *Thornburgh*." Represented Appellants' Brief at 57 (citing *Thornburgh*, 490 U.S. at 406). But Plaintiffs already receive that. Bowker explained that the publication review committee consists of three people who review individual

publications—"everything from John Sanford novels to . . . the latest *People* magazine and everything in between." D0789 at 21:9–11. That is consistent with *Thornburgh*. *Cf.* 490 U.S. at 406 ("The warden may designate staff to screen and, where appropriate, to approve incoming publications, but only the warden may reject a publication.").

In sum, the district court correctly held that section 904.310A(1) satisfies each of *Turner*'s four factors.

3. Even if section 904.310A(1) had an unconstitutional application, Plaintiffs cannot show substantial overbreadth.

Under *Turner*, no application of section 904.310A(1) violates Article I, Section 7. But even if Plaintiffs could demonstrate an unconstitutional application, that would not be enough for them to succeed on their facial overbreadth claim. That is because the third step of the facial overbreadth analysis requires Plaintiffs to demonstrate that a "substantial number of [section 904.310A(1)'s] applications are unconstitutional." *Neff*, 5 N.W.3d at 312 (quotation marks omitted). "A law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep." *Id.* at 312 (brackets and citation omitted).

Plaintiffs have failed to meet that high burden. Their first unconstitutional application is "texts in an art course." Represented Appellants' Brief at 58; *see also* D0791 at 37:2–38:17 (Hays). What texts? Plaintiffs never say. Without that evidence, Plaintiffs cannot establish that alleged denial was even an application of section 904.310A(1). After all, "[p]ublications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition." Iowa Admin. Code r. 201–20.2(904). And as the district court pointed out, "[a]rtistic materials may also fit the definition of 'anthropology,'" depending on the type of materials at issue, which would allow the inmate to access the publication. D0734 at 32.

Represented Plaintiffs next point out that DOC denies entire publications instead of painstakingly removing each page that is sexually explicit or features nudity. Represented Appellants' Brief at 58–59. But that mixes *Turner*'s alternative-means analysis with the overbreadth analysis. "*Turner* permits prisons to take an 'all-or-nothing' approach to censorship, prohibiting books in their entirety if they contain any censorable content." *Sisney*, 15 F.4th at 1192 (quoting *Thornburgh*, 490 U.S. at 418–19). Represented Plaintiffs' page-by-page analysis eliminates

Turner's alternative-means factor, which properly affords deference to prison officials regarding administrative burdens.

In any event, that the DOC does not remove individual pages of a publication does not say anything about "the ratio of unlawful-to-lawful applications." *Neff*, 5 N.W.3d at 313 (citation omitted). For example, in the overbreadth section of their brief, Plaintiffs do not dispute that prohibiting *Playboy* is a valid application of the law. What is the ratio of pages in a *Playboy* that the Legislature could validly prohibit versus those it cannot? Though Plaintiffs bear the burden of "develop[ing] a factual record to support their request for facial injunctive relief," they have failed to do so. *NetChoice, L.L.C. v. Paxton*, 121 F.4th 494, 500 (5th Cir. 2024); *see NetChoice*, 603 U.S. at 744 ("The need for [plaintiff] to carry its burden on those issues is the price of its decision to challenge the laws as a whole.").

The only other unconstitutional application Plaintiffs suggest is that "regulations appear to have been applied to certain television programming including CNN, Fox News, and HBO Max." Represented Appellants' Brief at 59; *see also* Hays Brief at 36 (asserting that Defendants block CNN documentaries and "all commercials"). That is not

an application of section 904.310A(1) because television is governed by a separate policy unconnected to that statute. Plaintiffs' testimony illustrates the point, as some of the shows do not appear to involve nudity. *See, e.g.*, D0791 at 103:16–18 ("Anthony Bourdain: Parts Unknown. CNN, the recent Navalny interview was blocked. On PBS George Bush's documentary and the Iraq war documentary was blocked.").

The district court correctly rejected Plaintiffs' facial overbreadth challenge. This Court should affirm.

II. The district court did not abuse its discretion by declining to exclude the State's non-retained expert.

A. Error Preservation and Standard of Review.

Plaintiffs preserved error by moving to exclude Dr. Tatman. D0636 at 1. The district court declined to do so because Plaintiffs could not demonstrate prejudice. D0670 at 3–4; *see also* D0791 at 15:14–19. This Court reviews the district court's decision for abuse of discretion. *See Ranes v. Adams Lab's, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010).

B. The State was required to disclose Dr. Tatman 90 days before trial.

Non-retained experts must be disclosed "[n]o later than 90 days before the date set for trial" unless the district court's trial scheduling

order says otherwise. Iowa R. Civ. P. 1.500(2)(*d*)(1). Plaintiffs argue that the district court's February 2020 trial scheduling order said otherwise. Represented Appellants' Brief at 60. Not so.

The 2020 trial scheduling order stated:

> **7. EXPERT WITNESS.**
>
> a. A party who intends to call an expert witness, including rebuttal expert witnesses, shall certify to the Court and all other parties the expert's name, subject matter of expertise and qualifications, within the following time period, unless the Iowa Code requires an earlier designation date (See, e.g., Iowa Code Section 668.11). **The expert witness's report of opinions is due on the date of designation.**

D0296 at 2. Below that paragraph were deadlines for each party in Fall 2020. D0296 at 2.

Non-retained experts are not required to serve reports. *See* Iowa R. Civ. P. 1.500(2)(*b*). Thus, the plain language of the order covers only retained experts: "[a] party who intends to call *an expert witness*" must disclose the witness, and "*[t]he expert witness's report* is due" on the same day. D0296 (emphasis altered).

The district court interpreted its scheduling order the same way. Plaintiffs' objection was that the State failed to meet the deadline in the 2020 scheduling order. D0636 at 1. The State responded that "the expert disclosure deadline set forth in the Trial Scheduling Order only refers to

experts who will be relying on a report of opinions." D0637 at ¶ 3. The district court disagreed with Plaintiffs. D0670 at 3. Rather than referring to the scheduling order, the court applied Rule 1.500(2)(*d*)(1)'s 90-day deadline. D0670 at 3–4. It concluded that the State disclosed Dr. Tatman 30 days late because of the State's mistaken belief that the deadline was 60 days. D0670 at 4.

Because both the text of the district court's scheduling order and the district court's interpretation of its own order demonstrate that the order applied only to retained experts, this Court should review the district court's decision not to exclude Dr. Tatman based on the State's failure to meet the 90-day deadline.

C. The district court correctly concluded that Plaintiffs failed to show prejudice.

Though the State's disclosure was 30 days late, the district court did not abuse its discretion by declining to exclude Dr. Tatman.

"Exclusion of evidence is the most severe sanction available." *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997). "Exclusion should not be imposed lightly." *Klein v. Chicago Cent. & Pac. R. Co.*, 596 N.W.2d 58, 61 (Iowa 1999). "This decision rests with the sound discretion of the trial court and [this Court] ha[s] been slow to find an

abuse of discretion." *Hagenow v. Schmidt*, 842 N.W.2d 661, 671 (Iowa 2014), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016) (quotation marks, brackets, and internal citation omitted).

Exclusion "is justified only when prejudice would result." *Klein*, 596 N.W.2d at 61. Here, the district court correctly concluded that Plaintiffs failed to show prejudice. "[E]arly in the case," the State disclosed "the possibility of expert testimony." D0670 at 4 (citing D0246). Plaintiffs did not retain an expert in response—even when "the summary judgment ruling discussed the need for expert testimony." D0670 at 4. Nor did Plaintiffs give any "indication they would have retained a rebuttal expert." D0670 at 5. Tellingly, even on appeal Plaintiffs do not claim that they would have retained a rebuttal expert. *See* Represented Appellants' Brief at 63; Hays Brief at 23–28.

Even so, the district court ensured that the Plaintiffs could have presented a rebuttal expert if they wanted. It recognized that "the court could leave the record open to allow additional time to admit the testimony of a rebuttal expert." D0670 at 5. So even if the 30-day delay caused prejudice, the district court's solution cured it. *See Whitley v. C.R.*

Pharmacy Serv., Inc., 816 N.W.2d 378, 389 (Iowa 2012) (affirming a district court's decision to grant a continuance rather than exclude evidence). But Plaintiffs did not take the district court up on its offer.

The district court also recognized that Plaintiffs were "prepared" to challenge Dr. Tatman's qualifications and credentials at trial. D0670 at 4. At trial, the district court remarked that "the plaintiffs actually are quite well prepared . . . to make arguments as far as why Dr. Tatman's testimony should be given less weight and maybe no weight." D0791 at 15:20–23.

Though Represented Plaintiffs argue that they were "deprived" of a *Daubert* hearing, Represented Appellants' Brief at 63, they never assert in their brief that the district court erred when it concluded that Dr. Tatman was qualified to testify. *See* D0789 at 98:21–23; D0789 at 108:22–24. Nor is the district court's decision not to hold a *Daubert* hearing reversible error. *See In re Det. of Rafferty*, No. 01-0397, 2002 WL 31113930, at *3 (Iowa Ct. App. Sept. 25, 2002) ("Our supreme court expressly held . . . that the *Daubert* analysis was not required in Iowa."). Plaintiffs fail to show that the district court abused its discretion.

D. Any error was harmless.

Even if Dr. Tatman's testimony should have been excluded, this Court should still affirm the district court's judgment. *See McGrew v. Otoadese*, 969 N.W.2d 311, 325 (Iowa 2022) (explaining that "[r]eversal of the district court is only required if the [plaintiffs'] substantial rights were affected").

Even without Dr. Tatman's testimony, there is a rational connection between section 904.310A(1) and the State's interest in rehabilitation, safety, and a non-hostile work environment. For rehabilitation, it is "[c]ommon sense . . . that prisoners are more likely to develop the now-missing self-control and respect for others if prevented from poring over pictures that are themselves degrading and disrespectful." *Amatel*, 156 F.3d at 199. For safety, Lamb testified to seeing inmates get in "physical fights" over the materials prohibited by section 904.310A(1). D0734 at 10. It is common sense that taking these materials away promotes safety.

And for a non-hostile work environment, Lamb explained that inmates "harass female staff by posting explicit materials in the cell" where they are "easily viewed by female staff." D0788 at 17:8–11.

"Common sense dictates that . . . banning [these] materials is a rational means of rectifying and improving that workplace environment." *Reynolds*, 25 F.4th at 86.

III. The district court correctly concluded that section 904.310A(1) does not cover movies and television.

A. Error Preservation.

Plaintiffs preserved error by asking to present evidence on DOC's regulation of movies and television at trial. D0791 at 75:22–80:7. The district court denied Plaintiffs' request but allowed them to make a record for appeal. *E.g.*, D0791 at 82:24–25.

B. Standard of Review.

Plaintiffs incorrectly paint this as a pleading issue, but it is really part of the first step of the facial overbreadth analysis: assessing the law's scope. From the beginning, there has never been any question about the claim Plaintiffs pleaded: "[t]he Code of Iowa §904.310A is unconstitutional." D0003 at ¶ 18. On appeal, Plaintiffs argue that movies-and-television evidence is relevant because it supports their argument that section 904.310A(1) is unconstitutional. *See* Represented Appellants' Brief at 66 ("The Plaintiffs' clear challenge to Iowa Code section 904.310A(1) should have sufficiently encapsulated banning

television and movies."); Hays Brief at 14–15 ("The Plaintiffs sought prohibition of censoring 'information and material that is visual, written, auditory, video, or photographic,'" including "books, magazines, photos, art, literature, movies, T.V. shows, etc.") (emphases omitted).

The district court disagreed with Plaintiffs' interpretation of the law's scope: "the statute and regulation do not cover television or movies" but "include[] only printed materials." D0454 at 5–6. The district court reiterated this ruling when it excluded movies-and-television evidence at trial, D0791 at 78:8, and in its post-trial ruling, D0734 at 2–3 n.3. Plaintiffs' argument is just an attack on the district court's legal conclusion about the law's scope and its accompanying evidentiary ruling.

This Court reviews the district court's conclusions of law following a bench trial "for correction of errors at law." *Chrysler Fin. Co.*, 703 N.W.2d at 418. It reviews constitutional claims de novo. *Milner*, 571 N.W.2d at 12. And it reviews evidentiary rulings for abuse of discretion. *See In re Estate of Rutter*, 633 N.W.2d 740, 745 (Iowa 2001).

C. Section 904.310A(1) does not apply to movies and television.

Section 904.310A(1) applies only to "[c]ommercially published information or materials," which means "any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document." Iowa Admin. Code r. 201–20.2(904). That definition excludes movies and television. Further, movies and television are regulated by a separate policy that does not rely on or implement section 904.310A(1). *See* OP-RA-03; D0696. The district court correctly concluded that because section 904.310A(1) does not cover movies and television, that media was not relevant to Plaintiffs' facial overbreadth challenge.

D. Even if the district court erred, this Court should still affirm.

But even if the district court were wrong, and the statute does cover movies and television, Plaintiffs do not argue that the error affected the result in this case. *See* Represented Appellants' Brief at 67; Hays Brief at 14–15. At trial, Plaintiffs made offers of proof regarding movies and television. D0791 at 111:21. On appeal, Plaintiffs do not claim that opportunity was insufficient. Yet Plaintiffs do not explain how movies-and-television evidence would have changed the result on the question in this case: whether section 904.310A(1) violates Article I, Section 7.

That is fatal to Plaintiffs' argument. *See Jackson*, 4 N.W.3d at 311 ("A party forfeits an issue on appeal when the party does not include the issue in its main brief."). Though Plaintiffs mention television elsewhere when discussing facial overbreadth, that passing reference is not enough to establish that the law is substantially overbroad. *See* Represented Appellants' Brief at 59 (citing testimony discussing an alleged prohibition of a PBS documentary).

Plaintiffs instead ask for "remand . . . for the District Court to fully engage in an independent analysis on television and movie censorship." Represented Appellants' Brief at 67; Hays Brief at 37 (asking for remand generally). But remand is inappropriate both factually and legally. Factually, "[r]emand to the trial court is not an appropriate disposition" because Plaintiffs were not "precluded from making a complete offer of proof." *State ex rel. Juv. Dep't of Lincoln Cnty. v. Ashley*, 818 P.2d 1270, 1276 (Or. 1991) (en banc).

Legally, remand for an "*independent* analysis on television and movies[s]," Represented Appellants' Brief at 67 (emphasis added), is unnecessary because Plaintiffs have forfeited their as-applied challenge on appeal. Nor do Plaintiffs bring a standalone challenge to DOC's

movies-and-television policy. That policy is agency action that must be challenged in a Chapter 17A proceeding. *See, e.g.*, *Fassett v. State*, No. 15-0816, 2016 WL 3554954, at *6 (Iowa Ct. App. 2016) (Chapter 17A exclusive means of challenging prison policies). This is not a Chapter 17A proceeding, and Plaintiffs cannot inject a challenge to agency action into this case. *See Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985) (explaining that a plaintiff "could not 'piggyback' a separate action onto the petition for judicial review of agency action"). That is especially so when that agency action is unrelated and does not rely on the statute they seek to enjoin. *Cf. LS Power Midcontinent, LLC v. State*, --N.W.3d--, 2025 WL 1535529, at *9–10 (Iowa May 30, 2025) (holding a district court "ha[s] power to enjoin" a rule "without the need for a corresponding challenge under chapter 17A" only when a "judicial determination that [a statute] was unconstitutionally enacted automatically invalidate[s] the rule").

IV. Hays's remaining constitutional arguments also fail.

Beyond his free speech claims, Hays also appeals his Iowa constitutional claims for equal protection, substantive due process, unreasonable search and seizure, cruel and unusual punishment, and

violation of the Unenumerated Rights Clause. Hays Brief at 17–23, 30–34, 37. The district correctly dismissed those claims. D0734 at 28–30.

A. Error Preservation and Standard of Review.

Plaintiff Hays preserved his remaining constitutional challenges because he raised the arguments in the district court and the district court rejected them. D0734 at 28–30; D0454 at 12–13, 14. The district court dismissed Plaintiffs' equal protection, substantive due process, and search and seizure claims after trial. D0734 at 28–30. Plaintiffs' cruel and unusual punishment and unenumerated rights claims were dismissed at summary judgment. D0454 at 12–13, 14.

This Court reviews the district court's conclusions of law following a bench trial "for correction of errors at law." *Chrysler Fin. Co.*, 703 N.W.2d at 418. It reviews constitutional claims de novo. *Milner*, 571 N.W.2d at 12. And it reviews evidentiary rulings for abuse of discretion. *See In re Estate of Rutter*, 633 N.W.2d at 745.

"Summary judgment is granted when 'there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" *Lennette v. State*, 975 N.W.2d 380, 388 (Iowa 2022) (quoting Iowa R. Civ. P. 1.981(3)). This Court "review[s] the legal issues

necessary for resolution of the constitutional claims presented within the context of the summary judgment proceeding de novo." *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 542 (Iowa 2019) (citations omitted). The Court reviews all other legal issues for correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012).

B. Equal protection and substantive due process.

Hays argues that section 904.310A(1) violates equal protection and substantive due process because it "violates the rights of free citizens and those whom are incarcerated in Iowa's prison[s] to share and receive information or material" that is sexually explicit or contains nudity. Hays Brief at 20 (internal quotation marks omitted). "Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test." *King v. State*, 818 N.W.2d 1, 25 (Iowa 2012) (citing *Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005)).

Hays contends strict scrutiny applies because "the rights to freedom of speech and search and seizure are fundamental rights." Hays Brief at 22. But even if these rights are fundamental, they still do not trigger strict scrutiny in this prison context. "[W]hile persons imprisoned for crime enjoy many of the protections of the Constitution, it is also clear

that imprisonment carries with it the circumspection or loss of many significant rights." *See State v. Fox*, 493 N.W.2d 829, 831 (Iowa 1992) (quoting *Hudson v. Palmer*, 468 U.S. 517, 524 (1984)). Thus, when evaluating First Amendment claims in the prison context, courts apply a "lesser standard of scrutiny" that is functionally similar to equal protection's rational basis standard. *See Turner*, 482 U.S. at 81, 89; *see also Amatel*, 156 F.3d at 198–99 (likening *Turner*'s standard to rational basis review). And "[i]t would make no sense to use a reasonableness test when evaluating the first amendment claim and then a strict scrutiny standard when evaluating first amendment rights as part of an equal protection challenge." D0734 at 29.

"[W]hen the rational basis test is involved, we evaluate that basis similarly for equal protection and due process purposes." *King*, 818 N.W.2d at 32 (citing *Midwest Check Cashing, Inc. v. Richey*, 728 N.W.2d 396, 405 (Iowa 2007); *Sanchez*, 692 N.W.2d at 820). So the district court correctly applied rational-basis review to these claims. D0734 at 29.

The rational basis test is a "deferential standard" that asks whether the classification is "rationally related to a legitimate governmental interest. *King*, 818 N.W.2d at 27 (quoting *Ames Rental Prop. Ass'n v. City*

of Ames, 736 N.W.2d 255, 259 (Iowa 2007)). Under the rational basis test, a law is valid "unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious." *Ames Rental Prop. Ass'n*, 736 N.W.2d at 259. The government is not required or expected to produce evidence to justify its action. *Id.* Instead, plaintiffs "must negate every reasonable basis upon which the classification may be sustained." *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980).

Section 904.310A(1) and DOC's regulations are rationally related to Department interests in rehabilitation, prison security, and a non-hostile work environment. Thus, "Plaintiffs have not proved a violation of equal protection or substantive due process for the same reasons they have not proved a violation of the first amendment." D0734 at 29. The dismissal of these claims therefore should be affirmed.

C. Search and seizure.

Hays argues that section 904.310A(1) violates Iowa constitutional protections against unreasonable search and seizure because Defendants "seiz[e]" publications that are prohibited under the statute. Hays Brief at 33. But constitutional protections against unreasonable search and

seizure "do[] not apply in prison cells." *Fox*, 493 N.W.2d at 831 (quoting *Hudson*, 468 U.S. at 530). And "[t]he recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions." *Hudson*, 468 U.S. at 526.

To be sure, Hays again contends that the Iowa Constitution provides "greater protection for unlawful seizure." Hays Brief at 34. But this is incorrect. "The search and seizure clause of the Iowa Constitution is substantially identical in language to the Fourth Amendment," so Iowa courts "usually deem the two provisions to be identical in scope, import, and purpose." *State v. Kreps*, 650 N.W.2d 656, 640–41 (Iowa 2002). And like their federal counterparts, Iowa courts have concluded that an inmate has no legitimate expectation of privacy in his prison cell. *See Fox*, 493 N.W.2d at 83–32 (permitting prison officials to monitor telephone calls); *State v. VanHoff*, 371 N.W.2d 180, 182 (Iowa Ct. App. 1985) (finding inmate had no reasonable expectation of privacy in a notebook he asked a law enforcement officer to bring from his home); *cf. State v. Ruan*, 419 N.W.2d 734, 737 (Iowa Ct. App. 1987) (due to institutional security needs, pretrial detainee has no reasonable expectation of privacy

in nonprivileged mail). Inmates thus have no reasonable expectation of privacy in publications sent to them from outside the correctional facility, and DOC can constitutionally examine those materials to ensure those materials comply with Department regulations. So the district court properly dismissed Plaintiffs' search and seizure claim.

D. Cruel and unusual punishment and the Unenumerated Rights Clause.

Hays also makes passing references to Plaintiffs' claims that section 904.310A(1) violates the Constitution's prohibition of cruel and unusual punishment and its Unenumerated Rights Clause. Hays Brief at 37. The district court dismissed these claims on summary judgment. D0454 at 12–13, 14. And Hays's perfunctory references do not avoid waiver and forfeiture of these claims. *See Jackson*, 4 N.W.3d at 311. So the dismissal of these claims should likewise be affirmed.

CONCLUSION

This Court should affirm the judgment of the district court.

REQUEST FOR ORAL SUBMISSION

The State requests oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*e*) 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 14,532 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

/s/ Breanne A. Stoltze
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 12th day of August, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS and to Plaintiff Jack Hays via U.S. mail at the following address:

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