IN THE SUPREME COURT OF IOWA
No. 22–2036

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC, and JILL MEADOWS, M.D.,

Appellees,

vs.

KIM REYNOLDS EX REL. STATE OF IOWA and IOWA BOARD OF MEDICINE,

Appellants.

Appeal from the Iowa District Court for Polk County
Celene Gogerty, District Judge

APPELLANTS' FINAL BRIEF

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**Pro hac vice* granted by order entered January 19, 2023

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ROUTING STATEMENT

This Court correctly decided to keep this case. It presents substantial constitutional questions about the validity of a statute, substantial issues of first impression, fundamental and urgent issues of broad public importance, and substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

In 2018, Planned Parenthood of the Heartland, Inc., Emma Goldman Clinic, and Jill Meadows, M.D. (collectively "Planned Parenthood") sued Governor Kim Reynolds ex rel. State of Iowa and the Iowa Board of Medicine (collectively "the State") challenging the constitutionality of the state fetal heartbeat law under the Iowa Constitution. *See* Iowa Code §§ 146C.1, 146C.2.

On January 22, 2019, the district court—compelled by then-existing precedent—permanently enjoined the State from enforcing or implementing the law. App. 142. The law prohibits some previability abortions. App. 137. So the district court ruled that it violated "the due process and equal protection provisions of the Iowa Constitution," App. 142, as informed by this Court's then "recent decision" in *Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206 (Iowa 2018) (*PPH II*), and the U.S. Supreme Court's earlier decisions in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and *Roe v. Wade*, 410 U.S. 113 (1973). The State chose not to appeal.

In June 2022, this Court overruled *PPH II* and "reject[ed] the proposition that there is a fundamental right to an abortion in Iowa's Constitution subjecting abortion regulation to strict scrutiny." *Planned Parenthood of the Heartland v. Reynolds*, 975 N.W.2d 710, 715 (Iowa 2022) (*PPH IV*), *reh'g denied* (July 5, 2022).

A week later, the Supreme Court overruled *Roe* and *Casey*, holding there is no fundamental right to abortion under the U.S. Constitution either. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261, 2266, 2270, 2274 (2022). Because the 2019 injunction now depends on overruled precedents, the State moved to dissolve it. The district court denied the motion, and the State now appeals.

STATEMENT OF THE FACTS

In the Spring of 2018, the Iowa General Assembly amended Iowa Code chapter 146C to require physicians to "perform an abdominal ultrasound" before an abortion "to determine if a fetal heartbeat is detectable." 2018 Iowa Acts, Ch. 1132, § 4 (codified at Iowa Code § 146C.2). The law prohibits an abortion "when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician's reasonable medical judgment," one of several exceptions applies. Iowa Code § 146C.2 (2)(a).

Those exceptions include threats to the mother's life and "serious risk of substantial and irreversible impairment of a major bodily function," Iowa Code §§ 146C.2(2), 146C.1(3), 146A.1(6)(a), and for other rare circumstances—including rape, incest, and fetal abnormality, Iowa Code §§ 146C.2(2), 146C.1(4). The law also allows treatment for incomplete miscarriages. Iowa Code § 146C.1(4)(c). And it only regulates physicians—it imposes no liability on women who have an abortion. Iowa Code § 146C.2.

A. 2019 injunction based on *PPH II*, *Roe*, and *Casey*

Less than two weeks after Governor Reynolds signed the bill, Planned Parenthood sued, challenging the law's constitutionality under the Iowa Constitution. Shortly after that, this Court held in *PPH II* that a fundamental right to an abortion exists under the Iowa Constitution, and that laws regulating abortion must satisfy strict scrutiny. 915 N.W.2d at 212, 237–38, 245–46. Following that holding, the district court entered summary judgment for Planned Parenthood in this case, declaring "Iowa Code chapter 146C . . . unconstitutional" under the Iowa Constitution as a "prohibition of previability abortions" and "permanently enjoin[ing]" the State "from implementing, effectuating or enforcing the provisions of Iowa Code chapter 146C." App. 142.[1]

[1] The parties dispute how many weeks into pregnancy Iowa's fetal heartbeat law would operate to prohibit elective abortions. Relying on data measuring how early a fetal heartbeat can be detected using a *transvaginal* ultrasound, Planned Parenthood mislabels the law a "6-week abortion ban." *See, e.g.*, App. 180, 182, 189, 193. *Accord* App. 136 n.5. But the law only requires an *abdominal* ultrasound. Iowa Code § 146C.2(1)(a). So for most women, it will not prohibit elective abortions until 8 or 9 weeks' gestation or later. 2018 Aff. of Kathi Aultman, M.D., at 3; App. 136–37. The *earliest* an abdominal ultrasound can detect a fetal heartbeat for at least some pregnant women is 7 weeks' gestation. App. 126, 136–37. So Planned Parenthood's "6-week abortion ban" is a misnomer.

The district court reached that conclusion because, "[r]egardless of when precisely . . . a fetal heartbeat may be detected in a given pregnancy, it [was] undisputed that such cardiac activity is detectable well in advance of the fetus becoming viable." App. 137. And based on *PPH II*, *Roe*, and *Casey*, the court held "viability [was] not only material to this case, it [was] dispositive." *Id.*

"In coming to this conclusion," the district court cited this Court's "recent decision" in *PPH II*. *Id.* There, this Court had "held that a woman's right to decide whether to terminate a pregnancy is a fundamental right under the Iowa Constitution, and that any governmental limits on that right are to be analyzed using strict scrutiny." App. 137–38. Turning to federal precedent, the district court noted that strict scrutiny in the abortion context had been "first taken up in *Roe v. Wade*," which had "focused on the viability of the fetus" as the point at which the state's "interest in potential life" became compelling. App. 138 (quoting *Roe*, 410 U.S. at 163).

By 2019, that "threshold of viability as a check on the state's compelling state interest in promoting potential life" had "remained intact." App. 139. *Casey* had "established an 'undue burden' standard" for "restrictions on previability abortions." *Id.* But it had not disturbed *Roe*'s "central holding" that a state "may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Id.* (quoting *Casey*, 505 U.S. at 879).

While *PPH II* did not "expressly address the previability versus postviability dichotomy," the district court was "satisfied that such an analysis [was] inherent" in this Court's "adoption of a strict scrutiny test." App. 140. And the court was "equally satisfied that Iowa Code chapter 146C fail[ed] in this regard as a prohibition of previability abortions." *Id.*

Finally, the district court rejected the State's alternative argument "that Iowa Code chapter 146C does not impose a ban on abortions, but merely creates a window of opportunity" for women to exercise "their right to terminate a pregnancy." App. 141. That argument, the Court thought, was "an attempt to repackage the undue burden standard rejected . . . in *PPH II*." *Id.*

So long as abortion remained a "fundamental right," the district court thought the State's alternative argument was foreclosed because it would have "relegate[d] the individual rights of Iowa women to something less than fundamental," *id.* (quoting *PPH II*, 915 N.W.2d at 240), by requiring "a level of diligence . . . antithetical to the notion of a fundamental right," *id.*

Accordingly, the district court granted Planned Parenthood summary judgment, declared the law "unconstitutional and therefore void," and granted permanent injunctive relief. App. 142. The State chose not to appeal given that—at the time—*PPH II*, *Roe*, and *Casey* all remained good law.

B. 2022 litigation based on *PPH IV* and *Dobbs*

In June 2022, this Court overruled *PPH II*, explaining that it could find "no support for abortion as a fundamental constitutional right in Iowa." *PPH IV*, 975 N.W.2d at 740. Textually, "[i]f liberty cannot be limited *without* due process of law, the logical implication is that liberty can be limited *with* due process of law." *Id.* Historically, "abortion at any stage of pregnancy [was] criminalized by statute in Iowa as early as 1843." *Id.* at 741. And this Court had interpreted an 1858 statute enacted six months after the state Constitution's effective date as criminalizing abortion "throughout pregnancy," refuting any argument abortion at any stage could be a fundamental right. *Id.*

One week later in *Dobbs*, the U.S. Supreme Court confirmed that the same is true under the federal Constitution: "[P]rocuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution's text or in our Nation's history." *Dobbs*, 142 S. Ct. at 2283. "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision." *Id.* at 2242. As a result, "rational-basis review is the appropriate standard" for assessing abortion laws under the federal Constitution. *Id.* at 2283.

1. State moves to dissolve 2019 injunction

Because *PPH IV* and *Dobbs* explicitly overruled *PPH II*, *Roe*, and *Casey*—the legal foundation for the district court's 2019 permanent injunction against Iowa's fetal heartbeat law—the State moved the district court to dissolve that injunction based on a substantial change in the law. This Court has previously held that "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Bear v. Iowa Dist. Ct. of Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995). And the State reasoned that *PPH IV* and *Dobbs* qualify as a "substantial change" given that the district court premised its 2019 injunction on *PPH II*, *Roe*, and *Casey*. App. 152–53, 158–71.

In response, Planned Parenthood argued that courts have no power to vacate injunctions that were based on wrongly decided legal decisions even after those decisions have been overruled. App. 187–90. According to Planned Parenthood, the language in *Bear* about courts' authority to modify or vacate their own injunctions was "clearly dictum," App. 187, the case *Bear* cited for that proposition involved a change in the *facts*, not a change in the law, *id.*, and "no Iowa court [had] held that it [had] the power to vacate a permanent injunction based on a change in law," App. 184.

In the alternative, even assuming the district court *did* have that authority, Planned Parenthood argued that *PPH IV* and *Dobbs* did not qualify as a substantial change in the law because in *PPH IV* this Court had left the undue-burden standard the Court had applied in *Planned Parenthood of the Heartland, Inc. v. Iowa Board of Medicine*, 865 N.W.2d 252 (Iowa 2015) (*PPH I*), in place. App. 191–92.

In reply, the State highlighted three cases—*Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006), *Iowa Electric Light & Power Company v. Incorporated Town of Grand Junction*, 264 N.W. 84 (Iowa 1935), and *Wilcox v. Miner*, 205 N.W. 847 (Iowa 1925)—in which this Court *has* affirmed decisions to modify or dissolve prior injunctions (or as in *Spiker*, an analogous form of continuing relief) based on a substantial change in the law. App. 204–09.

On the merits, the State argued that *PPH IV* had left open the question of what standard should replace strict scrutiny, and that rational-basis review is the correct test under cases like *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005), and *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012). App. 214–15, 220. Planned Parenthood countered by filing a surreply, proffering various reasons for distinguishing the three cases the State had highlighted in its reply. App. 226–32.

2. District court denies motion to dissolve

Following a motions hearing, the district court denied the State's motion on three bases. First, the "Iowa Rules of Civil Procedure do not provide a path for vacating this judgment." App. 295. (Indeed, the State had not argued otherwise.) Second, the State had "failed to show that the court has any inherent authority to dissolve the permanent injunction." App. 297. And third, the State had "failed to show there has been a substantial change in the law." App. 304.

i. Ruling on inherent authority

On the threshold question of the court's inherent authority to dissolve injunctions based on substantial changes in the law, the district court cited cases showing that district courts retain the authority to *enforce* final judgments, but they typically cannot revisit them. App. 297–98. "Therefore, jurisdiction is decided by statute and any inherent authority of the court beyond the statute would only be for enforcement." App. 298.

In the very next line of its opinion, though, the district court conceded that there *is* caselaw "that allows a court to modify or vacate a permanent injunction in Iowa." *Id.* The court just thought those cases were distinguishable, App. 298–04, and that, even taken together, they amount to only a "little caselaw," App. 298.

For example, in *Helmkamp* this Court "affirmed the trial court's decision to vacate [a] permanent injunction based on changed conditions." *Id.* (citing *Helmkamp v. Clark Ready Mix Co.*, 249 N.W.2d 655 (Iowa 1977)). But "the changed conditions were" based on "a change in facts," not a change in law. *Id.*

Similarly, the district court conceded this Court in *Bear* stated "that 'the court which rendered [an] injunction may modify or vacate [it] if, over time, there has been a substantial change in the facts or law.'" App. 299 (quoting *Bear*, 540 N.W.2d at 441). But the court disregarded that statement because (1) this Court merely was "providing a summary of the law on permanent injunctions," (2) the Court's assertion "was not based on precedent from *Helmkamp* but was based on 42 Am.Jur.2d *Injunctions* §§ 317, 318, 334 (1969)," and (3) it "cannot be said that the statement of law summarized in *Bear* was germane to the case," making it "dicta." *Id.*

Having dispensed with *Helmkamp* and *Bear*, the district court moved on to *Wilcox v. Miner*, *Iowa Electric*, and *Spiker v. Spiker*. "*Wilcox* and *Iowa Electric* both preceded the promulgation of the Iowa Rules of Civil Procedure, which occurred in 1943." *Id.* So the district court found it "hard to find precedential value in the two cases," especially given that neither case "cite[s] any rule of law or authority to support its decision to modify or dissolve the permanent injunction." App. 299–300.

And "even if *Wilcox* and *Iowa Electric* are based on a court's inherent authority under the common law," the district court continued, they "are distinguishable from this case and do not offer any guidance to the court." App. 300. That's because the motions to modify in both were filed "within the one-year limitations period under Rule 1.1013," so they would have been timely filed if the current rules had been in effect at the time. *Id.* Both cases also were based on *statutory* changes, not changes in *decisional* law. App. 301. Whereas the "case at hand does not deal with a subsequent legislative act 'curating' or 'legalizing' the fetal heartbeat bill." *Id.* Instead, the State was asking the district court to "revive a statute that was found unconstitutional and void." *Id.* And "[n]o law that is contrary to the constitution may stand." *Id.* (quoting *PPH II*, 915 N.W.2d at 213).

Finally, the district court distinguished this Court's decision in *Spiker*. App. 301–04. "[O]n its face," the court conceded, that decision "may support the assertion that a court may modify or vacate a final judgment after the jurisdictional time limitations." App. 301. But *Spiker* involved a petition to modify, vacate, or stay a previously entered grandparent-visitation order based on a later ruling that such orders are unconstitutional, and the district court thought that made *Spiker* distinguishable. App. 301–02.

Leaving the grandparent-visitation order in place would have resulted in the State's "continuing violation of an individual's fundamental constitutional rights." App. 302 (quoting *Spiker*, 708 N.W.2d at 358). By contrast, the permanent injunction here was issued "to prevent *the State* from enforcing" a law that had been "found to have violated what was an individual's fundamental constitutional right under the Iowa Constitution to an abortion." *Id.*

"As a result," Iowa's fetal heartbeat law "was unconstitutional and the legislative act was void." App. 303 (citing Iowa Const. art. XII, § 1; *PPH II*, 915 N.W.2d at 213). And the court had found "no caselaw to support" the proposition "that a permanent injunction . . . based on a finding that a statute was unconstitutional and void at the time it was passed may later be modified or vacated because of the inherent authority of the issuing court to modify or vacate the permanent injunction based on a change in the law." App. 304.

Finally, the district court distinguished child-custody cases more broadly, concluding based on language in *Spiker* that courts' inherent authority in such cases "arises from [their] valid concern with [the] best interests of children." *Id.* By contrast, the district court could find "nothing in the current case," a case involving the State's attempt to protect the lives of innocent unborn children, "which would indicate a similar compelling circumstance." *Id.*

ii. Ruling on substantial change in the law

Turning briefly to the merits, the district court ruled in the alternative that the State had "failed to show that there has been a substantial change in the law." App. 304. According to the district court's reading of *PPH IV*, this Court had "overruled *PPH II* and held that there no longer was a fundamental right to abortion subjecting abortion regulation to strict scrutiny under Iowa's Constitution." *Id.* But the "constitutional standard to apply" going forward "was not predicated on *Dobbs*." *Id.* And this Court "explicitly did not find that the standard of review for abortion regulations would be rational basis like the Supreme Court in *Dobbs*." App. 305. Instead, the district court found the Court had been clear that "for now" *Casey*'s undue-burden test remained "the governing standard." *Id.* (quoting *PPH IV*, 975 N.W.2d at 716).

While acknowledging that "for now" meant the standard "could change in the future," the district court cited Justice McDermott's partial dissent in *PPH IV* for the proposition that "it is not in the district court where the standard should be further litigated," but in this Court on appeal. *Id.*

And so the district court applied *Casey*'s undue-burden test, labeled the fetal heartbeat law a "ban on nearly all abortions," and ruled that it creates "an undue burden." App. 306. "[T]herefore, the statute would still be unconstitutional and void," and thus "there

has not been a substantial change in the law." *Id.* "As a result, the State [had] failed to show a change in the law that would warrant dissolving the permanent injunction issued on January 22, 2019." *Id.* So the court denied the State's motion for that relief. App. 307.

* * * * *

In this appeal from that decision, the State asks this Court to (1) hold that the district court erred by refusing to exercise its inherent authority to dissolve its 2019 injunction because, ever since *PPH IV* and *Dobbs*, rational-basis review has been the correct test for challenges to laws regulating abortion under Iowa's Constitution, or (2) hold that rational-basis review is the correct test going forward. Either way, the Court should hold that Iowa's fetal heartbeat law satisfies rational-basis review, and the relief required is the same: reverse and remand with instructions to enter an order dissolving the 2019 injunction.

ARGUMENT

In Iowa, as in other jurisdictions, "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Bear*, 540 N.W.2d at 441. Inherent in the power to grant injunctive relief is the "common-law power to modify judgments granting [such] relief and regulating future conduct upon a substantial change in circumstances." *Spiker*, 708 N.W.2d at 360.

In *PPH IV*, this Court overruled *PPH II*, "reject[ing] the proposition that there is a fundamental right to an abortion in Iowa's Constitution subjecting abortion regulation to strict scrutiny." *PPH IV*, 975 N.W.2d at 715. And in *Dobbs*, the Supreme Court overruled *Roe* and *Casey*, rejecting the viability line because it "makes no sense," and discarding the "arbitrary" and "unworkable" undue-burden test. *Dobbs*, 142 S. Ct. at 2261, 2266, 2270, 2275.

As a result, the district court's 2019 injunction is "founded on . . . superseded law." *Am. Horse Prot. Ass'n, Inc. v. Watt*, 694 F.2d 1310, 1316 (D.C. Cir. 1982) (Ginsburg, Ruth B., J.). And that easily qualifies as a "substantial change." *Bear*, 540 N.W.2d at 441. No right to abortion exists under either constitution. Rational-basis review has necessarily replaced strict scrutiny. And the viability line is no more. The district court thus has a duty to vacate its injunction so the State can enforce its validly enacted law.

I. The district court has the authority to dissolve its 2019 injunction based on a substantial change in the law.

The district court wrongly held that it lacks the authority to dissolve an injunction that was based on wrongly decided cases that have since been overruled. App. 297, 307. The State preserved its objection to that error by moving to dissolve the injunction, *Meier v. Senecaut*, 641 N.W.2d 532, 538–39 (Iowa 2002), and by explaining the inherent nature of the court's authority to grant that relief, App. 158–59, 203–12, 246–60, 282–87.

"Questions of the court's authority are reviewed for correction of errors of law." *In re Marriage of Seyler*, 559 N.W.2d 7, 8 (Iowa 1997). So too for "jurisdictional questions." *Heartland Express v. Gardner*, 675 N.W.2d 259, 262 (Iowa 2003). So this Court's "review is limited to whether the district court correctly applied the law." *Id.* (cleaned up).

A. This Court has reaffirmed lower courts' inherent authority to modify or dissolve their injunctions in multiple cases, and the district court's attempts to distinguish those cases all fail.

It has long been the law in Iowa that "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Bear*, 540 N.W.2d at 441 (citing *Helmkamp*, 249 N.W.2d at 656; 42 Am.Jur.2d *Injunctions* §§ 317, 318, 334 (1969)). Stated differently, "[p]ermanent injunctions are permanent [only] so long as the

conditions which produce the injunction remain permanent." *Id.* (cleaned up). And district courts retain the power "to modify or vacate a 'permanent' injunction [based] on changed conditions in the future." *Helmkamp*, 249 N.W.2d at 656.

The district court at first flatly rejected that proposition, summing up general legal principles like this: "Therefore, jurisdiction is decided by statute and any inherent authority of the court beyond the statute would only be for enforcement." App. 298. But in the very next line in its opinion, the court backtracked, conceding that there *is* at least a "little caselaw, or caselaw germane to this purported inherent authority, that allows a court to modify or vacate a permanent injunction in Iowa." *Id.* As the court went on to explain, though, the court found all those cases to be distinguishable. App. 298–304.

Ultimately, the court rejected the State's reliance on those cases because none of them are exactly like this one: "There is no caselaw to support . . . that a permanent injunction being issued based on a finding that a statute was unconstitutional and void at the time it was passed may later be modified or vacated because of the inherent authority of the issuing court to modify or vacate the permanent injunction based on a change in the law." App. 304.

But this isn't a federal qualified-immunity case, so the State did not "need to find a case nearly identical on the facts, a virtually impossible task," *Baldwin v. City of Estherville*, 915 N.W.2d 259, 290 (Iowa 2018) (Appel, J., dissenting), to prove the correctness and binding nature of this Court's statement that a district court "may modify or vacate [its own] injunction if, over time, there has been a substantial change in the facts or law," *Bear*, 540 N.W.2d at 441.[2] And the district court erred by concluding otherwise.

1. *Helmkamp* and *Bear* hold that courts have inherent authority to modify or dissolve their own injunctions based on changed conditions like a substantial change in the law.

In *Helmkamp*, this Court held that the district court had properly vacated an injunction against a concrete company after the company made improvements to its plant "to overcome the objectionable features" that previously had caused this Court to direct the district court to enjoin the plant's operation. 249 N.W.2d at 656. As this Court described it, the question on appeal "relate[d] to the power of a court to modify or vacate a 'permanent' injunction on changed conditions in the future." *Id.*

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[2] What is more, such cases *do* exist. *See, e.g.*, *Jacobson v. Cnty. of Goodhue*, 539 N.W.2d 623, 627 (Minn. Ct. App. 1995) (affirming district court decision vacating injunction based on change in state supreme court decisional law despite earlier district court ruling that the enjoined ordinance was "void" for violating the plaintiffs' free-speech rights).

Citing cases from this Court, the U.S. Supreme Court, the California Supreme Court, and multiple secondary sources, this Court explained, "The law is clear that a court may so modify or vacate an injunction, otherwise the party restrained might be held in bondage of a court order no longer having a factual basis." *Id.* "The original injunction decree is res judicata as to conditions then existing; it is not res judicata as to events thereafter occurring and conditions thereafter coming into being." *Id.*[3] And so, because the evidence showed the defendant's improvements had overcome the nuisance, this Court held that the "trial court [had] properly vacated the injunction" and affirmed. *Id.* at 657–58.

Almost two decades later, in *Bear*, this Court decided a tribal member's challenge to a contempt order finding that she had "violat[ed] a permanent injunction previously ordered by the court." 540 N.W.2d at 440. The injunction had been issued 13 years earlier to stop her from interfering with construction of a housing project on tribal property. *Id.* And she argued that because it only spoke "directly to the housing and sewer system being constructed" at the time—not the newer housing project she had interfered with—she should not have been held in contempt for violating it. *Id.* at 441.

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[3] *Accord Iowa Elec.*, 264 N.W. at 90 ("The judgment in that case was res adjudicata only of the issues then presented, of the facts as they then appeared, and of the legislation then existing.") (cleaned up).

Construing that assertion as an argument that the "mere passage of time" might "invalidate a permanent injunction," this Court rejected it. In so doing, the Court identified the only circumstances in which the passage of time *could* justify dissolution of a permanent injunction: "The court which rendered the injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Id.* The tribal member had not alleged any such change, and the "mere passage of time" was not enough to invalidate it, so this Court upheld the contempt ruling. *Id.* at 440–42.

Read in that context, the district court's dismissal of this Court's clear statement in *Bear* as not "germane to the case," and therefore non-binding dicta, falls apart. App. 299. To properly consider and rule on the tribal member's claim that the 13-year-old injunction no longer prohibited her conduct, this Court rightly began by setting out the relevant law governing the modification and dissolution of permanent injunctions. 540 N.W.2d at 441. Had the relevant law changed, the outcome of the case might have been different. Thus, the statement was not dicta, but part of the Court's carefully crafted holding.

Relatedly, while the district court distinguished *Bear* and *Helmkamp* as cases involving changes in facts, not law, nothing in either case suggests that makes a difference. In *Helmkamp*, this

Court reasoned that it would be inequitable to hold a party "in bondage of a court order no longer having a factual basis." 249 N.W.2d at 656. But holding a party "in bondage of a court order no longer having a [*legal*] basis," *id.*, would be just as inequitable.

Indeed, as one source cited in *Helmkamp* explained, "when new legislation or administrative regulation has altered the law upon which an injunction has been based, courts have long recognized that modification should be granted as a matter of right." *VII. Modification and Dissolution*, 78 Harv. L. Rev. 1080, 1081 (1965).[4]

Similarly, at least by the 1940s courts "wisely ha[d] begun to grant modification regularly" in cases involving changes in law by judicial decision. *Id.* at 1082 (citing *Sontag Chain Stores Co. v. Superior Court*, 113 P.2d 689 (Cal. 1941), and *Santa Rita Oil Co. v. State Bd. of Equalization*, 116 P.2d 1012 (Mont. 1941)). And today, that authority is "well established." *Benjamin v. Jacobson*, 172 F.3d 144, 161 (2d Cir. 1999). *See also* Bryan A. Garner, et al., *The Law of Judicial Precedent* 331–32 (2016) (discussing *Coca-Cola Company v. Standard Bottling Company*, 138 F.2d 788 (10th Cir. 1943), and *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 437–38 (1976)).

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[4] *Accord Helmkamp*, 249 N.W.2d at 656 (citing the same source as *Developments in the Law Injunctions*, 78 Harv. L. Rev. 994, 1082).

2. *Wilcox* and *Iowa Electric* show that this Court has long held courts can modify or dissolve an injunction based on a change in the law.

In addition to *Bear*'s clear statement of the rule, two of this Court's earlier cases prove the statement has long been correct as a matter of Iowa law.

1. First, almost 100 years ago, this Court affirmed a district court's ruling that had "practically dissolved" a permanent injunction after the legislature passed a statute legalizing a tax the district court had enjoined as invalid. *Wilcox*, 205 N.W. at 847–48.[5] The plaintiffs argued the motion to modify was an "attempt to relitigate the matters involved and already disposed of by final decree," and that the district court was thus "without jurisdiction" to consider it. *Id.* But this Court disagreed because, "after the curative act was passed, the reasons upon which the decree was rendered no longer existed." *Id.* at 848. As a result of that change in the law, "[i]t was not only within the power of the court to modify its previous holding to conform to a valid legalizing act, but it would have been its duty in any subsequent proceeding to give full effect thereto, notwithstanding its previous decree." *Id.*

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[5] *Wilcox* also proves that a change in law can justify modification or dissolution even if no appeal is taken from the original injunction. *Wilcox*, 205 N.W. at 847; *see also Jacobson*, 539 N.W.2d at 625 (rejecting argument "that because the county did not appeal from the final judgment granting the original injunction," the county was barred from "relitigating" the constitutionality of an ordinance).

So too here. After *PPH IV* and *Dobbs*, "the reasons upon which the [2019] decree was rendered no longer exist[]." *Id.* So it was "within the power of the [district] court to modify its previous holding to conform" to those decisions. *Id.* And it will be the court's "duty" to give *PPH IV* and *Dobbs* "full effect" in any future cases "notwithstanding [the court's] previous decree." *Id.*

2. Ten years after *Wilcox*, this Court issued a second decision affirming a district court's modification of a permanent injunction based on a change in the law: the passage of another legalizing act. *Iowa Elec.*, 264 N.W. at 84–85, 91. In that case, this Court quoted approvingly from *Utter v. Franklin*, a case involving "county bonds" that the U.S. Supreme Court had previously found "invalid because there was no power to issue them." *Id.* at 90 (quoting *Utter v. Franklin*, 172 U.S. 416, 424 (1899)). Congress later passed a curative act making the bonds "valid." *Id.* (quoting *Utter*, 172 U.S. at 424). And so it made "no possible difference that they had been declared to be void under the power originally given." *Id.* (quoting *Utter*, 172 U.S. at 424).

Equally here, "it makes no possible difference" that the district court previously declared Iowa's fetal heartbeat law to be "void" under the law "then existing." *Id.* (quoting *Utter*, 172 U.S. at 424). That "then existing" law has been overruled, and it is now clear that Iowa's fetal heartbeat law is valid.

The district court gave three reasons for refusing to follow *Wilcox* and *Iowa Electric*. But none of them have any merit.

1. First, the court thought the cases were too old to be helpful because they predate the Iowa Rules of Civil Procedure. App. 299–300. "With the promulgation of the current rules of civil procedure in 1943," the court found it "hard to find precedential value in the two cases, especially when" they did not "cite any rule of law or authority to support" their holdings. *Id.*

But that doesn't follow. The district court is right that "there is no specific rule that allows for permanent injunctions to be dissolved under the Iowa Rules of Civil Procedure." App. 296. But nor is there any rule disallowing it. So it makes little sense to conclude that the promulgation of the rules changed anything.

Moreover, while the two rules the court thought *might* govern such motions, Rules 1.1012 and 1.1013, App. 296–97, 299, did not exist in rule form when this Court decided *Wilcox* and *Iowa Electric*, they did exist in statute form. *See* Iowa Code §§ 12787–800 (1924); Iowa Code §§ 12787–800 (1935). And just like the current rules, those statutes also did not explicitly allow for the modification or dissolution of a permanent injunction based on a change in the law. And yet this Court in both cases affirmed lower court decisions modifying permanent injunctions without even citing those statutes. *Wilcox*, 205 N.W. at 848; *Iowa Elec.*, 264 N.W. at 91.

That approach makes sense because what is true now was just as true then: a court's power to modify its own injunctions does not depend on a rule or statute. The power is inherent in the nature of the relief. *See Spiker*, 708 N.W.2d at 357 (explaining that the source of the power is the "continuing supervision [required] by the issuing court" (cleaned up)). The mere fact that this Court decided *Wilcox* and *Iowa Electric* when the rules of civil procedure existed only in statute form does not make those decisions less binding today.[6]

And this Court confirmed as much in *Johnston v. Kirkville Independent School District*, six years *after* the promulgation of the Iowa Rules of Civil Procedure. 39 N.W.2d 287 (Iowa 1949). There, this Court held that the appeal was moot because the injunction was based on a statute that had since been repealed. *Id.* at 288. Because the case was moot, the injunction survived. *Id.* But this Court quickly added "that if, as seem[ed] unlikely, plaintiffs should attempt to enforce the injunction" despite that change in the law, the trial court "might and should dissolve the injunction." *Id.* And rather than cite the newly promulgated rules, the Court cited cases from other courts and legal treatises standing for the proposition that such authority is inherent. *Id.* (collecting cases and treatises).

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[6] Indeed, this Court sometimes looks to precedents that "predate our civil rules" to interpret those rules. *See Galloway v. Zuckert*, 424 N.W.2d 437, 438 (Iowa 1988) (relying on caselaw predating the rules to interpret Rules of Civil Procedure 68 and 73).

2. Second, the district court distinguished *Wilcox* and *Iowa Electric* because the motions there were filed within one year of the original judgments, so "within the one-year limitations period" under Rule 1.1013. App. 300. The same one-year period existed when the rule was in statute form, though. *See* Iowa Code §§ 12790, 12793 (1924); Iowa Code §§ 12790, 12793 (1935). And this Court did not suggest in either case that the timing made a difference.

3. Third, the district court distinguished *Wilcox* and *Iowa Electric* because the change in law in those cases took the form of a legalizing act, not a court decision. App. 300–01. But that's another distinction without a difference. Neither opinion suggests the Court thought it mattered that the change occurred through legislation rather than judicial decision. Nor should it. Indeed, that "point hardly requires citation of authority, for obviously it is not equitable to continue to restrain a party from actions no longer unlawful whether the change in law has come about through new legislative enactment or through an authoritative change in judicial construction by the courts." *Santa Rita*, 116 P.2d at 1017. *Accord Agostini v. Felton*, 521 U.S. 203, 215 (1997) ("A court may recognize subsequent changes in either statutory or decisional law."); *Spiker*, 708 N.W.2d at 359, 361 (affirming district court decision vacating visitation order based on change in decisional law).

3. *Spiker* proves that, even with the Iowa Rules of Civil Procedure, courts retain the authority to modify or dissolve their own injunctions.

i. Rule 1.1013's one-year time limit does not apply to motions to modify prior grants of continuing relief.

More recently—and long after the adoption of the Iowa Rules of Civil Procedure—this Court reaffirmed that "[w]hen judgments concerning continuing relief are involved and a change of circumstances makes the judgment too burdensome," the burdened party typically can "apply to the rendering court for a modification of the terms of the judgment." *Spiker*, 708 N.W.2d at 355 (cleaned up). In *Spiker*, the "change in circumstances" was a change in decisional law: this Court's holding "that the statute upon which [a] visitation order was based" was unconstitutional. *Id.* at 358.

The question on appeal was whether that new holding allowed a mother "to modify a grandparent visitation order" entered more than two years earlier "from which she did not appeal." *Id.* at 352. And this Court held that it did because the initial visitation order was a "judgment granting continuing relief." *Id.* at 354. So even though the case involved a "petition to modify, vacate, or stay," *id.*, a visitation order—not an injunction—this Court applied caselaw governing motions to modify an injunction based on a change in the law and affirmed the district court's order vacating the visitation order, *id.* at 354, 357–58, 361.

For example, quoting a U.S. Supreme Court case involving the modification of a consent decree based on a change in the law, this Court declared that there is "no dispute but that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, *whether of law or fact,* obtaining at the time of its issuance have changed, or new ones have since arisen." *Id.* at 357 (quoting *Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647 (1961)). The stability of past judgments is important, but a "court cannot be required to disregard significant changes in law or facts if it is satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong." *Id.* (quoting *Sys. Fed'n*, 364 U.S. at 647) (cleaned up).

In *System Federation*, the U.S. Supreme Court had held that a decree "could be modified due to [a] change in the law." *Id.* at 358. That was true because the parties had "no power to require of the court continuing enforcement of rights the statute no longer [gave]." *Id.* (quoting *Sys. Fed'n*, 364 U.S. at 652). And this Court held that applied "with equal, if not greater, force" in *Spiker*. *Id.* "[T]hat the statute upon which the visitation order was based [had] been declared unconstitutional [was] a substantial change in circumstances," and that justified dissolving the visitation order two years after it had been entered. *Id.* at 358–59.

All of that is equally true here. Planned Parenthood has "no power to require . . . continuing enforcement of rights" the Iowa Constitution "no longer gives," *id.* at 358 (cleaned up), especially since this Court has made clear Iowa's Constitution *never* protected a fundamental right to abortion, *see PPH IV*, 975 N.W.2d at 740. "[T]he fact that the [decision] upon which the [injunction] was based has been [overruled] is a substantial change in circumstances," and that justifies dissolving the injunction. *Spiker*, 708 N.W.2d at 358.

Importantly, *Spiker* also refutes the district court's apparent belief that the Iowa Rules of Civil Procedure somehow limit lower courts' inherent authority to modify or vacate their own injunctions. App. 296–97, 299–300. This Court rejected that very argument in *Spiker* when the grandparents there complained that the mother did not file her petition "within the time required by Rule 1.1013." *Spiker*, 708 N.W.2d at 360. As this Court correctly held, "[t]his argument fails because . . . failure to comply with our rule governing modifications of final judgments does not deprive the court of its common-law power to modify judgments granting continuing relief and regulating future conduct upon a substantial change in circumstances." *Id.* And the same is necessarily true here. "[O]therwise equity would cease to be equity and become a hard and fast taskmaster." *Ladner v. Siegel*, 148 A. 699, 701 (Pa. 1930). Rule 1.1013 does not require such an inequitable result.

ii. A motion to modify an injunction filed in the same proceeding does not implicate res judicata.

The district court distinguished *Spiker* largely based on the reasons this Court gave in explaining why res judicata did not bar dissolving the visitation order at issue there. App. 302–04. But whether those reasons are present here makes no difference because this Court has *already* held that res judicata does not limit courts' authority to modify an injunction based on new conditions: "The original injunction decree is res judicata as to conditions then existing; it is not res judicata as to events thereafter occurring and conditions thereafter coming into being." *Helmkamp*, 249 N.W.2d at 656. *Accord Iowa Elec.*, 264 N.W. at 90 (applying the same rule). "Although some measure of finality is desirable, the legal doctrine of res judicata is inappropriate when applied to the injunction remedy." *Modification and Dissolution*, 78 Harv. L. Rev. at 1081.

Relatedly, as the Supreme Court has observed, "res judicata and collateral estoppel do not apply if a party moves the rendering court in the *same proceeding* to correct or modify its judgment." *PennyMac Corp. v. Godinez*, 474 P.3d 264, 270 (Haw. 2020) (quoting *Arizona v. California*, 460 U.S. 605, 619 (1983)) (emphasis added). Courts have correctly "held that res judicata generally does not apply to [such] motions" if filed in the same case. *Id.* (collecting cases). And that is exactly what the State did here.

iii. This case raises equally important policy concerns as those raised in Spiker.

This case also presents equally important reasons for dissolving the 2019 injunction as those raised in *Spiker*, mitigating any unnecessary concerns about res judicata. This Court explained in *Spiker* that res judicata "must give way at least when, as in [that] case, claim preclusion would result in the State's continuing violation of an individual's fundamental constitutional rights." *Spiker*, 708 N.W.2d at 358. To the district court, that distinguished *Spiker* because here the court had issued its injunction to stop the State from enforcing a law that "violated what was an individual's fundamental constitutional right under the Iowa Constitution to an abortion." App. 302.

But that incorrectly assumes there ever "*was* an individual[] fundamental" right to an abortion. *Id.* (emphasis added). And it overlooks the strong separation-of-powers concerns that are implicated here. Under the separation-of-powers doctrine, "one department of the government" is prohibited "from exercising powers granted by the constitution to another branch." *State v. Thompson*, 954 N.W.2d 402, 410 (Iowa 2021) (cleaned up). And that is exactly what the district court did here by treating its 2019 injunction as an effective repeal of the General Assembly's validly enacted law.

This Court long ago rejected the argument that judges can "refuse to execute a statute" merely because "it is not in harmony with their notions of morality and justice." *Stewart v. Bd. of Supervisors of Polk Cnty.*, 30 Iowa 9, 15–16 (1870). Such "questions of public policy and State necessity are not meant to be assigned to the domain of the courts." *Id.* at 16 (cleaned up). And this Court has "repeatedly held that equity will generally decline to interfere with the administration of valid laws against crimes or quasi crimes." *Wood Bros. Thresher Co. v. Eicher*, 1 N.W.2d 655, 659 (Iowa 1942) (collecting cases). Leaving the 2019 injunction in place would be a stark departure from that practice—allowing wrongly decided and overruled court decisions to prevent the executive branch from enforcing the legislature's validly enacted laws.

Equally wrong was the district court's second reason for distinguishing *Spiker*: that the holding there was "consistent with" the view that "courts have inherent authority to modify decrees concerning custody and visitation of children." App. 304 (quoting *Spiker*, 708 N.W.2d at 355). "Consistent with" does not mean "dependent on," so the court wrongly inferred the authority to modify an injunction is limited to "exceptional" cases involving the "best interests of children." App. 304. Moreover, this case does implicate the best interests of children—countless children whose lives will be spared if Iowa's fetal heartbeat law finally takes effect.

B. It makes no difference that the common-law power to modify injunctions has not been codified in the Iowa rules—courts retain that inherent authority.

As *Spiker* makes clear, the "source" of the "power to modify" an injunction is that it "often requires continuing supervision by the issuing court." 708 N.W.2d at 357 (quoting *Sys. Fed'n*, 364 U.S. at 647). Thus, while some jurisdictions have rules that broadly govern the practice—like Rule 60(b)(5) at the federal level—those rules are "little more than a codification of the universally recognized principle that a court has continuing power to modify or vacate a final decree." Wright & Miller, Modification of Injunctions, 11A *Fed. Prac. & Proc. Civ.* § 2961 (3d ed. 2013). *Accord Polites v. United States*, 364 U.S. 426, 438 (1960) (Brennan, J., dissenting) ("This principle is rooted in the practice of courts of equity and is well settled in the vast majority of the States.").

That power is "inherent in the jurisdiction of the chancery." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932). And for good reason. A court's "continuing responsibility . . . over its decrees is a necessary concomitant of the prospective operation of equitable relief." Wright & Miller, § 2961. In other words, because trial courts have continuing authority to *enforce* their own injunctions, equity requires that they also have the same coextensive authority "to modify or vacate [their injunctions] 'as events may shape the need.'" *Id.* (quoting *Swift*, 286 U.S. at 114).

For that reason, Justice Frankfurter famously wrote that an injunction is "'permanent' only for the temporary period for which it may last." *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941). Equity requires an "opportunity for modifying or vacating an injunction when its continuance is no longer warranted." *Id.* And that's because "[i]njunctions do not give rise to vested rights; they enforce only rights existing under current law and conditions." *Modification and Dissolution*, 78 Harv. L. Rev. at 1081. That leads to the common-sense conclusion that enjoined parties "should be inhibited only as long as there is something improper about their activity." *Id.* And so "it has uniformly been held" that an injunction is "always subject, upon a proper showing, to modification or dissolution by the court which rendered it." *Sontag*, 113 P.2d at 690. *Accord City & Cnty. of Denver v. Denver Tramway Corp.*, 187 F.2d 410, 416–17 (10th Cir. 1951) (collecting state and federal cases approving of this "inherent power").

Given the inherent nature of that authority, the district court's conclusion that the "Iowa Rules of Civil Procedure do not provide a path for vacating this judgment" is beside the point. App. 295. As this Court made clear in *Spiker*, the absence of a rule "does not deprive the court of its common-law power to modify judgments granting continuing relief and regulating future conduct upon a substantial change in circumstances." 708 N.W.2d at 360.

The same was true in federal court "long before" Rule 60(b). *Polites*, 364 U.S. at 438 (Brennan, J., dissenting). "[A] change in the law after the rendition of a decree was grounds for modification or dissolution of that decree insofar as it might affect future conduct." *Id.*[7] And Rule 60(b)(5), adopted in 1948, merely "continue[d] this history of equitable adjustment to changing conditions of fact and law." *Polites*, 364 U.S. at 438 (Brennan, J., dissenting). The power itself long predates the federal rule, and *Spiker* confirms the same power still exists in Iowa even after the promulgation of our rules.

C. The State's decision not to pursue an appeal in 2019 does not prevent the State from appealing the district court's December 2022 ruling now.

Undeterred, Planned Parenthood asks this Court to dismiss this appeal because the State did not file a notice of appeal within 30 days of the 2019 decision. Mot. to Dismiss Appeal (Dec. 27, 2022). According to Planned Parenthood, the district court's 2019 decision was a "final judgment for purposes of appeal," and therefore the State filed its notice of appeal "almost four years after the deadline to appeal as of right [had] passed." *Id.* at 2–3.

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[7] *See, e.g.*, *W. Union Tel. Co. v. Int'l Brotherhood of Elec. Workers*, 133 F.2d 955, 957 (7th Cir. 1943) (explaining that an "injunction will be vacated or modified where the law has been changed making acts enjoined legal") (citing *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1855)).

But dismissing this appeal on that basis would fly in the face of the authority discussed above, including this Court's decisions in *Bear*, *Helmkamp*, *Wilcox*, *Iowa Electric*, and *Spiker*. Indeed, in both *Wilcox* and *Spiker* this Court explicitly noted that the movants had *not* appealed the prior final judgments that had resulted in the challenged orders for continuing relief. *Wilcox*, 205 N.W. at 847; *Spiker*, 708 N.W.2d at 352. And that "failure" to file an initial appeal had no impact on the outcome in either case.

More recently, this Court affirmed a district court decision dissolving an injunction issued almost three years earlier on remand from this Court. *Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 766 (Iowa 2019). The movant apparently had not appealed the injunction at the time, but again, that made no difference on appeal. *Id.* at 767. Rather than reviewing the merits of the underlying injunction, this Court "review[ed] the district court's decision to vacate [that] injunction for abuse of discretion" and affirmed. *Id.* at 769, 774.

Several non-Iowa cases explain why that approach is correct. At bottom, a court's "inherent power" to modify its own injunctions, even after "the power to modify a judgment at law would have ceased," is based on "the principle that a preventive injunction is fundamentally different from any other judgment or decree." *State ex rel. Bradford v. Stubblefield*, 220 P.2d 305, 311 (Wash. 1950).

One key difference is the continuing nature of an injunction. A permanent injunction "differs materially from the ordinary final decree adjudicating the principles of the cause and determining the rights of the parties" because a permanent injunction "protect[s] the settled rights of a party against injurious interference in the future." *Edlis, Inc. v. Miller*, 51 S.E.2d 132, 142 (W. Va. 1948). As a result, an injunction "is a continuing process over which the equity court necessarily retains jurisdiction in order to do equity." *Nat'l Elec. Serv. Corp. v. Dist. 50, United Mine Workers of Am.*, 279 S.W.2d 808, 812 (Ky. 1955). "The final decree [thus] continues the life of such proceeding, not only for the purpose of execution, but for such other relief as a [court] may in good conscience grant under the law." *Ladner*, 148 A. at 701. And that "distinctive characteristic . . . renders inapplicable the general rules which apply to an ordinary final decree or judgment." *Edlis*, 51 S.E.2d at 142.

Another key difference is that an injunction is based on the issuing court's mere prediction about what the future holds—here, its prediction that certain "settled rights" would remain settled. *Id.* "[B]ecause injunctive relief is drafted in light of what the court *believes* will be the future course of events, a court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong." 43A C.J.S. Injunctions § 441 (emphasis added).

Because of these differences, "a decree may be final[] as it relates to an appeal and all matters included or embodied in such a step," and "yet, where the proceedings are of a continuing nature, it is not final." *Santa Rita*, 116 P.2d at 1016 (quoting *Ladner*, 148 A. at 701).[8] "In such cases, courts must retain jurisdiction to vacate or modify the terms of the injunction . . . to avoid unjust or absurd results when a change occurs in the factual setting or the law which gave rise to its existence." *Twedell v. Town of Normandy*, 581 S.W.2d 438, 440 (Mo. Ct. App. 1979). "The power to modify is essential, for without it an injunction awarded by a court of equity might itself become an instrument of inequity." *Material Serv. Corp. v. Hollingsworth*, 112 N.E.2d 703, 705 (Ill. 1953).

Read against that backdrop, Planned Parenthood's insistence that the 2019 ruling was "a final judgment for purposes of appeal" misses the point. Mot. to Dismiss Appeal at 2 (Dec. 27, 2022). So too for Planned Parenthood's argument that the expiration of the original 30-day deadline to appeal the 2019 injunction somehow bars a meritorious appeal from the December 2022 ruling denying the State's motion to dissolve that injunction. *Id.* at 3.

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[8] This Court in *Johnston* found *Santa Rita* and *Ladner* persuasive for the proposition that the trial court "might and should dissolve" the injunction challenged there—assuming it was ever enforced—based on a change in the law. 39 N.W.2d at 288.

As other courts have held, "[a]n exception to the above rule is that circuit courts have jurisdiction, or inherent power, to modify or dissolve their own injunctions after the lapse of the 30-day limit." *Am. Inst. of Real Est. Appraisers v. Nat'l Real Est. Ass'n, Inc.*, 548 N.E.2d 379, 381 (Ill. App. Ct. 1989). That's because "the reason for the rule ceases and the rule fails to apply in the case of a preventive injunction." *Sontag*, 113 P.2d at 690. "[T]he decree . . . creat[es] no right but merely assum[es] to protect a right from unlawful and injurious interference." *Id.* "Such a decree, it has uniformly been held, is always subject, upon a proper showing, to modification or dissolution by the court which rendered it." *Id.*

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"Injunctions are one of the law's most powerful weapons." *Sweeton v. Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994) (en banc). No power is "more dangerous in a doubtful case." *Kent Prods., Inc. v. Hoegh*, 61 N.W.2d 711, 714 (Iowa 1953) (cleaned up). As such, they "should be dissolved when they no longer meet the requirements of equity." *Sweeton*, 27 F.3d at 1166. "Neither the doctrines of *res judicata* or waiver nor a proper respect for previously entered judgments requires that old injunctions remain in effect when the old law on which they were based has changed." *Id.* at 1166–67. That has long been the law in Iowa. *Helmkamp*, 249 N.W.2d at 656; *Iowa Elec.*, 264 N.W. at 90. And it requires reversal here.

II. The district court abused its discretion by refusing to dissolve the 2019 injunction now that the law it was founded on has been superseded by *PPH IV* and *Dobbs*.

The district court also wrongly concluded the State had "failed to show . . . a substantial change in the law." App. 304. The State preserved its objection by moving to dissolve the injunction, *Meier*, 641 N.W.2d at 538–39, and by describing the many ways in which *PPH IV* and *Dobbs* profoundly altered the legal landscape on which the injunction was based, App. 160–71, 213–20, 244, 273–82, 287–90.

"Constitutional claims are reviewed de novo." *PPH IV*, 975 N.W.2d at 721. But the Court reviews a decision whether "to vacate an injunction for abuse of discretion." *Den Hartog*, 926 N.W.2d at 769. "When a change in the law authorizes what had previously been forbidden it is abuse of discretion for a court to refuse to modify an injunction founded on the superseded law." *Am. Horse*, 694 F.2d at 1316. *Accord* 42 Am.Jur.2d *Injunctions* § 310; *Agostini*, 521 U.S. at 215 ("A court errs when it refuses to modify an injunction . . . in light of such changes."); *California v. EPA*, 978 F.3d 708, 713–14 (9th Cir. 2020) (discussing "unbroken line of Supreme Court cases" making that "clear"). Finally, in "construing a change in the law," a reviewing court "does not owe [deference] to a district court's construction." *Am. Horse*, 694 F.2d at 1316. Instead, the reviewing court must "independently assess the import" of the change. *Id.*

A. After *PPH IV* and *Dobbs*, the injunction's treatment of abortion as a fundamental right is based on superseded law.

In 2019, the district court based its decision to enjoin Iowa's fetal heartbeat law on *PPH II*'s holding "that a woman's right to decide whether to terminate a pregnancy is a fundamental right under the Iowa Constitution." App. 137. The district court conceded as much in denying the State's motion to dissolve. App. 294 (describing injunction as "a result of *PPH II*"). The court also relied on *Roe*'s holding that a woman has a "fundamental right to decide to terminate a pregnancy" under the federal Constitution. App. 138. In fact, the court described the nature of the right as "fundamental" ten separate times in its eight-page order. App. 137, 138 & n.8, 139, 140, 141.

Three years after that injunction issued, though, this Court overruled *PPH II*, holding that there is "no support for abortion as a fundamental constitutional right in Iowa." *PPH IV*, 975 N.W.2d at 740. One week later, the U.S. Supreme Court overruled *Roe* and *Casey*, holding that "abortion is not a fundamental constitutional right" under "any constitutional provision" in the U.S. Constitution. *Dobbs*, 142 S. Ct. at 2242, 2283. Contrary to *PPH II*, *Roe*, and *Casey*, abortion is not a fundamental right. And the district court abused its discretion by "refus[ing] to modify an injunction founded on [that] superseded law." *Am. Horse*, 694 F.2d at 1316.

B. After *PPH IV* and *Dobbs*, the injunction's application of strict scrutiny is based on superseded law.

The district court just as clearly based its injunction on *PPH II*'s related holding that "any governmental limits on [the abortion] right are to be analyzed using strict scrutiny." App. 137–38. In applying that test, the court drew support from *Roe*'s "application of a strict scrutiny test." App. 138. Because the court concluded Iowa's fetal heartbeat law fails strict scrutiny, meaning it is not "narrowly tailored to serve the compelling state interest of promoting potential life," the court held that it violated "both the due process and equal protection provisions of the Iowa Constitution" and had to be permanently enjoined. App. 142.

In *PPH IV*, though, this Court "overrule[d] *PPH II*, and thus reject[ed] the proposition that there is a fundamental right to an abortion in Iowa's Constitution subjecting abortion regulation to strict scrutiny." *PPH IV*, 975 N.W.2d at 715. The Court likewise rejected the claim that Iowa's equal protection provisions offer heightened protection for abortion. *Id.* at 743–44; *accord Dobbs*, 142 S. Ct. at 2246. Iowa's Constitution thus does not "necessitat[e] a strict scrutiny standard of review" for laws regulating abortion. *PPH IV*, 975 N.W.2d at 716. And as *Dobbs* made clear one week later, the U.S. Constitution does not require strict scrutiny either. 142 S. Ct. at 2283–84 (applying rational-basis review instead).

1. Because abortion is not a fundamental right, rational-basis review necessarily applies.

While the Court in *PPH IV* rejected strict scrutiny, a plurality of justices chose not to decide "what constitutional standard should replace" it. *PPH IV*, 975 N.W.2d at 715. In justifying its decision to leave that question to "be litigated further" on remand and in other cases, the plurality explained that the upcoming decision in *Dobbs* "could alter the federal constitutional landscape established by *Roe* and *Casey*." *Id.* at 716. *Dobbs* "could decide whether the undue burden test continues to govern federal constitutional analysis of abortion rights." *Id.* at 745. And that could "impart a great deal of wisdom" that the Court did not yet have. *Id.*

And that is exactly what *Dobbs* did. *Dobbs* rejected *Casey*'s "ambiguous," "arbitrary," and "unworkable" undue-burden test. *Dobbs*, 142 S. Ct. at 2266, 2273, 2275. That test had been "plucked from nowhere." *Id.* at 2275 (cleaned up). And "[c]ontinued adherence to [it] would undermine, not advance, the evenhanded, predictable, and consistent development of legal principles." *Id.* at 2275 (cleaned up). So *Dobbs* discarded *Casey*'s undue-burden test, applying "rational-basis review" instead. *Id.* at 2283–84. Stated plainly, "rational-basis review is the appropriate standard for such challenges" because "procuring an abortion is not a fundamental constitutional right." *Id.* at 2283.

The same is true under Iowa law. "It is well settled that '[i]f a fundamental right is implicated," Iowa courts "apply strict scrutiny.'" *PPH II*, 915 N.W.2d at 238 (quoting *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005)). And "[i]f a fundamental right is not implicated, a statute need only survive a rational basis analysis." *Seering*, 701 N.W.2d at 662. Simply put, "[i]f the right at issue is fundamental, strict scrutiny applies; otherwise, the state only has to satisfy the rational basis test." *King*, 818 N.W.2d at 31. Full stop.

To reiterate what this Court held in *PPH IV*, "the Iowa Constitution is not the source of a fundamental right to an abortion." 975 N.W.2d at 716. As a matter of state constitutional text and history, "there is no support for abortion as a fundamental constitutional right." *Id.* at 740. It necessarily follows that, since "a fundamental right is not implicated," laws regulating abortion like Iowa's fetal heartbeat law "need only survive a rational basis analysis." *Seering*, 701 N.W.2d at 662. Or as this Court put it in *King*, because any alleged "right at issue" is not fundamental, the State "only has to satisfy the rational basis test" for the fetal heartbeat law to survive constitutional review. *King*, 818 N.W.2d at 31. And the law easily satisfies that test.

2. Iowa's fetal heartbeat law rationally advances the state's interest in protecting unborn life.

"Under rational-basis review, the statute need only be rationally related to a legitimate state interest." *Sanchez v. State*, 692 N.W.2d 812, 817–18 (Iowa 2005). And that only requires "a reasonable fit between the government interest and the means utilized to advance that interest." *Seering*, 701 N.W.2d at 662 (cleaned up). So the State "may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot substitute their social and economic beliefs for the judgment of legislative bodies." *Dobbs*, 142 S. Ct. at 2283–84 (cleaned up). Such "legitimate interests" include:

- "respect for and preservation of prenatal life at all stages of development;
- the protection of maternal health and safety;
- the elimination of particularly gruesome or barbaric medical procedures;
- the preservation of the integrity of the medical profession;
- the mitigation of fetal pain; and
- the prevention of discrimination on the basis of race, sex, or disability."

Id. at 2284 (cleaned up). "These legitimate interests" provided a rational basis for the 15-week law challenged in *Dobbs*. *Id.* And it followed that the challenge to that law "must fail." *Id.*

So too here. As the Eleventh Circuit recently held in vacating a permanent injunction against Georgia's fetal heartbeat law, a "prohibition on abortions after detectable human heartbeat is rational" because "'[r]espect for and preservation of prenatal life at all stages of development' is a legitimate interest." *SisterSong Women of Color Reprod. Just. Collective v. Governor of Georgia*, 40 F.4th 1320, 1326 (11th Cir. 2022) (quoting *Dobbs*, 142 S. Ct. at 2284). And "[t]hat legitimate interest provides a rational basis for" Iowa's law, too. *Id.* (cleaned up). *Accord State v. Moore*, 25 Iowa 128, 135 (1868) (commending the common law's "solicitude for the sacredness of human life and the personal safety of every human being," including "infants [in their mothers' wombs]").[9]

Indeed, in *SisterSong* the plaintiffs "concede[d] that *Dobbs* doom[ed] their challenge to the Act's prohibition of abortions after detectable fetal heartbeat." 40 F.4th at 1325. "Because [their] right-to-abortion claim" and resulting injunction were "premised on the *Roe*/*Casey* framework, *Dobbs* [was] dispositive." Suppl. Appellees' Br., *SisterSong*, No. 20-13024 (11th Cir. July 15, 2022), 2022 WL 2901027, at *1. Equally here, *PPH IV* and *Dobbs* dispose of Planned Parenthood's challenge to Iowa's fetal heartbeat law.

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[9] Iowa's law also furthers legitimate interests in banning a barbaric practice, protecting women's health and safety, and preserving the medical profession's integrity. *Dobbs*, 142 S. Ct. at 2284. Measured against any of these interests, the law is constitutional.

3. Especially now that *Casey* has been overruled, *Casey*'s undue-burden standard cannot be the test under Iowa law.

Post-*Dobbs*, it makes no difference that the *PPH IV* plurality did not decide what standard should replace strict scrutiny. 975 N.W.2d at 715. The plurality wrote that, "[*f*]*or now*," the *Casey* undue burden test this Court "applied in *PPH I* remain[ed] the governing standard." *Id.* at 716 (emphasis added). But even the plurality did not find that the Iowa Constitution imposes an undue-burden test. *Dobbs* was still pending, and the plurality knew that *Dobbs* might "decide whether the undue burden test continue[d] to govern federal constitutional analysis of abortion rights." *Id.* at 745. So the plurality decided not to decide the question yet and invited the parties to "litigate[]" it "further" on remand. *Id.* at 716.

We now know that is exactly what the Supreme Court decided in *Dobbs*. And the Supreme Court's rejection of *Casey*'s "arbitrary" and "unworkable" undue-burden standard, 142 S. Ct. at 2266, 2275, means this Court should reject it, too (see Part III below).

But *Dobbs* matters for a more fundamental reason. In *PPH I*, this Court did *not* hold that the undue-burden test is the correct test as a matter of Iowa law—the Court did not even hold that Iowa's Constitution protects a right to abortion. *PPH I*, 865 N.W.2d at 262 (explaining why the Court thought it "need not decide whether the Iowa Constitution provides such a right").

Instead, the Court applied *Casey*'s test based on the State's apparent concession at oral argument that Iowa's Constitution "provides a right to an abortion that is coextensive with" the federal right. *Id.* at 254. *Accord PPH IV*, 975 N.W.2d at 745 (noting that the Court had "applied the undue burden test . . . based on the State's concession *for purposes of that case*") (emphasis added).

The State and the Board have long since disavowed that alleged concession. Regardless, now that *Dobbs* has rejected *Casey*'s undue-burden test under the U.S. Constitution, there is no basis for concluding it "remains the governing standard" under Iowa's Constitution. *PPH IV*, 975 N.W.2d at 716. If anything, now that rational-basis review applies at the federal level, *PPH I*'s assumption that the two constitutions are "coextensive" means rational-basis review is the correct test here in Iowa, too. 865 N.W.2d at 254.

This Court does not need to reach that conclusion based on any perceived concession, though. Black-letter Iowa law compels the same result: "Lest we forget, we already have well-established tiers of constitutional scrutiny for the type of challenge presented in this case." *PPH IV*, 975 N.W.2d at 746 (McDermott, J., dissenting in part). In cases where, as here, "the right at stake is not a fundamental right," Iowa courts "apply the rational basis test and determine whether the law is 'rationally related to a legitimate state interest.'" *Id.* (quoting *Sanchez*, 692 N.W.2d at 817–18).

The district court refused to conduct that analysis here, insisting that the undue-burden test still governs until this Court says otherwise. App. 305 (citing *PPH IV*, 975 N.W.2d at 749 (McDermott, J., dissenting in part)). After *PPH IV* and *Dobbs*, though, rational-basis review is the only test that has any basis in Iowa law. And the district court erred by refusing to recognize that.

The Montana Supreme Court's decision in *Santa Rita*—which this Court cited approvingly in *Johnston*, 39 N.W.2d at 288—shows why that was error. In *Santa Rita*, the defendant State Board of Equalization petitioned the Montana Supreme Court to vacate an injunction that court had issued five years earlier. 116 P.2d at 1013. The Board based its petition on the ground that since "the decision and the issuance of the injunction order there [had] been changes in the applicable law, rendering the continuance of the injunction unjust, unreasonable and inequitable." *Id.* The law had "been changed, not by congressional Act, . . . but by judicial interpretation," namely a U.S. Supreme Court decision that had expressly and implicitly overruled four prior cases the Montana Supreme Court had relied on in making its original decision and issuing the resulting injunction. *Id.* at 1014–15.

That decision was binding on the Montana Supreme Court. *Id.* at 1015. And while it could "in no way be held to reverse the decision of [that] court upon which the injunction in question [was]

based, it [did] overrule the authorities and reverse the rule of law upon which that decision was grounded." *Id.* As a result, "equity demand[ed]" that the Board's "motion must be granted and the injunction vacated." *Id.* at 1017–18.

A similar analysis supports the same conclusion here. "While [*Dobbs*] can in no way be held to reverse" the district court's 2019 decision "upon which the injunction in question [was] based," *Dobbs* did "overrule the authorities and reverse the rule of law upon which that decision was grounded." *Id.* at 1015. And by rejecting *Casey*'s undue-burden test, *Dobbs* just as clearly reversed the rule of law on which *PPH I*'s application of that test was based. As a result of *that* change in the law, and *PPH IV*'s overruling of *PPH II*, "equity [now] demands" that the State's "motion must be granted and the [2019] injunction vacated." *Id.* at 1017–18.

C. After *PPH IV* and *Dobbs*, the injunction's reliance on the viability line is based on superseded law.

Finally, the district court based its 2019 injunction of Iowa's fetal heartbeat law on the fact that the law prohibits some previability abortions. "[V]iability is not only material to this case," the district court wrote in its summary judgment order, "it is dispositive on the present record." App. 137. Indeed, the Court's eight-page order contains 21 references to some version of the word "viability." App. 137 & n.7, 138, 139, 140 & n.10, 142.

As the district court conceded, "*PPH II* did not expressly address the previability versus postviability dichotomy." App. 140. But the court was still "satisfied that such an analysis [was] inherent in [this] Court's adoption of a strict scrutiny test." *Id.* And the court was "equally satisfied" that the fetal heartbeat law "fail[ed] in this regard as a prohibition of previability abortions." *Id.*

In *PPH IV*, though, this Court overruled *PPH II*'s adoption of strict scrutiny. *PPH IV*, 975 N.W.2d at 715–716. Thus, any "inherent" value the viability line might have had under a strict-scrutiny regime is now gone. App. 140. And in *Dobbs*, the U.S. Supreme Court completely erased the viability line's legal relevance by overruling *Roe* and *Casey*. *Dobbs*, 142 S. Ct. at 2242, 2279. *Dobbs* even singled out the viability line for express disapproval, saying it made "no sense" and had never been "adequately justified." *Id.* at 2261, 2270.

It follows that the viability line can no longer be read into *PPH II*'s strict-scrutiny analysis when both viability and strict scrutiny have been read *out* of the state and federal constitutions. The mere fact that Iowa's fetal heartbeat law prohibits some previability abortions is no longer a reason to enjoin it. And the district court's decision enjoining it on that ground should be dissolved.

* * * * *

In sum, this is not just a case about abortion. It's also a case "about the separation of powers and the limits of a court's equitable discretion." *California v. EPA*, 978 F.3d at 711. This appeal asks this Court "to decide whether a district court abuses its discretion by refusing to modify an injunction even after its legal basis has evaporated and new law permits what was previously enjoined." *Id.* Based on close to a century's worth of precedent discussed above, this Court should "answer affirmatively and reverse." *Id.*

III. This Court should hold now that rational-basis review applies and thus that there's been a substantial change in the law requiring dissolution of the 2019 injunction.

In the alternative, now that *Dobbs* has been decided and the undue-burden standard has been discarded at the federal level, this Court should complete the analysis the plurality left open and hold that *Casey*'s undue-burden test is no longer the test under Iowa law. *PPH IV*, 975 N.W.2d at 716. And that means reversing the decision below regardless of whether the district court was right to leave it to this Court to decide that issue in the first instance.

The State preserved this argument by moving to dissolve the injunction, *Meier*, 641 N.W.2d at 538–39, and by describing below the ways in which *PPH IV* and *Dobbs* substantially changed the law the injunction was based on, App. 160–71, 213–20, 244, 273–82, 287–90.

"Constitutional claims are reviewed de novo," *PPH IV*, 975 N.W.2d at 721, and the Court reviews a decision whether "to vacate an injunction for abuse of discretion." *Den Hartog*, 926 N.W.2d at 769. Importantly, though, while the trial court has discretion to decide whether to vacate an injunction, "the exercise of [that] discretion cannot be permitted to stand" if a reviewing court finds that it "rests upon a legal principle that can no longer be sustained." *Agostini*, 521 U.S. at 238. And that perfectly describes this case.

In addressing the State's argument that, post-*PPH IV* and *Dobbs*, rational-basis review is the correct test for state constitutional challenges to laws regulating abortion, the district court mainly decided not to decide that issue. App. 305–06. Citing Justice McDermott's partial dissent in *PPH IV* and the authority that opinion relied on, the district court concluded that "it is not in the district court where the standard should be further litigated," but in this Court on appeal. App. 305.

As discussed above, that conclusion was error. A plurality of this Court invited further litigation on that question, and that opinion controlled. *PPH IV*, 975 N.W.2d at 716 n.2. But regardless, this Court still should hold now that rational-basis review applies (and the fetal heartbeat law satisfies it), reverse the district court's contrary decision, and remand the case with instructions to the district court to enter an order dissolving the 2019 injunction.

The U.S. Supreme Court took that exact approach in *Agostini*, an Establishment Clause case with a nearly identical procedural posture to the procedural posture here. In a prior decision, the Supreme Court had held that the Establishment Clause "barred the city of New York from sending public school teachers into parochial schools to provide remedial education to disadvantaged children." 521 U.S. at 208. On remand the district court had "entered a permanent injunction reflecting [that] ruling." *Id.* And 12 years later, "the parties bound by that injunction" had moved to the district court to vacate it based on their contention that the Supreme Court's prior decision could not "be squared with [its] intervening Establishment Clause jurisprudence." *Id.* at 208–09.

The district court denied the motion, reasoning that while there was good reason to believe the prior decision's "demise [was] imminent," that "demise had not yet occurred," and it therefore was still binding on the district court. *Id.* at 214, 238 (cleaned up). The Second Circuit affirmed the district court. *Id.* at 214. And the Supreme Court granted certiorari, overruled its prior precedent, reversed the district court's decision denying the motion to modify the injunction, and remanded the case to the district court with instructions to vacate the 12-year-old permanent injunction order. *Id.* at 209, 214, 240.

Relevant here, the Supreme Court did *not* hold that the district court had erred by failing to recognize that the Court had implicitly overruled the prior decision on which the injunction was based. Quite the opposite, the lower court was "correct to recognize that the motion had to be denied unless and until [the Supreme] Court reinterpreted [that] precedent." *Id.* at 238. The Court also recognized it was reviewing for an abuse of discretion. *Id.*

Even still, the Court explained that "the exercise of discretion cannot be permitted to stand if [the Court] find[s] it rests upon a legal principle that can no longer be sustained." *Id.* The Court's prior decision was "not consistent with [its] subsequent Establishment Clause decisions" and thus was "no longer good law." *Id.* at 209, 235. And that qualified as "a bona fide, significant change in subsequent law" requiring vacating the injunction. *Id.* at 239–40.

All of that applies equally here even if the Court believes the district court was right to reject *PPH IV*'s invitation to litigate the issue further and decide whether *Casey*'s undue-burden test "remains the governing standard" post-*Dobbs*. *PPH IV*, 975 N.W.2d at 716. This Court still can and should reject *Casey*'s "ambiguous," "arbitrary," and "unworkable" test right now. *Dobbs*, 142 S. Ct. at 2266, 2273, 2275. That test never had any basis in federal law. *Id.* at 2275. Nor has it ever had any basis in Iowa law either. *PPH IV*, 975 N.W.2d at 746–50 (McDermott, J., dissenting in part).

As Justice McDermott observed, "the undue burden test has vexed courts trying to apply it." *Id.* at 748. Indeed, the "difficulty of applying *Casey*'s new rules surfaced in that very case," as justices applying the same test reached opposite results. *Dobbs*, 142 S. Ct. at 2273. "The ambiguity of the 'undue burden' test also produced disagreement in later [Supreme Court] cases." *Id.* And the lower courts have had just as much trouble applying it. "Many states have passed abortion regulations in the years since *Casey* endeavoring to achieve the enigmatic balance of 'due' and 'undue' burdens." *PPH IV*, 975 N.W.2d at 748 (McDermott, J., dissenting in part). And "[s]cores of court battles with frequently varying outcomes have followed." *Id.* (collecting cases). *Accord Dobbs*, 142 S. Ct. at 2274 (listing the "long list of Circuit conflicts" *Casey* has generated).

Part of the problem is the "inherently standardless nature" of the inquiry, which invites "judges to inject their own policy preferences" into the analysis. *PPH IV*, 975 N.W.2d at 748 (McDermott, J., dissenting in part) (cleaned up). "How 'undue' a burden might be depends heavily on which factors the judge considers and how much weight the judge assigns them." *Id.* (cleaned up). Such a test "leaves courts unable to provide predictability, consistency, or coherence in its application." *Id.* at 749. "Regardless of outcome, the rule of law inevitably loses when courts are made to attempt the undue burden test's balancing act." *Id.*

This Court should abandon constitutional tests that were "created out of whole cloth," generate "unnecessary litigation," and are "difficult to administer" in favor of well-established and workable tests like rational-basis review. *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 81 (Iowa 2022). *Casey*'s "plucked from nowhere," "ambiguous," "arbitrary," and "unworkable" undue burden standard fits that description perfectly. *Dobbs*, 142 S. Ct. at 2266, 2273, 2275. This Court "need not adopt it in Iowa," and the Court "should not adopt it in Iowa." *PPH IV*, 975 N.W.2d at 749 (McDermott, J., dissenting in part).

Instead, the Court should hold that (1) rational-basis review is the correct test for state constitutional challenges to laws regulating abortion, (2) Iowa's fetal heartbeat law easily satisfies that standard, and (3) that change qualifies as "a bona fide, significant change in subsequent law" requiring dissolution of the district court's 2019 injunction. *Agostini*, 521 U.S. at 239–40.

CONCLUSION

The Court should deny Planned Parenthood's motion to dismiss this appeal, reverse the district court's decision denying the State's motion to dissolve the 2019 injunction, and remand the case to the district court with instructions to vacate that injunction and finally allow the State and the Board to enforce Iowa's validly enacted fetal heartbeat law.

REQUEST FOR ORAL SUBMISSION

The State agrees with—and appreciates—the Court's decision to set this case for oral argument on April 11, 2023.

Respectfully submitted,

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**Pro hac vice* granted by order entered January 19, 2023

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CERTIFICATE OF COST

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

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 13,477 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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CERTIFICATE OF FILING AND SERVICE

I certify that on March 28, 2023, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

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