IN THE SUPREME COURT OF IOWA

NO. 20-0804

PLANNED PARENTHOOD OF THE HEARTLAND, INC.,

Petitioner/Appellee,

v.

KIM REYNOLDS, IOWA DEPARTMENT OF HUMAN SERVICES, KELLY GARCIA in her official capacity as Director of the Iowa Department of Human Services, IOWA DEPARTMENT OF PUBLIC HEALTH, and GERD CLABAUGH in his official capacity as Director of the Iowa Department of Public Health,

Respondents/Appellants

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. PAUL D. SCOTT, Judge

FINAL BRIEF OF AMICUS CURIAE THE FAMiLY LEADER FOUNDATION

Supporting Respondents/Appellants

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Statement of Interest of Amicus Curiae

The FAMiLY Leader Foundation (TFLF) seeks to protect all innocent life from conception to natural death. It advocates for legal protection of unborn babies from the moment they are conceived. TFLF works with organizations to ensure mothers in difficult situations have what they need to care for their children, including finances, safe shelter, food, and clothing. Funding of sex-education programs touches very closely on issues such as abortion, about which the people of Iowa have a wide range of views. Additionally, sex education provided by abortion providers presents a conflict of interest due to the fact that sex education and abortion are closely related. TFLF successfully lobbied legislators to exclude abortion providers from sex education funding due to this conflict of interest and the desire that tax dollars not fund organizations that promote abortion.

TFLF has a specific interest in the issues presented in this appeal. It provided factual information to legislators about the lack of efficacy of sexual education programs for youth administered by Planned Parenthood affiliates. This

information assisted legislators in their decision to exclude non-hospital abortion providers, including PPH, from eligibility to serve as a grantee for sexual education programming for youth. TFLF was registered in favor of HF 766, which contained the law currently under consideration.

Summary of the Argument

"[T]he government need not be neutral between abortion providers and other medical providers, and this principle is particularly well-established in the context of governmental decisions regarding the use of public funds. As long as the difference in treatment does not unduly burden a woman's right to obtain an abortion, the government is free to treat abortion providers differently." *Planned Parenthood of Indiana, Inc.* v. *Commissioner of Indiana State Dep't of Health*, 699 F.3d 962, 988 (7th Cir. 2012).

The immediate issue presented in this case is the validity of a provision in an appropriations bill which acts to prevent abortion providers from serving as a governmental contractor to teach sex education. But the fundamental issue is far more pressing: the ability of the Iowa General Assembly and the Iowa Governor to make policy choices about the values that the State of Iowa will express. These value-driven choices presumably reflect the will of the People. If the People disagree, they are free to elect new leadership.

The district court upended this process. It did so under the guise of rational basis review. But its legal analysis contained a fatal flaw, because it failed to distinguish between governmental regulation and governmental subsidy. This flaw led the district court to weigh whether it believed there was an appropriate "fit" between the values expressed by the elected branches of government and the policy chosen to promote those values. But this inquiry is utterly irrelevant to consideration of governmental choices of what activities or messages it wishes to promote. The equal protection clause of the Iowa Constitution simply does not speak to the policy choices made by Iowa's elected leadership.

But even if it did, this legislation has a rational basis. Legislators had ample reasons to not want this messenger (an abortion provider) to deliver these services (sex education). There is a fundamental conflict of interest in having an organization which makes millions of dollars doing abortions be in the business of teaching children how to avoid pregnancy. Studies have shown that sexual education

programs administered by Planned Parenthood affiliates have, at best, a problematic record in preventing teen pregnancy.

Argument

I. States are free to make value-driven policy choices and embody those choices in appropriations legislation. Here, the Iowa General Assembly enacted an appropriations law which prevented PPH, because it performs abortions, from receiving grant funds to provide sexual education services for youth. The law did not tax or regulate PPH, nor did it implicate any constitutional right it has. Was the appropriations law constitutional?

PPH claims that the decision of the legislature to exclude abortion providers as a contractor violates the equal protection guarantee of the Iowa Constitution. But there is no authority for the proposition that PPH has a constitutional right to perform abortions. And a decision by the legislature to favor certain kinds of activities over others does not implicate equal protection analysis.

Preservation of Error.

Amici agrees that error was preserved on this claim.

Standard of Review.

Constitutional claims are reviewed de novo. *Gartner* v. *Iowa Dep't of Pub. Health*, 830 N.W.2d 335, 344 (Iowa 2013).

A. PPH does not have a constitutional right to perform abortions.

PPH challenges provisions of an appropriations bill that made it ineligible for grant funds to teach certain federally funded sexual education programing. The law, 2019 Iowa Acts §§ 99-100 (H.F. 766), prohibited the award of a grant to an applicant which performed or promoted abortions, maintained or operated facilities where abortions are performed, contracted with any entity performing abortions, or made referrals to an entity which performed abortions or maintained or operated facilities where abortions are performed. The law exempted from this disqualification a "nonpublic entity that is a distinct location of a nonprofit health care delivery system" if that distinct location provides the grant-funded educational services and not abortions at that location.

The net effect of this language prohibits PPH (the state's largest provider of abortions) from eligibility to be a grantee

but allows hospitals (who are affiliated with hospitals that perform abortions) to be eligible to be a grantee. PPH claims the language places an unconstitutional condition on the receipt of public benefits. *Agency for Intern. Development* v. *Alliance for Open Society Intern., Inc.*, 570 U.S. 205, 214 (2013) ("[T]he Government may not deny a benefit to a person on the basis that infringes his constitutionally protected…freedom of speech even if he has no entitlement to that benefit.") But PPH must assert its *own* rights to make such a claim. This is where its claim fails.

"The first step in any unconstitutional-conditions claim is to identify the nature and scope of the constitutional right arguably imperiled." *Planned Parenthood of Greater Ohio* v. *Hodges*, 917 F.3d 908, 913 (6th Cir. 2019) (en banc). PPH has no basis to claim that it enjoys a constitutional right to perform abortions. "Planned Parenthood nonetheless maintains that a bevy of cases establishes that clinics *do* have a due process right to perform abortions. But a review of the cases leaves the reader empty handed." *Id.* (emphasis original). "The Supreme Court has never identified a freestanding right

to perform abortions. To the contrary, it has indicated that there is no such thing." *Id.* at 912.

"Whatever constitutional status the doctor-patient relation may have as a general matter, in the present context it is derivative of the woman's position." *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. 833, 884 (1992). The *Hodges* court, examining the *Casey* holding about the challenged informed-consent statute, noted "the plurality concluded that the law has no more constitutional import to the *providers* than if its requirements dealt with 'a kidney transplant.'" *Hodges*, 917 F.3d at 912 (citing *Casey*, 505 U.S. at 883). Accord, *Commissioner of Ind. State Dept. of Health*, supra, 699 F.3d at 988 ("If, as the foregoing cases hold, the government's refusal to subsidize abortion does not unduly burden a woman's right to obtain an abortion, then Indiana's ban on public funding of abortion providers–even for unrelated services–cannot *indirectly* burden a woman's right to obtain an abortion.")

PPH raises this claim under the right to abortion found in the Iowa Constitution in *Planned Parenthood of the Heartland*,

Inc. v. *Reynolds*, 915 N.W.2d 206 (Iowa 2018) (*Reynolds I)*. Yet their claim of an organizational right to perform abortions does not align with this Court's rationale in *Reynolds I*. This Court's holding was focused exclusively on the personal and weighty decision of the pregnant woman, not the organization which would facilitate the end of her pregnancy. "Autonomy and dominion over one's body go to the very heart of what it means to be free. At stake in this case is the right to shape, for oneself, without unwarranted governmental intrusion, one's own identity, destiny, and place in the world. Nothing could be more fundamental to the notion of liberty. We therefore hold, under the Iowa Constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy." *Id.* at 237. To the extent a right to abortion is found in the Iowa Constitution, it is the woman's right, not the corporation which provides the service. Of course, there is no allegation, let alone proof, in PPH's case that the appropriations language contested here will prevent a single woman from obtaining an abortion. PPH's unconstitutional conditions argument fails.

B. The State of Iowa is free to disfavor abortion and abortion providers when appropriating public funds. Such a decision is not subject to rational basis or strict scrutiny review by the Court.

PPH attacks the appropriations law on equal protection grounds, claiming it fails both rational basis review and strict scrutiny. But this is the wrong inquiry, for there is nothing in the law which regulates or taxes PPH. "There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy." *Maher* v. *Roe*, 432 U.S. 464, 475-76 (1977). "Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader." *Id.*

This Court's leading equal protection decisions considered regulatory or tax laws. *Racing Association of Central Iowa* v. *Fitzgerald*, 675 N.W.2d 1 (Iowa 2004) (challenge to tax rates imposed in the gaming industry); *Varnum* v. *Brien*, 763 N.W.2d 862, 879 (Iowa 2009) (challenge

to prohibition of same-sex marriage); *AFSCME Iowa Council 61* v. *State*, 928 N.W.2d 21, 32 (Iowa 2019) (challenge to collective bargaining reform which distinguished between law enforcement bargaining units); *McQuistion* v. *City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015) (challenge to city's policy regarding light duty for some employees); *LSCP, LLLP* v. *Kay-Decker*, 861 N.W.2d 846, 856 (Iowa 2015) (challenge to tax rates imposed on natural gas pipeline customers). These decisions have no bearing on appropriations decisions made by the legislature.

This is true even when we are talking about abortion. "*Roe* [v. *Wade*, 410 U.S. 113 (1973)] implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds." *Maher*, 432 U.S. at 474. "The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way." *Rust* v. *Sullivan*, 500 U.S. 173, 193 (1991). "A

legislature's decision not to subsidize the exercise of a fundamental right does not infringe on the right." *Id.* (citing *Regan* v. *Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)). "A refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." *Id.*

This principle allows a State to refuse "to allow public employees to perform abortions in public hospitals…" *Webster* v. *Reproductive Health Services*, 492 U.S. 490, 509 (1989). Such a decision "leaves a pregnant woman with the same choices as if the State had chosen not to operate any public hospitals at all." *Id.* "If the State may make a value judgment favoring childbirth over abortion…and implement that judgment by the allocation of public funds," *Maher,* supra, "surely it may do so through the allocation of other public resources, such as hospitals and medical staff." *Webster*, 492 U.S. at 510.

It must be understood that this is not a rule which is special to abortion providers. "When the government disburses funds to private entities to convey a governmental message, it

may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Legal Services Corp.* v. *Velazquez*, 531 U.S. 533, 541 (2001). "When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse some different or contrary position." *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U.S. 217, 235 (2000).

Thus, the government may constitutionally terminate the employment of a policymaker for speech contrary to its mission and objectives. *Elrod* v. *Burns*, 427 U.S. 347 (1976), *Curtis* v. *Christian County, Mo.*, 963 F.3d 777, 784 (8th Cir. 2020). And the government may promote certain kinds of agricultural products. *Johanns* v. *Livestock Mktg. Ass'n*, 544 U.S. 550, 559 (2005) ("The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the

government will be spent for speech and other expression to advocate and defend its own policies.")

So, too, the government is free to fund artistic endeavors which promote certain values without violating the First Amendment rights of those whose art is judged not worthy for funding. "In doing so, 'the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.'" *Nat'l Endowment for the Arts* v. *Finley*, 524 U.S. 569, 588 (1998) (citing *Regan*, supra). "The reason that denial of participation in a tax exemption or other subsidy scheme does not necessarily 'infringe' a fundamental right is that—unlike direct restriction or prohibition—such a denial does not, as a general rule, have any significant coercive effect." *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U.S. 221, 237 (1987) (Scalia, J., dissenting).

Justice Scalia's point is worth considering. PPH has not alleged the slightest coercion of it from the appropriations language. Do we think that PPH executives huddled in a conference room and weighed whether to give up performing thousands of abortions every year in our state to make them

eligible for this grant? Of course not. For a claimed violation of a constitutional right this is weak stuff.

Indeed, PPH appears ready and willing to sacrifice its own First Amendment rights to participate as a grantee. The terms of the grant would require it to teach a specific curriculum to the program participants. The message that PPH employees would spread would not be PPH's–it would be the State of Iowa's. PPH would be unable to replace the curriculum with something it found to be more satisfying or correct, for that would surely violate the terms of the grant. PPH wants it both ways: it wants to be both the State of Iowa's messenger and enjoy its own First Amendment rights in so doing. Surely our state's constitution does not give this entitlement.

One way to consider the weakness of PPH's claim is to examine how the same claim would work in a different context. Let's start with the fundamental right of parents to direct the upbringing and education of children under their control. *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534-35 (1925). *Pierce* teaches that it is unconstitutional for a state to

mandate that children are sent to public schools rather than a suitable private one. Does it follow, then, that a state which chooses to fund public schools must also fund private ones?

The U.S. Supreme Court, in considering the demand for public funding of abortion, has firmly answered this question in the negative. "Were we to accept [this] argument, an indigent parent could challenge the state policy of favoring public rather than private schools…on grounds identical in principle to those advanced here." *Maher*, 432 U.S. at 477. "We think it abundantly clear that *a State is not required to show a compelling interest* for its policy choice to favor normal childbirth any more than a State must so justify its election to fund public but not private education." *Id.* (emphasis added). See also, *Norwood* v. *Harrison*, 413 U.S. 455, 462 (1973) ("It is one thing to say that a State may not prohibit the maintenance of private schools and quite another to say that such schools must, as a matter of equal protection, receive state aid.")

The State of Iowa's freedom to disfavor abortion is the end of the analysis. There is no need to justify such a decision.

This is exactly the kind of policy that states are free to make. "[T]he appropriate forum for [such] resolution in a democracy is the legislature. We should not forget that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Maher*, 432 U.S. at 479-80 (citing *Missouri, K. & T.R. Co.* v. *May*, 194 U.S. 267, 270 (1904)).

II. The legislature is entitled to weigh the suitability of potential contractors to perform contracted services. The legislature considered the inherent conflict of interest in having an abortion provider teach sexual education and the poor record of Planned Parenthood affiliates in providing such services. Was the legislature's decision to exclude abortion providers as contractors reasonable?

Iowa lawmakers had good reason to exclude abortion providers as a possible contractor to deliver sexual education to young Iowans. This education should be delivered by an organization free from conflicts of interest. Planned

Parenthood affiliates have a problematic record of delivering effective programming.

Preservation of Error.

Amici agrees that error was preserved on this claim.

Standard of Review.

Constitutional claims are reviewed de novo. *Gartner,* 830 N.W.2d at 344.

A. The legislature was appropriately wary of allowing abortion providers to teach sexual education.

As we have already seen, when the government chooses to fund a message it is entitled to choose the messenger "to ensure that its message is neither garbled nor distorted by the grantee." *Velazquez*, 531 U.S. 541. Amici will not greatly lengthen this brief with every noteworthy controversy surrounding abortion providers, especially Planned Parenthood and its affiliates. Nationally, the organization's affiliates (including PPH) performed over 345,000 abortions in

the last year.[1] Americans were appalled to learn that fetal tissue was sold (at great profit) by Planned Parenthood affiliates for various biomedical research purposes. These revelations provoked a variety of legislative[2] and executive[3] responses.

And the views on race and eugenics of Planned Parenthood's founder have caused her legacy to be, to put it mildly, reassessed.[4] "Eight decades after Sanger's 'Negro Project,' abortion in the United States is also marked by racial disparity. The reported nationwide abortion ratio–the number of abortions per 1,000 live births–among black women is nearly 3.5 times the ratio for white women." *Box* v. *Planned Parenthood of Indiana and Kentucky, Inc.*, 139 S.Ct. 1780, 1791 (2019) (Thomas, J., concurring). "And there are areas of

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[1] https://www.plannedparenthood.org/uploads/filer_public/2e/da/2eda3f50-82aa-4ddb-acce-c2854c4ea80b/2018-2019_annual_report.pdf (last visited Aug. 8, 2020).
[2] See, 2018 Iowa Acts ch. 1132, § 1 (S.F. 359) (prohibiting trafficking in fetal body parts).
[3] https://www.hhs.gov/about/news/2019/06/05/statement-from-the-department-of-health-and-human-services.html (announcing termination of contract with company due to insufficient protections about fetal tissue procurement) (last visited Aug. 8, 2020).
[4] https://www.wsj.com/articles/margaret-sanger-gets-canceled-11595889653 (last visited Aug. 8, 2020)

New York City in which black children are more likely to be aborted than they are to be born alive–and are up to eight times more likely to be aborted than white children in the same area." *Id.*

Iowa lawmakers had every reason to believe that abortion providers would not be the appropriate messenger of educational programing intended to reduce teen pregnancy. There is an inherent conflict between the goals of an educational program valuing abstinence and a messenger who advocates for abortion on demand. PPH can hardly claim that its employees would be viewed with the same neutrality as an employee of a nonprofit health system.

This common-sense view is backed up by studies. Lawmakers were informed by TFLF that Planned Parenthood affiliates did not have a good record of delivering sexual education curriculum, including curriculum that would be implemented in the State of Iowa. In the most comprehensive

study of the effectiveness of the program, a research team[5] examined the implementation of the Teen Outreach Program (TOP) over a three-year period in five northwestern states (Alaska, Idaho, Montana, Oregon, and Washington) by a coalition of Planned Parenthood affiliates. The program was studied at 87 different schools. The study used a survey instrument to measure attitudes about sex among the teenaged participants. The teens were then divided into groups receiving TOP and a control group. Nearly 9,000 students participated in the study.

The results[6] of TOP, at least as administered by Planned Parenthood affiliates, was underwhelming. "At the end of the program, 6.5% of [Teen Outreach Program] students reported having been pregnant compared to 5.8% of [control group] students; this was not a statistically significant difference." In

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[5] Philliber, A.E., et al. (2015). Evaluation of the Teen Outreach Program® in The Pacific Northwest. Accord, NY: Philliber Research & Evaluation. https://collections.nlm.nih.gov/master/borndig/101697789/ppgnw-final-report.pdf (last visited Aug. 17, 2020)

[6] *Id.* at 21.

other words, the program failed to reduce teen pregnancy. But the overall statistics masked something much more troubling.

First, in the short-term analysis immediately following the program - when its impact would be strongest - the program seems to have caused more pregnancies: "Among males, females, and non-Hispanics, TOP students were significantly more likely than controls to have ever been pregnant or to have caused a pregnancy."[7]

Second, the long-term survey, performed 12 months later, distressingly showed that TOP, at least as administered by these Planned Parenthood affiliates, *increased* the rate at which girls became pregnant. "Among females there was also a statistically significant effect on pregnancy rates but these rates were higher among females receiving TOP than among control females (9.0% TOP and 7.2% [control])." In other words, more girls became pregnant after receiving sexual education from Planned Parenthood than did girls who received no sexual education.

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[7] *Id.* at 14.

Another federally commissioned study[8] also presented to lawmakers by TFLF reviewed the implementation of TOP in Chicago Public Schools, where a Planned Parenthood affiliate was one of three facilitating organizations. This study "did not find TOP to have a statistically significant impact on any student behavioral outcomes."[9] Two[10] other[11] federal studies involving different curricula found no statistically significant impact where Planned Parenthood affiliates were involved either in facilitating or in training facilitators.

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[8] https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/evaluation/grantee-led-evaluation/reports/chicago-pubschools-finalreport.pdf (last visited Aug. 18, 2020).

[9] *Id.* at 16.

[10] Kelsey, M., et al, "Safer Sex Intervention Final Impact Report: Findings from the Teen Pregnancy Prevention Replication Study". Cambridge, MA: Abt Associates Inc., October 2018. 25. <<https://aspe.hhs.gov/system/files/pdf/260076/SSI_Final_Impact_Report.pdf.>> (last visited Aug. 14, 2020).

[11] Kelsey, M., et al, "Replicating Reducing the Risk: 12-Month Impacts of a Cluster Randomized Controlled Trial." *American Journal of Public Health*106, no. S1 (2016). S45. doi:10.2105/ajph.2016.303409

Planned Parenthood did all of the teaching and altered the curriculum for one *Reducing the Risk* grantee: "Grantee Profile: LifeWorks." "Replication: Reducing the Risk." Abt Associates Inc. https://aspe.hhs.gov/system/files/pdf/164431/LifeWorks.pdf. (last visited Aug. 18, 2020)

Planned Parenthood provided additional training to a second *Reducing the Risk* grantee: "Grantee Profile: San Diego Youth Services." "Replication: Reducing the Risk." Abt Associates Inc. 8. https://aspe.hhs.gov/system/files/pdf/164436/SDYS.pdf. (last visited Aug. 18, 2020)

It should be noted that TOP is an evidence-based program[12] which has been proven to be successful. Recent studies[13] confirm this, but these are studies where the program was implemented by an organization other than Planned Parenthood. In other words, the viewpoint of the program facilitator may have an impact.

This is probably because TOP and other sexual education programs permit the facilitators to lead unstructured discussions with students. As described in one study[14] the program is "characterized by its flexibility… [l]essons on birth control and other sexual health topics comprise a small proportion of the available lessons and are also not required

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[12] Allen JP, et al. Preventing teen pregnancy and academic failure: Experimental Evaluation of a Developmentally Based Approach. Child Development. 1997; 68 (4): 729-742. Allen JP, Philliber S. Who benefits most from a broadly targeted prevention program? Differential efficacy across populations in the teen outreach program. Journal of Community Psychology. 2001; 29 (6): 637-655.

[13] Walsh-Buhi, Eric R., et al, "The Impact of the Teen Outreach Program on Sexual Intentions and Behaviors." Journal of Adolescent Health59, no. 3 (2016): 283-90. https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/evaluation/grantee-led-evaluation/reports/fldoh-final-report.pdf. (last visited Aug. 18, 2020)

[14] See, https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/evaluation/grantee-led-evaluation/reports/hennepin-final-report.pdf. (last visited Aug. 18, 2020)

by the program developer for fidelity." TOP may work, but apparently not all messengers of the program are effective.

B. The legislature's concerns with abortion providers teaching sexual education satisfy rational basis review.

As we have seen, the law does not require the State of Iowa to justify the policy decision to value childbirth over abortion. If the Court does examine the reason for the challenged appropriations language, the language easily survives scrutiny. "[C]ourts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *AFSCME*, 928 N.W.2d at 37. "As long as the means 'rationally advances a reasonable and identifiable governmental objective, we must disregard the existence of other methods…that we, as individuals, perhaps would have preferred.'" *Hensler* v. *City of Davenport*, 790 N.W.2d 569, 584

(Iowa 2010) (citing *Schweiker* v. *Wilson*, 450 U.S. 221, 235 (1981)).

The decision of how best to deliver sexual education to Iowa youth is the classic kind of policy question that courts leave to the elected branches of government. As this Court said in considering a challenge to state education funding policy, "[t]he Judiciary is particularly ill suited to make such decisions, as courts are fundamentally underequipped to formulate state policies or develop standards for matters not legal in nature." *King* v. *State*, 818 N.W.2d 1, 17 (Iowa 2012).

Conclusion

The decision of the district court should be reversed.

Certificate of Compliance

This brief complies with the type-volume limitation of Iowa R. App. Pro. 6.903(1)(g)(1) because it contains **4297** words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. Pro. 6.903(1)(e) and the type style requirements of Iowa R. App. Pro. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Bookman Old School, 14-point type.

No party, their counsel, or other individual has authored this brief in whole or in part. No party, their counsel, or other individual has contributed funds to the preparation of this brief.

/s/
Alan R. Ostergren