IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LS POWER MIDCONTINENT, LLC; and SOUTHWEST TRANSMISSION, LLC, Plaintiffs, vs. STATE OF IOWA; IOWA UTILITIES BOARD; GERI D. HUSER; GLEN DICKINSON; and LESLIE HICKEY, Defendants, MIDAMERICAN ENERGY COMPANY and ITC MIDWEST LLC, Proposed Intervenors.	Case No. CVCV060840 DEFENDANTS' RESISTANCE TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Defendants resist the motion for temporary injunction filed by Plaintiffs LS Power Midcontinent, LLC and Southwest Transmission, LLC. The relief Plaintiffs' motion seeks is overbroad, unnecessary, and unwarranted. Defendants state as follows:

1. Plaintiffs filed a petition for declaratory and injunctive relief on October 14, 2020.

2. Plaintiffs' lawsuit challenges Division XXXIII of House File (HF) 2643, which was passed in the 2020 session of the Iowa General Assembly. *See* 2020 Iowa Acts, ch. 1121, § 128.

3. Plaintiffs challenge only Division XXXIII, and not any other part of HF 2643.

4. Division XXXIII of HF 2643 establishes a right of first refusal (ROFR) applicable to electric transmission projects in Iowa. (Petition ¶ 13.)

5. Plaintiffs allege the passage of HF 2643 procedurally violated two different clauses of article III, section 29 of the Iowa Constitution. (Petition ¶¶ 36–45.)

6. Plaintiffs also allege separately that the substantive ROFR provisions violate the equal protection clause or "equality provision" in article I, section 6 of the Iowa Constitution. (Petition ¶¶ 46–53.)

7. Plaintiffs filed a motion for temporary injunctive relief on November 13, 2020.

8. Plaintiffs' motion seeks an injunction that does three things:

a. Prohibits the code editor from publishing the ROFR provisions;

b. Prohibits the Iowa Utilities Board (IUB or Board) from taking any action, including promulgating administrative rules, to implement the ROFR provisions; and

c. Suspends the operational effect of the ROFR provisions.

9. The Court should deny Plaintiffs' motion.

10. Plaintiffs' request to enjoin publication is overbroad and unduly burdensome. It is unclear whether Plaintiffs seek only to block the ROFR provision from publication (while publication of the rest of the Iowa Code moves forward), or to enjoin publication of the entire Iowa Code. But either way, the requested injunction is problematic.

11. If Plaintiffs' request is to force the Legislative Services Agency (LSA) to withhold the ROFR provisions while the rest of publication moves forward, the publication process is not that simple. The process of publishing the Iowa Code has many interconnected parts and requires dozens of painstaking tasks. Enjoining publication of even one part of one bill can potentially throw those interconnected parts into disarray. (Exhibit A—Hickey Affidavit.)

12. If, on the other hand, Plaintiffs seek to stop publication of the entire Code, the request is extremely overbroad. Plaintiffs challenge one division of one bill passed in 2020. Enjoining publication of the Iowa Code that includes not just the ROFR provisions, but all other

statutes passed or amended in 2020, could engender significant confusion. Furthermore, enjoining publication (either in whole or in part) could also subject LSA to additional costs and payments under the applicable printing contract. (Exhibit B—Contract for Printing, Binding, Packaging, and Delivering the 2021 Iowa Code.)

13. As an alternative to enjoining publication, Plaintiffs seek an adjudication that publication does not render Plaintiffs' claims untimely. But there is a difference between whether a claim is *timely* (when it is initially filed) and whether it becomes *moot* (following later developments). There is also a difference between publication and *codification*—and the relevant event for measuring timeliness is codification. As the motion to dismiss explains, Plaintiffs' challenge was untimely because it did not precede codification. (Defendants' Motion to Dismiss [MTD] at 9–12.) Nonetheless, Defendants agree that *if* the Court does not grant Defendants' motion to dismiss as to Count I and Count II of Plaintiffs' petition,[1] subsequent publication of the Iowa Code does not moot or nullify Plaintiffs' challenge.

14. Plaintiffs also seek an injunction against IUB to prevent it from promulgating rules or taking any other action related to the ROFR provisions. Such relief is both unnecessary and unwarranted. For example, any future IUB decision to grant a franchise for an electric transmission line under Iowa Code chapter 478 would be subject to lengthy proceedings before IUB, and potentially judicial review afterward. (Defendants' MTD at 3 n.1, 20.) Further, IUB has not begun promulgating rules related to HF 2643. If and when it does so, the rulemaking process contemplates two publications in the Iowa Administrative Bulletin, a public comment period, an oral comment presentation, and review by the Governor's Office, the General Assembly's Administrative Rules Review Committee, and the Office of the Attorney General. *See generally*

[1] Publication and codification are irrelevant to Count III.

Iowa Code § 17A.4. Once adopted, any rules would also be subject to judicial review. *Id.* § 17A.19. Finally, in the event the Court strikes down the underlying legislation, any rules implementing the legislation would be *ultra vires* at that point and no longer enforceable as a matter of law. *See City of Des Moines v. Iowa Dep't of Transp.*, 911 N.W.2d 431, 449–50 (Iowa 2018) (concluding when an agency "did not have statutory authority to promulgate" certain rules, the agency could not "rely on those rules" to take any action); *Iowa Med. Soc'y v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 837 (Iowa 2013) (noting petitioners sought "judicial review of the rules promulgated" by two state agencies soon after the rules became effective, and "urged the court to invalidate the rules as exceeding the regulators' authority"). In practical effect, they would be inert. Consequently, Plaintiffs cannot show a temporary injunction is warranted; the mere act of promulgating rules will not cause irreparable harm, and other available remedies exist to challenge any rules promulgated in the future (or any other franchise proceedings that may arise).

15. Finally, enjoining the operation of the ROFR provisions is unwarranted because Plaintiffs have not satisfied the standards for a temporary injunction. For example, as Defendants' motion to dismiss explains, Plaintiffs have not demonstrated *any* cognizable harm; Plaintiffs lack standing and their claims are unripe. Therefore, Plaintiffs also cannot establish the *irreparable* harm necessary for an injunction. *See Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000) (finding the equivalent of an "irreparable harm" element to be "[t]he dispositive issue" as to whether an injunction was warranted). And a litigant who lacks standing also cannot establish a likelihood of success on the merits. *See Harvey v. Prall*, 250 Iowa 1111, 1117, 97 N.W.2d 306, 310 (1959) (concluding the issue of standing to seek an injunction goes "to the merits of the controversy").

16. Additionally, with respect to Count II and Count III of Plaintiffs' petition, Plaintiffs have not shown a likelihood of success on the merits even if they have standing and have shown

irreparable harm. Plaintiffs' emphasis on the ROFR provisions' purported anticompetitive effect conflates the question of constitutionality with the question of whether ROFRs are a good idea. The wisdom of a ROFR "does not enter into [the] judicial evaluation" of Plaintiffs' claims. *Rush v. Ray*, 362 N.W.2d 479, 480 (Iowa 1985); *see also Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 795 (Iowa 1994) ("It is not for us to judge the wisdom of such a policy. That was a legislative call.").

17. For these reasons, the Court should not enter a temporary injunction. However, if the Court enters any injunction, it must require Plaintiffs to post a bond that is "125 percent of the probable liability to be incurred" in complying with the injunction. Iowa R. Civ. P. 1.1508. The bond must be available to satisfy any additional costs the State may incur—potentially including an entirely new expenditure of several hundred thousand dollars to restart the publishing process without any ROFR provisions included. (Exhibit A, at 10–12.)

18. Defendants provide a brief below.

I. TEMPORARY INJUNCTION STANDARD

"As a general rule injunctive relief is used sparingly and the court should act with deliberation and caution." *Martin v. Beaver*, 238 Iowa 1143, 1148, 29 N.W.2d 555, 558 (1947); *accord Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 96 (Iowa 1985) (noting injunctions are "a delicate matter—an exercise of judicial power which requires great caution, deliberation, and sound discretion"); *Wood Bros. Thresher Co. v. Eicher*, 231 Iowa 550, 557, 1 N.W.2d 655, 659 (1942) (concluding injunctions are "to be issued only with extreme caution"). For the Court to exercise this delicate power, Plaintiffs must show irreparable harm, a likelihood of success on the merits, and a lack of any other available remedy. *See Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184–85 (Iowa 2005); *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181

(Iowa 2001) (noting the standards for temporary injunctions resemble the standards for permanent injunctions, except that a person seeking a temporary injunction must show "likelihood of success instead of actual success"). Importantly, however, "the function of a temporary injunction is not 'to determine the merits of a case.'" *Econ. Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 648 (Iowa 1995) (quoting 43 C.J.S. *Injunctions* § 5, at 745–46 (1978)).

Under these standards, an injunction is not warranted here. Plaintiffs lack standing because their asserted injuries are speculative and anticipatory. A person who shows no cognizable harm cannot show *irreparable* harm either. In turn, Plaintiffs' lack of standing also means Plaintiffs are not likely to succeed on the merits. *See Harvey*, 250 Iowa at 1117, 97 N.W.2d at 310. Further, Plaintiffs' claims are unlikely to succeed even if Plaintiffs have shown both actual and irreparable harm. With respect to enjoining IUB, no injunction should issue because another remedy is available to challenge future IUB rulemaking. Finally, the balance of harms favors Defendants because the balancing involves not just the ROFR provisions, but undertaking to publish the entire Iowa Code. The Court should deny Plaintiffs' motion and decline to enter any injunction.

II. ARGUMENT

Article III, section 29 of the Iowa Constitution "involves the internal processes of a coordinate branch of government." Op. No. 79–2–9, 1979 WL 21163, at *3 (Iowa Att'y Gen. Feb. 23, 1979). "In a system of government characterized by separation of powers, the respect due a coordinate branch of government makes it inappropriate for a court lightly to conclude that the legislative branch has not abided by its primary obligation to operate within constitutional requirements." *Id.*; *see also Godfrey v. State*, 752 N.W.2d 413, 427 (Iowa 2008) (recognizing that article III, section 29 of the Iowa Constitution primarily addresses "the internal workings of the legislative process"); Op. No. 85–5–1, 1985 WL 68969, at *1–2 (Iowa Att'y Gen. May 1, 1985)

("[C]ourts traditionally have been reluctant to void legislation on grounds that the General Assembly violated constitutional provisions which structure the legislative process. . . . Primary responsibility for enforcement of the constitutional values embodied in Article III, § 29 rests with the legislature, whose members are sworn to uphold the constitution.").

Just as the Court must not proceed lightly when adjudicating claims that the legislature violated article III, section 29, temporary injunctions are "used sparingly," *Martin*, 238 Iowa at 1148, 29 N.W.2d at 558, and are "issued only with extreme caution," *Wood Bros.*, 231 Iowa at 557, 1 N.W.2d at 659. This double-barreled caution weighs against an injunction here. Plaintiffs have not satisfied the applicable injunction standards and are not entitled to injunctive relief. The issues raised in Defendants' motion to dismiss are in large part applicable to the temporary injunction as well—and defeat Plaintiffs' request.

A. Plaintiffs Have Not Shown Standing or Irreparable Harm.

The ROFR provision does not irreparably harm Plaintiffs, because it does not cognizably harm them at all. Plaintiffs' supposition that they will be prevented from bidding on or building future electric transmission projects is speculative and anticipatory. Thus, Plaintiffs lack standing both to raise their underlying claims and to seek this injunction. (Defendants' MTD at 4–7.) Furthermore, Plaintiffs' claims are unripe because neither Plaintiffs' petition nor the exhibits submitted in support of the request for injunction identify any *specific* Iowa transmission project that has been approved. (Defendants' MTD at 7–9.) Without a particularized cognizable injury that confers standing, or a claim that is ripe for adjudication, Plaintiffs cannot demonstrate irreparable harm and are therefore not entitled to an injunction.

A 2004 Iowa Supreme Court decision illustrates the problem. In *Citizens for Responsible Choices v. City of Shenandoah*, a nonprofit corporation asserted that a city could not utilize the

procedural mechanism of issuing revenue bonds to finance a recreational lake the corporation opposed. 686 N.W.2d 470, 472 (Iowa 2004). The court ruled both that the plaintiffs' claims were unripe and that the plaintiffs lacked standing. *Id.* at 473–75. The claims were unripe because "it was not certain that the projects" to which the plaintiffs objected "would take place" at all. *Id.* at 473. That was true even though the city had already both sought and obtained public financing for one or more projects. *Id.* And the plaintiffs lacked standing because issuing revenue bonds "would produce no adverse effect on [the plaintiffs]. Their injury, if any, would come as a result of a project that is financed by the bonds." *Id.* at 475. That nexus—where the injury is one step removed from the purported procedural violation—does not cause cognizable harm sufficient for standing. *See id.*

Similar logic indicates that Plaintiffs cannot establish irreparable harm here. First, it is "not certain that the projects" Plaintiffs anticipate will take place. *Id.* at 473. That is true even if new electric transmission projects in Iowa "are expected within the next year" (Plaintiffs' Br. in Support of Injunction at 33), just as it was true in *Citizens for Responsible Choices* even though the city had taken far more tangible steps toward making the project a reality. *See id.* Moreover, Count I and Count II of Plaintiffs' petition allege *procedural* violations in the passage of HF 2643. But, just as the alleged impropriety of issuing revenue bonds was one step removed from the purportedly harmful project in *Citizens for Responsible Choices*, here the alleged procedural violation in passing HF 2643 is one step removed from the harm Plaintiffs assert they will suffer *if* they are in fact precluded from bidding on or building some unnamed future electric transmission project. *See id.* at 475. That nexus is not close enough to demonstrate irreparable harm.

Additionally, Plaintiffs' concern about publishing the Iowa Code (Plaintiffs' Br. in Support of Injunction at 31–32) is overblown. Defendants agree that if a single-subject challenge is

"raised" or "lodged" prior to codification, subsequent codification and publication do not moot or "nullify" the challenge. *See State v. Kolbet*, 638 N.W.2d 653, 661 (Iowa 2001) ("lodged"); *Iowa Dep't of Transp. v. Iowa Dist. Ct.*, 586 N.W.2d 374, 377 (Iowa 1998) ("lodged"). However, timeliness (at the outset) and mootness (caused by subsequent events) are entirely different questions. Whether Plaintiffs raised or lodged *this* challenge before codification is disputed. (Defendants' MTD at 9–12.) Nonetheless, Defendants agree that *if* the Court rules Plaintiffs' challenge was timely at the outset, subsequent publication does not moot or nullify the lawsuit.

Further, Plaintiffs will not suffer irreparable harm if the IUB begins the process of enacting rules while this litigation remains pending because alternate remedies are not only available, but are the exclusive remedy for challenging agency actions. Formal rulemaking is a lengthy process involving public comment, publication in the Iowa Administrative Bulletin, and multiple reviews by various governmental bodies. Iowa Code § 17A.4. These formal processes are in addition to any additional steps agencies may voluntarily take to solicit public comment prior to issuing a Notice of Intended Action and commencing formal rulemaking. The IUB regularly seeks stakeholder input prior to approving a Notice of Intended Action for publication in the Iowa Administrative Bulletin. *See, e.g.*, *In Re Rulemaking for Ratemaking Principles Proceeding [199 IAC Chapter 41],* "Order Requesting Stakeholder Comment on Potential Rule Changes," Docket No. RMU-2019-0041 (I.U.B. April 12, 2019) (seeking stakeholder input on potential rulemaking the Board was considering) [Exhibit C]. If and when the IUB begins the process, Plaintiffs will be able to provide comment and advocate for particular rules, or revisions to them. At this point, however, Plaintiffs' harm is purely speculative and cannot be irreparable. *See Citizens for Responsible Choices*, 686 N.W.2d at 474 (concluding claims were unripe when issuance of any bonds would require a later public hearing and be subject to objections). Additionally, the Iowa

Administrative Procedure Act provides that judicial review of agency action is the exclusive means by which a person aggrieved or adversely affected by agency action may seek recourse in the courts. Iowa Code § 17A.19. "Agency action" includes "the whole or a part of an agency rule." Iowa Code § 17A.2(2). Thus, even if the IUB proceeds with rulemaking regarding ROFRs at some indeterminate point in the future, Plaintiffs will have remedies available to them at that time.

Moreover, when reviewing a promulgated rule on judicial review, courts must determine whether the agency's action was "[b]eyond the authority delegated to the agency by any provision of law or in violation of any provision of law." Iowa Code § 17A.19(10)(*b*). If an adopted rule exceeds the agency's statutory authority, the rules are void and invalid. *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009). In this case, Plaintiffs seek to enjoin IUB from promulgating any rules implementing the ROFR legislation. However, Plaintiffs cannot suffer irreparable harm by such rulemaking because even if IUB promulgated and adopted rules while this litigation is pending, the resulting remedy if Plaintiffs are successful in their challenge would be to strike down the statute—including the part that requires IUB to promulgate rules. This would inherently make such rules "void and invalid." *See id.*

Finally, Plaintiffs' assertion that a ROFR "harmfully affects Iowa citizens as a whole" (Plaintiffs' Br. in Support of Injunction at 10) is not judicially cognizable irreparable harm either. First, any purported harm to the entire citizenry is a generalized grievance that does not confer standing. *See Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 869–70 (Iowa 2005) (rejecting a claim of injury to the general public). "[W]here the right claimed to be in danger is not different from that enjoyed by the public generally, and the dangers which may be suffered are only those shared by the public, an action of injunction will not lie . . . ." *Semones v. Needles*, 114 N.W. 904, 905 (Iowa 1908). Second, Plaintiffs can only raise their own interests and have not satisfied the criteria for

third-party standing to raise someone else's. *See Godfrey*, 752 N.W.2d at 424 (rejecting a claim of third-party standing in a single-subject challenge). Third, the question whether a ROFR provision is in the public interest, and the focus of the Consumer Advocate brief upon which Plaintiffs rely (Plaintiffs' Br. in Support of Injunction at 12–13), are policy arguments that have no bearing on whether HF 2643 is constitutional. *See Exira Cmty. Sch. Dist.*, 512 N.W.2d at 795. In short, Plaintiffs' professed concern for Iowa ratepayers is a lot of sound and fury that ultimately signifies nothing—or at least, nothing material to Plaintiffs' constitutional challenges. Plaintiffs are certainly entitled to believe a ROFR is a bad idea, but they "must look to the ballot box," not the courts, to change that. *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 42 (Iowa 2019). Constitutional challenges are one thing, but asserting a law should be enjoined because it is poor policy "seek[s] do to no more than vindicate . . . value preferences through the judicial process." *Sierra Club v. Morton*, 405 U.S. 727, 740, 92 S. Ct. 1361, 1369 (1972). That's not irreparable harm, and it doesn't justify an injunction.

B. Plaintiffs Are Unlikely to Succeed on the Merits.

Plaintiffs' inability to demonstrate standing speaks to the merits. *See Harvey*, 250 Iowa at 1117, 97 N.W.2d at 310. But even assuming Plaintiffs have standing, they are unlikely to succeed on the merits of Count II and Count III. As the motion to dismiss explains, those counts do not state a claim upon which the Court can grant relief because the title of HF 2643 is adequate and the ROFR provision satisfies applicable equal protection analysis.

1. *Title claim.* The title clause of the Iowa Constitution "should be liberally construed." *Indep. Sch. Dist. of Cedar Rapids v. Iowa Emp't Sec. Comm'n*, 237 Iowa 1301, 1313, 25 N.W.2d 491, 498 (1946). "The title need not be an index or epitome of the act." *Id.*; *accord State v. Hutchinson Ice Cream Co.*, 147 N.W. 195, 198 (Iowa 1914) ("It is not necessary that the

details of the subject-matter or reasons which brought about the enactment . . . should be set out in the title."). "Where there is doubt as to the sufficiency of the title it should be resolved in favor of validity." *State v. Gibson*, 174 N.W. 34, 37 (Iowa 1919). Indeed, the notion of liberal construction is the "[f]oremost" principle in article III, section 29 cases. *Motor Club of Iowa v. Dep't of Transp.*, 265 N.W.2d 151, 153 (Iowa 1978). Put simply, "[t]he legal environment established by Article III, § 29 is not demanding." Op. No. 85-5-1, 1985 WL 68969, at *1 (Iowa Att'y Gen. May 1, 1985).

The Court must afford "deferential consideration" to bills challenged under article III, section 29. *Utilicorp United, Inc. v. Iowa Utils. Bd.*, 570 N.W.2d 451, 454 (Iowa 1997) (en banc). HF 2643 satisfies that standard and is also materially analogous to two appellate cases. For example, in 1942, the Iowa Supreme Court rejected a title challenge because, in addition to describing a broad subject, the bill's title referred "to the establishment of administrative requirements." *Burlington & Summit Apts. v. Manolato*, 233 Iowa 15, 19, 7 N.W.2d 26, 28 (1942). Similarly, in *Rush v. Reynolds*, the Iowa Court of Appeals commented that several seemingly disparate subjects "arguably fit under the legal and regulatory responsibilities clause" in a bill's title, and so "the title . . . would not have required amendment." *Rush v. Reynolds*, No. 19–1109, 2020 WL 825953, at *13 n.21 (Iowa Ct. App. Feb. 19, 2020).

The same is true here. HF 2643's title includes a phrase noting that the bill establishes legal and regulatory responsibilities. That phrase is sufficient; the legislature is not required to make every bill an exhaustive index of every provision it amends and every regulatory responsibility it imposes. *See Burlington & Summit*, 233 Iowa at 19, 7 N.W.2d at 28. The legislature may use titles that are "plain and broad, and direct[] the attention to the general subject." *Iowa Savings & Loan Ass'n v. Selby*, 82 N.W. 968, 969 (Iowa 1900); *accord State ex rel. Witter*

v. Forkner, 62 N.W. 772, 774 (Iowa 1895) ("It is not contemplated that anything more than general terms shall be used in the title . . . ."). Because the title here does so and the standard is exceptionally deferential in any event, Plaintiffs are unlikely to succeed on their title challenge to HF 2643 and the Court should not issue a temporary injunction.

2. *Equal protection claim.* "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const. art. I, § 6. Similar to the guarantee of equal protection found in the United States Constitution, Iowa's guarantee is essentially a direction "that similarly situated citizens should be treated alike." *LSCP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 856 (Iowa 2015); *accord Varnum v. Brien*, 763 N.W.2d 862, 878-79 (Iowa 2009). This first requires that Plaintiffs be part of a class of similarly situated persons singled out for different treatment. *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 204 (Iowa 2002). The reason for this threshold inquiry is plain: "Dissimilar treatment of persons dissimilarly situated does not offend equal protection." *City of Coralville v. Iowa Utils. Bd.*, 750 N.W.2d 523, 531 (Iowa 2008). The relevant inquiry involves specific circumstances, not Plaintiffs' general status. *Cf. New Midwest Rentals, LLC v. Iowa Dep't of Commerce*, 910 N.W.2d 643, 653 (Iowa Ct. App. 2018) (rejecting an equal protection challenge because the relevant classification was not all "Iowa retailer beer permittees," but all permittees with the same specific ownership circumstances as the appellant).

Non-incumbent providers like Plaintiffs are not similarly situated to incumbent providers. *See NextEra Energy Capital Holdings, Inc. v. Walker*, No. 19-CV-626-LY, 2020 WL 3580149, at *6 (W.D. Tex. Feb. 26, 2020) ("The existing regulated transmission-line providers with a right of first refusal are not similarly situated with unregulated providers such as NextEra Midwest.").

Incumbent providers are already subject to regulation by the IUB, while Plaintiffs are not. Moreover, incumbent providers have existing facilities (that will usually be connection points for any new projects), which gives them a unique interest in coordination to ensure the new project's safety and reliability. The equal protection claim fails at the outset. Plaintiffs are unlikely to succeed.

But even proceeding past the similarly situated question, Plaintiffs are still unlikely to succeed on their equal protection claim. Under the rational basis test applicable here, a statute will satisfy equal protection so long as there is a plausible policy reason for the statute and the relationship of the classification to the reason is not arbitrary or irrational. *Varnum*, 763 N.W.2d at 879 (Iowa 2009). As more fully discussed in the motion to dismiss, states have inherent police powers which include the regulation of utilities. *LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018, 1029 (8th Cir. 2020). The Iowa Legislature has further declared its intent "to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public" by establishing exclusive service territories for electric service at the retail level. Iowa Code § 476.25. The implementation of an ROFR law for transmission lines is consistent with those policies and rationally related to those state interests. Additionally, eliminating possible uncertainty following Order 1000 is a valid step to take in furthering "a State's legitimate interest in regulating the intrastate transmission of electric energy." *LSP Transmission Holdings*, 954 F.3d at 1031. And a legitimate interest for equal protection purposes "can be any reasonable justification, not just the one the legislature actually chose." *LSCP*, 861 N.W.2d at 858. Plaintiffs are unlikely to succeed on the merits of their equal protection claim, and the Court should deny their request for temporary injunctive relief.

C. Balancing Harms Weighs Against an Injunction.

When considering whether to grant an injunction, the Court must "ascertain the circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance." *Kleman*, 373 N.W.2d at 96. Here, issuing an injunction would result in more harm than it would prevent.

Most notably, Defendants disagree that "little harm" (Plaintiffs' Br. in Support of Injunction at 35) will come from enjoining publication. Enjoining publication of the entire Iowa Code would engender confusion, unnecessarily delay official publication of every other statute passed or amended in 2020, and potentially subject the State to additional fees or costs under its printing and publishing contract. (Exhibits A–B.) In light of Defendants' agreement that publication will not moot or nullify Plaintiffs' challenge (if the challenge is otherwise timely), the balance of harms favors Defendants with respect to enjoining publication.

Additionally, an injunction here would portend a "strict doctrine" of article III, section 29 analysis that "would unsettle the validity of a multitude" of standings bills like HF 2643. *Cook v. Marshall Cty.*, 93 N.W. 372, 378 (Iowa 1903). That common legislative practice, of course, "should not deter the court from accepting and announcing a rule which is clearly right, but it is a good and sufficient reason [to] pause and refuse to take a position attended with such grave consequences," *id.*, at an early stage of this case where the Court must act with extreme caution.

III. CONCLUSION

Plaintiffs are not entitled to injunctive relief because they do not show irreparable, judicially cognizable harm, and they therefore do not show a likelihood of success on the merits either. Additionally, with respect to Plaintiffs' request to enjoin IUB from promulgating rules, an injunction is unavailable now because Plaintiffs have other remedies—including potential judicial

review—available should IUB begin the process at any point. Further, there remain serious questions, raised by the pending motion to dismiss, about (1) whether Plaintiffs have standing to bring this case at all, and (2) whether Plaintiffs' claims are ripe for adjudication. Considering those serious and still-outstanding questions, an injunction is not appropriate.[2] Accordingly, Defendants respectfully request that the Court deny Plaintiffs' motion for temporary injunction, assess all costs to Plaintiffs, and award any other relief appropriate under the circumstances.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that the foregoing instrument was served upon counsel of record via EDMS on this 23rd day of November, 2020:

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[2] If the Court grants any injunction, it must require Plaintiffs to post a bond that is "125 percent of the probable liability to be incurred" in complying with the injunction. Iowa R. Civ. P. 1.1508.