IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

LS POWER MIDCONTINENT, LLC and SOUTHWEST TRANSMISSION, LLC, Plaintiffs, v. THE STATE OF IOWA, IOWA UTILITIES BOARD, GERI D. HUSER, GLEN DICKINSON and LESLIE HICKEY, Defendants MIDAMERICAN ENERGY COMPANY and ITC MIDWEST LLC. Intervenors.	Case No. CVCV060840 **INTERVENORS JOINT SUR-REPLY IN OPPOSITION TO TEMPORARY INJUNCTION**

COME NOW Intervenors MidAmerican Energy Company ("MidAmerican") and ITC Midwest LLC ("ITC") who state as follows:

BACKGROUND

At the hearing on the temporary injunction held January 29, 2021, MidAmerican contended if the court were to find a likelihood of success on the merits because HF 2643 violated either the single-subject or notice provisions of Article III Section 29 of the Iowa Constitution, that meant such constitutional infirmities were present throughout the entire bill and, as such, a preliminary injunction should enjoin implementation of the entire bill, including appropriations for state government for fiscal year 2020-2021. (1/29/21 Hearing, Tr. 43). MidAmerican claimed that the public interest did not favor enjoining such funding and, for that reason alone, the court should not grant a temporary injunction.

Plaintiffs strongly disputed the validity of such a notion. (1/29/21 Tr. 48). The position taken by MidAmerican was well-founded.

Plaintiffs also called the Court's attention to an unpublished ruling from the District Court for Johnson County, *Planned Parenthood of the Heartland, Inc. v. Reynolds*.[1] That case is so distinguishable as to be of little relevance here.

ARGUMENT

No reported Iowa case was found that addressed the issuance of a preliminary injunction when a single-subject violation was deemed likely to occur.[2] One case, however, was found from another jurisdiction which dealt with this precise issue.

In *City of Philadelphia v. Commonwealth of Pennsylvania*, 922 A.2d 1 (Pa. 2003) the court addressed whether certain legislation violated that state's single-subject requirement. The court found that the legislation violated the single-subject rule, found irreparable harm was shown and determined that a preliminary injunction should issue. The court then addressed the scope of such injunction and stated:

> We must next determine whether such preliminary relief may be tailored by enjoining *only certain parts* of that act. . . [T]he remedy best tailored to this situation is a preliminary injunction of Act 230 in *its entirety*. We note that the Act does not contain a severability provision, and, while a narrower preliminary injunction might be crafted, such a step may well lead to more confusion and uncertainty than it would prevent. ***The alleged constitutional violation applies with equal force to the entire act***, thereby suggesting that *injunctive relief* should not be granted piecemeal, but should also *encompass* the *entire act*.

Id. at 15 (emphasis added); see also *California Trial Lawyers Assn. v*. Eu, 200 Cal. App. 3d 351, 245 Cal. Rptr. 916 (3d Dist. 1988) (when constitutional single-subject provision for

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[1] Docket No. EQCV081855, Ruling dated June 30, 2020.

[2] See *State v. Mabry*, 460 N.W.2d 472, 474 (Iowa 1990) (where a *final* judgment concludes that a violation of the single-subject rule occurred, the remedy is to invalidate any subject not mentioned in the title).

initiatives does not permit severance of an invalid portion of an initiative so as to give effect to the valid portion, court may be required to determine that the entire initiative has no effect).

Like the challenged legislation in *City of Philadelphia*, H.F.2643 did not contain a severability provision. Thus, precedent exists that a single-subject violation affects the *entire* act and, consequently, any injunctive relief should be applied to the entire act.

Similar judicial reasoning was recently used by the Iowa Supreme Court in *Rants v. Vilsack,* 684 NW2d 193, 212 (Iowa 2004) (because Governor needed to approve the entirety of a bill to become law and he did not do so, the result of the case was to render things as though no provision of the bill passed into law).

H.F. 2643 contained state government funding for this fiscal year. The public interest in maintaining such funding and the services provided thereby to citizens of the State of Iowa clearly outweighs any interest these plaintiffs may claim. For this reason alone, this court should not grant the requested temporary injunctive relief.

MidAmerican continues its objection to legislator affidavits submitted by plaintiffs that involve legislative intent, speculation and other matters. [3]

Finally, Plaintiffs relied on the June 2020 decision granting an injunction in *Planned Parenthood v. Reynolds*. The facts that drove the Planned Parenthood case are vastly different from those found here. That court correctly stated that:

> The Iowa Supreme Court has "often noted that '[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.'"

[3] This court should not consider the Affidavit of Rep. Wessel-Kroeschell (Ex. 28) because its was used for another bill in another case and is irrelevant to this matter. MidAmerican further specifically objects to paragraphs 4, 5, 9, 11, 23, 24, 26, and 35-36 of Rep. Wessel-Kroeschell's Affidavit along with paragraphs 7, 8, 13-20, 22 and 23 of Sen. Bisignano's Affidavit (Ex. 30) because those paragraphs contain conclusions on why Legislators voted or acted and/or contain speculation on citizen intent, legislative intent and hypothetical outcomes.

Planned Parenthood at 10 (citing *Sear v. Clayton Co. Zoning Bd. of Adjustment*, 590 N.W.2d 515, 515 (Iowa 1999). The court went on to discuss the "time sensitive nature of abortion procedures" and held that substantial injury would result if temporary relief was not granted. The fact that women may become pregnant at any time, and the window in which to obtain an abortion is short after which the constitutional right becomes moot, is nothing like the fact here where planning that might result in a project will not be completed until the end of the year at the earliest, and where there would be time for the Court to act, if appropriate, when the facts are better established.

Unlike in *Planned Parenthood*, there is no certain, irreparable harm here if no temporary injunction issues. Further, discussing the time for legislative debate, the *Planned Parenthood* court noted that abortion is a uniquely "polarizing and highly controversial topic." *Id*. at 14. And of course the right at issue in *Planned Parenthood* is subject to the strictest scrutiny, id. at 12-13, unlike the mere rational basis on which the narrow and technical economic regulation in this case is analyzed. Finally, in *Planned Parenthood* the legislative language at issue had been ruled non-germane by the Speaker of the House; as Judge Turner noted, he was just "giving deference to Speaker Grassley." *Id*. at 15. Here, just the opposite occurred. There was no such challenge that any portion of H.F.2643 was not germane[4] so an injunction in this case would not give deference to the Legislature.

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[4] Germaneness is typically raised against an amendment if it expands the scope of the bill or is "outside the title." An amendment that is "outside the title" would require a second action to amend the title. When an amendment is "outside the title," another member usually raises the germaneness objection. If the chair agrees the amendment is not germane, the amendment is out of order. See House Rule 38, Senate Rules 12, 52; https://www.legis.iowa.gov/chamber/rules.

By not raising germaneness during debate on H.F. 2643, it can be inferred that all members thought the ROFR amendment when proposed was properly within the title and within the scope of the existing subject matter. This inference is further supported by Rep. Hunter's motion to amend the title which did not address the ROFR portion of the title. See MidAmerican Ex. G p. 7-8; see also Ex. D-F.

In short, the highly controversial, frequently litigated, time sensitive nature of the abortion issue renders it distinguishable from this case. Along with the substantial difference between strict scrutiny and the rational basis applied here, and the fact that the amendment in question in *Planned Parenthood* had already been held non-germane, there are simply too many factual and legal distinctions for *Planned Parenthood* to be relevant to the question before this Court. The cases cited by the State and the Intervenors are more appropriate to deciding the case at hand.

CONCLUSION

Intervenors MidAmerican and ITC Midwest assert that a temporary injunction should not issue for the reasons previously stated and, accordingly, the court should deny Plaintiffs' request for temporary injunctive relief.

Filed this 5th day of February, 2021.

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