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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LS POWER MIDCONTINENT, LLC, and SOUTHWEST TRANSMISSION, LLC, Plaintiffs, vs. THE STATE OF IOWA, IOWA UTILITIES BOARD, GERI D. HUSER, GLEN DICKINSON and LESLIE HICKEY, Defendants, MIDAMERICA ENERGY COMPANY and ITC MIDWEST LLC, Intervenors.	)	CASE NO. CVCV060840 **BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION, ENLARGEMENT OR MODIFICATION**

Plaintiffs LS Power Midcontinent, LLC and Southwest Transmission, LLC, by and through the undersigned, hereby file this Brief in Support of Motion for Reconsideration, Enlargement or Modification under Iowa Rule of Civil Procedure 1.904, stating as follows:

Procedural Background

The Court is familiar with the history of this case. In the dark of night on June 14, 2020, the final day of the legislative session, S-5163, an omnibus amendment to H.F. 2643, the fiscal appropriations bill, was introduced at 1:35 a.m. Pet., ¶ 17. Among other items, S-5163 contained Division XXXIII, a newly created right of first refusal granting incumbent transmission owners in Iowa the right to construct, own and maintain of electric transmission lines by regional planning entities. Pet., ¶¶ 21-26. Under Division XXXIII, rather than proceed through certain federally approved competitive processes at the regional entity to be assigned a project, an incumbent owner whose facility connects to the line is automatically assigned the right to construct, own and maintain the line. Pet., ¶¶ 21-26, 34. Plaintiffs are qualified developers with the regional entity and eligible to compete for projects through that entity. The definition of "incumbent electric

transmission owner" excludes by its terms any individual or entity that does not own, operate or maintain an electric transmission line "in this state" as of the date of the Act. Pet., ¶ 25. As a result of Division XXXIII, non-incumbent entities—who are subject to the very same rigorous reliability, maintenance and safety standards under state and federal law as incumbents—are denied any opportunity to compete for regionally approved projects within Iowa. Pet., ¶ 26.

Protectionist rights of first refusal such as Division XXXIII are highly controversial. As recognized by the Federal Energy Regulatory Commission in eliminating them at the federal level, rights of first refusal "undermine the identification and evaluation of more efficient or cost-effective solutions to regional transmission needs, which in turn can result in rates ... that are unjust and unreasonable." *Transmission Planning & Cost Allocation by Transmission Owning & Operating Public Utilities*, Order No. 1000, 136 FERC 61051 (2011) (hereinafter, "Order 1000"). Removal of federal right-of-first-refusal provisions was later affirmed to be in the public interest by both FERC and courts. The Iowa Department of Justice echoes state rights of first refusal "depriv[e] ratepayers, including those in Iowa and other surrounding states, of the benefits of competitive bidding," including design efficiencies and avoidance of cost overruns. Brief of the Iowa Dep't of Justice, Office of Consumer Advocate as Amicus Curiae in Support of Plaintiff-Appellant, *LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018 (8th Cir. 2020) (No. 18-2559), 2018 WL 5318515, at *1.

Legislation similar to Division XXXIII twice failed to pass on its own merit in Iowa. Pet., ¶¶ 14-15. Only after shoving the anticompetitive right of first refusal into a late-night, everything-but-the-kitchen sink amendment to a much-needed appropriations bill, and only after misstatements on the floor were made about its history and effect, did the measure prevail. Pet., ¶ 20. Division XXXIII was passed along with such unrelated, disparate matters as voting, the

locations of civil trials, alarm system contractor fees, returns on search warrants and code corrections. Pet., ¶ 12. Even after Division XXXIII's passage, the title to the legislation was never amended and made no reference of a right of first refusal, electric transmission lines or any subject reasonably encompassing such topics.

On October 14, 2020, Plaintiffs, who are non-incumbent electric transmission entities desiring to construct, own and maintain transmission lines in Iowa, filed a Petition for Declaratory and Injunctive Relief. Pet, ¶¶ 27. Plaintiffs asserted the surreptitious passage and anticompetitive effect of Division XXXIII violated their constitutional rights, bringing three counts: (I) Violation of the Single-Subject Clause of the Iowa Constitution, Article III, § 29; (II) Violation of the Title Clause of the Iowa Constitution, Art. III, § 29; and (III) Violation of the Equal Protection and Privileges and Immunities Clauses of the Iowa Constitution, Art. I, § 6. Pet., ¶¶ 36-53. Because Article III, section 29 claims are barred once the legislation is codified, Plaintiffs were required to act quickly. Further, because they knew transmission projects in Iowa were imminent, on November 13, 2020, Plaintiffs sought a temporary injunction. Plaintiffs sought to prohibit Division XXXIII's enforcement, operation and rulemaking during the litigation's pendency to avoid projects being automatically assigned by the regional planning entities to incumbents while Plaintiffs vindicated their constitutional rights.

On November 16, 2020, Defendants State of Iowa, Iowa Utilities Board, Geri Huser, Glen Dickinson and Leslie Hickey (hereinafter collectively "State Defendants") moved to dismiss Plaintiffs' claims. Intervenors MidAmerican Energy Company and ITC Midwest LLC joined the State's Motion. State Defendants and the two intervenor companies directly benefitted by the legislation asserted Plaintiffs did not have standing because they could not establish "actual injury." Despite numerous sources stating transmission in Iowa is likely in 2020 (including the

Governor of Iowa, stating projects were expected "with a sense of urgency (Pet., ¶ 32)) and despite Plaintiffs being deprived by Division XXXIII of the opportunity to compete for any such projects, State Defendants and Intervenors argued that because no *specific* Iowa project is slated for competition, injury was "hypothetical" and not imminent.

Plaintiffs resisted Defendants' Motion. In resisting, Plaintiffs pointed out they are the targets of Division XXXIII, and they are deprived of the opportunity to compete on an equal playing field in the electric transmission market by its enforcement. Resistance, at 9-10. They emphasized industry statements confirming upcoming transmission in Iowa (Resistance, at 12, Pet., ¶¶ 31-32) and that project approval was not a matter of "if," but "when." Plaintiffs further highlighted Supreme Court precedent holding denial of the opportunity to compete and harm to competitive interests *are* actual and non-speculative injuries, even absent a particular project. *Horsfield Materials Inc. v. City of Dyersville*, 834 N.W.2d 444, 457 (Iowa 2013); *see also Hawkeye Foodservice Distrib., Inc.*, 812 N.W.2d 600, 608 (Iowa 2012). Finally, Plaintiffs noted under Iowa law, "[o]nly a likelihood or possibility of injury need be shown. A party need not demonstrate injury will accrue with certainty, or has already accrued." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 444 (Iowa 1983).

On March 25, 2021, this Court disagreed and ruled against Plaintiffs. Plaintiffs also argued, however that "[i]f this Court disagrees, it should still elect to proceed to the merit of Plaintiffs' claims under the exception to the general rule of standing." Resistance, at 14 n.1. Plaintiffs continued,

> Both the procedure and substance of Division XXXIII implicate issues of great public importance. *See Gregory v. Shurtleff*, 299 P.3d 1098, 1108-10 (Utah 2013); *Department of Admin. v. Horne*, 269 So. 2d 659, 663 (Fla. 1972). The public has an interest in ensuring the purposes of Article III, Section 29 are fulfilled, particularly where evidence of logrolling, fraud and surprise are present. *See id.* Additionally, as described more fully in Plaintiffs' Brief in Support of Motion for

> Preliminary Injunction, the substance of Division XXXIII of H.F. 2643 harms the public as a whole by impeding competition with no corresponding benefit. Finally, if Plaintiffs cannot pursue their challenge, then *no party* can, as no electric transmission line project will be approved prior to codification. *Exira Cmty. Sch. Dist.* [*v. State*], 512 N.W.2d [787, 790, (Iowa 1994)] (noting circumstances where no other party could have standing to pursue may be reason for exception).

Resistance, at 14-15, n.1. In its ruling, the Court did not specifically address Plaintiffs' argument on the exception to the standing requirement.

Because Plaintiffs' claims fit squarely within the standing exception and because ruling on this point is necessary for any resulting appeal, Plaintiffs respectfully request the Court enlarge or modify its March 25, 2021 Order to address the exception to standing.

LEGAL ANALYSIS

Under Iowa Rule of Civil Procedure 1.904, "on motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be reconsidered, enlarged, or amended and the judgment or decree modified accordingly or a different judgement or decree substituted." This rule "creates a procedure by which a district court may enlarge or amend a prior ruling made in a case not tried before a jury." *Homan v. Branstad*, 887 N.W.2d 153, 160 (Iowa 2016). "[W]hen a party has presented an issue, claim, or legal theory and the district court has failed to rule on it, a rule 1.904(2) motion is proper means by which to preserve error and request a ruling from the district court." *Id.* Additionally, Rule 1.904 motions "authorize the court to change its ruling," including on an issue of law as applied to the facts. *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002).

Plaintiffs raised and briefed the exception to standing. Because it does not appear the Court addressed it, Plaintiffs ask the Court to do so now. Because Plaintiffs further believe that certain facts applied to the law may make a difference in the Court's outcome, Plaintiffs ask the Court to reconsider its holding or, in the alternative, grant leave to amend.

I. PLAINTIFFS REQUEST THE COURT ENLARGE AND AMEND ITS RULING TO ADDRESS THE WAIVER OF STANDING ARGUMENT.

Iowa's "doctrine of standing is not so rigid that an exception to the injury requirement could not be recognized" for those entities "who seek to resolve certain questions of great public importance and interest in our system of government." *Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008). Whether a case qualifies for the exception is dependent upon the claim alleged. *See id.* Where a claim is of the "utmost importance and the constitutional protections are the most needed," standing should be waived. *Id.* at 427. The exception's appropriateness is also dependent on the party: when no other person is in a position to raise the constitutional challenge, the exception should apply. *Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 790 (Iowa 1994). Because both factors are satisfied in this case, standing should be waived and Plaintiffs should be permitted to proceed with their constitutional claims.

Single-subject and title challenges such as those brought by Plaintiffs are specifically designed to vindicate the public's interest in our system of government. As the Iowa Supreme Court has repeatedly recognized, Article III, section 29 intends to prevent surprise and fraud visited upon members of the legislature and the public, ensuring they are able to meaningfully grasp and intelligently discuss legislation proposed. *Godfrey*, 752 N.W.2d at 427; *see also Plain Local Sch. Dist. Bd. of Educ. v. DeWine*, 2020 WL 5521310, at *21 (S.D. Ohio Sept. 11, 2020). As other states highlight in applying their own public-interest exception to standing for such claims, single-subject and title challenges are part of a "fundamental structure of legislative power articulated in our constitution." *Gregory v. Shurtleff*, 299 P.3d 1098, 1108-09 (Utah 2013). Giving parties a mechanism for enforcing them is "of particular importance because these provisions are designed to assist the citizens [of the State] by providing legislative accountability and transparency." *Lebeau v. Comm'rs of Franklin Cty.*, 422 S.W.3d 284, 289 (Mo. 2014); *see also Gregory*, 299

P.3d at 1108-09 (applying public importance exception); *see also Hunsucker v. Fallin*, 408 P.3d 599, 602-03 (Okla. 2017) ("We find petitioners possess a public interest standing in this matter."); *Sloan v. Wilkins*, 608 S.E.2d 579, 584 (S.C. 2005) ("In light of the great public importance of this matter, we find Sloan has standing to maintain this action."), *abrogated on other grounds by Am. Petroleum Inst. v. S.C. Dep't of Rev.*, 677 S.E.2d 16 (S.C. 2009); *Harbor v. Deukmejian*, 742 P.2d 1290, 1300 (Cal. 1987) ("The issue raised by the respondents is of great public importance...").

In *Godfrey*, the Iowa Supreme Court considered the exception to standing requirement in an Article III, section 29, single-subject challenge. 752 N.W.2d at 427. The Court concluded it was inappropriate to apply the exception under the circumstances alleged. *Id.* at 427. Critical to the Court's holding was the absence of a title challenge and the absence of any "allegation of or claim by Godfrey that implicates fraud, surprise, personal and private gain, or other such evils inconsistent with the democratic legislative process." *Id.* Godfrey failed to allege the provision in question was "purposely placed into one bill to engage in logrolling," and it had been part of a joint effort by the legislature and governor, for which the legislature gathered for a special session to address. *Id.* The Court concluded, "These circumstances minimize our need to interfere with the affairs of another branch of government." *Id.* at 427-28.

It is what *Godfrey* distinguished that is critical. Unlike *Godfrey*, Plaintiffs here *did* bring a title challenge. Pet., at ¶¶ 42-45. Also unlike *Godfrey*, Plaintiffs expressly alleged Division XXXIII's provisions were purposely placed into one bill to engage in logrolling constituting fraud, deceit and surprise upon the public and other members of the legislature. Pet., ¶¶ 39, 44. Finally, Division XXXIII was not a joint legislative effort, nor were legislators apprised during the special session the right of first refusal was to be discussed. Instead—in stark contrast to *Godfrey*—H.S.B. 540, a House Study Bill similar to Division XXXIII, did not advance past subcommittee; no

committee meeting was *ever* held discussing it. Pet., ¶ 14. And, in the immediately preceding legislative session, language similar to Division XXXIII was purposely *removed* from legislation. Pet., ¶ 16. Neither legislators nor interested constituents had any reason to believe a right of first refusal would be resurrected—particularly in an unrelated, omnibus appropriations bill at 1:35 in the morning on the last day of session. Pet., ¶¶ 14, 17

Indeed, numerous legislators noted surprise (and confusion) about Division XXXIII. Iowa State Legislature, H.F. 2643, 88th G.A., Reg. Sess. (Iowa June 14, 2020). Even the bill's sponsor was misinformed about Division XXXIII's history and contents. *Id.* Nothing in H.F. 2643's title provided notice of a right of first refusal. It was offered last-minute on the heels of a critical year-end appropriations bill and passed along with a junk-drawer of other topics possessing no reasonable relation to one another, let alone a cohesive subject. Pet., ¶¶ 12, 20. It directly and privately benefits incumbent transmission owners, such as Intervenors herein. The short period of time between its amendment and passage (just over 12 hours) prevented citizens of the public from being informed of and weighing into their legislators about the bill. Pet., ¶ 20. Since Division XXXIII assuredly could not pass on its own merit (evidenced by its twice previous failure), it was attached as an undesirable rider to H.F. 2643. Pet., ¶ 40. These are the chief evils the single-subject and title clauses aim to prevent. Constitutional protections are "most needed" here, where such a flagrant violation has occurred. *Godfrey*, 752 N.W.2d at 425.

Apart from the public interest inherent in the single-subject and title clauses, Division XXXIII—a right of first refusal for electric transmission lines prohibiting non-incumbent entities from competing in the field—damages the public. FERC declared such measures have the potential to "lead[] to rates for jurisdictional transmission service that are unjust and unreasonable," and "undermine the consideration of potential transmission solutions at the

regional level." Order 1000, 136 FERC 61051, ¶ 286. It is "not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities, even if proposals submitted by new entrants would result in a more efficient or cost-effective solution to the region's needs." *Id.* Later, when the removal of federal rights of first refusal was challenged, FERC was even more definitive, concluding rights of first refusal "severely harm the public interest" by their anticompetitive provisions.[1] *Emera Maine v. Fed. Energy Regulatory Comm'n*, 854 F.3d 552, 667 (D.C. Cir. 2017) (quoting *ISO New England Inc.*, 143 FERC P 61150, 2013 WL 2189868 (May 17, 2013)). FERC recognized,

> [T]he removal of such barriers to participation by nonincumbent transmission developers in the regional transmission planning processes ... is essential to meeting demands of changing circumstances facing the electric industry. This finding is the foundation for our conclusion *protecting the public interest* requires removal from the TOA of the provisions at issue here.

ISO New England Inc., 143 FERC P 61150, 2013 WL 2189868 (May 17, 2013) (emphasis added).

Courts agree: the Seventh Circuit Court of Appeals highlighted although "no one likes to be competed with," incumbent transmission providers were unable to "articulate any benefit that such [rights of first refusal] would ... confer on consumers of electricity or on society as a whole under current conditions." *MISO Transmission Owners v. F.E.R.C.*, 819 F.3d 329, 333 (7th Cir. 2016); *see also Oklahoma Gas & Elec. Co. v. Fed. Energy Regulatory Comm'n*, 827 F.3d 75, 80 (D.C. Cir. 2016). The Seventh Circuit went so far as to compare federal rights of first refusals to cartels due to their anticompetitive nature. *MISO Transmission Owners*, 819 F.3d at 333. Although it has changed its position now, at one time even part of the *Iowa Attorney General's Office* agreed:

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[1] Order No. 1000's removal of federal rights of first refusal was challenged under the *Mobile-Sierra* presumption. This presumption "requires the Commission to 'presume a contract rate for wholesale energy is just and reasonable," and prohibits it from setting aside the rate unless the Commission finds that the rate "seriously harms the public interest." *Emera Maine*, 854 F.3d at 665.

rights of first refusal "depriv[e] ratepayers, including those in Iowa and other surrounding states, of the benefits of competitive bidding," including design efficiencies and avoidance of cost overruns. Brief of the Iowa Dep't of Justice, Office of Consumer Advocate as Amicus Curiae in Support of Plaintiff-Appellant, *LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018 (8th Cir. 2020) (No. 18-2559), 2018 WL 5318515, at *1. The United States Department of Justice has weighed in with similar views.

Public importance is particularly acute now, when Iowa is on the cusp of a boom in energy projects. Iowa's Governor and President Joe Biden's administration have made electric transmission planning in the Midwest region a high priority, with the President recently announcing a plan to spend $100 billion on updating the electrical grid, a significant portion to occur in Iowa. Pet., ¶ 17; *see also* The White House, *Fact Sheet: The American Jobs Plan*, WhiteHouse.gov (March 31, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/. Midcontinent Independent System Operator (MISO)'s Long Range Transmission Planning Outlook in October 2020 made it clear that "significant transmission planning needs will exist in Iowa." (Brief in Support of Mot. for Temp. Inj., Ex. 20)

MISO and SPP continue to highlight planning activities in 2021 that will advance transmission solutions in Iowa, with a specific focus on the Iowa-Nebraska border. Given impending projects, the reliability and cost-efficiency of electric transmission is critical right now in Iowa. Because the government acts as a "trustee for the public" in its regulation of utilities, matters touching thereon are of significant public importance. *See Willis v. Buchman*, 199 So. 892, 895 (Ala. 1940); *see also* 132 A.LR. 1185 (1941) (collecting cases where public interest has been held inherent in utilities).

Finally, Plaintiffs herein are the appropriate party to advance the public interest. Plaintiffs have "the interest necessary to effectively assist the court in developing and reviewing relevant legal and factual questions." *Gregory*, 299 P.3d at 1109. Plaintiffs are intimately familiar with electric transmission policy and Division XXXIII's legislative history. They are more than competent to articulate this constitutional challenge. Moreover, if Plaintiffs as the object of the legislation's anticompetitive focus do not have standing to proceed due to a lack of specific project, no party does. No project subject to Division XXXIII yet has been approved in Iowa, and the legislation has been codified. When a project arises, as it inevitably will, no party will be able to assert the Article III, section 29 challenges alleged herein, as codification nullifies the violation. *See State v. Kolbet*, 638 N.W.2d 653, 661 (Iowa 2001) ("Once a bill is codified, any constitutional defect relating to either the title requirement or the single-subject requirement of article III, section 29 is cured.").

In short, if Plaintiffs are unable to proceed, the constitutional infringement will go unchallenged, and Article III, section 29 will be left unenforceable. Indeed, the legislature, to avoid judicial review of plainly unconstitutional legislation, could simply draft a clause stating it will not be effective until after the bill is "codified." If a party does not have standing for an Article III, section 29 claim until after they have been injured by the provisions of the bill acting as intended, but injury cannot occur until after codification, Article III, section 29 challenges will forever escape review. John Dimanno, *Beyond Taxpayers' Suits: Public Interest Standing and the States*, 41 Conn. L. Rev. 639, 664 (2008) (noting a "constrained approach to public actions sweeps so broadly that it renders some constitutional provisions judicially unreviewable and thus futile limitations on government power"). It is the exception to standing, which should be applied

in cases such as this, that allows the Court to ensure portions of Iowa's constitution are not left unenforceable. *See id.*

The constitutional provisions at issue, including Article III, section 29 and Article I, section 6, place appropriate checks on legislative power. *Id.* "Where the legislature has passed a bill and the governor has signed it, we cannot assume that either of those branches are appropriate parties to whom to entrust the prosecution of a claim that the bill violates the strictures" of the Constitution. *Gregory*, 299 P.3d at 1109. Review of such action is for the courts, and the courts must be counted on to vindicate Plaintiffs' constitutional rights. Plaintiffs respectfully request that this Court modify and expand its March 25, 2021 holding to address the public importance exception to standing.

II. PLAINTIFFS REQUEST THE COURT RECONSIDER ITS FINDINGS ON INJURY IN FACT.

Additionally, Plaintiffs request the Court reconsider its application of law to the facts. The Court's March 25, 2021 Order rested primarily on the Court's view that "there is no allegation a specific project is planned, when such a project may arise, or that Plaintiffs have been denied such a project." Order, at 3. The Court relied upon *LSP Transmission Holdings, LLC v. Federal Energy Regulatory Commission*, 700 F. App'x 1, 2 (D.C. Cir. 2017) (per curiam) to hold an allegation of a specific project was necessary to meet injury-in-fact. Because allegations of expected projects now exist in the record before the Court and because *LSP Transmission Holdings* is fundamentally distinguishable from Plaintiffs' case, Plaintiffs believe reconsideration is appropriate.

In the record before the Court, Plaintiffs point to evidence of specific projects. A MISO presentation to the Planning Advisory Committee in 2020 discussed a transmission solution related to congestion on the Council Bluffs, IA 345kV transmission line. (Brief in Support of Mot. for Temp. Inj., Ex. 20) This specific transmission solution is a $252 million project between south of

Sioux City, Iowa and Council Bluffs, Iowa (Rauen-Council Bluffs substations) that is designed to address transmission constraints. At the time, the project had not passed the required cost-benefit ratio, but discussions concerning the improvement remain a high priority for MISO and SPP. Specifically, SPP and MISO in an April 9, 2021 presentation identified the following high-priority transmission constraints in Iowa: Council Bluffs, Iowa – S345kV transmission line, Grimes (IA) – Sycamore (IA) 345kV transmission line, Hazelton (IA) – Mitchell County (IA) 345kV transmission line, and Bondurant (IA) – Montezuma (IA) 345kV transmission line. (Ex. A) In April 2021, transmission solutions will be developed by SPP and MISO to address the Iowa constraints listed above. (Ex. B) These projects could be approved as near as October 2021, as acknowledged by Jeffrey Eddy (Manager, Planning at ITC Holdings). (ITC Midwest LLC's Resistance to Pl.s' Request for Temp. Inj., Ex. 1, ¶ 9).

In short, these projects are imminent. Because State Defendants and Intervenors moved to dismiss based on standing, this Court is free to look outside the pleadings at the numerous documents provided by Plaintiffs discussing the likelihood of upcoming transmission in Iowa. *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 (Iowa 2004); *see Swepi, LP v. Mora Cty., N.M.*, 81 F. Supp. 3d 1075, 1087 (D.N.M. 2015) ("Because the Court may consider evidence outside the pleadings for issues of justiciability, the Court will consider outside evidence solely to determine standing and ripeness."); *Kolstad v. Cty. of Amador*, 2013 WL 6065315, at *3, n.3 (E.D. Cal. Nov. 14, 2013) (same); *Branch Banking & Tr. Co. v. Fidelity Nat'l Title Ins. Co.*, 2011 WL 3841655, at *3 (M.D. Tenn. Aug. 30, 2011) (same); *Bank of Am., N.A. v. Miller*, 2005 WL 2086099, at *2 (E.D. Cal. Aug. 25, 2005) (same); *City of Harlingen v. Obra Homes, Inc.*, 2005 WL 74121, at *2 (Tex. App. Jan. 13, 2005); *Oblates of St.*

Joseph v. Nichols, 2002 WL 34938200, at *2 (E.D. Cal. Apr. 26, 2002) (same)*; Johnson & Towers, Inc. v. Corp. Synergies Grp., LLC*, 2015 WL 3889438, at *4 (D.N.J. June 23, 2015) (same).

If this Court declines to look outside the pleadings, Plaintiffs still pled imminent harm. Iowa is a notice pleading state, and thus, Plaintiffs were not required to make more than a terse statement they were damaged. *Brunkhorst v. Iowa Pub. Emps.' Retirement Sys.*, 2008 WL 4724726, at *4 (Iowa Ct. App. Oct. 29, 2008). Plaintiffs did so. Pet., ¶ 35. Nonetheless, if the Court believes more is required regarding statements on likely specific project initiatives, Plaintiffs respectfully request that their Motion to Amend, as contemporaneously filed, be granted. Leave to amend should be freely granted when justice so requires. *See* Iowa R. Civ. P. 1.402(4).

Should this Court decline to reconsider or allow amendment, no party will be able to challenge the Article III, section 29 violation. This makes this case distinctly different from *LSP Transmission Holdings, LLC*. There, the Court expressly relied upon the opposing party's concession that once a specific transmission project was approved for cost allocation and awarded to the incumbent, a challenge could then be brought. 700 F. App'x at *2-*3. Due to codification of Article III, section 29, here, that is not the case. *See Kolbet*, 638 N.W.2d at 661. Moreover, here Plaintiffs bring constitutional claims under Iowa's more liberal standard for injury, and Iowa law is clear no particular project is necessary to allege injury in fact. *Horsfield Materials Inc.*, 834 N.W.2d at 457.

It is with some trepidation that any litigant in Iowa asks the Court to reconsider its ruling. Plaintiffs greatly appreciate the Court's time and effort. Nonetheless, due to the importance of these claims to not only Plaintiffs, but all citizens in Iowa, Plaintiffs respectfully request the Court to reconsider its ruling or, in the alternative, allow amendment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on April 9, 2021, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System. A copy was also served upon the parties to this action by:

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