IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AIDEN VASQUEZ, Petitioner, v. IOWA DEPARTMENT OF HUMAN SERVICES, Respondent.	Case No. CVCV061729 **BRIEF IN SUPPORT OF MOTION TO DISMISS** **(COUNTS II, III, IV, AND V AND CLAIMS FOR RELIEF)**

Respondent Iowa Department of Human Services files the following brief in support of its motion to dismiss this action under Iowa Rule of Civil Procedure 1.421.

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INTRODUCTION

After first trying to obtain relief in a lawsuit dismissed as premature, Aiden Vasquez sought preauthorization from his managed care organization ("MCO") for phalloplasty and a related office visit under Iowa's Medicaid program. The MCO denied the request, relying on a Department of Human Services administrative rule excluding from coverage most "cosmetic reconstructive or plastic surgery," including "[p]rocedures related to transsexualism, hermaphroditism, gender identity disorders, or body dysmorphic disorders." Iowa Admin. Code r. 441—78.1(4). Following a contested case proceeding, the Department affirmed the denial.

Vasquez now seeks judicial review of the Department's decision. But rather than merely seeking to reverse that decision—so that he could obtain the services he requested from Medicaid—he tries to resurrect his earlier broad-based lawsuit within the confines of this narrow appellate proceeding. *See Black v. Univ. of Iowa*, 362 N.W.2d 459,461–64 (Iowa 1985) (discussing the importance of "maintaining the integrity" of judicial review proceedings as "appellate in nature" while holding that original causes of action cannot be joined together with judicial review proceedings).

He attempts to bring numerous constitutional challenges—some of which are untimely—to the substance and process of a recent amendment to the Iowa Civil Rights Act that is not the basis for the Department's decision. He seeks attorney fees to which he is not entitled. And he seeks sweeping injunctive and declaratory relief that goes beyond that necessary to remedy his alleged harm.

This Court should dismiss Vasquez's defective claims and requests for relief, leaving for further consideration by the Court only his proper challenges to the Department's decision in this contested case proceeding.

BACKGROUND

Iowa Medicaid covers medically necessary services for needy Iowans. *See* Iowa Code ch. 249A; Iowa Admin. Code r. 441—78.1; *see also Exceptional Persons, Inc. v. Iowa Dep't of Human Servs.*, 878 N.W.2d 247, 248 (Iowa 2016) (noting the Department "is responsible for managing the Medicaid program in Iowa"). And most such services are provided by contracted managed care organizations. *See* Iowa Admin. Code ch. 441—73 pmbl., r. 441—73.2. Before 1979, the Department had an unwritten policy of excluding sex reassignment surgeries from covered physician services based on existing exclusions and limitations for "cosmetic surgery" and "mental diseases." *Pinneke v. Preisser*, 623 F.2d 546, 549–50 (8th Cir. 1980). That unwritten policy, however, was implemented "[w]ithout any formal rulemaking proceedings or hearings," and so the Eighth Circuit concluded such denial of funding was arbitrary. *Id.* at 549; *accord Smith v. Rasmussen*, 249 F.3d 755, 760 (8th Cir. 2001) (characterizing *Pinneke* the same way).

In 1994, the State clarified its rule excluding surgery performed for primarily psychological purposes to specify that sex reassignment surgery fell within that exclusion, in compliance with the Eighth Circuit's admonition in *Pinneke*. The resulting rule provides in relevant part:

> 78.1(4) For the purposes of this program, cosmetic, reconstructive, or plastic surgery is surgery which can be expected primarily to improve physical appearance or which is performed primarily for psychological

> purposes…. Surgeries for the purpose of sex reassignment are not considered as restoring bodily function and are excluded from coverage.
>
> a. Coverage under the program is generally not available for cosmetic, reconstructive, or plastic surgery…

Iowa Admin. Code r. 441—78.1(4); *see also* Iowa Admin. Code r. 441-78.1(4)(b)(2) (excluding surgeries for certain conditions, including "transsexualism" and "gender identity disorder"), 441—78.1(4)(d)(15)–(17) (excluding "sex reassignment," "penile implant procedures," and "insertion of prosthetic testicles"). The Eighth Circuit concluded this rule was "both reasonable and consistent with the Medicaid Act." *Smith*, 249 F.3d at 761.

The Iowa legislature later amended the Iowa Civil Rights Act to add "gender identity" to the list of protected classifications. *See* 2007 Iowa Acts ch. 191, §§ 5–6 (codified at Iowa Code § 216.7(1)(*a*) (2009)). Section 216.7(1)(*a*) provides that it is "unfair or discriminatory" for any "agent or employee" of a "public accommodation" to deny services based on "gender identity." Iowa Code § 216.7(1)(*a*). Transgender individuals fall within this gender identity classification "because discrimination against these individuals is based on the nonconformity between their gender identity and biological sex." *Good v. Iowa Dep't of Hum. Servs.*, 924 N.W.2d 853, 862 (Iowa 2019).

In 2017, two transgender Iowans were denied preapproval for gender-affirming surgery. The Department relied on the administrative rule. And the two Iowans sought judicial review of the decision arguing, among other claims, that the decision violated the Iowa Civil Rights Act and the Iowa Constitution. The Iowa Supreme Court held that the Department violated the Act's prohibition on public

accommodation discrimination when it denied coverage expressly because the requested procedures related to gender identity disorders. *Good*, 924 N.W.2d at 862. Relying on the "time-honored doctrine of constitutional avoidance," the Court did not hold that excluding coverage for gender-affirming surgery violates the Iowa Constitution. *Id.* at 863. Nor did it hold that the State could not deny such coverage for reasons other than that the surgery treats gender dysphoria in transgender individuals.

In response to the Iowa Supreme Court's decision in *Good*, the legislature amended the Iowa Civil Rights Act. The Act now states that the prohibition on public accommodation discrimination "shall not require any state or local government unit or tax-supported district to provide for sex reassignment surgery or any other cosmetic, reconstructive, or plastic surgery procedure related to transsexualism, hermaphroditism, gender identity disorder, or body dysmorphic disorder." 2019 Iowa Acts ch. 85, § 93 (codified at Iowa Code § 216.7(3)). The amendment was effective immediately upon its enactment on May 3, 2019, and codified when the 2020 Iowa Code was deemed officially published on January 13, 2020. *See* 2019 Iowa Acts ch. 85, § 94; Iowa Code §§ 2B.12(2), 2B.17(2)(*b*), 2B.17A(2) (setting a default "publication date" of "the first day of the next regular session of the general assembly"); *see also* 2021 Iowa Code Vol. VIII., at VIII-1459 (noting historical chronology of 2020 Iowa Code).

Vasquez and two other plaintiffs brought a declaratory judgment action challenging the amendment shortly after its enactment. The Iowa District Court for

Polk County dismissed the action, holding that the claims were not ripe and that one of the plaintiffs lacked standing. The decision was affirmed by the Iowa Court of Appeals in *Covington v. Reynolds*, No. 19-1197, 2020 WL 4514691 (Iowa Ct. App. Aug. 5, 2020). The Court of Appeals explained that the plaintiffs "[had] not requested Medicaid pre-authorization, their Medicaid providers [had] not evaluated the request, and no notice of decision had been issued. The district court determined that until their Medicaid providers deny them coverage, the controversy is purely abstract because they have not been adversely affected in a concrete way. We agree." *Id*. at *3. It also reasoned that "[a]lthough the legislature has amended the ICRA so that the administrative rule no longer violates the law, the question of whether Medicaid must provide a recipient with a gender-affirming surgical procedure still resides, ultimately, with the DHS." *Id*. For that reason, the Court of Appeals held that the plaintiffs with standing had a legally adequate means of redress through the administrative process. *Id*.

Vasquez then sought Medicaid preapproval from his MCO in August 2020. His request was denied, and he appealed the denial to the Iowa Department of Human Services. The decision to deny coverage was affirmed by the agency in a contested case proceeding. And Vasquez now seeks judicial review.

STANDARD OF REVIEW

Motions to dismiss test "the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). A motion to dismiss "accept[s] as true the petition's well-pleaded factual allegations, but not its legal

conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). Motions to dismiss are a proper way to determine whether particular counts or requests for relief are properly within "the judicial review jurisdiction of the district court." *Black*, 362 N.W.2d at 465.

ARGUMENT

I. Counts II and III must be dismissed because they improperly attempt to bootstrap an equal protection constitutional challenge to an amendment to the Iowa Civil Rights Act into this contested case proceeding that was not brought under that Act or based on that provision of law.

To be clear, Vasquez may properly challenge the constitutionality of the Department's decision denying his Medicaid preauthorization request. He does so in Count I. (Petition ¶¶ 155–171). And the Department does not seek dismissal of that claim in this motion. But in Counts II and III Vasquez seeks to go further and challenge the constitutionality of the 2019 amendment to the Iowa Civil Rights Act. *This* he cannot do because section 17A.19 of the Iowa Code does not authorize relief on this basis.

Section 17A.19(10)(*a*) authorizes a court reviewing agency action to "reverse, modify, or grant other appropriate relief" when "substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied." Iowa Code § 17A.19(10)(*a*). Relying on this provision, Vasquez could—and does—argue that the Department's decision in his case violated the Iowa Constitution. He could—and also does—argue that the

administrative rule on which the Department's decision was based was unconstitutional. And if the Department's decision or administrative rule was based on a statute with an alleged constitutional defect, Vasquez could challenge the constitutionality of that statute as well.

But the Department's decision here was not based on any statutory mandate. And it was not "based upon" the Iowa Civil Rights Act, or its 2019 amendment, within the meaning of that phrase in section 17A.19(10)(*b*). This is a Medicaid contested case, applying the Department's Medicaid administrative rules. The Medicaid program and its rules are authorized by the Medical Assistance Act, Iowa Code ch. 249A—not the Iowa Civil Rights Act, Iowa Code ch. 216. Counts II and III do not allege any constitutional defects in a provision of law on which the Department's decision was based. They must thus be dismissed.

The Iowa Civil Rights Act amendment that Vasquez attempts to challenge did clarify that the Act cannot be a basis for requiring "any state or local government unit or tax-supported district to provide for sex reassignment surgery or any other cosmetic, reconstructive, or plastic surgery procedure related to transsexualism, hermaphroditism, gender identity disorder, or body dysmorphic disorder." 2019 Iowa Acts ch. 85, § 93 (codified at Iowa Code § 216.7(3)). But this amendment merely limited an enforcement statute, thus restricting the authority of another agency, the Iowa Civil Rights Commission, to enforce public accommodation law and narrowing the scope of the related private cause of action. The amendment did not mandate the Department's decision here. And it did not authorize or prompt the administrative

rule on which the Department based its decision. That rule had been adopted more than two decades before the challenged amendment. In short, the Department's decision was not "based upon" the amendment to the Iowa Civil Rights Act, and accordingly its alleged unconstitutionality cannot be a basis for relief here.

Vasquez's claims under Counts II and III are even further defective because this alleged constitutional issue is another step removed from any applicability to this contested case. Because the amendment is unconstitutional, Vasquez reasons, the pre-2019 Iowa Civil Rights Act remains in effect, and its prohibition on gender identity discrimination is violated by the Department's decision here. *See* Iowa Code § 17A.19(10)(b) (authorizing relief when the agency action is "in violation of any provision of law"). Yet as discussed above, the constitutionality of the amendment is outside the scope of this judicial review action. The Civil Rights Act as currently enacted does not require approval of Vasquez's preauthorization request. *See* Iowa Code § 216.7(3). So unlike in *Good*, the Department's decision does not violate the Iowa Civil Rights Act.

Any claim that the Department's decision violates the Iowa Civil Rights Act is also precluded because Vasquez has not filed a complaint with the Iowa Civil Rights Commission as required before asserting any claimed violation of the Act. *See* Iowa Code § 216.16(1) ("A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint *with the commission* in accordance with section 216.16. This provision also applies to persons claiming to be aggrieved by an unfair or discriminatory practice committed by the

state or an agency or political subdivision of the state, notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A." (emphasis added)); *see also McElroy v. State*, 703 N.W.2d 385, 391 (Iowa 2005) (dismissing ICRA retaliation claims for failing to exhaust when they were not included in complaint to Commission); *U.S. Jaycees v. Cedar Rapids Jaycees*, 614 F. Supp. 515, 518 (N.D. Iowa 1985) (dismissing ICRA public accommodation counterclaims because of Defendant's failure to exhaust with the Commission). No statute provides authority for deviating from this requirement.[1]

II. Counts IV and V must be dismissed because any alleged single-subject or title violation was cured by codification of the Iowa Civil Rights Act amendment before initiation of this proceeding.

There is "a window of time measured from the date legislation is passed until such legislation is codified. During this window of time, the legislation may be challenged as violative of article III, section 29 of the Iowa Constitution." *State v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990). "Absent a successful challenge during this period of time, the new legislation, if it is otherwise constitutional, becomes valid

[1] While the Iowa Supreme Court in *Good* relied on the Iowa Civil Rights Act to reverse the Department's decision, the Department had not raised the failure-to-exhaust argument. Because the issue was not raised or decided, *Good* is not contrary precedent precluding dismissal on this basis. *See State v. Foster*, 356 N.W.2d 548, 550 (Iowa 1984) ("To sustain a claim of binding precedent a case must be interpreted in reference to an involved question which necessarily must be decided."); Bryan A. Garner et al., *The Law of Judicial Precedent* 84 (2016) ("A decision's authority as precedent is limited to the points of law raised by the record, considered by the court, and determined by the outcome."). *Compare UE Local 893/IUP v. State*, 928 N.W.2d 51, 62 (Iowa 2019) (concluding the State waived a defense by failing to raise it), *with Serv. Emp'es Int'l Union v. Iowa Bd. of Regents*, 928 N.W.2d 69, 78–79 (Iowa 2019) (finding the same defense as in *UE Local 893*, when raised, to be dispositive).

law," even if its passage violated article III, section 29. *Id.* Future challenges under article III, section 29 are "barred even though future litigants may claim they were in no position to make such a challenge before the codification." *Id.* In other words, "[o]nce a bill is codified, any constitutional defect relating to title or subject matter is cured." *State v. Taylor*, 557 N.W.2d 523, 526 (Iowa 1996).

The codification window means that for some pieces of legislation, no challenge on single-subject or title grounds is possible, even if the passage of time and subsequent codification is "entirely fortuitous." *State v. Kolbet*, 638 N.W.2d 653, 661 (Iowa 2001). The challenger in *Kolbet* contended it was unfair to reject his single-subject claim as untimely because "he did not have standing to challenge the act until criminal charges were brought against him." *Id.* The Court rejected his assertion, because even though litigants can't "challenge a statute until they are placed in a position in which the statute adversely affects them," *id.*, the interest in finality of legislation outweighs any rock-and-a-hard-place counterargument surrounding the timing of the challenge. That a claim under article III, section 29 may be irretrievably lost simply due to the passage of time is an "inescapable conclusion" that follows from the codification window. *Id.*; *see also Iowa Dep't of Transp. v. Iowa Dist. Ct.*, 586 N.W.2d 374, 378–79 (Iowa 1998) (holding that even a successful district court decision within the codification window doesn't preserve a challenge in future cases because it must be a successful *appellate* decision).

Vasquez's petition demonstrates on its face that the legislation he seeks to challenge under article III, section 29 of the Iowa Constitution (in Count IV and

Count V) has already been codified. The legislation was enacted in 2019. 2019 Iowa Acts ch. 85, § 93. (Petition ¶ 7.) A new Iowa Code is codified and published "as soon as possible after the final adjournment" of the legislature. Iowa Code § 2B.12(2). Further, each "edition of the Iowa Code shall contain each Code section in its new or amended form." *Id.* § 2B.12(3). Typically, the codification and publication processes are both complete within one year after the legislature adjourns. *See, e.g.*, *Kolbet*, 638 N.W.2d at 661 ("[T]he statute was enacted in the spring of 1997 . . . . The Code containing the amendment was released by the Code Editor on January 8, 1998. That was the date beyond which no constitutional challenge based on a noninclusive title could be lodged."); *Iowa Dep't of Transp.*, 586 N.W.2d at 376–77 (statute passed in May 1996 and codified by January 8, 1997); *Mabry*, 460 N.W.2d at 475 ("Senate File 2070 was enacted and signed by the governor in 1980. This legislation first appeared in the 1981 Code . . . .").

Here, the 2019 legislation was codified by January 13, 2020. *See* Iowa Code §§ 2B.12(2), 2B.17(2)(*b*), 2B.17A(2) ("If the legislative services agency does not provide a publication date for the Iowa Code, the publication date shall be the first day of the next regular session of the general assembly convened pursuant to Article III, section 2, of the Constitution of the State of Iowa."); *see also* 2021 Iowa Code Vol. VIII., at VIII-1459 (noting historical chronology of 2020 Iowa Code and the first day of session). Vasquez's petition expressly recognizes as much; it mentions where the 2019 session law is *codified* in the 2020 version of the Iowa Code. (Petition ¶¶ 7, 69.) A session law that has been codified cannot be challenged under article III, section

29. Thus, Vasquez's current single-subject and title challenges, filed in 2021, are outside the codification window and cannot proceed.

Beginning the administrative process by requesting Medicaid preapproval on August 14, 2020 (Petition ¶ 23) does not save Vasquez's claims under article III, section 29. Nor does the fact that Vasquez briefed challenges under article III, section 29 before the agency in October 2020. (Petition ¶ 139 & Exhibit 10 at 19–25, 33.) First, "a constitutional challenge of this nature must actually be presented *to the court* prior to codification"—not to an agency. *Kolbet*, 638 N.W.2d at 661 (emphasis added). Second, even if beginning the administrative process *could* constitute "lodging" a constitutional challenge under article III, section 29, August 2020 and October 2020 were still outside the codification window—which closed on January 13, 2020, for the 2019 session laws. Vasquez's previous challenge to the statute (Petition ¶ 71) does not save his current claims under article III, section 29 either. That previous challenge did not succeed, and the codification window bars single-subject and title claims unless there is "a *successful* challenge" within the window. *Mabry*, 460 N.W.2d at 475 (emphasis added).

Count IV and Count V must be dismissed.

III. Vasquez's request for attorney fees must be dismissed because the Department's action was primarily adjudicative and arose from a proceeding in which the role of the state was to determine Vasquez's entitlement to a monetary benefit or its equivalent.

Iowa Code section 625.29 allows a prevailing party in an action for judicial review to collect attorney fees unless the prevailing party is the State or any one of a list of exceptions applies. Iowa Code § 625.29(1)(*a*)–(*h*). In this case, Vasquez is not

entitled to a fee award even if he does prevail because the exceptions in section 625.29(*b*) and (*d*) apply. Section 625.29(*d*) excepts actions that arise "from a proceeding in which the role of the state was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent." The Iowa Court of Appeals determined that a request for Medicaid preauthorization for services to treat gender dysphoria fell within this exception in *Good v. Iowa Dep't of Hum. Servs*, 2019 WL 5424960 (Iowa Ct. App. Oct. 23, 2019). Vasquez's identical claim falls within the exception as well.

Vasquez also cannot recover attorney fees even if he prevails because the role of the Department was "primarily adjudicative." *See* Iowa Code § 625.29(b). The Iowa Supreme Court has held that where an agency decision preserves constitutional claims over which it has no authority for judicial review and denies relief, its role is primarily adjudicative and the exception applies. *See Endress v. Iowa Dep't of Hum. Servs.*, 944 N.W.2d 71, 83 (Iowa 2020); *Pfaltzgraff v. Iowa Dep't of Hum. Servs.*, 944 N.W.2d 112 (Iowa 2020). Vasquez's request for attorney fees runs squarely into these precedents and must be dismissed.[2]

[2] Vasquez does not cite any specific statute entitling him to attorney fees. Respondent recognizes that the Iowa Civil Rights Act also permits the district court to award attorney fees to a successful complainant. *See* Iowa Code § 216.15(9)(*a*)(8). But because Vasquez did not bring his challenge pursuant to the Iowa Civil Rights Act procedures outlined in section 216.16, the fee-shifting provision in the Act does not apply to this action. *See Good*, 2019 WL 5424960, at *3.

IV. All Vasquez's requested declaratory and injunctive relief—except for reversal of the Department's final decision and related incidental relief in this contested case—must be dismissed because he seeks relief unavailable in this judicial review of a contested case proceeding.

"Judicial review proceedings are fundamentally different from original actions commenced in the district court." *Black*, 362 N.W.2d at 462. One fundamental difference is that judicial review proceedings "provide only those types of relief to the successful petitioner which chapter 17A specifically prescribes." *Id.*; *see also Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981) (recognizing the "severely limited extent of relief available on judicial review"). Chapter 17A does not specifically prescribe injunctive relief as an available remedy. It authorizes "other appropriate relief," including equitable relief, *see* Iowa Code § 17A.19(10), but that catchall does not apply in all circumstances and does not include injunctions in any circumstance.

Equitable relief on judicial review could include a stay (not an injunction) of specific, affirmative agency action. *See id.* § 17A.19(5)(*c*). That could include staying an order or decision that must be or will be implemented; or it could include staying an agency determination to suspend or revoke a license, so that the license continues while judicial review is pending. *See, e.g.*, *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 4 n.3 (Iowa 2020) (per curiam) (assuming without deciding that judicial review petitioners could seek a stay that delayed implementation of an emergency directive issued by the secretary of state); *Pro Farmer Grain, Inc. v. Iowa Dep't of Agric. & Land Stewardship*, 427 N.W.2d 466, 467 (Iowa 1988) (noting a

district court granted a stay on judicial review of an agency order calling "for the revocation of petitioner's license"); *R & V, Ltd. v. Iowa Dep't of Commerce*, 470 N.W.2d 59, 60 (Iowa Ct. App. 1991) (noting a district court stayed an agency order that suspended an establishment's liquor license for 45 days). But here, the Department did not take affirmative action *against* Vasquez that might justify a stay of that action; it merely declined to grant a request he made to it. *See* Henry J. Friendly, *"Some Kind of Hearing,"* 123 U. Pa. L. Rev. 1267, 1295 (1975) (discussing the "distinction between cases in which government is seeking to take action against the citizen [and] those in which it is simply denying a citizen's request"). Under those circumstances, there is nothing to "stay," and nothing to "enjoin."

Indeed, Vasquez's petition contains few specifics about what he wants enjoined. He simply pleads that he must receive "permanent injunctive relief." (Petition ¶ 249.) But relief that enjoins what? The petition goes on to suggest the injunction sought is an injunction categorically prohibiting application of Iowa Administrative Code rule 441—78.1(4). (Petition ¶ 252 & Request for Relief ¶ (b).) But that request must fail, because the petition's legal conclusion that there is no adequate remedy at law (Petition ¶ 252) is patently incorrect—and, as a legal conclusion, not subject to any presumption of truth at the motion-to-dismiss stage. Vasquez has brought a petition for judicial review that, if successful, would entitle him to exactly what he seeks—Medicaid coverage for surgical treatment of gender dysphoria. Thus, there is no need for any injunction, nor is it even available, because *judicial review itself* is an adequate remedy.

And to the extent Vasquez seeks a broader injunction against the rule that would apply universally, that is beyond the scope of judicial review of this *specific* agency action. The Department denied Vasquez's specific request for coverage; it did not, for example, issue a broad declaratory order that said the Department will always apply, and never waive, that rule. *See* Iowa Code §§ 17A.9 (declaratory orders), 17A.9A (waivers); Iowa Admin. Code r. 441—1.8 (authorizing exceptions to Department rules and establishing the procedure for making such a request).

Most importantly, however, Iowa law expressly forecloses injunctive relief in judicial review proceedings. Judicial review—even with its attendant limits—is a petitioner's *exclusive* remedy. *See* Iowa Code § 17A.19. Chapter 17A "provided one form of judicial review and made it an appellate process." *Salsbury Labs. v. Iowa Dep't of Envt'l Quality*, 276 N.W.2d 830, 835 (Iowa 1979). Requests for injunctive relief, however, are original actions (not appellate actions) with different "standards of inquiry and review." *Id.* Judicial review simply cannot "be discarded at will in favor of certiorari, declaratory judgment, *or injunction*." *Id.* (emphasis added). "There is no basis on which to conclude the 'exclusive means' language in section 17A.19 is mitigated by an exception for common-law writs such as . . . injunction." *Id.* Because injunctions are incompatible with judicial review, Vasquez's request for injunctive relief must be dismissed.

To the extent Vasquez seeks freestanding declaratory relief under the Rules of Civil Procedure (Petition ¶ 247), that too is incompatible with judicial review. *See id.* (concluding judicial review cannot "be discarded at will in favor of . . . declaratory

judgment"). Any declaratory relief available in this proceeding is limited to those declarations incident to other relief granted under Iowa Code section 17A.19(10).

CONCLUSION

For these reasons, the Department of Human Services respectfully requests that the court dismiss Counts II, III, IV, and V, and Vasquez's requests for attorney fees and declaratory, injunctive, and other relief, except for his request for an order reversing the Department's final decision in this contested case proceeding.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on May 13, 2021:

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ EDMS
- ☐ FAX
- ☐ Overnight Courier
- ☐ Other

Signature: */s/ Samuel P. Langholz*