IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AIDEN VASQUEZ, an individual, Petitioner, v. IOWA DEPARTMENT OF HUMAN SERVICES, an independent executive-branch agency of the State of Iowa, Respondent.	Case No. CVCV061729 **PETITIONER'S REPLY IN SUPPORT OF BRIEF ON JUDICIAL REVIEW**

Rita Bettis Austen, AT0011558
Shefali Aurora, AT0012874
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 901
Des Moines, IA 50309-2316
Telephone: 515-207-0567
Facsimile: 515-243-8506
rita.bettis@aclu-ia.org
shefali.aurora@aclu-ia.org

John Knight, PHV001725
ACLU Foundation
LGBT & HIV Project
150 North Michigan Avenue, Ste. 600
Chicago, IL 60601
Telephone: 312-201-9740
Facsimile: 312-288-5225
jknight@aclu-il.org

F. Thomas Hecht, PHV001733
Tina B. Solis, PHV001311
Seth A. Horvath, PHV001734
Nixon Peabody LLP
70 West Madison Street, Ste. 3500
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixonpeabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

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COMES NOW Petitioner Aiden Vasquez ("Mr. Vasquez"), by his counsel, and respectfully submits the following reply in support of his brief on judicial review of the Iowa Department of Human Services' ("DHS") denial of his request for Medicaid coverage for gender-affirming surgery.

INTRODUCTION

Mr. Vasquez's petition for judicial review is based on extensive unrebutted evidence establishing that gender-affirming surgery comports with modern medical standards of care and is medically necessary to treat his gender dysphoria. (AR 769–812.) His initial brief demonstrated that he is entitled to Medicaid coverage for that surgery on several independent legal grounds:

- ***Collateral Estoppel*:** DHS is collaterally estopped from relitigating the constitutionality of section 441–78.1(4) of the Iowa Administrative Code (the "Regulation") based on the prior disposition of that issue in *Good v. Iowa Department of Human Services*. *See Good v. Iowa Dep't of Human Servs.*, No. CVCV054956, at *11–42; *Good v. Iowa Dep't Human Servs.*, 924 N.W.2d 853, 863 (Iowa 2019). (Br. at 23–25).

- ***Equal Protection*:** The Regulation's categorical exclusion of Medicaid coverage for gender-affirming surgery, which facially discriminates against transgender Iowans, violates equal protection under either heightened scrutiny or rational-basis review. (Br. at 25–43.)

- ***The Iowa Civil Rights Act ("ICRA")*:** The Regulation violates ICRA's prohibitions against gender-identity and sex discrimination because Division XX of House File 766 ("Division XX"), which exempts state and local government units from ICRA's nondiscrimination protections for transgender Iowans seeking Medicaid coverage for gender-affirming surgery, violates the Iowa Constitution's equal-protection guarantee, single-subject rule, and title rule. As a result, Division XX is null and void, and the antidiscrimination protections of the preamendment version of section 216.7 of ICRA continue to apply. *Good*, 924 N.W.2d at 863. (Br. at 43–61.)

- ***Disproportionality*:** The Regulation has a disproportionate negative impact on the private rights of transgender people, such as Mr. Vasquez, because it categorically prohibits them from receiving Medicaid coverage

for medically necessary surgical treatment of gender dysphoria, and there is no public interest served by denying coverage for this treatment. *See* Iowa Code §§ 17A.19(10)(k) (2021). (Br. at 61–62.)

- ***Arbitrariness*:** DHS's denial of Medicaid coverage for the medically necessary gender-affirming surgery requested by Mr. Vasquez was arbitrary and capricious because DHS applied the Regulation without any regard for the Iowa Constitution's equal-protection guarantee, ICRA's prohibitions against gender-identity and sex discrimination, or the unrefuted evidence that the surgical procedure requested by Mr. Vasquez is medically necessary and consistent with modern standards of medical care. *See* Iowa Code § 17A.19(10)(n) (2021). (Br. at 62–64.)

At the core of DHS's response brief, running through nearly all its arguments, is the troubling assumption that it should have unfettered discretion to ban Medicaid reimbursement for medically necessary gender-affirming surgery because the current state of medical care for transgender Medicaid recipients is good enough as is. DHS's boldest statement in this regard is that "[m]edically necessary medical treatment for gender dysphoria is ***generally available*** to Medicaid beneficiaries in Iowa," and continuing to ban surgical coverage "is designed to conserve the [Medicaid] program's resources, not to harm transgender individuals." (Resp. at 18 (emphasis added).)

DHS suggests that it simply wants "flexibility and freedom from judicial oversight" in administering Iowa Medicaid. (*Id.* (internal quotation marks omitted).) But the history of discrimination against transgender Iowans in adopting this Regulation in the first place, which the Supreme Court discussed in *Good*, 924 N.W.2d at 862; the *extensive* lengths to which the state has subsequently gone to dismantle the Iowa Supreme Court's decision; and the absence of any medical evidence or economic data to support DHS's arguments, all demonstrate that the appropriate course of action is the exact opposite of what DHS proposes: careful judicial scrutiny of the Regulation and the enforcement regime surrounding it.

The Court should reject DHS's arguments in opposition to the relief sought by Mr. Vasquez. As discussed in further detail below, the Regulation facially discriminates against transgender people and violates equal protection under either heightened scrutiny or rational-basis review. DHS's sole justification for the Regulation—cost savings—fails under either standard. The law in this area is well developed. As this Court held in *Good*, consistent with the Iowa Supreme Court's decision in *Varnum v. Brien*, the state may not invoke cost savings to target a subclass of people, based on their gender identity and sex, who need surgery to treat their gender dysphoria, without meeting heightened scrutiny. *See Good*, No. CVCV054956, at *20–37; *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009). Here, DHS has not introduced any evidence of cost savings, and the unrebutted evidence presented by Mr. Vasquez shows that providing Medicaid coverage for gender-affirming surgery is medically necessary, medically effective, and cost-effective. Based on this record, the Regulation cannot withstand either heightened scrutiny or rational-basis review. (*See* Argument Part I.)

The Regulation also violates ICRA because Division XX is null and void, and the preamendment version of the Regulation remains in effect. Division XX violates equal protection for the same reasons as the Regulation. It also violates equal protection based on the evidence of discriminatory animus surrounding its enactment, which, combined with the discriminatory classification set forth in its plain text, further supports invalidating it on equal-protection grounds. Additionally, Division XX violates the Iowa Constitution's single-subject and title rules, given that it constituted a new, substantive subsection of ICRA buried in an annual appropriations bill and that Mr. Vasquez's challenge to its constitutionality has been continuously pending, in litigation or in administrative proceedings, since before Division XX was codified. (*See* Argument Part II.)

Independently, even if the Regulation is not actually unconstitutional or illegal (which it is), it creates a disproportionate negative impact on private rights, and is arbitrary and capricious, because, among other things, it is out of step with modern medical science on treating gender dysphoria, and the public interest is not furthered in any way—and is actually harmed—by denying Medicaid coverage for medically necessary and effective treatment. (*See* Argument Parts III–IV.)

For these reasons, and the other reasons discussed below, Mr. Vasquez is entitled to (1) a declaratory ruling that the Regulation violates the Iowa Constitution's equal-protection guarantee, ICRA, and the Iowa Administrative Procedure Act ("APA"); (2) an order invalidating the Regulation and enjoining any further application of it to deny Medicaid coverage for medically necessary gender-affirming surgery; (3) an order reversing and vacating DHS's decision denying Mr. Vasquez's request for Medicaid coverage; and (4) an order requiring DHS to cover the expenses associated with Mr. Vasquez's gender-affirming surgery.

ARGUMENT

I. The Regulation violates the Iowa Constitution's equal-protection guarantee.

DHS is collaterally estopped from relitigating the constitutionality of the Regulation. But regardless of collateral estoppel, the same legal analysis that applied in *Good* applies here. The Regulation facially discriminates against similarly situated Iowans on the basis of gender identity and sex without an adequate constitutional justification and therefore violates the Iowa Constitution's equal-protection guarantee.

A. DHS is collaterally estopped from relitigating the constitutionality of the Regulation.

As an initial matter, DHS argues that it is not collaterally estopped from relitigating the constitutionality of the Regulation because this Court's decision in *Good* was supported by four

separate grounds, and the Iowa Supreme Court only affirmed the decision based on one of them: ICRA. (Resp. at 10–14.) DHS concedes, however, that no Iowa Supreme Court precedent prohibits this Court from giving preclusive effect to the judgment in *Good*, noting that "[t]he Iowa Supreme Court has not yet addressed whether a district court's alternative independent determinations are necessary to the judgment and thus entitled to preclusive effect." (*Id*. at 12.)

The non-Iowa case law and the academic treatise on which DHS relies do not support DHS's position that the judgment entered in *Good* is not preclusive. (*Id*. at 11–13.) DHS fails to account for the critical fact that, regardless of whether the Iowa Supreme Court ruled on the merits of the plaintiffs' equal-protection claim in *Good*, the exact same findings regarding the facially discriminatory nature of the Regulation that supported the Supreme Court's ICRA ruling ***also supported*** the equal-protection challenge asserted in that case and, by extension, support the equal-protection challenge asserted here, which is identical.

In *Good*, the Supreme Court held that the Regulation's plain language violated ICRA's prohibition against gender-identity discrimination. *Good*, 924 N.W.2d at 862. The Court found that the record did "not support . . . DHS's position that [the Regulation] is nondiscriminatory because its exclusion of coverage for gender-affirming surgical procedures encompasses the broader category of 'cosmetic, reconstructive, or plastic surgery' that is 'performed primarily for psychological purposes.'" *Id*. at 862. The Court emphasized that "DHS expressly denied [the plaintiffs] coverage for their surgical procedures because they were 'related to transsexualism . . . [or] gender identity disorders' and 'for the purpose of sex reassignment.'" *Id*. The Court also emphasized that the Regulation "authorize[d] payment for some cosmetic, reconstructive, and plastic surgeries that serve psychological purposes" yet "prohibit[ed] coverage" for the "same"

procedures if those procedures were requested by a transgender individual. *Id*. For these reasons, the Court concluded that the Regulation was discriminatory under ICRA.

The Court also noted that "the history behind" the Regulation supported its holding. *Id*. According to the Court, before the Eighth Circuit decided *Pinneke v. Preisser*, 623 F.2d 546 (8th Cir. 1980), DHS "had an unwritten policy of excluding sex reassignment surgeries from Medicaid coverage based on Medicaid's coverage limitations on 'cosmetic surgery' and 'mental diseases." *Good*, 924 N.W.2d at 862. Then, after the Eighth Circuit decided *Pinneke*, DHS amended the Regulation "to clarify that [it] excluded Medicaid coverage for 'sex reassignment procedures' and 'gender identity disorders.'" *Id*. Based on this history, the Court concluded that the Regulation "expressly excluded Iowa Medicaid coverage for gender-affirming surgery specifically because this surgery treats gender dysphoria of transgender individuals." *Id*.

The discriminatory nature of the Regulation was at the heart of both the ICRA and equal-protection claims litigated in *Good*, just at it remains at the heart of the ICRA and equal-protection claims at issue in this case. DHS ignores the obvious link between these claims. In doing so, DHS undermines the "dual purpose" of collateral estoppel: (1) "protect[ing] litigants from the vexation of relitigating identical issues with identical parties or those persons with a significant connective interest to the prior litigation" and (2) "promot[ing] the interest of judicial economy by preventing unnecessary litigation." *See State ex rel. Casas v. Fellmer*, 521 N.W.2d 738, 740–41 (Iowa 1994); *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998). This Court's prior equal-protection ruling, which was premised on a finding of discrimination that the Iowa Supreme Court affirmed, should be given preclusive effect, and DHS should be barred from relitigating it.

B. The Regulation is facially discriminatory.

As DHS is aware, two courts have now found that the Regulation discriminates against transgender people. In *Good*, this Court found that the Regulation "clearly discriminates against transgender Medicaid recipients on the basis of gender identity by excluding coverage for medically necessary gender affirming surgery as treatment for the biological components of [g]ender [d]ysphoria while covering the same surgical procedures for other biological as well as psychological conditions of nontransgender individuals." *Good*, No. CVCV054956, at *29. Similarly, as noted above, the Iowa Supreme Court found that the record in *Good* did "not support . . . DHS's position that [the Regulation] is nondiscriminatory because its exclusion of coverage for gender-affirming surgical procedures encompasses the broader category of 'cosmetic, reconstructive, or plastic surgery' that is 'performed primarily for psychological purposes.'" *Good*, 924 N.W.2d at 862. The Court emphasized that "DHS expressly denied [the plaintiffs] coverage for their surgical procedures because they were 'related to transsexualism . . . [or] gender identity disorders' and 'for the purpose of sex reassignment.'" *Id*. The Court also emphasized that the Regulation "authorize[d] payment for some cosmetic, reconstructive, and plastic surgeries that serve psychological purposes" yet "prohibit[ed] coverage" for the "same" procedures if those procedures were requested by a transgender individual. *Id*.

Hemmed in by these previous well-founded rulings, DHS seeks to reformulate its old argument that the Regulation is not discriminatory into a new argument that transgender and nontransgender Iowans eligible for Medicaid are not similarly situated for equal-protection purposes. (Resp. at 14–15.) This, of course, is a dramatic about-face from DHS's position in the *Good* litigation, in which DHS did not dispute that transgender and nontransgender Medicaid recipients are similarly situated in relation to their financial need for medically necessary

treatment. *See Good*, No. CVCV054956, at *22 (stating that DHS did "not dispute that transgender and non-transgender Medicaid recipients are similarly situated"); *see also id*. at *22 n.77 (noting that DHS's brief stated that "transgender and non-transgender Medicaid recipients may be similarly situated").

At bottom, DHS's position is that a transgender Medicaid recipient whose physician has prescribed surgery to treat the person's gender dysphoria is somehow not similarly situated to a nontransgender Medicaid recipient whose physician has prescribed the exact same surgery to treat a condition other than gender dysphoria. Leaving aside the inconsistency between DHS's previous and current positions on whether transgender and nontransgender Medicaid recipients are similarly situated, DHS's current position makes no sense on its own terms. As this Court succinctly put it in *Good*, "the Medicaid program was designed to serve individuals and families lacking adequate funds for basic health services," and "[t]he Regulation was intended to exclude coverage for sex reassignment for Medicaid recipients who are transsexual." *Good*, No. CVCV054956, at *21. "In light of this purpose, transgender individuals who are Medicaid recipients because they lack funding for basic health services are similarly situated to non-transgender Medicaid recipients in essentially every way except their transgender status." *Id*.

This is not a close call. The Regulation expressly singles out transgender Iowans for discriminatory treatment by denying Medicaid-eligible individuals coverage for medically necessary treatment solely because they are transgender. This is necessarily the case because transgender people are the only individuals who have a medical need for surgical procedures related to "transsexualism" or "gender identity disorders," the procedures categorically banned by the Regulation. Discrimination against transgender people is, by its very nature, discrimination on the basis of gender identity because people who are transgender face

discrimination due to the failure of their birth-assigned sex to comport with their gender identity. (AR 800, ¶ 9.)

DHS does not dispute that the Regulation categorically prohibits surgical treatment for gender dysphoria, acknowledging that "because the rule specifically identifies gender dysphoria in subsection 441–78.1(4)(b)(2), the rule creates a classification based on transgender status . . . ." (Resp. at 15–16.) Instead, DHS takes the position that the Regulation is nondiscriminatory because its exclusion encompasses "cosmetic, reconstructive, or plastic surgery" that is "performed primarily for psychological purposes," thereby precluding nontransgender and transgender people alike from obtaining Medicaid reimbursement for such surgeries. (*Id.*) This argument fails for several reasons.

First, Medicaid coverage for the surgery at issue here was not denied because of the Regulation's psychological-purposes exclusion, but instead because "[g]ender surgery is not a covered benefit in Iowa." (AR 345; *see also* AR 290 ("The denial of coverage for a Gender Re-Assignment Surgery . . . will be upheld . . . . The requested surgery is not a covered benefit in Iowa per Iowa Administrative Code 441.78.1(4).").)

Second, the Regulation categorically bans coverage for gender-affirming surgery for transgender people by precluding coverage for surgery related to "transsexualism" or "gender identity disorders" and "[s]urgeries for the purposes of sex reassignment." Iowa Admin. Code r. 441–78.1(4) (2021). The Regulation draws a distinction between "cosmetic, reconstructive, or plastic surgery," which includes "surgery . . . to improve physical appearance or . . . primarily for psychological purposes or which restores form but which does not correct or materially improve bodily functions," on the one hand, and surgery that "primarily restores bodily function, whether or not there is also a concomitant improvement in physical appearance," on the other. *Id.*

Coverage for the former is barred; coverage for the latter is allowed. Cosmetic surgery "to improve appearance of . . . part of the body" that would be considered "normal" for a person's "age or ethnic or racial background" is therefore not covered, while surgery for "[c]orrection of a congenital anomaly; . . . [r]estoration of body form following an accidental injury; or . . . [r]evision of disfiguring and extensive scars resulting from neoplastic surgery" is covered. *Compare* Iowa Admin. Code r. 441–78.1(4)(d)(1) (2021) *with* Iowa Admin. Code r. 441–78.1(4)(a)(1), (2), (3) (2021). The Regulation, however, makes it irrelevant whether surgical treatment of gender dysphoria is for "psychological purposes" or for restoration of "bodily function" since "[s]urgeries for the purposes of sex reassignment" are *categorically defined* as "not . . . restoring bodily function" and "excluded from coverage." Iowa Admin. Code r. 441–78.1(4).

Third, the undisputed evidence proves that gender-affirming surgery is not primarily for "psychological purposes" and therefore cannot be excluded on that basis. Rather, the purpose of the surgery is to alter or reconstruct a person's "primary and/or secondary sex characteristics" in order to "create body congruence and eliminate anatomical dysphoria." (AR 811, ¶ 56.) "The idea that gender dysphoric patients [are simply] 'demonstrating psychotic mechanisms'" has been "discredited by the weight of research," and the notion that gender dysphoria can be "cured through "psychoanalysis" has been thoroughly "debunked." (AR 805, ¶¶ 27–28.) Indeed, current research indicates that a person's gender identity "has a strong biological basis." (AR 805, ¶ 35.) Gender dysphoria "is based on a realistic perception that one's body . . . does not align with one's gender identity." (AR 801, ¶ 13.)

Unlike elective cosmetic surgery that a person undergoes for aesthetic reasons, medically necessary gender-affirming surgery is intended to alter a person's body to affirm the person's

gender identity in order to address the life-altering—and, at times, life-threatening—consequences of gender dysphoria. The undisputed medical evidence in the record shows that gender-affirming surgical treatment may prevent social dysfunction, physical pain, and even death. (A 801–02, ¶¶ 12–15.) If left untreated, gender dysphoria often causes acute distress and isolation, impedes healthy personality development and interpersonal relationships, and destroys a person's ability to function effectively in daily life. (A 802, ¶ 15; A 807, ¶ 39; A 811, ¶ 56.) Suicidality and death are common among persons who are unable to access gender-dysphoria treatment, with an attempted-suicide rate of 41% to 43% for those individuals, a percentage "far above the baseline for North America." (A 802, ¶ 15.)

DHS assumes, without any support, that the purpose of gender-affirming surgery is "primarily psychological." (Resp. at 15.) This, in turn, is part of a broader assumption that the ban on surgical treatment for gender dysphoria is encompassed within a larger ban on surgery to treat mental-health conditions. (*Id.* at 15–16.) These assumptions are badly flawed. With two exceptions—gender dysphoria and body dysmorphic disorder, which is distinguishable from gender dysphoria in that surgery is not an effective treatment for it (AR 801, ¶ 13)—the Regulation does not classify surgeries as "psychological" based on whether the diagnosis giving rise to the treatment relates to mental health. *See* Iowa Admin. Code r. 441–78.1(4)(b)(1)(3), (d)(2) (2021). The record evidence shows that surgical treatment of gender dysphoria is the only medically necessary surgery banned by the Regulation. DHS's argument that the ban on coverage for surgery to treat gender dysphoria should be upheld because it is part of a larger ban on surgery to treat "primarily psychological conditions" fails.

Fourth, the Regulation categorically prohibits transgender people from receiving Medicaid coverage for surgical care that is available to nontransgender people for conditions

other than gender dysphoria. For example, a phalloplasty, a procedure for transgender men (i.e., men who were assigned the female sex at birth and have a male gender identity), and the procedure for which Mr. Vasquez seeks coverage in this case, is often used in nontransgender men to treat congenital defects, or trauma, affecting the penis. *See* Cleveland Clinic, *Treatments & Procedures, Phalloplasty*, *available at* https://my.clevelandclinic.org/health/treatments/21585-phalloplasty. And an orchiectomy, a procedure for transgender women (i.e., women who were assigned the male sex at birth and have a female gender identity),[1] is often used in nontransgender men "to treat and prevent testicular cancer as well as treat male breast cancer and prostate cancer." *See* Cleveland Clinic, *Treatments & Procedures, Orchiectomy*, *available at* https://my.clevelandclinic.org/health/treatments/21467-orchiectomy.

The Regulation also expressly provides for various types of reconstructive surgery, as long as they are not for the purpose of treating gender dysphoria. *See* Iowa Admin. Code r. 441–78.1(a)(1) (2021) (approving reimbursement for surgeries to correct "congenital anomal[ies]," for "restoration" after "accidental injury," and for "[r]evision of disfiguring and extensive scars resulting from neoplastic surgery"); *see also* Iowa Dep't of Human Servs., *Iowa Wellness Plan Benefits Coverage List*, *available at* https://dhs.iowa.gov/sites/default/files/Iowa%20Wellness%20Plan%_20Benefits%20Coverage%20List_0.pdf?080420211756 (last updated July 25, 2014) (stating that "non-cosmetic reconstructive surgery" and "breast reconstruction" are covered). This is so even though, in practice, these reconstructive procedures may have a psychological component. Specifically, reconstructive surgery "is performed to treat structures of the body

[1] This is the procedure sought by Mika Covington, who has moved to consolidate her case, No. CVCV062175, with this one. An orchiectomy is a component of a vaginoplasty, which involves both testicular and penile removal and the creation of a vagina, labia, and clitoris. *See* Mayo Clinic, *Tests & Procedures, Feminizing Surgery*, *available at* https://www.mayoclinic.org/tests-procedures/feminizing-surgery/about/pac-20385102.

affected *aesthetically* or functionally by congenital defects, developmental abnormalities or trauma, infection, tumors or disease." American Society of Plastic Surgeons, *Reconstructive Procedures*, *available at* http://www.plasticsurgery.org/reconstructive-procedures (emphasis added). "Breast reconstruction utilizes several plastic surgery techniques to restore a breast to near normal shape and appearance following mastectomy." American Society of Plastic Surgeons, *Breast Reconstruction*, *available at* https://www.plasticsurgery.org/rconstructive-procedures/breast-reconstruction. And "[s]car revision surgery will attempt to minimize a scar so that it is less conspicuous and blends in with the surrounding skin tone and texture." American Society of Plastic Surgeons, *Scar Revision*, *available at* http://www.plasticsurgery.org/reconstructive-procedures/scar-revision.

Fifth, the history behind the language of the Regulation expressly barring coverage for surgical treatment for "transsexualism" and "gender identity disorder" clearly illustrates that the Regulation's purpose is to exclude coverage for gender-dysphoria treatment, rather than to uniformly bar coverage for surgeries for psychological treatment. In November 1994, DHS began rulemaking to "exclude[] Medicaid coverage for sex reassignment surgery." Iowa Admin. Bulletin ARC 5220A at 730 (Nov. 9, 1994), *available at* https://www.legis.iowa.gov/docs/publications/IACB/854864.pdf ("ARC 5220A"). As the Iowa Supreme Court recognized in *Good*, DHS did so following the Eighth Circuit's 1980 decision in *Pinneke*, which found that "sex reassignment was an effective treatment for transsexualism and the only effective treatment available." *Id.* at 731; *Good*, 924 N.W.2d at 862. After that decision, a 1991 claim for coverage for "sex reassignment procedures" was "initially denied based on the state administrative rule's general exclusion of cosmetic, reconstructive, or plastic surgery for psychological purposes" but then was *allowed* after "determin[ing] that the intent of the current rule was to allow payment for

sex reassignment." ARC 5220A at 731. The addition of explicit language to deny coverage for "sex reassignment procedures" and "gender identity disorders" resulted from DHS's 1994 rulemaking to "reevaluat[e] . . . its policy on sex reassignment surgery"—an unambiguous effort to circumvent *Pinneke*. *Id.*

DHS's suggestion that the Regulation's exclusion of surgical treatment for gender dysphoria is the result of a generally applicable test excluding care for "psychological purposes" is thus belied by (1) the actual basis on which the Regulation was applied to Mr. Vasquez; (2) the Regulation's explicit ban on coverage for surgery to treat gender dysphoria; (3) the evidence showing that (a) gender identity and gender dysphoria are immutable and may have biological bases, and (b) gender-affirming surgery addresses the ways in which a person's body fails to conform with his or her gender identity to lessen or cure the dysfunction, pain, and even death that can result from untreated gender dysphoria; (4) the Regulation's allowance of various other surgeries "for psychological purposes"; and (5) the history of the Regulation. All of this is included in the record. DHS has failed to challenge it by offering any contrary evidence.

C. The Regulation is not constitutionally justified.

As explained in Mr. Vasquez's initial brief, the Regulation fails both heightened scrutiny and rational-basis review. (Br. at 28–43.) DHS disagrees on both counts. (Resp. at 16–24.) DHS's position has no merit.

1. The Regulation fails heightened scrutiny.

Mr. Vasquez's initial brief establishes two independent grounds for subjecting the Regulation to heightened scrutiny. *First*, the four-factor test from *Varnum* mandates applying heightened scrutiny to classifications such as the Regulation that discriminate against transgender Iowans. *Id.* at 887–88. (Br. at 28–36.) *Second*, since discrimination against

transgender people is a form of sex discrimination, heightened scrutiny automatically applies. (Br. at 37.) Mr. Vasquez should prevail on both of these arguments.

a. Iowa's four-factor test for ascertaining the appropriate level of equal-protection scrutiny mandates applying heightened scrutiny.

DHS does not dispute that two of the four *Varnum* factors—the history of invidious discrimination against transgender people and the relationship between their transgender status and their ability to contribute to society—"weigh in favor of applying heightened scrutiny to transgender individuals as a class." (*Id.* at 17.) But DHS's analysis of the remaining two factors—the immutability of transgender status and the political powerlessness of transgender people—badly misses the mark.

In *Good*, DHS did not dispute the immutability of transgender status. *Good*, No. CVCV054956, at *25 (stating that DHS "d[id] not refute this issue"). Nor does it actually do so in this case, where the evidence of immutability is unrebutted. (*See* AR 803–07, ¶¶ 20–38; AR 806–07, ¶¶ 34–38.) Instead, DHS relies on the United States Supreme Court's opinion in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), for the proposition that courts should not apply heightened scrutiny "where individuals in the group affected by a law have distinguishing characteristics relevant to interests the State has the authority to implement." (Resp. at 18 (internal quotation marks omitted).)

DHS's reliance on *Cleburne* is problematic for two reasons. *First*, there is no indication that the United States Supreme Court would place transgender people in the category of litigants addressed in *Cleburne*, which dealt with a classification based on intellectual disability. *See Cleburne*, 473 U.S. at 435. As the Court acknowledged last year in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), "it is impossible to discriminate against a person for being homosexual

or transgender without discriminating against that individual based on sex." *Id.* at 1741. The Court's rationale in *Bostock* supports the conclusion that transgender status is immutable. Additionally, the Court recently declined to a hear a case in which the Fourth Circuit expressly held that "transgender people constitute a discrete group with immutable characteristics." *See Grimm v. Gloucester v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 612 (4th Cir. 2020), *cert. denied sub nom. Gloucester Cnty. Sch. Bd. v. Grimm*, No. 20–116, 2021 WL 2637992 (U.S. June 28, 2021).

Second, although DHS tries to tether the extremely broad standard it derived from *Cleburne* to *Varnum*, the language on which DHS relies does not appear anywhere in the *Varnum* opinion and is not one of the *Varnum* factors. *See Varnum*, 763 N.W.2d at 887–88. Under *Varnum*, immutability hinges on whether a trait is "so central to a person's identity that it would be abhorrent for the government to penalize a person for refusing to change [it]." *Id.* at 893 (internal quotation marks omitted). The Court in *Varnum* concluded that sexual orientation met this standard. *Id.*

Gender identity, like sexual orientation, is a trait "central to a person's identity." *See id.* In *Good*, this Court acknowledged that "a person's gender identity is developed in early childhood, has a strong biological basis, cannot be altered, and is not subject to change through outside influence." *Good*, No. CVCV054956, at *25. The same evidence that was before this Court in *Good* is before it again in this case. (*See* AR 803–07, ¶¶ 20–38; AR 806–07, ¶¶ 34–38.) This Court should enter the same finding.

With respect to the political powerlessness of transgender people, DHS seems to argue that the Iowa legislature has, through various statutes, done enough to address discrimination based on gender identity to negate any "continuing antipathy or prejudice" toward transgender

people. (Resp. at 18 (internal quotation marks omitted).) This is not the relevant standard. Under *Varnum*, political powerlessness is gauged based on whether a group "lacks sufficient political strength to bring a prompt end to . . . prejudice and discrimination through traditional political means." *Varnum*, 763 N.W.2d at 894 (internal quotation marks omitted). Oddly, the language on which DHS focuses, which again comes from *Cleburne*, does appear in *Varnum*, but in relation to evaluating a group's history of invidious discrimination, a factor DHS concedes has been met in this case. *See id*. at 887 n.12 (quoting *Cleburne*).

Under the correct standard, it is obvious that transgender Iowans remain politically weak, if not "powerless," because of the community's small population size and the enduring societal prejudices against transgender people. *Id*. at 894. (internal quotation marks omitted). The statistical evidence Mr. Vasquez cites in support of this position remains unrebutted. (*See* Br. at 35–36.) In addition, DHS fails to address two glaring examples that prove Mr. Vasquez's point in a very immediate way: the Regulation and Division XX.

As this Court noted in *Good*, "the Regulation itself has been revised multiple times over the years without any change to its prohibition on sex reassignment surgeries." *Good*, No. CVCV054956, at *25. As a result, the political-powerlessness factor of the *Varnum* analysis "weighs in favor of finding transgender individuals to be a quasi-suspect class, given their clear inability to reverse this legislative burden through traditional political means." *Id*. Regrettably, after *Good* was decided, the legislature further underscored the Court's point by enacting the Division, which had the effect of reinstating the Regulation. This recent history establishes that transgender people remain unable "to bring a prompt end" to antitransgender discrimination. *Varnum*, 763 N.W.2d at 894 (internal quotation marks omitted).

Based on these considerations, the *Varnum* factors overwhelmingly support applying heightened scrutiny, a result that is consistent with the weight of federal authority on this issue. (*See* Br. at 36–37 (collecting cases).)

b. The fact that the Regulation discriminates on the basis of sex mandates applying heightened scrutiny.

Alternatively, the fact that the Regulation discriminates on the basis of sex mandates applying heightened scrutiny. (Br. at 37.) The Court should reject DHS's argument to the contrary.

The United States Supreme Court's decision in *Bostock* conclusively establishes that discrimination against transgender people is a form of sex discrimination. *Bostock*, 140 S. Ct. at 1741–43. There, the Court held that, for purposes of Title VII of the Civil Rights Act of 1964, "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Id.* at 1741. DHS does not mention this aspect of *Bostock* in its brief, let alone explain why it does not apply to an equal-protection claim.

Bostock's logic is consistent with opinions from three federal courts of appeals and several federal district courts. *See Grimm*, 972 F.3d at 607 (intermediate scrutiny applies to transgender classification, which is sex-based); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (same); *Glenn v. Brumby*, 663 F.3d 1312, 1318 (8th Cir. 2011) (same); *Corbitt v. Taylor*, No. 2:18cv91–MHT, 2021 WL 142282, at *3–4 (M.D. Ala. Jan. 15, 2021) (same); *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d. 1001, 1019–22 (W.D. Wis. 2019) (same); *Flack v. Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 952 (W.D. Wis. 2018) (same). In fact, in *Flack*, under facts nearly identical to those at issue here, the court

applied heightened scrutiny to permanently enjoin Wisconsin Medicaid's exclusion of coverage for medically necessary gender-affirming surgery. *See Flack*, 395 F. Supp. 3d at 1019–22.

Hennessy-Waller v. Snyder, No. CV–20–00335–TUC–SHR, 2021 WL 1192842 (D. Ariz. Mar. 30, 2021, on which DHS relies, is distinguishable. In *Hennessy-Waller*, at the preliminary-injunction phase of the case, the court determined that the plaintiffs had not yet "clearly shown" that Arizona's Medicaid program "denies coverage for [gender-affirming surgery] on the basis of sex and not on the basis of some other permissible rationale." *Id*. at *9. In that case, unlike in this one, which involves a well-developed, unrebutted evidentiary record, the court concluded that, based on the evidence before it, the plaintiffs had not demonstrated that the surgery they sought was "medically necessary for them," or that the surgery, consisting of permanent breast removal, was "safe and effective treatment for gender dysphoria in adolescents." *Id*. at *3, 8–9. Neither of those concerns are present here. *Hennessy-Waller* does not contradict, or justify disregarding, any of the well-established case law cited by Mr. Vasquez.

To further distance itself from that case law, DHS relies on *Geduldig v. Aiello*, 417 U.S. 484 (1974), arguing that *Geduldig*, and related cases, "stand for the proposition that health insurance benefit exclusions do not facially discriminate on the basis of sex, so long as they exclude coverage for comparable procedures for both sexes." (Resp. at 20.) In *Geduldig*, the United States Supreme Court held that a pregnancy-based classification in an insurance plan was not a classification based on sex and therefore was only subject to rational-basis review. *See id*. at 495–97. The other cases cited by DHS, like *Geduldig*, continued to apply *Geduldig* in the narrow context of pregnancy-based classifications. (*See* Resp. at 20–21.)

As indicated in *Boyden v. Conlin*, 341 F. Supp. 3d 979 (W.D. Wis. 2018), there is no reason to expand *Geduldig* beyond this context. In *Boyden*, under circumstances nearly identical

to those at issue here, the court declined to find that *Geduldig* negated the plaintiffs' equal-protection claim where the plaintiffs challenged the constitutionality of a Wisconsin regulation excluding gender-transition treatment from insurance coverage for transgender state employees. *See id*. at 982 There, the state relied on the same type of psychological-purposes exclusion on which DHS relies in this case, arguing that the regulation at issue "merely den[ied] cosmetic surgery to treat psychological conditions" and was subject to rational-basis review. *Id*. at 999 (internal quotation marks omitted). The court rejected the state's argument that *Geduldig* warranted applying rational-basis review, concluding that the argument improperly rested on the assumption that the regulation did not treat individuals differently based on sex. *Id*. at 999. The court noted that, unlike the pregnancy-based classification at issue in *Geduldig*, the regulation at issue in *Boyden* "deni[ed] coverage for medically necessary surgical procedures based on a patient's *natal* sex," thereby presenting "a straightforward case of sex discrimination." *See id*. at 995, 999–1000 (emphasis in original) (internal quotation marks omitted).

The same logic applies here. As discussed above (*see* Argument Part I(B)), the Regulation's psychological-purposes exclusion does not render it facially neutral or otherwise protect it from heightened constitutional scrutiny. For these reasons, *Geduldig* is inapposite, and the Court should find that the Regulation is subject to heightened scrutiny as a sex-based classification.

c. The Regulation is not substantially related to an important governmental objective or narrowly tailored to a compelling governmental interest.

The *Varnum* factors warrant applying either strict scrutiny or intermediate scrutiny to the Regulation's classification of transgender people (Argument Part I(C)(1)(a)), and the Regulation's status as a sex-based classification justifies applying intermediate scrutiny

(Argument Part I(C)(1)(b)), but regardless of which level of heightened scrutiny applies, the Regulation cannot stand.

DHS argues that the Regulation is "substantially related to important government interests in the protection of public health through the most efficient and effective distribution of Medicaid funding." (Resp. at 21.) None of the cases on which DHS relies to support its purported substantial interest in cost savings involved an equal-protection challenge. *See IMS Health, Inc. v. Sorrell*, 630 F.3d 263, 266 (2d Cir. 2010) (First Amendment challenge to statute banning data usage); *IMS Health, Inc. v. Ayotte*, 550 F.3d 42, 45 (1st Cir. 2008) (same); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1122–23 (10th Cir. 2015) (Second Amendment challenge to regulation governing firearm storage and transport); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 558 (1980) (First Amendment challenge to regulation banning promotional advertising); *ADL, Inc. v. Perales* No. 88 CIV.4749 (JFK), 1988 WL 83390, at *1, 3 (S.D.N.Y. Aug. 2, 1988) (procedural-due-process challenge to regulations allowing state to withhold Medicaid reimbursement for service providers). Three of these cases actually resulted in judgments invalidating or enjoining the laws in question. *Sorrell*, 630 F.3d at 266, 281–82; *Cent. Hudson*, 447 U.S. at 558, 571–72; *ADL*, 1988 WL 83390, at *6. And the *only* case to address Medicaid in any capacity did so in a completely different context. *See ADL*, 1988 WL 83390, at *2 (addressing fraud-and-abuse regulations applicable to Medicaid service providers).

More importantly, DHS has not offered any evidence to support its cost-savings rationale for upholding the Regulation. As this Court noted in *Good*, where it applied heightened scrutiny—specifically, intermediate scrutiny—to the Regulation, the justification offered to support a classification subject to intermediate scrutiny must be "'exceedingly persuasive.'" *Good*, No. CVCV054956, at *25 (quoting *United States v. Virginia*, 518 U.S. 515, 532–33

(1996)). DHS has not cited a single statistic, study, or assessment explaining (1) the costs associated with providing Medicaid coverage for medically necessary gender-affirming surgery or (2) why categorically banning the coverage is substantially related to protecting "public health through the most efficient and effective distribution of Medicaid funding." (*See* Resp. at 21–24.)

In contrast, the evidence cited by Mr. Vasquez shows that providing appropriate health-care coverage for transgender people is cost-effective and mitigates the negative economic effects of failing to address transgender people's health and well-being. Specifically, providing insurance coverage for transgender patients has been shown to be "affordable and cost-effective, and has a low budget impact." William V. Padula, PhD, et al., *Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, Johns Hopkins Bloomberg Sch. of Public Health, Dep't of Health Policy and Management (Oct. 19, 2015), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4803686 (finding that the budget impact of this coverage was $0.016 per member per month and provided "good value for reducing the risk of negative endpoints—HIV, depression, suicidality, and drug use"); *see also* Herman, Jody L., *Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans*, Williams Institute (Sept. 2013), *available at* https://williamsinstitute.law.ucla.edu/publications/trans-employee-transition-coverage/ (noting that employers report zero or very low costs, and substantial benefits, for them and their employees when they provide transition-related health-care coverage in their employee-benefit plans).

In addition, there are medical costs associated with *denying* transgender people access to medically necessary transition-related care. With the availability of that care, transgender people's overall health and well-being improve, resulting in significant reductions in suicide

attempts, depression, anxiety, substance abuse, and self-administration of hormone injections. Cal. Dep't of Ins., *Economic Impact Assessment: Gender Nondiscrimination in Health Insurance* (Apr. 13, 2012), *available at* https://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf.

DHS has failed to address any of this literature, either in the administrative record or in its response to Mr. Vasquez's brief on judicial review. Instead, it relies on the same generalized pronouncements about conserving state resources that the Iowa Supreme Court rejected in *Varnum* and this Court rejected in *Good*. *See Varnum*, 763 N.W.2d at 902–04 (cost savings could not justify excluding same-sex couples from marriage); *Good*, No. CVCV054956, at *26–27 (cost savings could not justify prohibiting Medicaid coverage for medically necessary gender-affirming surgery). DHS attempts to address *Varnum* by stating that *Varnum* "rejected cost savings as a general matter of the state's budget, not as part of an effort to ensure the most needy receive the most benefit from the Medicaid program." (Resp. at 23.) But this is a distinction without a difference, especially where, as here, DHS has not offered a single detail about its purported "effort" to maximize Medicaid benefits for the Medicaid program's neediest recipients, or about how this "effort" is inhibited—or, for that matter, affected in any way—by funding medically necessary gender-affirming surgery. As the Court noted in *Good*, "the Regulation allows coverage for the same, if not similar, surgical procedures, provided they are performed for purposes outside of [g]ender [d]ysphoria treatment." *Good*, No. CVCV054956, at *27. This fact, in and of itself, directly undermines DHS's cost-savings rationale.

Moreover, estimates show that only approximately 0.31 percent—i.e., fewer than 7,500—adult Iowans identify as transgender. Andrew R. Flores, et al., *How Many Adults Identify as Transgender in the United States?*, Williams Institute (June 2016), *available at* http://williamsins

titute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf. In turn, only a subset of them rely on Medicaid for health-insurance coverage. The small size of this population, combined with the fact that gender-affirming surgery is reserved for treating "severe" gender dysphoria (AR 805, ¶ 29; AR 810, ¶ 54; 811, ¶ 56), such as the gender dysphoria unanimously diagnosed by Mr. Vasquez's health-care providers (AR 769–801), further negates DHS's assertion that prohibiting Medicaid reimbursement for gender-affirming surgery is a fiscal necessity for the State of Iowa.

For these reasons, and as further discussed in Mr. Vasquez's initial brief, the Regulation cannot withstand heightened scrutiny under the Iowa Constitution's equal-protection guarantee.

2. The Regulation fails rational-basis review.

Alternatively, the Regulation fails rational-basis review. DHS simultaneously addresses heightened scrutiny and rational-basis review in its response brief, offering the same justification for the latter as the former. (Resp. at 21–24.) For the same reasons discussed above (Argument Part I(C)(1)(c)), this justification fails.

Although rational-basis review involves a different standard than heightened scrutiny, it still requires evaluating (1) whether "the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker" and (2) whether "the relationship of the classification to its goal is . . . so attenuated as to render the distinction arbitrary or irrational." *Varnum*, 763 N.W.2d at 879 (internal quotation marks omitted). As a result, it is not a "toothless" standard. *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 9 (Iowa 2004) (internal quotation marks omitted).

In *Good*, this Court concluded that the Regulation could not withstand rational-basis review, rejecting the exact same cost-savings rationale DHS again offers here. *See Good*, No. CVCV054956, at *32–33. The Court noted that even though, for purposes of rational-basis

review, "actual proof of specific costs savings is not required," there must still "be some realistically conceivable, fact based, plausible reason to believe that denying coverage to the subset of transgender Medicaid recipients who can establish a medical necessity for gender affirming surgery is unaffordable." *Id.* at *32. The Court also observed that "DHS provide[d] no indication as to the actual costs of sex reassignment procedures, nor any comparison to the costs associated with coverage for the very same cases unrelated to [g]ender [d]ysphoria treatment." *Id.*

Despite the Court's statements in *Good*, DHS still has not provided any evidence to support its cost-savings argument. Nor can it, since the relevant literature and statistics do not support its position. (*See* Argument Part I(C)(1)(c).) Instead, DHS's entire justification for maintaining the Regulation's discriminatory coverage ban is that the Director of DHS has the authority to determine the amount and scope of Medicaid coverage for the program's participants. (Resp. at 23–24.) The existence of this authority, however, does not justify exercising it arbitrarily. There is no plausible policy reason advanced by, or rationally related to, excluding transgender people from Medicaid reimbursement for medically necessary procedures. Surgical treatment for gender dysphoria, a serious medical condition, is necessary and effective. And Medicaid coverage is crucial to ensure the availability of that treatment. Additionally, there is no reasonable distinction between transgender and nontransgender people relative to their need for Medicaid coverage for medically necessary surgical care. Both groups need financial assistance for critically necessary medical treatments. Cost savings are insufficient to justify the arbitrary distinction created by the Regulation. *See, e.g., Diaz v. Brewer*, 656 F.3d 1008, 1014 (9th Cir. 2011) (rejecting cost-savings rationale offered to support sexual-orientation classification); *Bassett v. Snyder*, 59 F. Supp. 3d 837, 854–55 (E.D. Mich. 2014) (same).

For these reasons, and as further discussed in Mr. Vasquez's initial brief, the Regulation cannot withstand rational-basis review under the Iowa Constitution's equal-protection guarantee.

II. The Regulation violates ICRA.

The Regulation also violates ICRA's prohibitions against gender-identity and sex discrimination. Those prohibitions remain in effect since Division XX, which purported to amend ICRA by excluding "state or local government unit[s] or tax-supported district[s]" from having "to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder," is unconstitutional. *See* Iowa Code § 216.7(3) (2021).

As a preliminary matter, DHS argues, as it did in its motion to dismiss, that Mr. Vasquez cannot challenge DHS's decision under ICRA because DHS did not base its decision on ICRA. (Resp. at 25–27.) For the reasons set forth in Mr. Vasquez's response to the motion to dismiss, which Mr. Vasquez incorporates by reference, this argument has no merit. (*See* Resp. Mot. to Dismiss at 7–9.)

DHS's argument disregards the plain language of the APA and the grounds on which DHS relied to deny Mr. Vasquez's request for Medicaid coverage. DHS concedes, as it must, that "if [its] decision or administrative rule was based on a statute with an alleged constitutional defect, Mr. Vasquez could challenge the constitutionality of that statute . . . ." (Resp. at 25.) *See, e.g.*, *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335, 354 (Iowa 2013) (addressing, in a judicial-review case, the constitutionality of a statute presuming parentage of male spouses in heterosexual couples but not female spouses in lesbian couples). Mr. Vasquez asserts that DHS's decision denying Mr. Vasquez's request for Medicaid coverage was based on Division XX, an unconstitutional statute.

Division XX amended ICRA with the sole purpose of allowing DHS and managed-care organizations such as Amerigroup of Iowa Inc. ("Amerigroup"), as DHS's agents, to apply the Regulation to discriminate against transgender Iowans without violating ICRA. Division XX's intended effect of exempting state and local government units from ICRA's nondiscrimination protections for transgender Iowans seeking medically necessary care violates the Iowa Constitution's equal-protection guarantee.

Because Division XX is unconstitutional, the amendment to ICRA under which "state or local government unit[s] or tax-supported district[s]" are no longer required "to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder" is null and void. *See* Iowa Code § 216.7(3) (2021). The preamendment version of section 216.7 of ICRA, protecting against the discriminatory denial of gender-affirming surgery, therefore remains in effect. *See State v. Zarate*, 908 N.W.2d 831, 844 (Iowa 2018) (holding that "[w]hen parts of a statute . . . are constitutionally valid, but other discrete and identifiable parts are infirm," a court will "leave the valid parts in force on the assumption that the legislature would have intended those provisions to stand alone"). As set forth in *Good*, ICRA's protections against gender-identity discrimination prohibit the Regulation's categorical ban on Medicaid reimbursement for gender-affirming surgery. *See Good*, 924 N.W.2d at 862–63. So, too, do ICRA's protections against sex discrimination.

DHS fails to acknowledge that, but for the enactment of Division XX, which amended ICRA, DHS's denial of coverage would have violated the version of ICRA that existed before Division XX was unconstitutionally signed into law. DHS's decision was thus "based upon a provision of law"—i.e., Division XX—"that is unconstitutional on its face or as applied." Iowa Code § 17A.19(10)(a) (2021).

DHS contends that "its decision here was not based on any statutory mandate," but rather on its "Medicaid administrative rules." (Resp. at 25.) But the two provisions at issue—Division XX and the Regulation—are interdependent, not mutually exclusive. As amended by Division XX, ICRA's protections against discrimination in public accommodations no longer "require any state or local government unit or tax-supported district to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder." Iowa Code § 216.7(3) (2021). This is so regardless of (1) an individual's eligibility for Medicaid coverage or (2) the medical necessity of the requested procedure. Division XX thus reinstated the Regulation, which expressly prohibits Medicaid coverage for gender-affirming surgery, since, under Division XX, DHS can apply the Regulation as written, notwithstanding the Iowa Supreme Court's decision in *Good*. *See Good*, 924 N.W.2d at 862–63.

Under Division XX, the state *could* amend the Regulation to permit the Medicaid coverage that is currently banned. But it has not done so. *See* Iowa Admin. Code r. 441–78.1(4) (2021). As a result, based on Division XX and the Regulation, any request by a transgender Iowan for surgical preauthorization under Iowa Medicaid will be denied.

For DHS to now claim that its denial of Mr. Vasquez's request for Medicaid coverage was "not based on" Division XX, but rather on the Regulation, ignores that the latter would no longer be in effect without the former. Because of the *Good* ruling, Division XX is a necessary component of any decision denying Medicaid coverage for gender-affirming surgery based on the Regulation. Mr. Vasquez therefore should be allowed to challenge the constitutionality of Division XX, which amended ICRA, and challenge the legality of the Regulation under the preamendment version of ICRA.

A. Division XX is null and void.

Although Division XX purported to amend ICRA to allow DHS and Amerigroup, as DHS's agent, to apply the Regulation without violating ICRA, Division XX itself violates the Iowa Constitution and is therefore null and void.

1. Division XX violates the Iowa Constitution's equal-protection guarantee.

Division XX violates the Iowa Constitution's equal-protection guarantee because it (1) facially discriminates against transgender people and (2) was motivated by animus toward them. (Br. at 44–50.) The statute is unconstitutional under either heightened scrutiny or rational-basis review. Under heightened scrutiny, which is appropriate because Division XX creates a classification based on transgender status and sex (*see id.* at 28–37), there is no important governmental objective or compelling governmental interest advanced by excluding transgender people from Medicaid reimbursement for medically necessary procedures. Surgical treatment for gender dysphoria, a serious medical condition, is necessary and effective; Medicaid coverage is crucial to ensuring the availability of that necessary treatment.

For the same reasons, under rational-basis review, there is no plausible policy reason advanced by, or rationally related to, an exclusion that prohibits medically necessary surgical treatment. Additionally, even under rational-basis review, a statute cannot target a disadvantaged group based purely on animus toward that group, which is precisely what Division XX does, as evidenced both by the facially discriminatory classification it creates and the comments of legislators who supported its enactment.

a. Division XX is facially discriminatory.

DHS seeks to circumvent both heightened scrutiny, and rational-basis review, of Division XX by arguing that "transgender and non-transgender Medicaid beneficiaries are not similarly

situated" for purposes of ICRA because "[n]on-transgender Medicaid beneficiaries are not protected by [the statute]." (Resp. at 27.) But all Iowans on Medicaid, a public accommodation, are protected by ICRA.

Other than with respect to its current carve-out for gender-affirming surgery, ICRA prohibits the state from discriminating against nontransgender and transgender Medicaid beneficiaries alike based on race, sex, gender identity, and religion. The statute expressly states, without limitation, that "[i]t shall be an unfair or discriminatory practice for any . . . employee or agent [of any public accommodation] . . . [t]o refuse or deny ***to any person*** because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services or privileges thereof, or otherwise to discriminate against any person because of [those characteristics] in the furnishing of such accommodations, advantages, facilities, services or privileges." *See* Iowa Code § 216.7(1)(a) (2021) (emphasis added). If, for example, DHS were to provide some type of Medicaid coverage to transgender people that it did not provide to nontransgender people, like coverage for counseling, then this would violate ICRA's prohibition against gender-identity discrimination.

Contrary to DHS's argument, transgender and nontransgender Iowans eligible for Medicaid are similarly situated. *See, e.g.*, *Good*, No. CVCV054956, at *21–22 (concluding that transgender and nontransgender Iowans on Medicaid are similarly situated for equal-protection purposes). (*See also* Argument Part I(B).) They are the same in all legally relevant ways because Medicaid recipients, transgender or not, share a financial need for medically necessary treatment. The only exception to nondiscrimination coverage under ICRA, based on Division XX, is for transgender Iowans who have a medical need for gender-affirming surgery. *See* Iowa Code §

216.7(3) (2021). The purpose and effect of this exception is to deny transgender Iowans necessary Medicaid coverage.

DHS also contends that Division XX does not discriminate against transgender Medicaid beneficiaries because "nothing in [ICRA] requires a government unit to provide for . . . sex reassignment surgery," and "[n]othing in [ICRA] requires a government unit to provide for any other kind of surgery sought by a non-transgender Medicaid beneficiary either." (Resp. at 27.) This argument likewise fails. Division XX facially discriminates against transgender Medicaid recipients. It singles them out by reinstating the discriminatory Regulation, which expressly authorizes denying Medicaid coverage for medically necessary care based on a person's transgender status. *See* Iowa Admin. Code r. 441–78.1(4) (2021) (excluding coverage for "[p]rocedures related to transsexualism . . . [or] gender identity disorders" and "[s]urgeries for the purposes of sex reassignment"); *see also Good*, 924 N.W.2d at 863 (invalidating the Regulation under ICRA because it discriminates with respect to the provision of a public accommodation). In other words, Division XX facially discriminates against transgender Medicaid recipients by specifically authorizing what was prohibited by the *Good* case—the discriminatory denial of medically necessary gender-affirming surgery.

The Iowa Supreme Court's decision in *Varnum* is instructive. There, the "benefit denied by the marriage statute—the status of civil marriage for same-sex couples—[was] so closely correlated with being homosexual as to make it apparent the law [was] targeted at gay and lesbian people as a class." *Varnum*, 763 N.W.2d 862 at 885 (internal quotation marks omitted). Similarly, here, gender transition through social transition and medical interventions, such as surgical treatment for gender dysphoria, "is so closely correlated with being [transgender] as to make it apparent" that the discrimination specifically authorized by Division XX, which permits

denying this treatment, "is targeted at [transgender] people as a class." *See id.* (internal quotation marks omitted). As in *Varnum*, Division XX creates a facially discriminatory classification that applies to similarly situated people. This classification cannot withstand either heightened scrutiny or rational-basis review. (*See* Br. at 45.)

b. Division XX was motivated by animus toward transgender people.

Alternatively, even if the classification created by Division XX were not subject to heightened scrutiny (which it is), Division XX violates the Iowa Constitution's equal-protection guarantee because it was motivated by animus toward transgender people.

As an initial matter, contrary to DHS's contention, the legislature's discretion to decide the scope of ICRA's coverage does not place Division XX beyond the scope of equal-protection review. (Resp. at 27–29.) As discussed in Mr. Vasquez's initial brief, the legislature does not have boundless discretion to amend ICRA when it does so with the purpose and effect of harming a discrete group of Iowans. (Br. at 45–47.)

"[T]he Iowa Constitution of 1857 tended to limit the power of the legislature while it protected the independence of the court [system]." *Godfrey v. State*, 898 N.W.2d 844, 865 (2017). These limitations include the Iowa Constitution's two-part equal-protection guarantee. *See id.; see also* Iowa Const. art. I, §§ 1, 6.

A legislative amendment that purposely harms transgender Iowans violates this guarantee. This is true even where the amendment removes statutory protections the state was never required to provide. *See Romer* v. *Evans*, 517 U.S. 620, 627 (1996) (recognizing that removing and prohibiting state and local antidiscrimination protections violated federal equal-protection clause); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (amending Food Stamp Act to exclude households of unrelated individuals, such as "hippies" living in "hippie

communes," violated federal equal-protection clause); *Perry v. Brown*, 671 F.3d 1052, 1083 (9th Cir. 2012), *vacated and remanded on other grounds sub nom. Hollingsworth v. Perry*, 570 U.S. 693 (2013) (state initiative to take away marriage for same-sex couples violated equal protection, even if there was no federal constitutional right to marriage).

Indeed, a law is irrational, and violates equal protection, if its purpose is to target a disadvantaged group. *United States v. Windsor*, 570 U.S. 744, 770 (2013) ("The Constitution's guarantee of equality 'must at the very least mean that a bare [legislative] desire to harm a politically unpopular group cannot' justify disparate treatment of that group.") (quoting *Moreno*, 413 U.S. at 534–35); *Romer*, 517 U.S. at 632 ("[T]he amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests."); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) ("[M]ere negative attitudes, or fear . . . are not permissible bases for [a statutory classification]."); *see also Moreno*, 413 U.S. at 534 ("[The] amendment was intended to prevent so called 'hippies' and 'hippie communes' from participating in the food stamp program," and such "a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.").

Division XX does not simply take away ICRA's protections from discrimination by third-party private actors, as occurred in *Romer*; it specifically authorizes the state to discriminate. It does so by restoring the discriminatory Regulation struck down under ICRA in *Good*. Division XX thus violates equal protection by, together with the Regulation, allowing the state to deny Medicaid coverage for medically necessary surgery to transgender Iowans, including Mr. Vasquez, solely because they are transgender. *See Diaz*, 656 F.3d at 1012–15 (law limiting health-insurance benefits to married couples, when state law prohibited same-sex couples from

marrying, violated equal protection); *Bassett v. Snyder*, 951 F. Supp. 2d 939, 963 (E.D. Mich. 2013) (same); *cf. Johnson v. New York,* 49 F.3d 75, 79 (2d Cir.1995) (employment policy discriminated based on age, even though it did not mention age, where it incorporated another policy that discriminated based on age); *Erie Cnty. Retirees Ass'n v. Cnty. of Erie, Pa.*, 220 F.3d 193, 211 (3d Cir.2000) (same).

On its face, Division XX states that the public-accommodation provisions of ICRA "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." Iowa Code § 216.7(3) (2021). Based on Division XX, the discriminatory Regulation that was struck down in *Good* is once again effective. *Good*, 924 N.W.2d at 862–63 (concluding that "expressly exclud[ing] Iowa Medicaid coverage for gender-affirming surgery specifically because this surgery treats gender dysphoria of transgender individuals" constitutes unlawful discrimination).

By eliminating ICRA's protections for transgender Iowans' publicly funded, medically necessary Medicaid coverage, Division XX violates equal protection in the same way that eliminating nondiscrimination protections, food stamps, and marriage violated equal protection in *Romer, Moreno,* and *Perry*. *See Romer,* 517 U.S. at 627; *Moreno*, 413 U.S. at 534; and *Perry*, 671 F.3d at 1083. Likewise, Division XX works together with the Regulation to violate equal protection, as did the statutes at issue in *Diaz* and *Bassett*, which limited benefits to married couples where state law at the time prevented same-sex couples from marrying. Based on these well-established authorities, the state's discretion to determine what ICRA does and does not cover is not a defense to Mr. Vasquez's equal-protection challenge to Division XX.

DHS does not mention, much less challenge, any of these legal principles. Instead, it claims that the Court should discount the legislative commentary cited by Mr. Vasquez because "the views of an individual legislator are not persuasive in determining legislative intent." (Resp. at 29.) This is the wrong standard. The cases on which DHS relies regarding the relationship between statutory interpretation and legislative history are inapposite. (*See id.*) Mr. Vasquez does not seek an interpretation of Division XX's language, which is crystal clear.

Instead, Mr. Vasquez seeks to show that Division XX's enactment was motivated by discriminatory animus toward transgender people. This is precisely the type of situation in which individual legislators' statements are highly probative. For example, in *Moreno*, the United States Supreme Court found animus based on a single legislator's comments about "hippies." *Moreno*, 413 U.S. at 534. And in *Windsor*, the Court found animus based on three statements in a legislative report from the House of Representatives. *Windsor*, 570 U.S. at 770–71. As the Court noted in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the legislative history of a statute, "especially where there are contemporary statements by members of the decisionmaking body," may provide evidence of racial animus. *Id.* at 268; *see also Arce v. Douglas*, 793 F.3d 968, 978 (4th Cir. 2015) (concluding that "only a few snippets of overtly discriminatory expression . . . reasonably suggest[ed] an intent to discriminate"); *Bassett*, 951 F. Supp. 2d at 969 (rejecting argument "that statements of legislators are insufficient as a matter of law to support a finding of discriminatory animus").

Thus, when a statute contains a facially discriminatory classification, such as Division XX's classification of transgender people, and individual statements from legislators corroborate the discriminatory animus evidenced by the discriminatory text of the statute, the classification and the statements, taken together, serve as evidence that the statutory classification was

motivated by animus. *See Moreno*, 413 U.S. at 534; *Windsor*, 570 U.S. at 770–71; *see also Romer*, 517 U.S. at 632 (inferring animus where the statute's imposition of a "broad and undifferentiated disability on a single named group" was "so discontinuous with the reasons offered for it that the amendment seem[ed] inexplicable by anything but animus toward the class it affect[ed]"). Here, because Division XX was motivated by animus toward transgender people, it violates the Iowa Constitution's equal-protection guarantee.

2. Division XX violates the Iowa Constitution's single-subject and title rules.

Division XX also violates the Iowa Constitution's single-subject and title rules. (*See* Br. at 50–56.) As a preliminary matter, DHS again incorrectly argues, as it did in its motion to dismiss, that Mr. Vasquez's single-subject and title-rule challenges are untimely. (Resp. at 30–34.) As noted in Mr. Vasquez's response to DHS's motion to dismiss, which Mr. Vasquez incorporates by reference (*see* Resp. Mot. to Dismiss at 12–18), this argument disregards a critical fact that differentiates Mr. Vasquez's challenges from those at issue in the cases cited by DHS: Mr. Vasquez's challenges were initiated before Division XX was codified and have been pending at all relevant times, either in court or in agency proceedings, since they were first asserted.

After Division XX was enacted, Mr. Vasquez and two other plaintiffs challenged its constitutionality in *Covington v. Reynolds ex rel. State of Iowa et al.*, Case No. EQCE084567. That lawsuit, which resulted in a decision finding that Mr. Vasquez and the other individual plaintiff had to request Medicaid preauthorization for their gender-affirming surgeries before challenging Division XX's constitutionality, included single-subject and title-rule challenges to the statute. *See Covington v. Reynolds ex rel. State of Iowa et al.*, No. 19–1197, 949 N.W.2d 663, 2020 WL 4514691, at *3 (Iowa Ct. App. Aug. 5, 2020) (unpublished decision).

The final disposition of the *Covington* case did not occur until November 4, 2020, when the plaintiffs' application for further review was denied by the Iowa Supreme Court. *See Covington v. Reynolds ex rel. State of Iowa et al.*, No. 19–1197, Order Denying Application for Further Review (Iowa Sup. Ct. Nov. 4, 2020), *available at* https://www.aclu.org/legal-document/covington-v-reynolds-order-denying-further-review. (*See also* AR 820 n.1 (referencing Mr. Vasquez's pending application for further review in legal memorandum submitted to Amerigroup and DHS during administrative proceedings).) By the time the application for further review was denied, Mr. Vasquez had already requested Medicaid coverage from Amerigroup; received notices of denial; and commenced an internal appeal notifying Amerigroup, as DHS's agent, that its denial of coverage violated the single-subject and title rules. (AR 339, 345, 520, 151.)

The *Covington* lawsuit was initiated within the "codification window" for Division XX, given that the lawsuit was filed on May 31, 2019, and Division XX was not codified until January 13, 2020. *See Covington v. Reynolds ex rel. State of Iowa et al*., Case No. EQCE084567, Petition for Declaratory and Injunctive Relief (Iowa Dist. Ct. May 31, 2019), *available at* https://www/aclu.org/legal-document/covington-v-reynolds-petition-declaratory-and-injunctive-relief. The administrative proceedings subsequently initiated by Mr. Vasquez were a judicially mandated continuation of that lawsuit, necessitated by the Court of Appeals' ruling that Mr. Vasquez had to request Medicaid preauthorization for his gender-affirming surgery before challenging Division XX's constitutionality, a decision the Supreme Court declined to review. *See Covington*, No. 19–1197, 949 N.W.2d 663, 2020 WL 4514691, at *3.

None of the cases cited by DHS relied on the "codification window" to reject a single-subject or title-rule challenge that was pending at the time the legislation in question was

codified and remained pending after codification through contemporaneous and subsequent administrative proceedings. *See State v. Kolbet*, 638 N.W.2d 653, 661 (Iowa 2001) (rejecting single-subject challenge where "the act in question was codified *prior to* the time that it was challenged in defendant's criminal trial") (emphasis added); *Iowa Dep't of Transp. v. Iowa Dist. Ct. for Linn Cnty.*, 586 N.W.2d 374, 377 (Iowa 1998) (rejecting single-subject challenge where "codification of [the statute in question] occurred *before* the incidents and charges against [the] four criminal defendants . . . and before [the judge's] sentencing order") (emphasis in original); *State v. Taylor*, 557 N.W.2d 523, 526–27 (Iowa 1996) (upholding single-subject challenge on merits); *State v. Mabry*, 460 N.W.2d 472, 475 (Iowa 1990) (stating that "[n]o one had lodged a successful [single-subject] challenge to the legislation *before* the [code containing the legislation] was issued") (emphasis added).

In fact, this case is directly analogous to *Taylor*, which undermines, rather than supports, DHS's position. In *Taylor*, the Iowa Supreme Court noted that the state "conced[ed[that [the defendant] ha[d] timely and properly preserved his constitutional challenge" where he "raised the single subject and title defect by way of a motion to adjudicate law points filed *after* the law's effective date . . . but *before* its codification . . . ." *Taylor*, 557 N.W.2d at 526 (emphases in original). The Supreme Court later reaffirmed *Taylor* in *Linn County*, stating that "Taylor's challenge was made within the proper window of time." *Linn Cnty.*, 586 N.W.2d at 374.

Here, as in *Taylor*, Mr. Vasquez raised his single-subject and title-rule challenges after Division XX's effective date but before its codification, and those challenges have remained continuously pending, in litigation or in administrative proceedings, since the time they were initially asserted. As in *Taylor*, Mr. Vasquez should be allowed to proceed with those challenges. This outcome is consistent with the important functions served by the single-subject rule and the

title rule and with Mr. Vasquez's persistent, ongoing efforts to invoke the rights afforded by those rules.

DHS attempts to address this argument by asserting that administrative proceedings cannot "be considered [a] 'continuation' of [Mr.] Vasquez's previous lawsuit." (Resp. at 33.) But DHS does not, and cannot, cite any legal authority that supports this proposition. Instead, DHS relies on *Johnson v. Ward*, 265 N.W.2d 746 (Iowa 1978), a case in which the Iowa Supreme Court held that the doctrine of res judicata barred a plaintiff from litigating a second case asserting "identical" claims against the defendant while the first case was on appeal. *See id*. at 749.

Unlike in *Johnson*, the question here is not whether the pending appeal in *Covington* precluded Mr. Vasquez from initiating his administrative proceeding. It is whether the administrative proceeding Mr. Vasquez was expressly instructed to undertake as a precondition to litigation, and which he initiated while the *Covington* appeal was still pending, should be counted in his favor, or against him, for purposes of evaluating the timeliness of his single-subject-rule and title-rule challenges. Unlike this case, *Johnson* did not involve a situation in which the plaintiff was instructed, by court order, to relitigate his claims in a different forum. *See id*. (noting that the second case arose under "peculiar circumstances" when the plaintiff simply "started a new action" of his own accord while the original action was on appeal). *Johnson* is distinguishable and does not support circumscribing the single-subject and title rules in the manner proposed by DHS.

a. Division XX violates the single-subject rule.

DHS's argument that Division XX does not violate the single-subject rule has no merit. (Resp. at 34–38.) DHS asserts that House File 766, the bill containing Division XX related to a

"subject" DHS variously defines as (1) "health, human services, and veterans," (2) "Iowa's health and welfare system," (3) "Medicaid," and (4) "health and human services." (Resp. at 36.) DHS's scattershot approach to defining the subject of House File 766 is telling.

Division XX was part of the legislature's annual health-and-human-services appropriations bill ("HHS Appropriations Bill") in 2019. But Division XX was not merely a funding restriction on a DHS appropriation. On the contrary, it was a new, substantive third subsection to the section of ICRA otherwise ensuring protections against nondiscrimination in public accommodations. It carved out an area formerly covered by ICRA's nondiscrimination protections, thereby depriving transgender Iowans on Medicaid of nondiscriminatory access to medically necessary care.

Ironically, DHS attempts to use the discriminatory nature of Division XX to its advantage, arguing that the challenged amendment "relates to Medicaid" because it "superseded" the Iowa Supreme Court's decision in *Good* by providing that ICRA "does not require payment of certain Medicaid expenses." (Resp. at 36.) This argument is unavailing. The subject matter of the bill of which Division XX was part—i.e., appropriations—has nothing to do with the subject matter of Division XX itself—i.e., ICRA's protections against discrimination in public accommodations.

DHS's reliance on *Utilicorp United v. Iowa Utilities Bd.*, 570 N.W.2d 451 (Iowa 1997), is misplaced. (Resp. at 35.) Although *Utilicorp* states that, under the single-subject rule, courts will not interfere with legislation whose constitutionality is "fairly debatable," the facts of *Utilicorp* are so different from the facts of this case that *Utilicorp* supports Mr. Vasquez's argument, not DHS's. *See id.* at 454 (internal quotation marks omitted). The question in *Utilicorp* was whether an amendment "prohibiting nonutility use of equipment paid for by utility

customers" violated the single-subject rule. *Id*. at 453. The act containing the amendment "encompass[ed] one general topic—public utilities—and amend[ed] nothing other than various provisions in the public utility chapter of the [Iowa] Code," a fact the Iowa Supreme Court found "significant." *Id*. at 453, 455.

In stark contrast to this case, where a substantive amendment to ICRA was buried in an appropriations bill, the public-utility-regulations chapter of the Iowa Code "was an eminently logical place" for the amendment at issue in *Utilicorp*, and the amendment "fit logically and neatly within the other sections of the act." *Id*. at 455. Here, unlike in *Utilicorp*, not a single provision of the HHS Appropriations Bill other than Division XX amended or referred to ICRA. *See* 2019 Iowa Acts, House File 766. In fact, during the 11-year period preceding Division XX's enactment, no other health-and-human-services appropriations bill ever referenced ICRA in any way.[2]

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[2] 2018 Iowa Acts, Senate File 2418, https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF%202418 (titled "A bill for an act relating to appropriations for health and human services and veterans and including other related provisions and appropriations, providing penalties, and including effective date and retroactive and other applicability date provisions").
2017 Iowa Acts, House File 653, https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF%20653 (titled identically).
2016 Iowa Acts, House File 2460, https://www.legis.iowa.gov/legislation/BillBook?ga=86&ba=HF%202460 (titled identically).
2015 Iowa Acts, Senate File 505, https://www.legis.iowa.gov/legislation/BillBook?ga=86&ba=SF%20505 (titled identically).
2014 Iowa Acts, House File 2463, https://www.legis.iowa.gov/legislation/BillBook?ga=85&ba=HF%202463&v=e (titled "An Act relating to appropriations for health and human services *and veterans* and including other related provisions and appropriations, *extending the duration of county mental health and disabilities services fund per capita levy provisions*, and including effective date and retroactive and other applicability date provisions.").
2013 Iowa Acts, Senate File 446, https://www.legis.iowa.gov/legislation/BillBook?ga=85&ba=SF%20446 (titled "An Act relating to appropriations for health and human services and including other related provisions and
(Footnote continued on next page)

Division XX is much more like the statute struck down in *Western International v. Kirkpatrick*, 396 N.W.2d 359 (Iowa 1986), than the statute upheld in *Utilicorp*. In *Kirkpatrick*, the Iowa Supreme Court invalidated a substantive amendment to the workers'-compensation laws contained in legislation that otherwise made nonsubstantive technical corrections throughout the Iowa Code. *Id*. at 364–65. *Kirkpatrick* illustrates that, while the "fairly debatable" test on which DHS relies is deferential, it is far from meaningless. Burying a substantive, highly controversial piece of legislation that creates an exception to ICRA in an annual appropriations bill is a much more dramatic example of logrolling than the workers'-compensation amendment struck down in *Kirkpatrick*. Division XX's lack of germaneness is not "fairly debatable." *See Utilicorp*, 570 N.W.2d at 454 (internal quotation marks omitted). Rather, Division XX is "clearly, plainly, and palpably" not germane to the HHS Appropriations Bill containing it. *Id*. (internal quotation marks omitted). It should be stricken.

b. Division XX violates the title rule.

Division XX also violates the title rule. The title of the annual HHS Appropriations Bill was "An Act relating to appropriations for health and human services and veterans and including other related provisions and appropriations, providing penalties, and including effective date and retroactive and other applicability date provisions." 2019 Iowa Acts, House File 766, *available at*

appropriations, providing penalties, and including effective, retroactive, and applicability date provisions.").
2012 Iowa Acts, Senate File 2336,
https://www.legis.iowa.gov/legislation/BillBook?ga=84&ba=SF%202336 (titled identically).
2011 Iowa Acts, House File 649,
https://www.legis.iowa.gov/legislation/BillBook?ga=84&ba=HF%20649 (titled identically).
2010 Iowa Acts, House File 2526,
https://www.legis.iowa.gov/legislation/BillBook?ga=83&ba=HF%202526 (titled identically).
2009 Iowa Acts, House File 811,
https://www.legis.iowa.gov/legislation/BillBook?ga=83&ba=HF%20811 (titled identically).
2007 Iowa Acts, House File 909,
https://www.legis.iowa.gov/legislation/BillBook?ga=82&ba=HF%20909 (titled identically).

https://www.legis.iowa.gov/legilsation/BillBook?ga=88&ba-hf766, p. 1. DHS claims that Division XX qualifies as a provision "related" to "health and human services" and that, as a result, "it is accurately described in the title." (Resp. at 36.) But the relevant inquiry for purposes of the title rule is whether a title "gives fair notice of a provision in the body of an act." *See Kirkpatrick*, 396 N.W.2d at 365 (striking down legislation for violating the title rule where the title in question did not inform readers "that a drastic change in the workers' compensation law [would] result from [the legislation's] enactment"). The title of the HHS Appropriations Bill does not refer to ICRA at all, much less provide notice that Division XX would create a unique exception to ICRA's prohibition against gender-identity discrimination in public accommodations.

The deficiency of the HHS Appropriations Bill's title is underscored by the succinct but descriptive title of the legislation that *added* protections against gender-identity discrimination to ICRA in 2007, which was called "A bill for an act relating to the Iowa civil rights Act and discrimination based upon a person's sexual orientation or gender identity." 2007 Iowa Acts, Senate File 427, *available at* https://www.legis.iowa.gov/legislation/billTracking/billHistory?ga=82&billName=S F427. The title of the 2007 bill could hardly have been clearer. The title of the HHS Appropriations Bill, by contrast, could hardly have engendered more "surprise." *See State v. Talerico*, 290 N.W. 660, 663 (Iowa 1940) ("[The title rule] was designed to prevent surprise in legislation."). Because Division XX violates the title rule, it should be stricken.

B. The preamendment version of section 216.7 of ICRA remains in effect.

DHS does not dispute that, if the Court finds Division XX unconstitutional, the preamendment version of section 216.7 of ICRA remains in effect. *See Zarate*, 908 N.W.2d at 844 (stating that "[w]hen parts of a statute or ordinance are constitutionally valid, but other

discrete and identifiable parts are infirm," a court will "leave the valid parts in force on the assumption that the legislature would have intended those provisions to stand alone") (internal quotation marks and citations omitted). Because DHS has conceded this point, if the Court finds Division XX unconstitutional for one or more of the reasons discussed above, the Court should apply the preamendment version of section 216.7 of ICRA to this case.

C. The Regulation violates ICRA's prohibition against gender-identity discrimination.

DHS also does not dispute that the Regulation violates the prohibition against gender-identity discrimination reflected in the preamendment version of section 216.7 of ICRA. *See Good*, 924 N.W.2d at 862 (holding that the Regulation's plain language violated ICRA's prohibition against gender-identity discrimination). *Id*. at 862. Because DHS has conceded this point, if the Court determines that the preamendment version of section 216.7 of ICRA applies to this case, then it should find, as this Court and the Iowa Supreme Court found in *Good*, that the Regulation violates ICRA's prohibition against gender-identity discrimination.

D. The Regulation violates ICRA's prohibition against sex discrimination.

DHS also does not dispute that the Regulation violates ICRA's prohibition against sex discrimination. Its argument that the Regulation does not discriminate based on sex is confined to the constitutional aspect of sex discrimination. (*See* Resp. at 19–20.) It is undisputed that because "ICRA was modeled after Title VII of the United States Civil Rights Act, Iowa courts turn to federal law for guidance in evaluating . . . ICRA." *Vivian v. Madison*, 601 N.W.2d 872, 873 (Iowa 1999); *Wright v. Winnebago Indus., Inc.*, 551 F. Supp. 2d 836, 845 (N.D. Iowa 2008) (same). It is also undisputed that, under Title VII, discrimination against someone because they are transgender is sex discrimination. *Bostock*, 140 S. Ct. at 1741–43. Because DHS has conceded these points, if the Court determines that the preamendment version of section 216.7 of

ICRA applies to this case, it should find that the Regulation violates ICRA's prohibition against sex discrimination.

III. The Regulation has a disproportionate negative impact on private rights.

The Regulation also has a disproportionate negative impact on private rights, as set forth in Mr. Vasquez's initial brief. (Br. at 61–62.) DHS incorrectly argues that this claim is "subsumed into [Mr. Vasquez's] other challenges." (Resp. at 40.) It is not.

Mr. Vasquez's disproportionality claim is governed by a different standard than his equal-protection and ICRA claims. Under Section 17A.19(10)(k) of the APA, a court may reverse an agency action if "substantial rights of the person seeking judicial relief have been prejudiced because an agency action is . . . [n]ot required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy." *See* Iowa Code § 17A.19(10)(k) (2021). The disproportionality claim thus has four elements: (1) "substantial rights" that are (2) "prejudiced" by an "agency action" that is (3) "[n]ot required by law" and (4) causes a "negative impact" on individuals that is "grossly disproportionate" to the action's "benefits . . . to the public. *See id.*

Mr. Vasquez satisfies these elements. Regardless of whether the Regulation is actually unconstitutional or illegal (which it is), Mr. Vasquez has "substantial rights" based on the Iowa Constitution's equal-protection guarantee, ICRA, and his status as a participant in Iowa Medicaid. And regardless of whether Mr. Vasquez's rights were actually violated (which they were), they undoubtedly have been "prejudiced" by DHS's denial of his request for medically necessary care.

DHS, moreover, is "not required" to adopt and enforce a regulation that categorically prohibits Medicaid reimbursement for gender-affirming surgery. There is no statute mandating this outcome. DHS does not, and cannot, suggest otherwise.

In addition, when the negative impact of denying Mr. Vasquez Medicaid coverage is balanced against the public benefit of doing so, it is evident that the former is "grossly disproportionate" to the latter. On the one hand, Mr. Vasquez has suffered, and will continue to suffer great harm because of DHS's refusal to provide Medicaid coverage for the gender-affirming surgery he has requested. On the other hand, the public achieves no benefit by denying Medicaid coverage for medically necessary and effective treatment. In fact, a public benefit arises from *providing* coverage, not denying it. *See, e.g.,* Cal. Dep't of Ins., *Economic Impact Assessment: Gender Nondiscrimination in Health Insurance* (Apr. 13, 2012), *available at* https://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimina tion-In-Health-Insurance.pdf (discussing how availability of health care for transgender people enhances their overall health and well-being and significantly reduces suicide attempts, depression, anxiety, substance abuse, and self-administration of hormone injections).

Zieckler v. Ampride, 743 N.W.2d 530 (Iowa 2007), on which this Court relied in *Good*, and which DHS does not address, is instructive. *Zieckler* firmly establishes that a disproportionality claim may arise independently from violations of a person's statutory or constitutional rights. In *Zieckler*, an agency rule required dismissing an internal appeal as a sanction for failing to reimburse the nonappealing party for transcript costs within 30 days of initiating the appeal. *Id.* at 533. The Iowa Supreme Court held that the rule caused a disproportionate negative impact on the rights of individuals. *Id.* The Court noted that although the agency's commissioner was required by statute to adopt certain rules, the commissioner was

not required to adopt the sanction rule. *Id.* The Court also noted that "the public benefit of a mandatory dismissal" was "negligible, while the negative impact on [the plaintiff] [was] extremely severe." *Id.*

Under *Zieckler*, a badly conceived agency rule is enough to give rise to a disproportionality claim, regardless of whether the rule is, in fact, illegal or unconstitutional in its own right. Thus, while the Regulation *is* illegal and unconstitutional, this is not a prerequisite to Mr. Vasquez's disproportionality claim. Mr. Vasquez should prevail on that claim regardless of the outcome of his other claims. *See, e.g.*, *Good*, No. CVCV054956, at *34–35 (analyzing disproportionality claim separately from equal-protection and ICRA claims).

IV. DHS's denial of Mr. Vasquez's request for Medicaid coverage was arbitrary and capricious.

DHS's denial of Mr. Vasquez's request for Medicaid coverage was also arbitrary and capricious. (Br. at 62–64.) As with DHS's challenge to Mr. Vasquez's disproportionality claim, DHS incorrectly argues that Mr. Vasquez's arbitrariness claim should be "folded into his other challenges." (Resp. at 40.) It should not.

Under Section 17A.19(10)(n) of the APA, a court may reverse an agency action if "substantial rights of the person seeking judicial relief have been prejudiced because the agency action is . . . unreasonable, arbitrary, capricious, or an abuse of discretion. *See* Iowa Code § 17A.19(10)(n) (2021). As DHS acknowledges, "[a]n agency's action is 'arbitrary' or 'capricious' when it is taken without regard to the law ***or the facts of the case***." (Resp. at 40 (internal quotation marks omitted) (emphasis added).)

DHS's attack on Mr. Vasquez's arbitrariness claim ignores the latter half of this standard in its entirety. While it is, of course, true that enforcing an illegal, unconstitutional regulation is

arbitrary and capricious, so, too, is enforcing a regulation, such as the Regulation at issue here, that is entirely out of step with modern medical science.

As this Court noted in *Good*, DHS not only "owes an obligation to ensure [that its] rules conform to the statutes like ICRA and the Iowa Constitution[,] which trump any prior administrative rule," but also owes "an obligation to keep up with the medical science." *See Good*, No. CVCV054956, at *36–37. This was true then, and it is remains true now. The evidentiary record in this case—which, as in *Good*, is unrebutted—definitively establishes that the Regulation is scientifically outdated and that DHS's ongoing decision to enforce the Regulation's categorical surgical ban against transgender people like Mr. Vasquez is arbitrary and capricious.

The standards of care for gender dysphoria, which are set forth in the World Professional Association of Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Nonconforming People (the "Standards of Care" or "Standards"), are well established within the medical community. (AR 802, ¶ 16.) For many transgender people who have been diagnosed with gender dysphoria, the Standards prescribe medical intervention to affirm their gender identity and help them transition from living in one gender to living in another. (*Id.*, ¶¶ 18–19.) This transition-related care may include hormone therapy, surgery, and other medical services to align a transgender person's body with their gender identity. (*Id.*)

The treatment for each transgender person is individualized to fulfill that person's particular needs. (AR 802–03, ¶¶ 16–19.) The Standards of Care for treating gender dysphoria address all these forms of medical treatment, including surgery to alter primary and secondary sex characteristics. (*Id.*)

By the mid-1990s, there was consensus within the medical community that surgery was the only effective treatment for many individuals with severe gender dysphoria. (AR 805, ¶ 29; AR 810, ¶ 54.) More than three decades of research confirms that surgery to modify primary and secondary sex characteristics and align gender identity with anatomy is therapeutic and is therefore effective treatment for gender dysphoria. (AR 807, ¶ 40; AR 810, ¶ 54.) For appropriately assessed severe gender-dysphoric patients, surgery is the only effective treatment. (AR 811, ¶ 56.)

Health experts have rejected the myth that these treatments are "cosmetic" or "experimental" and have recognized that the treatments can provide safe and effective care for a serious health condition. (AR 810, ¶ 54.) Indeed, leading medical groups unanimously agree that gender dysphoria is a serious medical condition, that treatment for gender dysphoria is medically necessary for many transgender people, and that insurers should provide coverage for these treatments. (AR 811, ¶ 57.)

These considerations, among others, prompted Dr. Randi Ettner ("Dr. Ettner"), a world-renowned expert in this area, to conclude that "the findings, recommendations, and conclusions" underlying the Regulation "are not reasonably supported by scientific or clinical evidence, or standards of professional practice, and fail to take into account the robust body of research that surgery relieves or eliminates [g]ender [d]ysphoria." (*Id*., ¶ 58.) According to Dr. Ettner, since the Regulation was adopted in 1993, "[t]he ensuing decades [have] ushered in an era of technology" and "advances in surgical technique" that have "galvanized a tectonic shift in the understanding of [g]ender [d]ysphoria." (AR 812, ¶ 59.) These developments have "render[ed] the 1993 findings and recommendations anachronistic by current scientific standards." (*Id*.)

Despite this evidence, as well unanimous support for gender-affirming surgery from Mr. Vasquez's health-care providers (AR 769–801), DHS denied Mr. Vasquez's request for Medicaid coverage for gender-affirming surgery. DHS's decision to do so was arbitrary and capricious. It should be vacated and reversed.

V. DHS again prematurely challenges Mr. Vasquez's request for attorney's fees.

As it did in its motion to dismiss, DHS again prematurely challenges Mr. Vasquez's request for attorney's fees. (*See* Resp. at 43–44.) For the reasons set forth in Mr. Vasquez's response to the motion, which Mr. Vasquez incorporates by reference, this argument has no merit. (*See* Resp. Mot. to Dismiss at 18–30.)

First, attorney's fees are not adjudicated until after a case is decided on the merits and a prevailing party has filed a fee application. *See, e.g.*, Iowa Code § 625.1 (2021); Iowa Code § 625.29 (2021); Iowa R. App. Pro. 6.103(2). Since Mr. Vasquez is not yet a prevailing party who has filed a motion for a fee award, it makes little sense for the Court to resolve factual questions about whether DHS's role below was primarily adjudicative, whether Medicaid is a monetary or nonmonetary benefit, and whether Mr. Vasquez's "entitlement" or "eligibility" for this benefit was at issue. Those questions, absent a motion for fees by a prevailing party, are hypothetical and academic. *See State v. Wade*, 757 N.W.2d 618, 627 (Iowa 2008) (a matter "is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative").

Second, if the Court nevertheless considers DHS's fee-shifting arguments, ICRA and the Iowa Equal Access to Justice Act ("EAJA") expressly authorize fee-shifting in this case. Although DHS asserts that Mr. Vasquez "does not cite any specific statute entitling him to attorney[']s] fees" (Resp. at 44 n.5), he has, in fact, cited two. ICRA—which, by its own terms,

must be "broadly" construed—expressly allows fee-shifting. *See* Iowa Code §§ 216.15(9)(a)(8), 216.16(6), 216.18(1) (2021). EAJA section 625.29 likewise expressly provides for fee-shifting in nonrulemaking cases under the APA in order to facilitate meritorious claims by private parties against unreasonable exercises of administrative authority. Iowa Code § 625.29(1) (2021); Susan M. Olson, *How Much Access to Justice from State "Equal Access to Justice Acts"?*, 71 Chi.–Kent L. Rev. 547, 555 (1995). For all the reasons discussed above (*see* Argument Part II), DHS's claim that Mr. Vasquez did not bring any of his claims under ICRA, and therefore is not entitled to fee-shifting under ICRA, has no merit.

Third, the exclusions on which DHS relies to prematurely seek an exemption from EAJA's fee-shifting provision do not apply here:

"Primarily Adjudicative": DHS's role in this case was not "primarily adjudicative." *See* Iowa Code § 625.29(1)(b) (2021). As the administrative record reflects, DHS merely fulfilled its statutory obligation to provide a process for Mr. Vasquez to appeal the denial of his benefits, and to preserve his claims for judicial review, without actually adjudicating anything. (AR 763, 925.) Furthermore, whereas DHS argued in *Good* that Medicaid was not a public accommodation under ICRA—a position the Iowa Supreme Court ultimately rejected, *see Good*, 924 N.W.2d at 861—DHS made no similar legal or factual arguments below in this case. (AR 762, 925.)

"Monetary Benefit or Its Equivalent": Additionally, Medicaid is not a "monetary benefit or its equivalent" within the meaning of EAJA. *See* Iowa Code § 625.29(1)(d) (2021). It is a nonmonetary, nonfungible, nondiscretionary benefit available for the sole purpose of acquiring medical treatment. As a result, the exception to fee-shifting for monetary benefits does not apply to this case. *Cf. Kent v. Employment Appeal Bd.*, 498 N.W.2d 687, 688 (Iowa 1993) (addressing propriety of fee-shifting in case involving unemployment benefits, which are intended to replace

lost income and are monetary in nature). The distinction between monetary and nonmonetary benefits cannot simply be written out of the statute. While cash benefits are monetary in nature, medical benefits are not because they are not fungible, discretionary, or transferable.

"Eligibility" or "Entitlement": Finally, DHS's role in this case was not to determine Mr. Vasquez's "eligibility" for, or "entitlement" to, Medicaid. *See* Iowa Code § 625.29(1)(d) (2021). Mr. Vasquez's "eligibility" for, or "entitlement" to, participate in the Iowa Medicaid program is simply not at issue in this case. The record shows that DHS has never contested his Medicaid eligibility. (AR 760.) Had Mr. Vasquez been denied Medicaid coverage based on his entitlement to, or eligibility for, Medicaid benefits—for example, based on his citizenship or income—then that denial would fall within the scope of the exception set forth in EAJA (assuming that the benefits sought were monetary, which they are not). *See* Iowa Admin. Code R. 441.75.1; Iowa Admin. Code R. 441.75.25; Iowa Admin. Code R. 441.75.71. But Mr. Vasquez's entitlement to participate in the Medicaid program has never been contested.

IV. Mr. Vasquez is entitled to declaratory and injunctive relief.

Finally, DHS resurrects the argument asserted in its motion to dismiss that Mr. Vasquez is not entitled to declaratory or injunctive relief. (Resp. at 44–47.) For the reasons set forth in Mr. Vasquez's response to the motion, which Mr. Vasquez incorporates by reference, this argument has no merit. (*See* Resp. Mot. to Dismiss at 30–33.)

Declaratory and injunctive relief are expressly available in judicial-review actions. The APA states: "The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant ***other appropriate relief*** from agency action, ***equitable or legal and including declaratory relief*** . . . ." Iowa Code § 17A.19(10) (2021) (emphasis added). The same APA section then specifically sets forth the grounds pursued

by Mr. Vasquez in his petition—APA sections 17A.19(10)(a), (b), (k), and (n)—as bases for a district court's jurisdiction to grant those forms of relief. Iowa Code § 17A.19(10) (2021). The APA thus authorizes this Court to grant the declaratory and injunctive relief Mr. Vasquez seeks.

This is the only interpretation of section 17A.19(10) that comports with the plain meaning of the statute's language. "The intent of the legislature is the polestar of statutory construction and is primarily to be ascertained based on the language employed in the statute." *Univ. of Iowa v. Dunbar*, 590 N.W.2d 510, 511 (Iowa 1999). "Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter." *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996).

Section 17A.19(10) expressly refers to "declaratory relief." Iowa Code § 17A.19(10) (2021). And its reference to "other appropriate relief from agency action, equitable or legal," clearly encompasses injunctive relief. *Id.* As noted in *Black's Law Dictionary*, "equitable relief" equates to an "equitable remedy," and an "equitable remedy" is defined, in relevant part, as "[a] remedy, usu. a nonmonetary one ***such as an injunction*** . . . ." *See Black's Law Dictionary* (11th ed. 2019) (emphasis added). *Black's* goes on to quote a well-known treatise on equity jurisprudence, which states that one of the "well established and familiarly known . . . equitable remedies" includes "the preventive remedy of Injunction" and "the restorative remedy of Mandatory Injunction." *Id*. (quoting 1 John Norton Pomeroy, *A Treatise on Equity Jurisprudence* 123–25 (John Norton Pomeroy Jr., ed., 4th ed. 1918)) (internal quotation marks omitted). DHS's argument that the statute's reference to equitable relief "does not include injunctions in any circumstance" is inconsistent with these authorities and the text of the statute. (*See* Resp. at 44.)

Unsurprisingly, given that the APA expressly grants a district court jurisdiction to provide this relief, the Iowa Supreme Court has affirmed numerous district-court decisions

providing declaratory and injunctive relief in judicial-review actions. Of particular note, in *Good*, the Iowa Supreme Court affirmed a decision of this Court that enjoined the same Regulation at issue in this case. *See Good*, Case No. CVCV054956, at *41–42; *Good*, 924 N.W.2d at 863 (upholding this Court's decision); *see also Gartner*, 830 N.W.2d at 354 (upholding district court's decision, including its order that DHS issue a birth certificate naming both female spouses as parents, because the rule, and the presumption-of-parentage statute on which it was based, violated the Iowa Constitution's equal-protection guarantee); *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 269 (Iowa 2015) (declaring that the rule limiting access to medication abortion was unconstitutional).

The fact that DHS's arguments regarding the purported limitations on declaratory and injunctive relief were never raised, and thus were not adjudicated, in those cases does not weigh in DHS's favor. Jurisdictional questions need not be raised or preserved by parties or lower courts for appellate courts to decide them. *See, e.g.*, *In re Jorgensen*, 627 N.W.2d 550, 555 (Iowa 2001) (noting that appellate courts "determine subject matter jurisdiction issues even though the parties have not raised them" and "examine the grounds for subject matter jurisdiction on [their] own motion before [they] proceed further"); *In re Adoption of Gardiner*, 287 N.W.2d 555, 559 (Iowa 1980) (appellate court does not have jurisdiction of subject matter over which trial court lacks jurisdiction).

Moreover, contrary to DHS's argument, in *Salsbury Labratories v. Iowa Department of Environmental Quality*, 276 N.W.2d 830, 833, 835 (Iowa 1979), the Iowa Supreme Court ruled that the plaintiffs were required to bring their claims for declaratory and injunctive relief against an agency action *through* a judicial-review action after exhausting the claims with the agency, rather than bring them in an original civil action as they had sought to do. *See also Kerr v. Iowa*

Pub. Serv. Co., 274 N.W.2d 283, 288 (Iowa 1979) (request to permanently enjoin agency rule had to be brought through section 17A.19(10) action for judicial review after exhausting agency remedies).

DHS misreads those cases to argue that "Iowa law expressly forecloses injunctive relief in judicial review proceedings." (Resp. at 46.) Those cases stand for the propositions that (1) the APA is the exclusive means to seek declaratory and injunctive relief regarding agency actions and regulations, and (2) plaintiffs seeking this relief must exhaust their administrative remedies with an agency, and seek judicial review upon final agency action, rather than file an original civil action seeking that relief. The cases do not hold—and, indeed, given the plain language of APA section 17A.19(10), *could not have held*—that those types of relief are unavailable. *See* Iowa Code § 17A.19(10) (2021) (expressly granting district court jurisdiction to grant the forms of relief set forth in the statute).

DHS's attempt to avoid a permanent injunction "that would apply universally" likewise has no merit. (Resp. at 46.) The APA expressly provides for "equitable" and "legal" relief, as discussed above. *See* Iowa Code § 17A.19(10) (2021). It also expressly provides that one of the bases for this relief is demonstrating that a regulation is facially unconstitutional. *See* Iowa Code § 17A.19(10)(a) (2021). A regulation that is facially unconstitutional is unconstitutional in all its applications. *See Honomichl v. Valley View Swine, LLC*, 914 N.W.2d 223, 230 (Iowa 2018). The appropriate relief for addressing a facially unconstitutional regulation is the relief this Court granted in *Good*—an injunction prohibiting the regulation "universally," in all its applications. *See Good*, 924 N.W.2d at 863 (affirming district court's judgment granting declaratory and injunctive relief); *Good*, Case No. CVCV054956, at *41 (requiring unconstitutional and

discriminatory language to be stricken from Regulation and prohibiting DHS from denying Medicaid coverage for medically necessary gender-affirming surgery to treat gender dysphoria).

If DHS's position were correct, then a facially unconstitutional regulation could be applied again and again, with each application subject to a new, independent legal challenge. The repetitive, serialized litigation that would follow from this interpretation of APA section 17A.19(10) is clearly not what the statute contemplates. *See State v. Adams*, 810 N.W.2d 365, 369 (Iowa 2012) (courts "will not construe the language of a statute to produce an absurd or impractical result"); *In re Detention of Bosworth*, 711 N.W.2d 280, 283 (Iowa 2006) (same).

Because the APA expressly grants a district court jurisdiction to provide declaratory and injunctive relief against illegal and unconstitutional agency actions, Mr. Vasquez's requests for declaratory and injunctive relief are proper and should be granted.

CONCLUSION

For the reasons stated above and in his initial brief, Mr. Vasquez respectfully requests the following relief:

a. A declaratory ruling that:

   i. The Regulation facially violates the Iowa Constitution's equal-protection guarantee;

   ii. The Regulation violates ICRA's prohibitions against gender-identity and sex discrimination because Division XX, which purported to amend ICRA:

      (1) violates the Iowa Constitution's equal-protection guarantee on its face;

(2) violates the Iowa Constitution's equal-protection guarantee because it was enacted based on discriminatory animus toward transgender people;

(3) violates the Iowa Constitution's single-subject rule; and

(4) violates the Iowa Constitution's title rule;

vi. The Regulation creates a disproportionate negative impact on private rights; and

vii. DHS's denial of Mr. Vasquez's request for Medicaid coverage was unreasonable, arbitrary, and capricious;

b. An order invalidating the Regulation and enjoining any further application of the Regulation to deny Medicaid coverage for gender-affirming surgery;

c. An order reversing and vacating DHS's approval of Amerigroup's denial of Mr. Vasquez's request for Medicaid coverage for a phalloplasty and an office visit and requiring DHS to approve the coverage; and

d. Any other relief the Court deems just.

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Respectfully submitted,

/s/ Rita Bettis Austen
Rita Bettis Austen, AT0011558
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Suite 901
Des Moines, IA 50309-2316
Telephone: 515-243-3988
Facsimile: 515-243-8506
rita.bettis@aclu-ia.org

/s/ Shefali Aurora
Shefali Aurora, AT0012874

ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Suite 901
Des Moines, IA 50309-2316
Telephone: 515-243-3988
Facsimile: 515-243-8506
shefali.aurora@aclu-ia.org

/s/ F. Thomas Hecht
F. Thomas Hecht, PHV001733
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4322
Facsimile: 312-977-4405
fthecht@nixonpeabody.com

/s/ Tina B. Solis
Tina B. Solis, PHV001311
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4482
Facsimile: 312-977-4405
tbsolis@nixonpeabody.com

/s/ Seth A. Horvath
Seth A. Horvath, PHV001734
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
sahorvath@nixonpeabody.com

/s/ John Knight
John Knight, PHV001725
ACLU Foundation
LGBT & HIV Project
180 North Michigan Avenue, Suite 2300
Chicago, IL 60601
Telephone: 312-201-9740
Facsimile: 312-288-5225
jknight@aclu-il.org