HEARTLAND OF DARKNESS: THE DEATH OF STARE DECISIS

PLANNED PARENTHOOD OF THE HEARTLAND, INC. V. REYNOLDS, 975 N.W.2D 710 (IOWA 2022).

*Ryan Pletcher**

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* At the time of writing, the author was a student of Rutgers Law School–Camden. He is thankful for the opportunity to write for an audience, but those that know him well know he will still gladly perform for an empty room. To his friends and loved ones, past, present, and future, he remains grateful for their boundless kindness and grace as he stumbles joyfully, as we all must, through an absurd existence.

I. INTRODUCTION

One least expects to find elements of absurdism in the law, but even here, it is bound to creep in; the longer a particular thing goes on, the more susceptible it becomes to such infiltration. The Iowa Supreme Court's decision in *Planned Parenthood of the Heartland, Inc. v. Reynolds* (*PPH IV*)[1] is a lesson in the absurd. In *PPH IV*, the Iowa Supreme Court all too merrily took to their task of undoing the substantial precedent-making in which they had engaged just four years earlier, when they had found a fundamental right to abortion arising under the due process and equal protection clauses of the Iowa Constitution.[2] In its earlier *PPH II* decision, the court found a seventy-two hour waiting period on abortions to be unconstitutional under a strict scrutiny standard of analysis.[3] Undeterred by this outcome, Iowa legislators attempted once again to employ a waiting period on abortions, passing a bill in 2020 that contained a provision mandating a twenty-four-hour waiting period before receiving an abortion.[4] Understandably, the issue became the subject of litigation once again. Concerns of res judicata, questions of stare decisis, and qualms about the single-subject rule were the issues du jour for the Iowa Supreme Court. The court did something alarming: dancing artfully around the res judicata and single-subject rule questions; it looked stare decisis square in the eye and unflinchingly declined to give it any weight, casting to the wayside a decision made by the very same court less than five years prior.[5] Instead, in the interest of correcting a supposedly deeply flawed judicial precedent,[6] the court overturned its earlier decision and returned the issue of the twenty-four-hour waiting period to the district court to reconsider.[7]

II. A BRIEF EXPLORATION OF STARE DECISIS AND THE SINGLE-SUBJECT RULE

The two elements of law most flagrantly adulterated in *PPH IV* are the principle of stare decisis and the single-subject rule. The court's treatment of the due process and equal protection clauses of the Iowa

1. Planned Parenthood of the Heartland, Inc. v. Reynolds *ex rel.* State (*PPH IV*), 975 N.W.2d 710 (Iowa 2022).

2. Planned Parenthood of the Heartland v. Reynolds *ex rel.* State (*PPH II*), 915 N.W.2d 206, 237 (Iowa 2018).

3. *Id.* at 244, 246.

4. *See PPH IV,* 975 N.W.2d at 715.

5. *Id.* at 746.

6. *PPH II*, 915 N.W.2d at 206.

7. *PPH IV*, 975 N.W.2d at 746.

Constitution is also inherently flawed, but the court, having reached its conclusion largely on the merits of stare decisis and the single-subject rule, provides only a cursory gloss with respect to these constitutional claims, painting them with the same stare decisis brush.[8]

A. The Single-Subject Rule Is Meant to Improve Legislative Efficiency

The single-subject rule is unique to states and state constitutions.[9] The principal object of Iowa's single-subject rule, and indeed of single-subject rules at large, is the prevention of "logrolling."[10] Logrolling, as defined by the Iowa Supreme Court, "occurs when a provision unrelated to the core of a bill and not itself capable of obtaining majority support is tied to a popular bill having majority support."[11] This form of logrolling is often referred to as "riding."[12] Another example of logrolling occurs when multiple matters that individually lack majority support are joined into one bill and are collectively passed by combining the minority in favor of each into a majority willing to enact them all.[13] This process is also used to obtain favorable votes on matters which are outright undesirable, where the undesirable provision is bundled up with a much more attractive provision, resulting in the passage of both.[14] The single-subject rule, then, is a preventative measure meant to defeat appeals to the better demons of legislators' natures. It is also held out as a mechanism that facilitates an orderly legislative process and reduces the issues present in each bill to a readily digestible, regurgitatable, and debatable format for legislators.[15] In summary, the single-subject rule, as written, is an anti-equivocation and anti-trojan horse provision.

8. *See id.* at 743–44.

9. There is no federal single-subject rule. *See* George A. Nation III, *We the People: The Consent of the Governed in the Twenty-First Century: The People's Unalienable Right to Make Law*, 4 DREXEL L. REV. 319, 334 n.88 (2012).

10. Western Int'l v. Kirkpatrick, 396 N.W.2d 359, 364 (Iowa 1986); *see also* State v. Iowa Dist. Ct., 410 N.W.2d 684, 686 (Iowa 1987). *See generally* Robert D. Cooter & Michael D. Gilbert, *A Theory of Direct Democracy and the Single Subject Rule*, 110 COLUM. L. REV. 687, 706 (2010).

11. *Iowa Dist. Ct.*, 410 N.W.2d at 686.

12. Cooter & Gilbert, *supra* note 10, at 707.

13. *Iowa Dist. Ct.*, 410 N.W.2d at 686 (citing Motor Club of Iowa v. Dep't of Transp., 265 N.W.2d 151, 152 (Iowa 1978)); Long v. Bd. of Supervisors, 142 N.W.2d 378, 382 (Iowa 1966).

14. *See* Cooter & Gilbert, *supra* note 10, at 707–08.

15. *State v. Iowa Dist. Ct.*, 410 N.W.2d at 686 (citing *Western Int'l v. Kirkpatrick*, 396 N.W.2d at 364); *see also* Cooter & Gilbert, *supra* note 10, at 708.

B. The Due Process and Equal Protection Clauses Can Be Found to Confer a Right to Abortion

Due process and equal protection are fundamental elements of any state constitution.[16] The right to due process typically prevents the state from depriving any person of life, liberty, or property without due process of law.[17] Similarly, the right to equal protection prohibits the state from denying any person equal protection under the law of the land.[18] Together, these two constitutional ideals form a presumptively strong bastion from which citizens can challenge problematic laws.[19] Abortion represents one such topic that is often the source of problematic law and, as a result, is subject to due process and equal protection challenges.[20] While a discussion of abortion at large and the legal principles and political and moral theories surrounding it is especially timely given the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*[21] and the potential for the legal reasoning deployed in that decision to trickle down into state high courts,[22] such a discussion, properly attempted, would fill volumes and is far beyond the scope of this Comment. Instead, for purposes of this Comment, it suffices to say that

16. *See* Daniel Polonsky, Note, *Equal Protection Through State Constitutional Amendment*, 56 HARV. C.R.-C.L. L. REV. 413, 420 (2021). These state constitutional provisions typically mirror the U.S. Constitution. U.S. CONST. amend. XIV, § 1.

17. U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law...."); IOWA CONST. art. I, § 9 ("[N]o person shall be deprived of life, liberty, or property, without due process of law.").

18. U.S. CONST. amend. XIV, § 1 ("[N]or deny to any person within its jurisdiction the equal protection of the laws."); IOWA CONST. art. I, § 6 ("All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.").

19. The use of "presumptively" is deliberate; as is evident by the Supreme Court of the United States's decision in *Dobbs v. Jackson Women's Health Org.* and the Iowa Supreme Court's decision in *PPH IV*, the issue of equal protection and the definition of "due process" are highly susceptible to the relentless assault of rhetoric that high courts so masterfully produce. *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022); *PPH IV*, 975 N.W.2d 710 (Iowa 2022).

20. *See generally* PAUL BENJAMIN LINTON, ABORTION UNDER STATE CONSTITUTIONS: A STATE-BY-STATE ANALYSIS, 497–502 (3d ed. 2020); ROBERT F. WILLIAMS & LAWRENCE FRIEDMAN, THE LAW OF AMERICAN STATE CONSTITUTIONS 247 (2d ed. 2023).

21. 597 U.S. 215 (2022).

22. Evidence of which can be seen quite plainly in *PPH IV*, despite the fact the decision in *Dobbs* came later. *See* 975 N.W.2d at 745–46 ("We expect the opinions in [*Dobbs*] will impart a great deal of wisdom we do not have today. Although we take pride in our independent interpretation of the Iowa Constitution, often our independent interpretations draw on and contain exhaustive discussions of both majority and dissenting opinions of the United States Supreme Court.").

the landmark abortion decision, *Roe v. Wade*,[23] demonstrates how claims arising under the Due Process Clause can be construed to provide a fundamental right to abortion. In *Roe v. Wade*,[24] the Supreme Court of the United States found the concept of personal liberty embodied in the Fourteenth Amendment's Due Process Clause to confer to pregnant women the right to terminate a pregnancy.[25] This same right can also be found, as in *PPH II*, under Iowa's equal protection clause.[26] There, equal protection was the appropriate right to implicate because "[e]qual protection of the law . . . prevents governments from 'den[ying] to women, simply because they are women, full citizenship stature'" and the opportunities which necessarily flow from that stature.[27] Reproductive autonomy, at least in the eyes of the *PPH II* court, was an integral part of those opportunities.[28] Armed with these interpretations, we may turn at last to the Iowa Supreme Court's reasoning in *PPH IV* to determine whether their consideration of the validity of these interpretations and conclusion to the contrary represents sound jurisprudence.

C. Stare Decisis Makes Judicial Precedent Reliable

Stare decisis is, as noted by Chief Justice Rehnquist in a case with particular relevance to the one at issue here, a call "to abide by, or adhere to, decided cases."[29] On its face, stare decisis would not appear to be a critical or fundamental principle of the law. After all, the relatively brief history of the United States is fraught with decisions and principles, both legal and not, which were unequivocally *wrong* in the light of modern day.[30] Courts must be able to reject earlier decisions that were based on erroneous or prejudicial societal values, especially where those decisions

23. 410 U.S. 113, 155–56 (1973).

24. It is interesting, though admittedly disheartening, to acknowledge the similarities between and conceptualize as parallel the *Roe* and *Dobbs* decisions and the *PPH II* and *PPH IV* decisions with respect to their treatment of due process and equal protection. *See Roe*, 410 U.S. 113; *Dobbs*, 597 U.S. 215; *PPH II*, 915 N.W.2d 206; *PPH IV*, 975 N.W.2d 710.

25. *Roe*, 410 U.S. at 153.

26. *PPH II*, 915 N.W.2d at 245–46.

27. *See id.* at 245 (alteration in original) (quoting United States v. Virginia, 518 U.S. 515, 532 (1996)).

28. *See id.*

29. Planned Parenthood v. Casey, 505 U.S. 833, 954 (1992) (Rehnquist, C.J., concurring in part and dissenting in part) (quoting *Stare Decisis*, BLACK'S LAW DICTIONARY 1406 (6th ed. 1990)), *overruled by* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

30. *See generally* Plessy v. Ferguson, 163 U.S. 537 (1896) (finding racial segregation laws did not violate the Constitution under the separate but equal doctrine), *overruled by* Brown v. Bd. Of Educ., 347 U.S. 483 (1954).

in some way limit the rights of individuals.[31] Courts do indeed enjoy this power and exercise it often enough.[32]

In view of a need for consistency, however, stare decisis begins to make sense. Stare decisis is offered as a means to "ensure that the law will not merely change erratically" and as a doctrine that "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals."[33] By electing to stand by previous decisions on the grounds that a court should "treat like cases alike," courts that adhere to the principle of stare decisis signal that those subject to their jurisdiction need not fear going to bed under one interpretation of the law and waking up to find that interpretation thrown out with yesterday's coffee.[34] Ultimately, the policy behind the principle is that "it is more important that the applicable rule of law be settled than that it be settled right."[35] This view necessarily demands that, from time to time, courts must stand by some "wrong" decisions.[36] Courts' hands are by no means tied, of course; inventive arguing, the specialty of Supreme Court Justices, is one way to sidestep stare decisis concerns, accomplished by finding a way to distinguish, even in some minor way, a case at issue from another which would otherwise appear to demand an application of stare decisis. Other judges take a more direct approach, dusting off the well-worn maxim that "[s]tare decisis is not . . . [an] inexorable command" and thereby ruling with no further deference to the past.[37] In either event, stare decisis is, at best, an aspirational ideal rather than an affirmative policy.

The central tension of stare decisis is the resolution of what represents abandonable judicial precedent. Courts must obviously strike a balance between rejecting every past decision and standing by every past decision; similarly, stare decisis demands, at least in the abstract, some degree of rationality in decisions to reject prior precedent. The commanding view, that the court should decline to adhere to stare decisis

31. *Id.* This juxtaposition is made in consideration of decisions which limit the rights of the state. A state whose rights are limited by judicial action has other means at its disposal for attempting to recover those rights, where individuals are, by comparison, powerless to restore their rights except under extreme circumstances, like revolution or leaving the state entirely.

32. *See, e.g.*, *Brown*, 347 U.S. at 483.

33. Vasquez v. Hillery, 474 U.S. 254, 265 (1986).

34. June Med. Servs. L.L.C. v. Russo, 591 U.S. 299, 345 (2020) (Roberts, C.J., concurring).

35. Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

36. Emery G. Lee III, *Overruling Rhetoric: The Court's New Approach to Stare Decisis in Constitutional Cases*, 33 U. TOL. L. REV. 581, 585–86 (2002).

37. *Burnet*, 285 U.S. at 405–06 (Brandeis, J., dissenting).

when a prior decision was not merely incorrect but very clearly and perniciously *wrong*, necessarily implicates at least some degree of valuative judgment-making on the part of the court. It is precisely this valuative judgment-making, often referred to as judicial activism,[38] that creates the opportunity for error. What is deemed wrong and demands corrective action by one court may be seen as perfectly sound reasoning and policy by another. Stare decisis is, unsurprisingly, a source of much antipathy in our increasingly polarized country, and its capricious application threatens to damage the legitimacy of the court system.[39]

D. Federal and State Stare Decisis Should Be Treated Differently

While the brief consideration of stare decisis above is useful for establishing a foundational knowledge of the principle, there are critical differences between federal and state stare decisis. The most glaring is a major philosophical difference between federal and state approaches to stare decisis: the ease with which judicial errors may be corrected. In his famous dissent to *Burnet v. Coronado Oil & Gas Co.*, Justice Brandeis noted that "in cases involving the Federal Constitution, where correction through legislative action is practically impossible," stare decisis is less compelling.[40] As a result, constitutional law cases tend to present the weakest appeal for an application of stare decisis for both federal and state courts.[41] However, Brandeis was deliberate in his use of the phrase "Federal Constitution;" he doubled down on the distinction between federal and state implementations of stare decisis in a footnote to his opinion, commenting that "[t]he policy of stare decisis may be more appropriately applied to constitutional questions arising under the fundamental laws of those States whose constitution may be easily amended."[42] It is all too easy for state courts rejecting stare decisis to rely on the conclusion in the body of Brandeis's dissent while leaving the footnoted nuance otherwise unaddressed. Whether this omission is intentional or accidental, the end result is an overly inflated sense of duty on the part of state courts of last resort, prompting them to needlessly

38. *See* Robert Justin Lipkin, *We Are All Judicial Activists Now*, 77 U. CIN. L. REV. 181, 182 n.4 (2008).

39. Tyler J. Buller & Kelli A. Huser, *Stare Decisis in Iowa*, 67 DRAKE L. REV. 317, 362 (2019).

40. *Burnet*, 285 U.S. at 406–07 (Brandeis, J., dissenting).

41. Buller & Huser, *supra* note 39, at 322.

42. *Burnet*, 285 U.S. at 409 n.5 (Brandeis, J., dissenting).

and rigorously reconsider their constitutional decisions at the expense of fostering uncertainty and distrust toward the judiciary.[43]

The consistency with which a court applies stare decisis is also, to some degree, suggestive of that court's propensity for "judicial activism." Judicial activism "giv[es] the appearance of legislating from the bench in that the court has chosen a new policy direction in the face of preexisting and otherwise constraining legal rules."[44] Judges engaging in judicial activism "create new constitutional rights, amend existing ones, or create or amend existing legislation to fit their own notions of societal needs."[45] Policy judgments, while not the exclusive right of the legislative branch, are generally best reserved for members of an institution that is, by design, structured to evaluate and decide matters of public policy.[46] It is also worth noting that members of this institution are *elected* by the people directly affected by these policy decisions, so there is a greater incentive for legislators to make considered choices, as they, unlike their judicial counterparts, do not benefit from direct appointment.[47] They most certainly do not have the benefit of direct appointment for life, so they must remain, to at least some degree, accountable to the public they purport to represent.[48] While judicial activism in the abstract is not wholly irredeemable, it is better for the judicial system as a whole to reduce, as much as possible, the influence of politics on interpretations of

43. *See* Buller & Huser, *supra* note 39, at 321–22 ("[W]hen stare decisis functions well, it can be a mechanism for courts to trade information and rely on the expertise of other judicial actors. This may be particularly important for a state like Iowa, where nearly all courts are courts of general jurisdiction.").

44. *Id.* at 323 (quoting Stefanie A. Lindquist, *Judicial Activism in State Supreme Courts: Institutional Design and Judicial Behavior*, 28 STAN. L. & POL'Y REV. 61, 68 (2017)).

45. Lipkin, *supra* note 38.

46. "A burgeoning consensus on all sides of the political spectrum seems to be that judicial activism is bad." *Id.* at 182.

47. A historical study comparing state supreme courts with elected judges and those with appointed judges found no statistically significant difference in the rate of overrulings, but this study analyzed cases from 1995 to 1999. Allen Lanstra, Jr., *Does Judicial Selection Method Affect Volatility?: A Comparative Study of Precedent Adherence in Elected State Supreme Courts and Appointed State Supreme Courts*, 31 SW. U. L. REV. 35, 67 (2001). This Comment's author humbly submits that such a study conducted now, over a longer time period (from 2000 to 2020) would yield different results. *But cf.* Stefanie A. Lindquist, *Judicial Activism in State Supreme Courts: Institutional Design and Judicial Behavior*, 28 STAN. L. & POL'Y REV. 61, 100, 107 (2017) (Based on data from 1975 to 2004, "elected courts overturn precedent more frequently and thus may be deemed more activist.").

48. While it is true that judicial decisions can be reversed through constitutional amendment or more radical approaches, like packing the court, these practices are "extraordinarily difficult to execute, especially as a reliable means of reversing more-than-ordinary but less-than-seminal judicial decisions. Consequently, this defective institutional design guarantees that the ill effects of constitutionally erroneous judicial decisions may last for decades." Lipkin, *supra* note 38, at 193–94.

the law and, as a general practice, render unto Congress the things that are Congress'.[49]

E. The Iowa Supreme Court's Historical Treatment of Stare Decisis Tends More Toward Judicial Activism

A review of the Iowa Supreme Court's relationship with stare decisis, historically speaking, renders the court's decision in *PPH IV* significantly less shocking. In the late twentieth and into the twenty-first century, the rate at which the Iowa Supreme Court overruled its own precedent exceeded most other courts of last resort in the country.[50] Iowa tends to overturn older decisions rather than younger cases.[51] According to one study, Iowa "overruled more than three times the number of statutory decisions than it did constitutional decisions," suggesting that the Iowa Supreme Court tends to diverge from what is generally considered the norm with regard to the relation between courts and the legislature: "the judicial branch aims to interpret legislation, not craft it."[52] The Iowa Supreme Court, then, is clearly disposed to cast aside stare decisis-related qualms and press ahead with its own sense of what constitutes good policy. Viewed through this lens, the court's action in *PPH IV* should come as no surprise.

III. *PPH IV* IS A WHOLESALE PERVERSION OF STATE CONSTITUTIONAL PRINCIPLES

A. The Single-Subject Rule Is Toothless

The *PPH IV* court's treatment of the single-subject rule is laughable. As previously explained, the single-subject rule demands that a piece of legislation before the Iowa legislature "embrace but one subject, and

49. *See Matthew* 22:21; Buller & Huser, *supra* note 39, at 322 ("[T]he political branches are 'institutionally competent to act' if they disagree" with a court's interpretation of legislation. (quoting William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEO L.J. 1361, 1366 (1988))). Lipkin also makes this point with much greater eloquence than the author:

> When judges read their own policy values into the Constitution—whether conservative or liberal—the democratic process is short-circuited. Government by republican legislators is replaced by the rule of elite, unelected, and unaccountable judges. Such an institutional arrangement is antithetical to republican democracy, where the people or their representatives rule, not a stealth judicial aristocracy.

Lipkin, *supra* note 38, at 182–83.

50. Buller & Huser, *supra* note 39, at 344–45.

51. The average age of an overruled case in the analysis conducted was 29.8 years, more than seven times older than the decision overruled by *PPH IV*. *Id.* at 344.

52. *Id.* at 348, 350.

matters properly connected therewith."[53] The legislation at issue here, HF 594, contained two provisions, but an abridged history is helpful to fully appreciate the *Cirque du Soleil*-worthy acrobatics deployed by the court in making their decision on the single-subject rule.[54]

HF 594 began as a piece of legislation that sought to impose limitations on state courts' capacities to require the withdrawal of life-sustaining procedures from a minor over the objection of the minor's guardian.[55] Put more simply, the original legislation sought to *curtail* state interference with citizens' medical decisions. The bill fell to the wayside at the start of the pandemic, remaining untouched until over a year later.[56] It got a new lease on life, however, when it was kicked back to the mad legislative scientists in the Iowa House of Representatives; there, à la Frankenstein, they cobbled together a creature which, in inexplicable contrast to the limitations of state authority at the heart of the bill, sought to once again extend the state's tendrils into citizens' private medical decisions by mandating a twenty-four hour waiting period before allowing an abortion to be performed.[57] Ultimately, this creature would come to be known as HF 594 and would go on to pass the Iowa House and Senate.[58]

The court reasoned that the twenty-four-hour holding period on abortion, conjoined as it was with the life-support provision of HF 594, was not violative of the single-subject rule.[59] Instead, the court felt "both provisions of [the bill] related to a single subject as set forth in the bill's title—'medical procedures.'"[60] Then, in an effort to outdo its own disingenuity, the court observed that both provisions related not only to mere medical procedures but to "governmental regulation of medical procedures in the interest of promoting human life."[61]

It becomes necessary here to take a step back from the text of the single-subject rule and consider the Iowa judiciary's historical application of the rule. By the court's own admission, a violation of the single-subject rule has been found a total of three times.[62] An in-depth analysis of the court's reasoning in these three instances, while

53. IOWA CONST. art. III, § 29. *See generally* WILLIAMS & FRIEDMAN, *supra* note 20, at 292 (noting nearly all states added single-subject rules to their constitutions in the nineteenth century).

54. *PPH IV*, 975 N.W.2d 710, 720 (Iowa 2022).

55. *Id.* at 716–17 (citing H.F. 233, 88th Gen. Assemb., 1st Sess. (Iowa 2019)).

56. *Id.* at 717.

57. *Id.* (citing H.J., 88th Gen. Assemb., 2d Sess., at 1391–92 (Iowa 2020)).

58. *Id.* at 717–18.

59. *Id.* at 721.

60. *Id.*

61. *Id.*

62. *Id.* at 725.

practically begging to be conducted, is beyond the scope of this work; the three cases will instead be treated in brief. The first case, which concerned an act relating to Iowa code corrections, was struck down where a subsequent amendment changed workers' compensation statutes to allow for direct appeals from administrative authorities to the Iowa Supreme Court.[63] Another involved similar code corrections with substantive modifications of appellate jurisdiction.[64] The third and final case involved a juvenile justice bill, which included a provision criminalizing the act of trafficking in stolen weapons.[65] There, the court rejected the argument that any weapons law could have an impact on juvenile justice as such reasoning would extend the reach of the legislation to virtually any crime "whether germane to the subject of juvenile justice or not."[66]

The last of these three cases, *State v. Taylor*,[67] is perhaps the most perplexing when contrasted with *PPH IV*. In the former, the Iowa Supreme Court held that a bill whose subject is "juvenile justice" could not contain a provision criminalizing an act that affects juveniles and in which juveniles could engage. In contrast, in the latter, a bill whose subject was "medical procedures" *could* contain a provision requiring a twenty-four-hour waiting period for abortions. More perplexing still, the court's choice in the latter case to uphold the subject of the bill as it did ("medical procedures") is bald, supported by a mere two sentences of circular reasoning; in making such a categorization, the court was able to defease the single subject issue quite handily. The court advocates for a broad and general application of the single-subject rule, but the decision in *Taylor* suggests that this application is not *so* broad and general as to capture an issue directly relating to and affecting the subject of the bill where that issue would reach circumstances beyond the intended scope of the legislation.[68] However, when faced with "[a]n Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child,"[69] the court was all too glad to rubber stamp the bill's "medical procedures" subject and allow an abortion provision which most certainly is not, by the court's reasoning in *Taylor*, germane to the actual subject of the bill. The court's less-than-perfunctory fallacious "analysis" of the subject of the bill at issue represents a significant expansion of its scope, which is conveniently just

63. *Id.* (citing Western Int'l v. Kirkpatrick, 396 N.W.2d 359, 361, 364 (Iowa 1986)).
64. *Id.* (citing Giles v. State, 511 N.W.2d 622, 625 (Iowa 1994)).
65. *Id.* at 726 (citing State v. Taylor, 557 N.W.2d 523, 524 (Iowa 1996)).
66. *Id.* (quoting State v. Taylor, 557 N.W.2d at 526)).
67. 557 N.W.2d 523 (Iowa 1996).
68. *See PPH IV*, 975 N.W.2d at 726.
69. *Id.* at 716 (quoting H.F. 233, 88th Gen. Assemb. 1st Sess. (Iowa 2019)).

broad enough to capture the later-amended abortion provision. The irreconcilability of these two disparate applications of the same rule—and the court's unfettered liberty to essentially define the scope of a bill as broadly as it likes—does not bode well for consistency and clarity in future analyses of Iowa constitutional law.

From these case decisions and the court's conclusions in *PPH IV*, it should be clear that enforcement and application of the single-subject rule is arbitrary at best. It is, therefore, no surprise that the court chose not to find a violation of the rule in spite of evidence suggesting that even *legislators* expressed consternation about the abortion amendment tacked slipshod onto the bill.[70] The court acknowledges without comment that, during the legislative process, a representative indicated that under the Iowa House rules, the amendment containing the abortion-related provisions was not germane.[71] The acting Speaker of the House agreed with the representative.[72] The legislature's use of the word "germane" is especially interesting when returning to the court's reasoning for finding a violation of the single-subject rule in *State v. Taylor*, as noted above.[73] There, the court was apprehensive of extending the reach of a piece of legislation to issues not germane to its subject. Here, where the legislature expressly indicated that the abortion-related provisions were not germane to the original piece of legislation, the court bats no eyelash. This treatment of the single-subject rule quite blatantly runs contrary to the aims of single-subject rules at large[74] (Iowa's included) and represents an overt aversion of the court's gaze, concluding with the court essentially burying the single-subject rule with a three-sentence epitaph.[75]

70. *See id.* at 717 (citing House Video, *HF 594 – Life Support for Child*, IOWA LEGISLATURE, at 10:20:41 (June 13, 2020), https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20200613100758317&dt=2020-06-13&offset=598&bill=HF%20594&status=i&ga=88) [https://perma.cc/WJ9A-SU2U].

71. *Id.*

72. *Id.* at 718 (citing House Video, *supra* note 70, at 10:21:08).

73. *See id.* at 726 (citing *Taylor*, 557 N.W.2d at 526–27).

74. *See* discussion *supra* Section II.A.

75. *PPH IV*, 975 N.W.2d at 721 ("Simply stated, both provisions of HF 594 related to a single subject as set forth in the bill's title—"medical procedures." In fact, their connection was closer than that. Not only did both provisions relate to medical procedures, but they also related to governmental regulation of medical procedures in the interest of promoting human life."). It is difficult to imagine more than a handful of medical procedures which are *not*, directly or indirectly, in the interest of promoting human life.

B. Federal and State Justifications for Stare Decisis Are Conflated, and Are Capriciously Applied

While the court's treatment of the single-subject rule is, as stated above, less than surprising, its handling of the stare decisis issue represents an alarming cause célèbre. What the *PPH IV* court did, practically speaking, was turn their back on stare decisis entirely, walking away from a decision they had made just *four years* earlier.[76] The majority violated a central tenet of stare decisis, using its power to overrule without a "'special justification'[] over and above the belief 'that the precedent was wrongly decided.'"[77] Put simply, its reasoning for this action is borderline disingenuous.

The court asserted that its decision in *PPH II* "depart[ed] from the approach taken by [the] court prior to 2018."[78] This argument is puzzling; the exact same thing could be said of *PPH IV* in juxtaposition with *PPH II*. What the court argues for, without explicitly stating it, *is* stare decisis, but it fails to appreciate the absurdity of such an argument when it is used in support of *abandoning* the principle. Another justification tendered for ignoring the *PPH II* ruling is the suggestion that stare decisis has limited application in constitutional cases.[79] The support for this conclusion, a recent concurring opinion from a justice of the Iowa Supreme Court, is something short of persuasive.[80] It is worth noting first that concurring opinions are not binding.[81] It is next worth considering that the basis for this legal conclusion comes not from a well-established and venerable holding, but from a case decided just a year prior, in which the foundation of this legal reasoning relied upon by the *PPH IV* court amounts to when an interpretation of the Constitution appears wrong, there is no reason to stand by it in favor of a new interpretation of the Constitution.[82] Interestingly, precedent is perfectly compelling to the

76. *See PPH II*, 915 N.W.2d 206, 237 (Iowa 2018); *PPH IV*, 975 N.W.2d at 715.

77. *PPH IV*, 975 N.W.2d at 752 (alteration in original) (quoting Kimble v. Marvel Ent., LLC, 576 U.S. 446, 455–56 (2015)).

78. *Id.* at 739.

79. *Id.* at 733 (quoting State v. Kilby, 961 N.W.2d 374, 386 (Iowa 2021) (McDonald, J., concurring in judgment)).

80. *See Kilby*, 961 N.W.2d at 386 (McDonald, J., concurring in judgment).

81. Maryland v. Wilson, 519 U.S. 408, 412–13 (1997) ("We agree . . . that the former statement was dictum, and the latter was contained in a concurrence, so that neither constitutes binding precedent.")

82. *See Kilby*, 961 N.W.2d at 386 (McDonald, J., concurring in judgment). In concurring, Justice McDonald quotes himself, repeating that "[t]here is 'no legitimate reason why a court may privilege a demonstrably erroneous interpretation of the Constitution over the Constitution itself.'" *Id.* (quoting Goodwin v. Iowa Dist. Ct., 936 N.W.2d 634, 649 (Iowa 2019) (McDonald, J., concurring in judgment). It should be obvious that the determination of whether a given interpretation of the Constitution is erroneous

Iowa Supreme Court when referencing an opinion advocating for the rejection of stare decisis, thereby freeing it of accountability.[83]

The court supports its conclusion with the argument that it must decline to apply stare decisis in the interest of "correct[ing] . . . mistakes when no one else can;"[84] this reasoning is weak. Borrowing from a Drake[85] Law Review article,[86] the court envisions itself to be the last bastion protecting the citizens of Iowa from otherwise indelible mistakes on the part of the judiciary, legislature, or executive. In actuality, the passage the court references is an excerpt from a discussion about the principle of stare decisis in constitutional cases at large, made with an eye toward federal applications.[87] In fact, the notion that stare decisis is not an inexorable command, referenced by the Iowa Supreme Court,[88] is, as discussed earlier in this Comment, cut from a dissent by Justice Brandeis.[89] In that same dissent, Justice Brandeis distinguished between federal and state stare decisis, concluding that state courts should be *more* inclined to uphold stare decisis on the grounds that their precedent is more readily corrected than federal court precedent.[90] Any consideration of this distinction is entirely absent from the majority's opinion. The decision in *PPH IV*, then, is a departure from stare decisis as it ought to be applied.

Even acknowledging the court's historical proclivity for overruling its own decisions, the ruling in *PPH II* was simply too recent and the court's reasoning in *PPH IV* too thin to justify abrogating its earlier decision. A much simpler and more compelling explanation for the majority opinion in *PPH IV* is unearthed in a dissenting opinion to the case. Between 2018, when *PPH II* was decided, and 2022, four new justices were appointed to the Iowa Supreme Court.[91] All four of the justices replaced were part of

when compared to the Constitution itself necessarily requires (gasp) another interpretation of the Constitution, this time by the party with an axe to grind.

83. *See PPH IV*, 975 N.W.2d at 733 (citing *Kilby*, 961 N.W.2d at 386 (McDonald, J., concurring in judgment)).

84. *Id.* at 733 (quoting Buller & Huser, *supra* note 39, at 322).

85. An institution from which the court proceeds, on the subsequent page, to reject an amicus brief on the subject of stare decisis. *Id.* at 734.

86. Buller & Huser, *supra* note 39, at 322.

87. *Id.* at 321–23. The court also glazed over a few choice passages while picking its quote, including observations that "Iowa courts are quick to venerate stare decisis when it furthers a desired outcome" and that, "[t]o judges, it seems stare decisis is (partially) in the eye of the beholder." *Id.* at 323.

88. *PPH IV*, 975 N.W.2d at 733.

89. *See supra* note 37 and accompanying text.

90. *See supra* note 40–42 and accompanying text.

91. *PPH IV*, 975 N.W.2d at 751 (Christensen, C.J., concurring in part and dissenting in part).

the 5-2 majority in *PPH II*.[92] This sea change and the resulting reconsideration of a heavily politicized decision, which followed almost immediately, is exactly the kind of situation that stare decisis is intended to mitigate by "serv[ing] as an intertemporal referee, moderating any knee-jerk conviction of rightness by forcing a current majority to advance a special justification for rejecting the competing methodology of its predecessor."[93]

C. *The Court's Treatment of the Due Process and Equal Protection Clauses of the Iowa Constitution Are Logically Fallacious*

As mentioned earlier, the *PPH IV* court cursorily examined equal protection and due process claims that it ultimately found uncompelling.[94] The court discussed at length the text of the Iowa Constitution, and though it noted that interpretations of the constitution should *also* include precedent, history, custom, and practice as aids in determining its meaning,[95] it focused almost exclusively on text and history,[96] both of which are unsurprisingly silent or unfavorable with respect to abortion.[97] It then proceeded to evaluate its logic from *PPH II*, which found abortion rights arising under both the due process and equal protection clauses of the Iowa Constitution.[98] A central holding of *PPH II* under attack in *PPH IV* was that the Iowa Constitution's due process clause found in article I, section 9 provided a fundamental right to abortion.[99] Section 9 stipulates, in pertinent part, that "no person shall be deprived of life, liberty, or property, without due process of law."[100] The *PPH IV* court observed that other state courts that had found abortion to be a fundamental right did so under textual grounds other than the due process clause.[101] Looking within, it found no support for the claim that abortion was fundamentally protected under Section 9.[102] The court did very little, however, by way of reconciling its reasoning in *PPH IV* with its reasoning in *PPH II*. In *PPH II*, the court observed that Iowa's due process provision was "'nearly identical in scope, import and

92. *Id.*
93. *Id.* (quoting Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1723 (2013)).
94. *See id.* at 739–40, 742–44 (majority opinion).
95. *Id.* at 739 (citing State v. Wright, 961 N.W.2d 396, 402–04 (Iowa 2021)).
96. *Id.* at 740–42.
97. *Id.* at 741.
98. *Id.* at 740–44.
99. *PPH II*, 915 N.W.2d 206, 237 (Iowa 2018).
100. IOWA CONST. art. I, § 9.
101. *PPH IV*, 975 N.W.2d at 739.
102. *Id.* at 740.

purpose' to the Federal Due Process Clause."[103] It concluded that due process under the Iowa Constitution extended to abortion based on the clause's role in "prevent[ing] unwarranted governmental interferences with personal decisions in life."[104] Though the court had conducted a thorough enough analysis to reach a conclusion under the due process clause alone, it also considered abortion rights as they arose under the equal protection clause of the Iowa Constitution.[105] On the issue of equal protection, the *PPH II* court remarked that "[l]iberty and equality are intertwined,"[106] finding that the right to abortion was implicit in the concept of ordered liberty.[107]

The *PPH IV* court did little in the way of substantive logical work to explain why its earlier determination of abortion rights flowing from the due process and equal protection clauses was flawed. Instead, it looked to other states, claiming that its decision in *PPH II* stood "virtually alone, both inside and outside Iowa" on the grounds that it seated a constitutional right to abortion in the due process clause.[108] The court gave remarkably short shrift to *Roe* in this portion of its discussion, making no mention of the fact that *Roe* did exactly what it claimed *PPH II* was alone in doing, and making no comment on the fact that *Roe* was still binding precedent at the time that the *PPH IV* court issued its decision.[109] For a court that emphasizes its right and duty to conduct "independent interpretation[s]" of its own constitution, the finger-pointing at how other states have treated their due process clauses is hardly compelling.[110] The *PPH IV* court then examined the text of the

103. *PPH II*, 915 N.W.2d at 233 (quoting State v. Hernandez-Lopez, 639 N.W.2d 226, 237 (Iowa 2002)). Despite this similarity, the *PPH II* court stated plainly that it reserved and guarded its right to differ from the U.S. Supreme Court and conduct independent interpretations of the Iowa Constitution. *Id.* (citing Hensler v. City of Davenport, 790 N.W.2d 569, 579 n.1 (Iowa 2010)).

104. *Id.* at 237 (quoting McQuistion v. City of Clinton, 872 N.W.2d 817, 832 (Iowa 2015)).

105. *Id.* at 244–46 ("Although not required, [the equal protection clause] can serve to cast a greater light of understanding on a divisive issue in society.").

106. *Id.* at 244.

107. *Id.* at 245.

108. *PPH IV*, 975 N.W.2d 710, 737 (Iowa 2022).

109. *Dobbs*, which overturned *Roe*, was delivered June 24, 2022, while *PPH IV* was delivered June 17, 2022. Though the outcome of *Dobbs* was, by this point in time, no means a surprise, the absence of a more thorough treatment of *Roe*, which, as stated above, was binding at the time, is surprising. Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022); *PPH IV*, 975 N.W.2d 710. *See generally* Kevin Breuninger, *Supreme Court Says Leaked Abortion Draft is Authentic; Roberts Orders Investigation Into Leak*, CNBC, https://www.cnbc.com/2022/05/03/supreme-court-says-leaked-abortion-draft-is-authentic-roberts-orders-investigation-into-leak.html (May 3, 2022, 2:40 PM) [https://perma.cc/S8US-JU5G].

110. *PPH IV*, 975 N.W.2d at 745–46.

Iowa Constitution and found no literal support for its reading of the due process clause in *PPH II* as conferring a right to abortion.[111] It went a step further in considering the state's history; there, it found "no support for abortion as a fundamental constitutional right in Iowa."[112] This is a whataboutism on the part of the court; by focusing in infinitesimal detail on the text of the constitution and considering only the history of the state, the court manages to avoid actually grappling with the logic of *PPH II*'s finding. In essence, the court in *PPH IV* is saying "we haven't approved of it historically, and we don't see abortion in the constitution, so it must not be a right." The question-begging on the part of the *PPH IV* court is lazy at best and disingenuous at worst.

The court conducts the same microscopic analysis with respect to its consideration of equal protection. Quoting from the dissent[113] in *PPH II* and adducing a single law review article, the court astutely observed that "[t]he relationship between abortion and women's quest for equal participation in society is more complicated than *PPH II* recognized."[114] Armed with these citations, the court reasoned that an equal protection clause is fundamentally unable to confer any right to abortion because "[e]qual protection requires treating similarly situated people alike," and women and men are not similarly situated.[115] By taking as narrow a view as the *PPH IV* court does, it is impossible *not* to conclude that men and women are not similarly situated with respect to their independent capacities to bear children. However, an equally plausible and far more compelling view of the equal protection issue exists: restrictions on abortion are tantamount to the conscription of women, and women alone, into uncompensated service to the State.[116] Why the court chose to adopt the narrower view, even after acknowledging the complexity and scope of abortion, is unclear, but taken in conjunction with the other rhetorical exercises in which the *PPH IV* court engaged, a presumption of judicial activism is difficult to rebut.

111. *PPH IV*, 975 N.W.2d at 739–40.

112. *Id.* at 740.

113. *Id.* at 744. At the risk of being repetitive, a dissent, like a concurrence, does not constitute binding precedent. *See supra* note 81.

114. *PPH IV*, 975 N.W.2d. at 744 (citing Kristina M. Mentone, *When Equal Protection Fails: How the Equal Protection Justification for Abortion Undercuts the Struggle for Equality in the Workplace*, 70 FORDHAM L. REV. 2657, 2659 (2002)).

115. *See id.* (quoting *PPH II*, 915 N.W.2d 206, 258 (Iowa 2018) (Mansfield, J., dissenting)).

116. Katherine C. Sheehan, *Toward A Jurisprudence Of Doubt*, 7 UCLA WOMEN'S L.J. 201, 207 & n.15 (1997).

IV. *PPH IV* IS A HARBINGER OF TROUBLED WATERS TO COME

To say that the implications of this case are significant is a gross understatement. On the narrowest level, *PPH IV* represents a repeal of rights previously granted to Iowa citizens. It is a moving of the goalposts as far as abortion-related legislation in Iowa is concerned. By applying only the undue burden test,[117] rather than strict or intermediate scrutiny, the Iowa Supreme Court has made it unequivocally easier to further regulate and interfere with abortions in Iowa. One level of abstraction higher, it serves as a bellwether of the court's comfort with and proclivity for eradicating citizens' rights. Moving further out still, the Iowa Supreme Court has dealt serious harm to its legitimacy and credibility. It has also continued to reinforce its disdain for the legislature, upholding instead a policy of judicial activism which ought to be deeply concerning to citizens on both sides of the aisle.

As noted before, this decision came less than a month before the Supreme Court of the United States issued its ruling in *Dobbs*. The result, that abortion has lost constitutional protections under both the Federal and the Iowa Constitution, has paved the way for Iowa to restrict abortion as it sees fit. It has been observed that "[i]n the wake of *Dobbs*, the abortion fight will move to state courts and legislatures," and "[s]tate supreme courts will be the new battleground on which abortion rights will be fought."[118] Unfortunately, with respect to the judiciary, the battle has already been fought and lost in Iowa. The only hope for Iowa residents is "to seek to affect the legislative process by influencing public

117. *Roe* found a fundamental privacy right in abortion decisions, requiring a "compelling state interest" in order to limit such decisions. Roe v. Wade, 410 U.S. 113, 155 (1973). Subsequently, *Casey* promoted an undue burden test in determining whether state regulations posed a substantial obstacle to women seeking abortions. Planned Parenthood v. Casey, 505 U.S. 833, 876–79 (1992). The undue burden test is much less stringent, requiring merely a showing that "the purpose or effect [of the restriction] is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability," but shifting the burden of doing so from the State to the individual raising the constitutional challenge. *Id.* at 878.

118. Yvonne Lindgren, Dobbs v. Jackson Women's Health *and the Post-*Roe *Landscape*, 35 J. AM. ACAD. MATRIM. LAWS. 235, 267 (2022). Florida, Michigan, and Kentucky were the first states in which state supreme courts were asked to determine whether abortion is protected under state constitutional provisions. *Id.* In 2019, the Kansas Supreme Court found abortion to be protected under the Kansas Constitution; subsequently, "abortion opponents put the issue on the ballot, asking Kansas voters to approve an amendment that would specifically provide that abortion was not protected under the state's constitution. In a surprising upset, voters in Kansas"—one of the most traditionally conservative states in the country—"voted down the amendment in a landslide victory." *Id.* at 267–68.

opinion, lobbying legislators, voting, and running for office."[119] There is, of course, still an opportunity for residents to restore these lost abortion rights: "Michigan and Vermont are working toward statewide votes to create constitutional protections for reproductive freedom to essentially override legislatures that do not represent the will of the majority of residents."[120] Missouri also "allows residents to put constitutional amendments directly on the ballot."[121]

By failing to adhere to stare decisis in *PPH IV*, the Iowa Supreme Court has made clear that it will not hesitate to contradict itself without reason. Stare decisis is a powerful principle, and the benefits it offers to citizens (and the court) are numerous. It prevents the erosion of liberties, representing, to some extent, a crystallization of established rights that serves to indicate to individuals that they can indeed rely on the choices that the court makes. Stare decisis cuts against judicial activism or presumption of the same, helping to prevent biases from creeping into decisions around hot-button issues and eliminating a source of public antipathy for courts' decisions not to overrule certain precedents. Finally, stare decisis preserves the dignity of the court; a court that issues a decision and then overrules that decision almost immediately thereafter appears to be far less competent than one that carefully and thoughtfully reaches and authors its decisions, especially if the former court overturns its precedent regularly.

The *PPH IV* court threw these considerations out the window. With what is a myopic rubber-stamp judiciary that espouses antiquated views, nothing remains to protect Iowa citizens' fundamental freedoms from further erosion. The reasoning that the *PPH IV* court used to justify its decision is incredibly dangerous; it is readily applied to any variety of liberties currently enjoyed by Iowa citizens that are not federally protected. The court's inclination to dismiss stare decisis considerations marks the beginning of a slippery slope. Any practice or trend from the state's past could be brought back on the grounds that it was not explicitly and expressly treated in the constitution and that it had been once before, so it should be again. Any legal fiction could be spun by the court and passed off as justification for abandoning prior precedent.

PPH IV calls into question the legitimacy of the Iowa Supreme Court. The readiness with which it engaged in almost entirely naked judicial

119. *Id.* at 268–69 (quoting Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 289 (2022)).

120. *Id.* at 268.

121. *Id.* (citing Summer Ballentine, *Missouri High Court: Referendum Laws Hinder Voters' Rights*, AP NEWS (Feb. 8, 2022, 6:12 PM), https://apnews.com/article/voting-rights-abortion-health-legislature-missouri-362a4066bfb8766d486cec24c59ab9b9 (describing No Bans on Choice v. Ashcroft, 638 S.W.3d 484 (Mo. 2022)).

activism, offering a minimal degree of support for its decision, rattles the public's trust in an institution that is supposed to be anti-reactionary, logical, and consistent. Without this trust, the court is nothing but another arm of the political machine, susceptible to infiltration by politics and partisanship, which does nothing to attempt to balance the powers of the legislative and executive branches and ensure that the laws of the land are fairly and equitably enforced. With respect to a decision not to follow precedent, a dissenting opinion in *Dobbs* argued that "the American public . . . should never conclude that its constitutional protections hung by a thread—that a new majority, adhering to a new 'doctrinal school,' could by 'dint of numbers' alone, expunge their rights."[122] Unfortunately, unilateral judiciary action of the kind present in *PPH IV* leaves the public with just such an apprehension and implies that a future may be coming where citizens live subject to tit-for-tat rule by administrations that work to feverishly undo the decisions of their predecessors in a truly Sisyphean effort.

V. CONCLUSION

PPH IV represents bad law, plain and simple. The logic and reasoning deployed by the court are flimsy, and it fails to properly address the issues that it raises with the decision it overrules. Its treatment of the Iowa Constitution is perfunctory, and it does nothing to rein in an overzealous legislature. Instead, it implicitly blesses logrolling, suggesting that lawmakers in Iowa can try and try again to enact laws irrespective of the constitutional implications of such laws, so long as they manage to pass said laws at the right time when the right people are on the bench. The court irreparably distorts stare decisis, presenting the illusion of reasoned protection with none of the actual benefits.

Perhaps even more alarming, though, is the policy that *PPH IV* stands for. It is a display of force from the Iowa Supreme Court, a flagrant spurning of the constitutional principles and legal theory which demands and ensures order and stability in the judiciary, to indicate to the citizens of Iowa that the court will not be bound or slowed by any sort of principle or theory, and that it will engage in as much judicial activism as it sees fit and necessary to conduct. The citizenry is put on notice with this decision that it can look forward to partisanship and power and control struggles in its courts for the foreseeable future, and unlike its elected officials, the authors of this decision cannot be voted out or otherwise held

122. Lindgren, *supra* note 118, at 247 (quoting *Dobbs*, 597 U.S. at 417 (joint opinion of Breyer, Sotomayor, and Kagan, JJ., dissenting)).

accountable for their actions by the people whose lives those actions affect.

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