THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., on behalf of itself and its patients, **Petitioner,** **vs.** **KIM REYNOLDS ex rel. , STATE OF IOWA et al.,** **Respondents.**	**Equity Case No. EQCE084508** **RULING ON MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Before the Court are Cross Motions for Summary Judgment filed on December 19, 2019. Each party has filed a Resistance, both on January 21, 2020. Petitioner filed a Reply on February 10, 2020. The parties also filed a Joint Statement of Undisputed Facts. A hearing on the Motions was held on February 14, 2020. Petitioner, Planned Parenthood of the Heartland ("PPH"), was represented by Julie Murray and Rita Bettis Austen. Respondents, Kim Reynolds and the State of Iowa were represented by Attorney Thomas Ogden.

The Court has reviewed the file, the applicable written submissions of the parties, and heard the arguments of counsel. The matter is fully submitted. The Court finds that Sections 99 and 100 of House File 766 violates PPH's right to equal protection under the law and therefore that the Act is unconstitutional.

FACTUAL AND PROCEDURAL HISTORY

A. Statement of Facts

The Iowa Department of Human Services ("IDHS") administers the Community Adolescence Pregnancy Prevention ("CAPP") and Service Program, and the Iowa Department of Public Health ("IDPH") administers the Personal Responsibility Education Program (PREP).[1] The money for these programs come from federal grants which are then distributed to Iowa entities after a competitive bidding process.[2] The grantees use the state-selected curricula to provide sex education and teen pregnancy prevention services to the Iowa communities they serve.[3] Grantees must implement the curricula selected by the state and are required to comply with reporting and other documentation requirements for the CAPP and PREP programs.[4] CAPP and PREP funding may not be used for abortion-related activities.[5]

PPH is a reproductive health services provider with eight locations in Iowa and two locations in Nebraska.[6] PPH provides abortions and promotes access to abortions in Iowa and upon patient request, all PPH health centers refer patients for abortion care.[7] In 2017, PPH provided 95% of all abortions in Iowa.[8] PPH received 32% of its revenue from "patient services" including abortions in 2018.[9] PPH is an "ancillary organization" of Planned Parenthood North Central States, which is an affiliate of Planned Parenthood Federation of America.[10] Both of those organizations

[1] Joint Stip. ¶ ¶ 5-6.
[2] Joint Stip. ¶ ¶ 8-11.
[3] Joint Stip. ¶ 25
[4] Joint Stip. ¶¶ 26, 30.
[5] Joint Stip. ¶ 32.
[6] Joint Stip. ¶ 12.
[7] Joint Stip. ¶¶15-18.
[8] Joint Stip. ¶ 15.
[9] Joint Stip. ¶¶ 19, 21.
[10] Joint Stip. ¶¶ 22-23.

also advocate for access to abortion services.[11] PPH had been a grantee of CAPP funding since 2005 and a grantee of PREP funding since 2012.[12]

On April 27, 2019, the Iowa legislature passed an appropriations bill for Health and Human Services.[13] On May 3, 2019, Governor Reynolds signed into law Sections 99 and 100 of House File 766 (hereinafter, "the Act").[14] The Act provides in relevant part:

> Sec. 99. ADMINISTRATION OF PERSONAL RESPONSIBILITY EDUCATION PROGRAM AND SEXUAL RISK AVOIDANCE EDUCATION GRANT PROGRAM FUNDS.
> 1. Any contract entered into on or after July 1, 2019, by the department of public health to administer the personal responsibility education program as specified in 42 u.s.c. §713 or to administer the sexual risk avoidance education grant program authorized pursuant to section 510 of Tit. v of the federal Social Security Act, 42 u.s.c. §710, as amended by section 50502 of the federal Bipartisan Budget Act of 2018, Pub. L. No. 115-123, and as further amended by division S, Title VII, section 701 of the federal Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, shall exclude as an eligible applicant, any applicant entity that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that provides or promotes abortions or maintains or operates a facility where abortions are performed. However, the prohibition specified in this section shall not be interpreted to include a nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides personal responsibility education program or sexual risk avoidance education grant program services but does not perform abortions or maintain or operate as a facility where abortions are performed…
>
> Sec. 100. AWARD OF COMMUNITY ADOLESCENT PREGNANCY PREVENTION AND SERVICES PROGRAM GRANT FUNDS.

[11] Joint Stip. ¶¶ 22, 23.
[12] Joint Stip. ¶ 24.
[13] Joint Stip. ¶ 37.
[14] Joint Stip. ¶ 37.

> 1. Any contract entered into on or after July 1, 2019, by the department of human services to award a community adolescent pregnancy prevention and services program grant using federal temporary assistance for needy families block grant funds appropriated to the department shall exclude from eligibility any applicant, grantee, grantee contractor, or grantee subcontractor that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that provides or promotes abortions or maintains or operates a facility where abortions are performed.
> 2. The eligibility exclusion specified in subsection 1 shall not be interpreted to include a nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides community adolescent pregnancy prevention program services but does not perform abortions or maintain or operate as a facility where abortions are performed.

B. Procedural History

At the time of the Act's adoption, IDHS was overseeing the bidding processes to award a new round of CAPP and PREP funding, with contracts for project periods to begin on July 1 and August 1, 2019.[15] PPH had submitted multiple applications to IDHS to continue to provide CAPP services in Des Moines, Lee, Linn, Polk, and Woodbury Counties.[16] PPH also submitted an application to IDPH to continue providing PREP services in Polk, Pottawattamie, and Woodbury Counties.[17]

PPH filed a lawsuit in this Court against the government officials responsible for enforcing the Act (collectively, "the State") and sought a temporary injunction.[18] PPH challenged the portion

[15] Joint Stip. ¶¶ 35, 39–40.
[16] Joint Stip. ¶ 42.
[17] Joint Stip. ¶ 43.
[18] Joint Stip. ¶ 38

of the law that restricts appropriation of the CAPP and PREP funds.[19] This Court issued a temporary injunction in May 2019.[20]

Both parties have now filed Motions for Summary Judgment. A hearing was held on these matters on February 14, 2020.

STANDARD OF REVIEW

Pursuant to Rule 1.981 of the Iowa Rules of Civil Procedure, summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[21] A material issue of fact is a factual dispute that might affect the outcome of the suit and is considered genuine only if it is such that a reasonable jury could return a verdict in favor of the nonmoving party.[22] The Court considers pleadings, depositions, answers to interrogatories, admissions on file, and affidavits in determining whether summary judgment is proper.[23] The Court views all evidence in the light most favorable to the resisting party, affording him or her all reasonable inferences that can be drawn from the record.[24] If, based on the evidence presented, reasonable minds could differ on how the issue should be resolved, summary judgment is not appropriate.[25] The parties in this case have stipulated to a statement of undisputed facts.[26]

LEGAL ANALYSIS

In its Motion for Summary Judgment, PPH contends that the Act: 1) Violates PPH's state constitutional right to equal protection under the law and; 2) unconstitutionally conditions funding on the abandonment of state constitutional rights to free speech, free association, and substantive

[19] Joint Stip. ¶ 38
[20] Joint Stip. ¶ 38
[21] *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875 (Iowa 1996).
[22] *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992).
[23] Iowa R. Civ. P. 1.981(3).
[24] *Wernimont v. Wernimont*, 686 N.W.2d 186, 189 (Iowa 2004).
[25] *Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996).
[26] See appendix and Joint Stipulation of Undisputed Facts.

due process. The State, in its Cross-Motion for Summary Judgment, counters that 1) excluding abortion providers from eligibility as CAPP and PREP grantees does not impose an unconstitutional condition; 2) PPH does not have a fundamental right to perform abortions; 3) excluding abortion providers from eligibility as CAPP and PREP grantees does not violate PPH's right to freedom of speech and association; 4) excluding abortion providers from eligibility as CAPP and PREP Grantees does not violate the equal protection clause and; 5) the challenged law is not a bill of attainder. The Court need not address all the issues raised as it finds that the Act violates PPH's right to equal protection under the law and therefore that the Act is unconstitutional.

I. Equal Protection

The equal protection clause of the Iowa Constitution states "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."[27] Iowa's equal protection clause "is essentially a direction that all persons similarly situated should be treated alike."[28]

"To allege a viable equal protection claim, plaintiffs must allege that the defendants are treating similarly situated persons differently."[29] Determining whether classifications involve similarly situated individuals is generally intertwined with whether the identified classification has any rational basis.[30]

In this instance, legal abortion providers are similarly situated to non-abortion providers who seek a government grant that has nothing to do with abortions. Recipients of the PREP and

[27] Iowa Const. art. I, § 6.
[28] *Varnum v. Brien*, 763 N.W.2d 862, 878–79 (Iowa 2009) (quoting *Racing Ass'n of Cent. Iowa v. Fitzgerald* (*RACI*), 675 N.W.2d 1, 7 (Iowa 2004)).
[29] *State v. Doe*, 927 N.W.2d 656, 662 (Iowa, 2019) (quoting *King v. State*, 818 N.W.2d 1, 24 (Iowa 2012)).
[30] *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 32 (Iowa 2019) (citing *State v. Dudley*, 766 N.W.2d 606, 616 (Iowa 2009)).

CAPP funds must rely on existing curricula that has been selected by the state agencies administering the programs, as well as follow all documentation and reporting requirements. Promoting and or performing abortions are not permitted purposes of the PREP and CAPP programs.

The parties initially agree the Court should review the Act using the rational basis test. PPH also argues that should the Court find the legislature had a plausible policy reason, the Court should then review the Act using strict scrutiny because the Act impinges on their fundamental rights of free speech, free association, and abortion. The State argues the Court should apply the rational basis test because there is no fundamental right to perform abortions. The Court finds that PPH prevails under the rational basis test. Because the Act cannot pass the rational basis test, it surely cannot pass the heightened standard of strict scrutiny.

The rational basis test requires PPH show the statute is unconstitutional and "must negate every reasonable basis upon which the classification may be sustained."[31] "In deference to the legislature, a statute will satisfy the requirements of the equal protection clause 'so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decision-maker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.'"[32]

The rational basis test, while deferential, "'is not a toothless one in Iowa."[33] "[T]his court engages in a meaningful review of all legislation challenged on equal protection grounds by applying the rational basis test to the facts of each case."[34] "The rational basis test defers to the

[31] *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980).
[32] *Varnum,*763 N.W.2d at 879 (citing *RACI*, 675 N.W.2d at 7) (internal citations omitted).
[33] *Id.* (quoting *RACI*, 675 N.W.2d at 9).
[34] *Id.* (citations omitted).

legislature's prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision and, again, a merely rational relationship between the classification and the policy justification."[35]

> We use a three-part analysis when reviewing challenges to a statute under article I, section 6. "First, we must determine whether there was a valid, 'realistically conceivable' purpose that served a legitimate government interest." *Residential & Agric. Advisory Comm., LLC*, 888 N.W.2d at 50 (quoting McQuistion, 872 N.W.2d at 831). "To be realistically conceivable, the [statute] cannot be 'so overinclusive and underinclusive as to be irrational.' " *Id.* (quoting *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 459 (Iowa 2013)). "Next, the court must evaluate whether the 'reason has a basis in fact.' " *McQuistion*, 872 N.W.2d at 831 (quoting RACI, 675 N.W.2d at 7–8). "[A]lthough 'actual proof of an asserted justification [i]s not necessary, ... the court w[ill] not simply accept it at face value and w[ill] examine it to determine whether it [i]s credible as opposed to specious." *LSCP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 860 (Iowa 2015) (alteration in original) (quoting *Qwest Corp. v. Iowa State Bd. of Tax Review*, 829 N.W.2d 550, 560 (Iowa 2013)); see also *King v. State*, 818 N.W.2d 1, 30 (Iowa 2012) ("[W]e have continued to uphold legislative classifications based on judgments the legislature could have made, without requiring evidence or 'proof' in either a traditional or a nontraditional sense.").[36]

The State claims that there are multiple justifications the legislature could have used in creating the classifications in this statute. "In order to evaluate [these] relationships, it is helpful to consider whether the legislation is over-inclusive or under-inclusive."[37] The first rationale argued is that the state could be making a value judgment favoring childbirth over abortion.[38] This potentially is a legitimate government interest. However, this legislation does nothing to serve that interest. Neither PREP nor CAPP have anything to do with abortion or childbirth. The classification the legislation makes here makes no difference as to grants having nothing to do with

[35] *Id.*
[36] *AFSCME,* 928 N.W.2d at 32–33.
[37] *Varnum*, 763 N.W.2d at 899 (citing *RACI*, 675 N.W.2d at 10 (considering under-inclusion and over-inclusion even in the rational basis context)).
[38] *See Maher v. Roe*, 432 U.S. 464, 474, (1977).

favoring childbirth over abortion. All grant recipients are required to rely on the curricula that the state provides. The grant money cannot be used for any abortion-related services.

This classification is irrationally under-inclusive in achieving the suggested government interest. The Act creates an exception for any "nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides personal responsibility education program or sexual risk avoidance education grant program services but does not perform abortions or maintain or operate as a facility where abortions are performed." The Act allows nonprofit health care delivery systems to remain eligible for PREP and CAPP funding even if they: promote abortions, contract or subcontract with an entity that performs or promotes abortions, or choose to become an affiliate of any entity that performs or promotes abortions, and/or regularly make referrals to an entity that provides or promotes abortions, or maintains or operates a facility where abortions are performed. This Act effectively singles out PPH while still allowing other possible recipients of the grants to provide a vast array of abortion-related services, such as promoting abortion or even, possibly, referring patients to PPH for an abortion procedure. This does not match the value judgment favoring childbirth over abortion.

This classification is simultaneously irrationally over-inclusive in its efforts to achieve the suggested government interest favoring childbirth over abortion. Under the Act, PPH could completely stop all abortion-related activities in Iowa and still be unable to receive PREP or CAPP funding due to the fact that they are associated with entities that perform abortion-related activities in other states. However, the Court notes again that other possible grantees that are a distinct location of a "nonprofit health care delivery system" could still receive the grants while also being able to promote abortions and refer patients for abortions in Iowa. The government interest of

favoring childbirth over abortions is again not served in this instance and is not a realistically conceivable or valid purpose for this legislation.

The State claims another possible government interest is the legislature concluded that it does not want organizations for whom abortion represents a significant revenue stream to receive government funds to provide sex education and pregnancy prevention programming to Iowa teens. The State argues an abortion provider who is "less scrupulous" could exploit the relationships developed through PREP and CAPP to encourage abortion over childbirth.

This purpose too is irrationally under-inclusive to the purported interest at issue. Under the Act, an eligible "nonprofit healthcare delivery system" facility could still receive grants while also promoting abortions; contracting, subcontracting or affiliating with an entity that performs or promotes abortions; and/or importantly, could be less scrupulous, and use the contacts made through the grants to regularly make referrals to an entity that provides or promotes abortions. Put differently, an exempt nonprofit healthcare delivery system could themselves be the less scrupulous party and use points of contact made from the grant funding to promote abortions or refer clients/patients to PPH. The Act omits mention of other possible less scrupulous providers that the Iowa legislature could find to be an undesirable provider of Iowa teen sexual education and teen pregnancy prevention programming. Additionally, there is no clear basis in fact that providers of legal abortions or those who promote legal abortion are or would use these contacts less scrupulously than anyone else.

This justification is also irrationally over-inclusive. Again, PPH could stop all abortion-related activities and still not qualify for funding because they associate with other entities outside of the state of Iowa that perform abortion-related activities. All the while, other possible recipients of the grants that are "nonprofit healthcare delivery system" facilities could still promote or refer

patients for abortions in Iowa.

Finally, the State argues that legislature could have concluded that it simply does not want to indirectly subsidize the work of organizations who perform or promote abortions. Here again, the reasoning is both over- and under-inclusive. It is under-inclusive because state funds could still subsidize an eligible "nonprofit healthcare delivery system" facility that promotes abortions; contracts or subcontract or affiliates with an entity that performs or promotes abortions; and/or regularly makes referrals to an entity that provides or promotes abortions. It is over-inclusive, yet again, because even if PPH did not do any abortion-related activity in Iowa, it could not receive this grant money under the Act because it affiliates with out-of-state entities that perform abortion-related activities. Meanwhile, other possible recipients of the grants that are "nonprofit healthcare delivery system" facilities could still promote or refer patients for abortions in Iowa.

CONCLUSION

The carved out exception for the "nonprofit healthcare delivery system" facilities undermines any rationale the State produces of not wanting to be affiliated with or provide funds to organizations that partake in any abortion-related activity. The Act has no valid, 'realistically conceivable' purpose that serves a legitimate government interest as it is both irrationally over-inclusive and under-inclusive. The Act violates PPH's right to equal protection under the law and is therefore unconstitutional.

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the Petitioner's Motion for Summary Judgment is **GRANTED.** the Respondents are enjoined from implementing and enforcing the Act. The Petitioner's bond is exonerated. Respondents' Motion for Summary Judgment is **DENIED**.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCE084508	PLANNED PARENTHOOD OF THE HEARTLAND V KIM REYNOLDS

So Ordered

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa