IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Planned Parenthood of the Heartland, Inc., and Jill Meadows, M.D.,	)	
Petitioners,	)	**No. EQCV081855**
vs.	)	
Kim Reynolds ex rel. State of Iowa, and Iowa Board of Medicine,	)	**RULING ON MOTIONS FOR SUMMARY JUDGMENT**
Respondents.	)	

This matter is before the Court on Petitioners' and Respondents' Cross-Motions for Summary Judgment, Resistances, and Reply thereto. Having considered the file, relevant case law, and arguments of the parties, the Court finds a hearing on the motions is not necessary and hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

This action brought by Petitioners, Planned Parenthood of the Heartland, Inc. (hereinafter PPH) and Jill Meadows, M.D., challenges the constitutionality of recent legislation passed by the Iowa Legislature, which imposed restrictions on abortions.

Much of the factual and procedural background relevant to this action was set forth by the Court in its June 30, 2020 Temporary Injunction Ruling (hereinafter *TI Ruling*). The Court has reviewed the record in its entirety and now sets forth relevant portions of the factual and procedural background from its previous ruling, in addition to setting forth the factual and procedural history of this action since June 2020.

In the early morning hours of Sunday, June 14, 2020, the Iowa Legislature passed Amendment H-8314 (hereinafter the Amendment) to House File (hereinafter HF) 594, 88th Gen. Assemb. (Iowa 2020), to be codified at Iowa Code § 146A.1(1) (2020), under the Iowa Constitution. *P. Exhibit A*, attached to *Petition*. Text for the Amendment was released on the evening of Saturday, June 13, 2020. The Amendment was part of an existing bill related to the withdrawal of life-sustaining procedures from minors. Iowa Governor Kim Reynolds signed the Amendment into law on June 29, 2020. The Amendment was intended to go into effect on July 1, 2020 (absent injunctive relief), and Petitioners allege it would require women seeking an abortion to first receive an ultrasound and certain state-mandated information, and then wait at least 24 hours before returning to the health center to have an abortion. Respondent Iowa Board of Medicine would be charged with administering the Amendment and disciplining individuals licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148, including licensees who violate a state statute.

Petitioners provide, among various other health care services, abortion procedures, including in Johnson County, Iowa. Petitioner PPH provides abortions up to 20 weeks and 6

days, as measured from the first day of a patient's last menstrual period (hereinafter "lmp"), which is, according to Petitioners, weeks before a fetus is potentially viable. Petitioner Dr. Jill Meadows is the medical director of PPH, and Dr. Meadows provides reproductive health care to PPH patients, including medication and procedural abortion.

Petitioners filed a Petition for Declaratory Judgment and Injunctive Relief with this Court on June 23, 2020. Petitioners allege that the Amendment flagrantly defies clear and binding precedent recognizing that Iowans have a protected liberty interest in terminating an unwanted pregnancy, including based on the Iowa Supreme Court's 2018 decision to strike from Iowa Code § 146A.1(1) a 72 hour mandatory delay requirement. *Petition* at ¶ 5 (citing *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018) (hereinafter *PPHI*)).

Petitioners assert multiple arguments in support of their Petition:

(1) Petitioners assert that Iowa law already requires physicians to obtain a patient's informed consent before performing any medical procedure, including a comprehensive informed consent process for abortion, available on the day of the procedure, which provides patients with all information necessary for them to fully understand the risks and benefits of abortion and alternatives to abortion. *See id.* at ¶¶ 22-25.

(2) Petitioners assert that Iowa precedent, *PPHI*, was decided in light of the Iowa Legislature's 2017 passage of a law requiring physicians to obtain written certification from a pregnant woman that she has completed a number of steps at least 72 hours prior to an abortion procedure. The Iowa Supreme Court found the law unconstitutional. *Id.* at ¶¶ 26-36 (citing *PPHI*, 915 N.W.2d at 237-38). Petitioners contend that *PPHI* is controlling, and in light of the *PPHI* case, Respondents are precluded and collaterally estopped from re-litigating materially identical issues already decided in *PPHI*.

(3) Petitioners assert the Amendment at issue in this case violates the single-subject rule of the Iowa Constitution because it was added to an unrelated bill initially titled, "An Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child," which limits courts from authorizing the withdrawal of life-sustaining care from a minor over the parent's or guardian's objection. *Id.* at ¶¶ 4, 37. Petitioners contend that, despite taking no action on the bill since March 2019, the Iowa Senate took up the measure on the last evening of the 2020 legislative session, and superficially amended the measure by adding numbering to create subsections and defining "minor." Petitioners contend that lawmakers expressed concern that the purely superficial changes were being made for the sole purpose of sending the bill back to the Iowa House so that another last minute amendment could be introduced, and indeed, when HF 594 returned to the Iowa House late in the evening, the Amendment was immediately introduced. Petitioners contend lawmakers and Iowa voters only learned of the existence of the Amendment mere hours before it was voted on, which resulted in surprise and an abnormal legislative process without public input or the ability for Iowa citizens to be fairly informed. *Id.* at ¶¶ 37-56.

(4) Petitioners assert numerous negative impacts of the Amendment on women including an unwarranted intrusion into a woman's personal privacy and autonomy; tangible costs; a threat to confidentiality; delays greater than 24 hours; a threat to patients' health; further stigmatization and anxiety; difficulty having a medication abortion; and, for some, being prevented from obtaining an abortion in Iowa altogether. Petitioners also express concerns regarding the impact of the Amendment on vulnerable populations: people with low incomes; victims of domestic violence and those whose pregnancy is the result of rape or other forms of abuse; those who face medical risks from pregnancy that do not fall within the Amendment's narrow exceptions; those whose pregnancies involve a severe fetal anomaly; and women of color, as they comprise a disproportionate share of PPH's abortion patients. Petitioners point out additional harm may be caused during the ongoing COVID-19 public health emergency, e.g., reducing visits to health care facilities. *Id.* at ¶¶ 57-80. Petitioners contend, "By imposing a delay on abortion—a delay that the Legislature does not impose on any other medical procedure—the Amendment conveys that the Legislature believes women are not competent to make considered, appropriate medical decisions for themselves and their families, and must instead be forced by the state to reconsider their medical decisions." *Id.* at ¶ 78.

Specifically, Petitioners set forth four counts in their Petition: (I) Single-Subject Violation; (II) Right to Due Process; (III) Right to Equal Protection; and (IV) Inalienable Rights of Persons. Petitioners' prayer for relief sought a declaration that Section 2 of HF 594 violates the Iowa Constitution, and sought an injunction enjoining Respondents from enforcing Section 2 of HF 594. *Id.* at ¶¶ 81-98. "By imposing these medically unnecessary, onerous, and harmful requirements, the Amendment unlawfully violates the rights of Petitioners, their patients, and all Iowans under the Iowa Constitution." *Id.* at ¶ 8.

Also on June 23, 2020, Petitioners filed an Emergency Motion for Temporary Injunctive Relief. Petitioners alleged, absent injunctive relief from the Court, the Amendment will severely and unconstitutionally restrict all women's ability to access abortion by forcing them to make an additional, medically unnecessary trip to a health center; regardless of how certain they are in their decision and without taking into account various other individual life circumstances. Petitioners argued that they have established a likelihood of success on their claims, including that the Amendment was passed in violation of the Iowa Constitution's single-subject rule and Due Process and Equal Protection clauses. Petitioners argued that they and their patients will be substantially injured and that there is no adequate legal remedy available.

Respondents resisted arguing that PPH does not meet the third-party standing requirements to assert the rights of abortion patients; PPH has not shown that it is likely to succeed on the merits of its single-subject rule, due process, or equal protection claims; and with respect to issue preclusion, HF 594 is not identical to the law struck down in *PPHI* and the Court need not reach the merits of the due process and equal protection claims. Petitioners replied arguing that abortion providers may sue to challenge abortion restrictions and to assert constitutional rights on their patients' behalf; and with respect to the single-subject rule, Respondents have not shown how the germaneness of the Amendment is fairly debatable and most single-subject challenges are not such a blatant violation as is present here.

Telephonic hearing on Petitioners' Emergency Motion for Temporary Injunctive Relief took place on June 29, 2020.

The Court issued its ruling on the matter on June 30, 2020, in which it granted Petitioners' Emergency Motion for Temporary Injunctive Relief and temporarily enjoined Respondents from enforcing Section 2 of HF 594. The Court concluded Petitioners are permitted to assert their patients' rights in this case, and have third-party standing to pursue the claims stated in this case. *TI Ruling*. The Court further concluded that Petitioners have established a likelihood of success on their claim that the Amendment was passed in violation of the single-subject rule. With respect to the constitutional issues, the Court stated it is bound by Iowa precedent, including the standards clearly set forth by the *PPHI* Court. The Court further concluded that Petitioners and their patients will be substantially injured if the Court does not enjoin Respondents from enforcing the Amendment, and the balance of hardships warrants injunctive relief. Lastly, the Court concluded Petitioners clearly do not have an adequate legal remedy. The Court ordered Petitioners to immediately post bond in the amount of $500.00.

Respondents filed an Answer and Affirmative Defenses on July 13, 2020. Respondents denied all allegations adverse to them, including that the Amendment violates the Iowa Constitution, that there is any negative impact of the Amendment on Iowans seeking an abortion, and that Respondents are precluded from re-litigating the same issues. *Petition* at ¶¶ 4, 8, 35-36, 57-80; *Answer* at ¶¶ 4, 8, 35-36, 57-80. Respondents' affirmative defenses included lack of standing; failure to state a claim; laches, estoppel, and/or unclean hands; and any harm to Petitioners resulted from their own acts or omissions.

A nonjury trial is scheduled to commence January 18, 2022.

Petitioners filed the pending Motion for Summary Judgment on January 22, 2021. Petitioners ask this Court to permanently enjoin the Amendment, as it violates the Iowa Constitution in multiple ways. Petitioners argue they are entitled to summary judgment because the Amendment violates the Iowa Constitution's single-subject rule. Petitioners argue because the Amendment violates the single-subject rule, the Court need not reach the Due Process and Equal Protection claims. However, Petitioners argue, these claims constitute independent grounds for permanently enjoining the Amendment, under clear Iowa precedent *PPHI* and due to issue preclusion. In support of their Motion for Summary Judgment, Petitioners filed a Memorandum of Authorities (hereinafter *P. MSJ Memo.*), Statement of Undisputed Facts (hereinafter *P. SOF*), and Appendix (hereinafter *P. App.*).

Respondents filed the pending Cross-Motion for Partial Summary Judgment and a Resistance to Petitioner's Motion for Summary Judgment on February 9, 2021. Respondents argue the Amendment does not violate the single-subject requirement of the Iowa Constitution because it embraces one subject and matters properly connected to that subject; thus, Respondents argue it is entitled to summary judgment in *its* favor on this claim. Respondents further argue Petitioners are not entitled to summary judgment on their constitutional claims based on issue preclusion because the issues are not identical. In support of their Cross-Motion and Resistance, Respondents filed a Brief (hereinafter *R. MSJ Br.*), Statement of Undisputed

Facts (hereinafter *R. SOF*), Statement of Disputed Facts (hereinafter *R. SODF*), and Appendix (hereinafter *R. App.*).

Petitioners filed an unopposed Motion for extension of time to file a responsive brief, which the Court granted, giving Petitioners until March 18, 2021 to file a combined resistance and reply brief. At that time, Petitioners filed a combined Reply in further support of their Motion for Summary Judgment and a Resistance to Respondents' Cross-Motion for Partial Summary Judgment. Petitioners argue the Amendment does violate the single-subject requirement because it contains more than one subject, is indisputably not germane to the Act's other provisions, and in passing the Amendment, the Legislature resorted to precisely those legislative irregularities the single-subject rule exists to prevent. Petitioners further argue Respondents are precluded from relitigating the issues that were fully and finally adjudicated in *PPHI*. Petitioners state, Respondents do not argue, nor could they, that the 24-hour waiting period is *more* likely to improve decision-making than the 72-hour waiting period. *P. Reply* at 11 (emphasis in brief).

Respondents did not file a Reply.

The undisputed facts, when viewed in a light most favorable to the resisting parties, could be found as follows:

1. Petitioners provide abortions in Iowa. *P. SOF* at ¶ 1; *R. SODF* at ¶ 1.
2. Petitioner Jill Meadows is the medical director of Petitioner PPH. *P. SOF* at ¶ 2; *R. SODF* at ¶ 1.
3. PPH provides two methods of abortion: medication abortion, which uses medication alone to end a pregnancy in a process similar to a miscarriage, and procedural abortion, in which the uterus is emptied using instruments inserted through the cervix. *P. SOF* at ¶ 3; *R. SODF* at ¶ 1.
4. PPH provides medication abortion up until the first eleven weeks of pregnancy as measured from the first day of the last menstrual period (lmp), and procedural abortion up to 20 weeks, 6 days lmp. *P. SOF* at ¶ 4; *R. SODF* at ¶ 1.
5. PPH provides both medication and procedural abortion at two Iowa clinics: in Des Moines and Iowa City. Another four of PPH's health centers—in Ames, Cedar Falls, Council Bluffs, and Sioux City—provide only medication abortion. *P. SOF* at ¶ 5; *R. SODF* at ¶ 1.
6. With respect to abortion generally, Petitioners set forth "Operative Facts" in its Petition, which the Court recited in its TI Ruling without specifically adopting or confirming any of the facts. *Petition* at ¶¶ 16-21; *TI Ruling* at 2-3.
7. In its Answer, Respondents deny Petitioners' "Operative Facts" regarding abortion generally, stating either that Iowa law speaks for itself or that Respondents lack sufficient information to admit or deny the allegations and, thus, deny them. *Answer* at ¶¶ 16-21.
8. On June 29, 2018, the Iowa Supreme Court issued its decision in *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018), which considered the constitutionality of the Iowa Legislature's passage of Senate File 471 (codified at Iowa Code § 146A.1), requiring a 72-hour wait for women to obtain an abortion following initial consultation and satisfaction of certification prerequisites.

Petition at ¶¶ 26-28; *Answer* at ¶ 27; *P. SOF* at ¶ 8; *R. SODF* at ¶ 2; *R. MSJ Br.* at 2 (citing *PPHI*, 915 N.W.2d at 206).

9. The *PPHI* Court held that the previously enacted 72-hour waiting period violated the due process and equal protection rights under the Iowa Constitution. *Id.*
10. On June 14, 2020, the Iowa General Assembly passed House File 594, which amends two sections, with Section 2 amending Iowa Code § 146A.1 to read as follows: A physician performing an abortion shall obtain written certification from the pregnant woman of all of the following at least ~~seventy-two~~ twenty-four hours prior to performing an abortion (replacing the words "seventy-two" with "twenty-four"). *Petition* at ¶ 1; *Answer* at ¶¶ 1-2; *R. SOF* at ¶¶ 1, 4, 6; *R. App.* at 28-29.
11. Petitioners' current action challenges the validity of the Amendment to HF 594, to be codified at Iowa Code § 146A.1(1) (2020), under the Iowa Constitution. *Id.*
12. With respect to the 24-hour waiting period, the law has not changed since 2018. The law in Iowa remains as stated in *PPHI*. *TI Ruling* at 16.
13. Respondents assert, the fact that nothing has changed significantly since *PPHI* in 2018 is not material. Respondents state the only facts material to this action are facts related to the single-subject claim and issue preclusion claim. *P. SOF* at ¶ 26; *R. SODF* at ¶¶ 3-4.
14. In Petitioners' Statement of Undisputed Facts, they assert facts regarding the Amendment, the usual legislative process, the Amendment's legislative process, the timeline of events relating to the introduction and passage of the Amendment, and other abortion-related bills introduced in the 88th General Assembly. *P. SOF* at ¶¶ 27-72.
15. In response to these facts, Respondents state they "do not dispute Paragraphs 27 through 72 for purposes of this motion only, although most of the paragraphs contain facts that are not material to deciding Petitioner's single-subject claim or their issue preclusion claims." *R. SODF* at ¶ 4.
16. Regarding the circumstances surrounding the passage of the Amendment, HF 594 was first introduced into the Iowa House on March 4, 2019 and was not substantially revisited until June 13, 2020. *Bill History for House File 594*, IOWA LEGISLATURE, https://www.legis.iowa.gov/legislation/billTracking/billHistory?enhanced=true&ga=88&billName=HF594 (hereinafter *Bill History*); H. JOURNAL, 88th Gen. Assemb., at 388 (Iowa 2019) (hereinafter H. JOURNAL); *P. SOF* at ¶¶ 36-38.
17. On June 13, 2020, the second to last day of the Iowa legislative session, at 4:02 p.m., Sen. Schultz presented opening remarks on HF 594 – "Life Support for Minor" and introduced S-5151 as a "technical" amendment, adding numbering to create subsections and defining "minor" as the same definition as specified in section 599.1. *Senate Video (2020-06-13)*, IOWA LEGISLATURE, at 4:02 p.m., https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20200613085856120&dt=2020-06-13&offset=25405&bill=HF%20594&status=i (hereinafter *Senate Video*); *P. SOF* at ¶¶ 38-39; *R. App.* at 28.
18. At that time, HF 594 was titled: "An Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child." H. JOURNAL, at 758; S. JOURNAL, 88th Gen. Assemb., 2d Sess., at 841 (hereinafter S. JOURNAL); *P. SOF* at ¶ 56.

19. The Act prohibits a court from ordering "the withdrawal of life-sustaining procedures from a minor child over the objection of the minor child's parent or guardian, unless there is conclusive medical evidence that the minor child has died . . ." *R. SOF* at ¶ 5; *R. App.* at 28 (Act of June 29, 2020 § 1, ch. 1110, 2020 Iowa Acts 298 (codified at IOWA CODE § 144F.1 (2021))).
20. Discussion on this amendment followed, with remarks from Sen. Boulton, Sen. Petersen, and Sen. Jochum. The Senators expressed concern on the need for the technical change and delaying the legislative process. *Senate Video* at 4:02-4:16 p.m.
21. At approximately 4:16 p.m., the Senate passed the amendment by a vote of 32 to 17 and it was immediately messaged to the House. *Bill History*; *Senate Video* at 4:16 p.m.; S. JOURNAL, at 841-42; *R. App.* at 39-40.
22. At 10:18 p.m., Rep. Lundgren and Rep. Salmon introduced an amendment (H-8314) to the Senate amendment (H-8312), which requires a physician performing an abortion to obtain informed consent from the pregnant woman at least 24 hours before performing an abortion by replacing the words "seventy-two" with "twenty-four" in section 146A.1(1) of the Iowa Code. *House Video (2020-06-13)*, IOWA LEGISLATURE, at 10:18 p.m., https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20200613100758317&dt=2020-06-13&offset=598&bill=HF%20594&status=i (hereinafter *House Video*); *P. SOF* at ¶¶ 41-42; *R. SOF* at ¶ 6.
23. Discussion on the Amendment followed, with Rep. Meyer stating, "I'm very confused on this amendment. Somehow, we ended up with an abortion amendment on a limitations on life sustaining procedure [bill]. I'd ask the Speaker if this amendment is in fact germane because it doesn't appear to even relate to anything in the bill." *House Video* at 10:21 p.m.
24. The Speaker of the House responded, "Representative Meyer, your point is well taken, the amendment is not germane." *Id.*
25. Upon the Court's information and belief, the Speaker of the House is Patrick Grassley. *Leadership*, IOWA LEGISLATURE, https://www.legis.iowa.gov/legislators/leadership.
26. Rep. Lundgren moved for a motion to suspend rules for immediate consideration of H-8314 to Senate amendment H-8312. The motion to suspend rules prevailed by a vote of 52 to 42. *Bill History*; *House Video* at 10:22 p.m.
27. Discussion on the Amendment followed, with remarks from Rep. Wessel-Kroeschell, Rep. Derry, Rep. Lensing, and Rep. Matson. *House Video* at 10:22-10:55 p.m.
28. At approximately 11:02 p.m., the House passed the Amendment by a vote of 53 to 42 and it was immediately messaged to the Senate. *Id.* at 11:02 p.m.; *R. SOF* at ¶¶ 7-8.
29. After amendment, HF 594 was titled: "An Act relating to medical procedures including abortion and limitations regarding the withdrawal of a life-sustaining procedure from a minor child." *P. SOF* at ¶ 42; *R. SOF* at ¶ 3.
30. At 4:22 a.m., now June 14, 2020, Sen. Schultz introduced HF 594 with both amendments. *Senate Video* at 4:22 a.m.
31. Discussion on the Amendment followed, with remarks from Sen. Bisignano, Sen. Petersen, Sen. Taylor, Sen. Celsi, Sen. Quirmbach, Sen. Bolkcom, Sen. Chapman, Sen. Mathis, Sen. Carlin, and Sen. Smith. *Id.* at 4:22-5:35 a.m.

32. At approximately 5:41 a.m., the Senate passed HF 594 and the Amendment by a vote of 31 to 16. *Bill History*; *Senate Video* at 5:41 a.m.; *R. SOF* at ¶¶ 9-10.
33. While the Amendment did re-name the underlying bill to include a reference to abortion, both the Iowa House and Senate Journals recording the votes in both chambers referred to the bill with its original title, "an Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child." H. JOURNAL, at 758; S. JOURNAL, at 841; *P. SOF* at ¶ 56. At hearing on Petitioners' Emergency Motion for Temporary Injunctive Relief, Respondents acknowledged that the title of the bill, as of 8:17 p.m. on Saturday, June 13, 2020, did not include the word "abortion." *TI Ruling* at 14.
34. Representative Beth Wessel-Kroeschell is an Iowa State Representative for the 45th District. She is the ranking member of the Human Resources Committee and is a member of the Public Safety and Judiciary Committees and the Human Services Appropriations subcommittee. *P. SOF* at ¶ 6; *R. SODF* at ¶ 1.
35. Connie Ryan is the Executive Director of Interfaith Alliance of Iowa Action Fund. Ms. Ryan has held this position for approximately eighteen years. *P. SOF* at ¶ 7; *R. SODF* at ¶ 1.
36. Rep. Wessel-Kroeschell stated in her affidavit, "As a result of the way H-8314 was passed, legislators in both chambers were taken by surprise, learning of the contents of the bill only hours before voting on it, and the voters of Iowa were taken completely off-guard, with even the most engaged voters similarly learning of the bill only hours before it was voted on." *P. App.* at 006 *(Affidavit of Rep. Beth Wessel-Kroeschell*).
37. Ms. Ryan stated in her affidavit that she was not able to take steps she normally would when she is aware that the legislature is considering a bill relevant to the mission of Interfaith Alliance of Iowa and Action Fund, because she did not learn of the bill until the evening of the day it was voted on, June 13, 2020. For example, if a bill is moving particularly quickly, she may send out an action alert to advocates. *P. App.* at 018-19 *(Affidavit of Connie Ryan*).
38. Five other bills seeking to restrict abortion access were introduced as stand-alone bills in the 2019-2020 legislative session, none of which were enacted into law. *P. SOF* at ¶¶ 71-72; *P. Reply* at 7.
39. House File 594 was signed into law by Governor Kim Reynolds on June 29, 2020. *R. SOF* at ¶ 2; *R. App.* at ¶¶ 28-29 (Act of June 29, 2020, ch. 1110, 2020 Iowa Acts 298).
40. This Court entered a Ruling granting Petitioners' Emergency Motion for Temporary Injunctive Relief on June 30, 2020. *TI Ruling* at 17.
41. Absent injunctive relief, the Amendment was intended to go into effect on July 1, 2020. *Id.* at 1.

As of the date of this Ruling, pursuant to the Court's Temporary Injunction Ruling on June 30, 2020, Respondents remain enjoined from enforcing Section 2 of HF 594 and the Court's Temporary Injunctive Relief remains in effect.

SUMMARY JUDGMENT STANDARD

The standards for considering a motion for summary judgment are well settled under Iowa law:

> Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). Further considerations when reviewing a motion for summary judgment are summarized as follows:
>
> > A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.

Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004) (quoting *Phillips v. Covenant Clinic*, 625 N.W.2d 714-717-18 (Iowa 2001)). "Summary judgment is appropriate if the only conflict concerns the legal consequences of undisputed facts." *Honomichi v. Valley View Swine, L.L.C.*, 914 N.W.2d 223, 230 (Iowa 2018) (internal citations omitted).

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." *McVey v. National Organization Service, Inc.,* 719 N.W.2d 801, 802 (Iowa 2006). "To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings . . . affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file." *Id.* Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined." *Id.* at 803. "The statement required by rule 1.981(8) is intended to be a mere summary of the moving party's factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits." *Id.* "If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied." *Id.*

"When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party." *Eggiman v. Self-Insured Services Co.,* 718 N.W.2d 754, 763 (Iowa 2006) (citing *Daboll v. Hoden*, 222 N.W.2d 727, 733 (Iowa 1974). "A fact question arises if reasonable minds can differ on how the issue should be resolved." *Walderbach v. Archdiocese of Dubuque, Inc.,* 730 N.W.2d. 198, 199 (Iowa 2007). However, the resisting party may not rest merely on allegations or denials of the pleadings. *Matter of Estate of Henrich,* 389 N.W.2d 78, 80 (Iowa App. 1986). They must set forth specific, relevant, evidentiary facts that demonstrate there are unanswered issues of material facts. *Id.*

As the Iowa Supreme Court has "long emphasized,

> The resistance must set forth facts which constitute competent evidence showing a *prima facie* claim. By requiring the resister to go beyond generalities, the basic purpose of summary judgment is achieved: to weed out '[p]aper cases and defenses' in order 'to make way for litigation which does have something to it.'"

Slaughter v. Des Moines University College of Osteopathic Medicine, 925 N.W.2d 793, 808 (Iowa 2019) (citing *Thompson v. City of Des Moines*, 564 N.W.2d 839, 841 (Iowa 1997)).

> Summary judgment is not a dress rehearsal or practice run; "it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of events."

Id. (citing *Hammel v. Eau Galle Cheese Factory*, 407 F.3d 852, 859 (7th Cir. 2005)).

FINDINGS AND CONCLUSIONS

Arguments of the Parties

Petitioners argue there is no dispute that the text of the Amendment and the underlying bill to which it was attached do not have a single-subject, as required under the Iowa Constitution. *P. MSJ Memo.* at 6-7. Petitioners argue, as noted by this Court previously, when the Amendment was introduced it was immediately subjected to a challenge that it was not germane[1] to the underlying bill, to which Speaker of the House, Rep. Patrick Grassley, immediately concurred, and on which there was no further debate. Further, Petitioners contend the Amendment violates not only the plain words of the Constitution's single-subject requirement but also its spirit. *Id.* at 7-8 (citing *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990)). Petitioners argue the controversial abortion Amendment was tacked onto a non-controversial provision, which "constitutes the very definition of logrolling."[2] *Id.* at 8. Petitioners contend the highly unusual circumstances under which the amendment was passed resulted in surprise to the legislature and the public; and it constitutes "double-barreling."[3] *Id.* at 9. Petitioners argue this double-barreling prevented the Senate from having any debate on the merits of the controversial portion of the bill. "These calculated evasions of public accountability

[1] To be germane, "all matters treated [within the act] should fall under some one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of ... one general subject." *State v. Mabry*, 460 N.W.2d 472, 474 (Iowa 1990) (quoting *Long v. Board of Supervisors*, 142 N.W.2d 378, 381 (1966)); Black's Law Dictionary defines "germane" as, "Relevant; pertinent." *germane*, BLACK'S LAW DICTIONARY (11th ed. 2019); Merriam-Webster dictionary defines "germane" as, "[B]eing at once relevant and appropriate." *germane*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/germane.

[2] "Logrolling" is defined in *State v. Mabry* as occurring "when unfavorable legislation rides in with more favorable legislation." 460 N.W.2d 472, 473 (Iowa 1990).

[3] Petitioners define "double-barreling" as when a substantive bill is introduced as an amendment to an amendment. Petitioners contend, in the Iowa legislature, an amendment can only be further amended once; thus, a double-barreled amendment cannot be debated by both chambers or by the general public, but rather must be voted on in its entirety without opportunity to fix aspects of the amendment. Petitioners contend this is an unusual legislative maneuver used to reduce debate on the merits of an amendment. *P. SOF* at ¶ 35; *P. App.* at 008-09, 019 *(Affidavit of Rep. Beth Wessel-Kroeschell* and *Affidavit of Connie Ryan*).

and the deliberative process are precisely what the Constitution's single-subject requirement exists to prevent." *Id.* (citing to *Mabry*, 460 N.W.2d at 473).

Petitioners further argue because the Amendment violates the single-subject rule, the Court need not reach the Due Process and Equal Protection claims. However, Petitioners argue, these claims constitute independent grounds for permanently enjoining the Amendment. *Id.*at 9-10. Petitioners contend that based on Iowa precedent, *PPHI*, Respondents cannot restrict abortion unless they can prove that the infringement is narrowly tailored to serve a compelling state interest. *Id.* at 10 (citing *PPHI*, 915 N.W.2d at 238). Petitioners note that the *PPHI* Court "explicitly and specifically" rejected the "undue burden" standard as set out in *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), in favor of strict scrutiny. *Id.* at 10 n.6 (citing *PPHI*, 915 N.W.2d at 238-41). Petitioners argue the *PPHI* Court found that a 72-hour forced delay served no compelling state interest because it failed to enhance patient decision-making. Thus, Petitioners argue, self-evidently, if a 72-hour delay does not change patients' minds, the shorter minimum period prescribed by the Amendment will not either and it fails strict scrutiny. *Id.* at 10-11.

Petitioners argue Respondents are precluded from relitigating whether mandatory delay laws enhance patient decision-making, as well as many other of the factual findings in *PPHI*, since Respondents were parties in that case. *Id.* at 11. Petitioners contend the *PPHI* Court made numerous findings regarding mandatory delay laws and the only difference from the stricken prior act is replacing the words "seventy-two" with "twenty-four." *Id.* at 12 (citing *PPHI*, 915 N.W.2d at 221-22, 229, 237, 241, 243, 244-46). Petitioners argue issue preclusion is proper here because Respondents were afforded a full and fair opportunity to litigate the issues at stake only three years ago and there are no other changed legal or factual circumstances that would justify relitigating the issue. *Id.* at 12-13.

In resistance, Respondents argue the single-subject requirement under the Iowa Constitution, "should be liberally construed so one act may embrace all matters reasonably connected with the subject expressed in the title and not utterly incongruous thereto." *R. MSJ Br.* at 3 (quoting *Long v. Board of Supervisors*, 142 N.W.2d 378, 381 (1966)). Respondents argue the Court must "search for […] a single purpose toward which the several dissimilar parts of the bill relate." *Id.* (quoting *Miller v. Blair*, 444 N.W.2d 487, 490 (Iowa 1989)). Respondents argue courts should only act "in extreme cases" where legislation is clearly, plainly and palpably unconstitutional, and this is not such an extreme case. *Id.* at 4 (quoting *Utilicorp United Inc. v. Iowa Utilities Bd.*, 570 N.W.2d 451, 454 (Iowa 1997)). Respondents contend that both sections of the June 29, 2020 Act fall under the expressly identified general subject of "medical procedures," which satisfies the single-subject requirement. *Id.* Respondents argue that PPH tries to distract from "this proper analysis" by challenging the legislative process leading to the enactment of the Act, but "these issues are irrelevant" to the required constitutional analysis. *Id.* at 5. Respondents maintain that bills may be amended to be broadened or may even change subject during the legislative process. Respondents state, even though the Amendment was ruled nongermane on the House floor, "it does not follow that just because an amendment exceeds the scope of the underlying bill that the amended bill does not have a new broader single subject." *Id.* at 5-6 (citing *Long*, 142 N.W.2d at 380). Respondents contend in this lawsuit, the question is whether the Act "embraces but one subject, and matters properly connected therewith," and

because it does comply, the Court should deny PPH's motion and grant the State's Cross-Motion for Partial Summary Judgment. *Id.* at 7 (citing IOWA CONST. art III, § 29).

Respondents further argue that PPH cannot rely on issue preclusion from its lawsuit challenging the 72-hour waiting period statute because its due process and equal protection challenges to this 24-hour waiting period statute do not present identical issues. *Id.* at 8 (citing *Employers Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012); *Est. of Leonard, ex rel., Palmer v. Swift*, 656 N.W.2d 132, 147 (Iowa 2003)). Respondents contend that because PPH seeks to use issue preclusion offensively, the standard is heightened; further, issue preclusion should be applied cautiously in constitutional adjudication. *Id.* (citing *Employers Mut. Cas. Co.*, 815 N.W.2d at 22; *Montana v. United States*, 440 U.S. 147, 163 (1979)). Respondents argue the *PPHI* ruling that the 2017 statute was unconstitutional does not preclude this Court from determining whether the 2020 statute is constitutional because they are not identical issues. *Id.* at 10. Respondents argue the "fluid abortion industry [] is not necessarily affected in the same way in 2021 as it was in 2017." *Id.* "The passage of time, year-long pandemic, and change in federal Administrations make this observation self-evident." *Id.* at n.7.

Respondents rely on a Planned Parenthood of Montana case to further argue that issue preclusion is not appropriate and that even "minor" differences in statutes is a question to be addressed on the merits. *Id.* at 11 (citing *Planned Parenthood of Montana v. Montana*, 342 P.3d 684, 686-88 (Mont. 2015)). Respondents cite multiple cases from other states and circuits to further support this point. *Id.* at 11-12. Lastly, Respondents argue that because the *PPHI* Court did not specifically hold "that mandatory delay laws cannot survive strict scrutiny," any "overbroad dicta" would not "have been essential to the resulting judgment." *Id.* at 12-13 (citing *Employers Mut. Cas. Co.*, 815 N.W.2d at 22; *cf. Planned Parenthood of Montana*, 342 P.3d at 688)). "All the issues necessarily decided by the Supreme Court in 2018 were limited to the 72-hour waiting period at issue in that case." *Id.* at 13. Thus, Respondents argue, issue preclusion does not apply and Petitioners' Motion for Summary Judgment should be denied. *Id.*

In reply, Petitioners reassert that the Amendment is indisputably not germane to the Act's other provisions; thus, it violates the single-subject rule. *P. Reply* at 1-2. Petitioners argue the germaneness of the bill at the time it passed is *not* irrelevant and Iowa case law supports this proposition. *Id.* at 2 (distinguishing Respondents' reliance on *Long*, 142 N.W.2d at 382 ("[L]imiting each bill to one subject means that extraneous matters may not be introduced into consideration of the bill by proposing amendments not germane to the subject under consideration."); *see also Godfrey v. State*, 752 N.W.2d 413, 426 (Iowa 2008) ("[T]he single-subject rule prevents the attachment of undesirable riders on bills certain to be passed because of their popularity or desirability.")). Petitioners argue the case law Respondents' cite involves provisions substantially more similar than those at issue here and Petitioners set forth case law where Iowa courts have struck down provisions much more closely related to their underlying bills than the Amendment here. *Id.* at 2-4 (distinguishing *Miller*, 444 N.W.2d at 488-90; citing *State v. Taylor*, 557 N.W.2d 523, 526 (Iowa 1996); *Giles v. State*, 511 N.W.2d 622, 626 (Iowa 1994); *Western Int'l v. Kirkpatrick*, 396 N.W.2d 359, 361, 364-66 (Iowa 1986)).

Additionally, Petitioners argue, in passing the Amendment, the Legislature resorted to precisely those legislative irregularities the single-subject rule exists to prevent. *Id.* at 5. Specifically, Petitioners argue the Act's passage entailed logrolling and the Amendment caused surprise to legislators and the public. *Id.* at 5-9 (citing *Mabry*, 460 N.W.2d at 473). Petitioners

contend, "It is worth noting that nothing in the record available to the Court at the time of the temporary injunction order has changed or been either challenged or controverted by Respondents." *Id.* at 9.

Petitioners further argue the Amendment is unconstitutional under *PPHI*, and Respondents are barred from relitigating that case. *Id.* Petitioners argue the doctrine of issue preclusion serves a dual purpose: to protect litigants from relitigating identical issues with identical parties, and to further the interest of judicial economy and efficiency by preventing unnecessary litigation. *Id.* (quoting *Employers Mut. Cas. Co.*, 815 N.W.2d at 22). Petitioners argue Respondents had a full and fair opportunity to litigate issues regarding mandatory delay laws and the obstacles they present to individuals seeking abortions in *PPHI* only three years ago. *Id.* at 10. "Respondents offer no reason why the substantial factual findings made by the Iowa Supreme Court only three years ago, which were based on the overwhelming expert social scientific consensus, should be ignored and re-litigated." *Id.* at 11. Petitioners note that Respondents refer to the "fluid" nature of the "abortion industry," without explaining what that means or how the supposed "fluidity" matters to the case. *Id.* at 12 n.3. Lastly, Petitioners argue the case law on which Respondents rely do not present issues nearly as similar as those presented here. *Id.* at 12 (distinguishing *e.g.*, *Planned Parenthood of Montana*, 342 P.3d at 687-88 ("The provision at issue here, by contrast, cannot fix the fundamental constitutional flaw identified by the Iowa Supreme Court when it invalidated the 72-hour law: that mandatory delay laws do not advance any state interest in improving patient decision-making." *P. Reply* at 13.).

Respondents did not file a Reply.

Applicable Law

A. Permanent Injunction

Iowa Rule of Civil Procedure 1.1501 states:

> An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction.

IOWA R. CIV. P. 1.1501.

"The standards a court considers in granting temporary injunctions are similar to those for permanent injunctions. One important exception concerns the burden of proof: temporary injunctions require a showing of the *likelihood* of success on the merits whereas permanent injunctions require *actual* success." *PIC USA v. N. Carolina Farm P'ship*, 672 N.W.2d 718, 723 (Iowa 2003) (internal citations omitted) (emphasis in original). Additionally, "permanent injunctions are those granted as part of a final judgment, while temporary injunctions are those granted at any prior stage of the proceedings." *Id.* "Once a court issues a permanent injunction following the grant of a temporary injunction, the temporary injunction merges into the permanent one." *Id.* at 724.

While the Iowa Supreme Court has emphasized "that a permanent injunction is a remedy that should be granted only with caution, an injunction is warranted when it is necessary to prevent irreparable injury to the plaintiff and when there is no other adequate remedy at law." *In re Langholz*, 887 N.W.2d 770, 779 (Iowa 2016); *see also Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 185 (Iowa 2005). "A plaintiff who seeks a permanent injunction must establish (1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available." *In re Langholz*, 887 N.W.2d at 779 (internal citations and quotation marks omitted). "A court of equity should carefully weigh the relative hardship which would be incurred by the parties upon the award of injunctive relief." *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991) (internal citations omitted).

> A permanent injunction should be structured so it affords relief to the complainant but does not interfere with the legitimate and proper actions of the person against whom it is granted. 42 Am.Jur.2d *Injunctions* § 11, at 606 (2010). A permanent injunction should only be ordered to prevent damage likely to occur in the future; it is not meant to punish for past damage. *Id.*

In re Langholz, 887 N.W.2d at 779. Another factor to be considered is the public interest in granting injunctive relief. *Mid-America Real Estate Co. v. Iowa Realty Co., Inc.*, 406 F.3d 969, 972 (8th Cir. 2005).

> [Iowa Rule of Civil Procedure] 1.1508 only requires a bond when a temporary injunction is granted. It does not require a bond once a permanent injunction is granted. *See* 42 Am.Jur.2d *Injunctions* § 10, at 569 (2000) ("There is no bond requirement in connection with the issuance of a permanent injunction.").

PIC USA, 672 N.W.2d at 727.

B. Single-Subject

The Iowa Constitution, Article III, § 29 states:

> Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

IOWA CONST. art. III, § 29. "Most state constitutions require that 'no [legislative] act shall contain more than one subject, which shall be expressed in its title….'" *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990) (citing *1A Sutherland*, *Statutory Construction § 22.08*, at 187 (1985)). "This constitutional mandate is known as the 'single-subject' rule." *Id.* "The purpose of the single-subject rule is three-fold." *Id.* "First, it prevents logrolling." *Id.* "Logrolling occurs when unfavorable legislation rides in with more favorable legislation." *Id.* "Second, it facilitates the legislative process by preventing surprise when legislators are not informed." *Id.* "Finally, it keeps the citizens of the state fairly informed of the subjects the legislature is considering." *Id.*

The *Mabry* Court went on to hold:

> [Article III, § 29] has four requirements. First, the act may have only one subject together with matters germane to it. *Western Int'l v. Kirkpatrick*, 396 N.W.2d 359, 364 (Iowa 1986). Second, the title of the act must contain the subject matter of the act. *Id.* at 365. Third, any subject not mentioned in the title is invalid. *See Constitutional Form*, 8 Drake L. Rev. at 67. Last, an invalid subject in the act does not invalidate the remaining portions that are expressed in the title. *Id.*
>
> There are longstanding rules for determining whether an act meets the constitutional mandate of article III, section 29. First and foremost, we construe "the [act] liberally in favor of its constitutionality." *State v. Iowa Dist. Court*, 410 N.W.2d 684, 686 (Iowa 1987). Before we can say the act is invalid we must find that the act "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection or relation to each other." *Id.*; *see also Western Int'l*, 396 N.W.2d at 364. Even if the "matters grouped as a single subject might more reasonably be classified as separate subjects, no violation occurs if these matters are nonetheless relevant to some single more broadly stated subject." *Id.*
>
> So to pass constitutional muster the matters contained in the act must be germane. To be germane, "all matters treated [within the act] should fall under some one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of ... one general subject." *Long v. Board of Supervisors*, 142 N.W.2d 378, 381 (1966).
>
> In addition to these rules, we use a "fairly debatable test" to determine whether the enactment of a statute complies with the constitution. Under this test "[l]egislation will not be held unconstitutional unless clearly, plainly and palpably so." *Long*, 142 N.W.2d at 381. And "[i]f the constitutionality of an act is merely doubtful or fairly debatable, the courts will not interfere." *Id.*; *see also Burlington & Summit Apartments v. Manolato*, 7 N.W.2d 26, 28 (1942). So "[i]t is only in extreme cases, where unconstitutionality appears beyond a reasonable doubt, that this court can or should act...." *Long*, 142 N.W.2d at 381-82.

Id. at 473-74.

C. PPHI *Precedent, Due Process, and Equal Protection*

In 2018, the Iowa Supreme Court issued the *PPHI* opinion. The Court considered the following procedural background:

> On April 18, 2017, the Iowa legislature passed Senate File 471. Division I of Senate File 471 creates new prerequisites for physicians performing an abortion, including a mandatory 72-hour waiting period between informational and procedure appointments. *See* 2017 Iowa Acts ch. 108, § 1 (codified at Iowa Code ch. 146A (2018)). Division II prohibits performing an abortion upon the twentieth week of pregnancy. *Id.* § 2 (codified at Iowa Code ch. 146B (2018)).

> On May 3, anticipating Governor Branstad would sign the bill into law, Planned Parenthood of the Heartland (PPH) moved for a temporary injunction to prevent Division I (the Act) from going into effect. PPH alleged the Act violated the rights to due process and equal protection of the law under the Iowa Constitution. The district court denied the injunction, and PPH sought a stay from this court. On May 5, Governor Branstad signed the law into effect. A few hours later, we stayed the enforcement of the Act per a single-justice order. On May 9, we granted PPH's interlocutory appeal and stayed enforcement of the Act pending a trial on the merits.
>
> The district court subsequently held a two-day trial. At trial, PPH produced five witnesses and an affidavit of a domestic violence expert. The State did not call any witnesses but, instead, offered two sworn statements. Mark Bowden, Executive Director of the Iowa Board of Medicine, indicated the Board would promulgate rules to implement the Act. Melissa Bird, Bureau Chief of Health Statistics at the Iowa Department of Public Health, presented vital statistics on where abortion patients resided in 2014 and 2015. The district court held the Act did not violate the Iowa Constitution.
>
> PPH appealed. We retained the case and stayed enforcement of the Act pending resolution of the appeal. On our review, we will first consider the entire factual record, as developed at the trial court, to determine how the Act will impact the ability of women to obtain an abortion in Iowa. Following that determination, we will consider whether the Act runs afoul of the due process clause and right to equal protection under the Iowa Constitution.

PPHI, 915 N.W.2d at 213-14.

The Iowa Supreme Court held that, "under the Iowa constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy." *Id.* at 237. However, the Court did "not today hold, that a woman's right to terminate a pregnancy is unlimited." *Id.* at 239. "Like all fundamental rights, it is subject to reasonable regulation." *Id.* The Court applied the strict scrutiny standard to conclude that the Act "does not, in fact, further any compelling state interest and cannot satisfy strict scrutiny," and even if the Act did confer some benefit to the State's identified interest, "it sweeps with an impermissibly broad brush." *Id.* at 243. "The Act's mandatory delay indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim." *Id.* "The Act takes no care to target patients who are uncertain when they present for their procedures but, instead, imposes blanket hardships upon all women." *Id.*

"Reasonable minds unquestionably diverge as to the morality of terminating a pregnancy." *Id.* "We do not, and could not, endeavor to discern the precise moment when a human being comes into existence." *Id.* "We have great respect for the sincerity of those with deeply held beliefs on either side of the issue." *Id.* at 243-44. "Nevertheless, the state's capacity to legislate pursuant to its own moral scruples is necessarily curbed by the constitution." *Id.* at 244. "The state may pick a side, but in doing so, it may not trespass upon the fundamental rights

of the people." *Id.* The Iowa Supreme Court concluded that the Act violated due process and equal protection rights. *Id.* at 244-46.

In the context of equal protection claims, the Iowa Supreme Court has held, with respect to strict scrutiny, that "[t]his highest level of review is applied only when the challenged statute classifies persons in terms of their ability to exercise a fundamental right or when it classifies or distinguishes persons by race or national origin." *In re Detention of Williams*, 628 N.W.2d 447, 452 (Iowa 2001). In an unpublished opinion, the United States District Court for the Northern District of Iowa also has described strict scrutiny as the "highest level of scrutiny." *U.S. v. Bena*, No. 10-CR-07-LRR, 2010 WL 1418389, *3 (N.D. Iowa Apr. 6, 2010), *aff'd*, 664 F.3d 1180 (8th Cir. 2011).

D. Issue Preclusion

"Issue preclusion, sometimes referred to as collateral estoppel, is a form of res judicata." *Employers Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012). Under issue preclusion, parties are prevented from relitigating in a subsequent action issues raised and resolved in a previous action. *Id.* "The doctrine serves a dual purpose: to protect litigants from the vexation of relitigating identical issues with identical parties or those persons with a significant connected interest to the prior litigation, and to further the interest of judicial economy and efficiency by preventing unnecessary litigation." *Id.* (internal citations and quotation marks omitted). "Issue preclusion also tends to prevent the anomalous situation, so damaging to public faith in the judicial system, of two authoritative but conflicting answers being given to the very same question." *Id.*

There are four elements to be established for issue preclusion to apply: (1) the issue in the present case must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior case; and (4) the determination of the issue in the prior action must have been essential to the resulting judgment. *Id.* The offensive use of issue preclusion is allowed unless the defendant lacked a full and fair opportunity to litigate the issue in the first action or unless other circumstances justify affording him an opportunity to relitigate the issue. *Id.* at 27. "One of the primary requirements for application of issue preclusion is an identity of the issue decided in the prior litigation with the issue presented in the current lawsuit. Similarity of issues is not sufficient; the issue must be precisely the same." *Est. of Leonard, ex rel., Palmer v. Swift*, 656 N.W.2d 132, 147 (Iowa 2003) (internal citations and quotation marks omitted).

Analysis

In reviewing the arguments of the parties, relevant law, and the entire record before the Court, the Court finds there is no genuine issue of material fact in this case and Petitioners are entitled to judgment as a matter of law. The Court finds that Petitioners have established "actual success" on the merits of their claims, so as to warrant a permanent injunction. *See PIC USA*, 672 N.W.2d at 723 ("permanent injunctions require *actual* success"); *see Honomichi*, 914 N.W.2d at 230 ("Summary judgment is appropriate if the only conflict concerns the legal consequences of undisputed facts.").

First, the Court concludes that Petitioners have established success on their claim that the Amendment was passed in violation of the single-subject rule. This Court previously found, "[T]he circumstances surrounding the passage of the Amendment in this case, as set forth in the limited record available to the Court at this stage of litigation, appear to show that the Amendment was passed under highly unusual circumstances, including the speed at which the Amendment was passed." *TI Ruling* at 14. "Abortion is, under any analysis, a polarizing and highly controversial topic, yet the Amendment was passed with limited to no debate, and without Iowans being given a chance to respond to the Amendment." *Id.* "As Respondents acknowledged, most Iowans would have been asleep by the time the Amendment was passed in its final form." *Id.* "[T]here certainly [is] some evidence in the limited record before the Court that ultimately may support a finding of 'logrolling,' since the Amendment was attached to what would likely be a non-controversial provision regarding withdrawal of life-sustaining procedures from a minor child, and there is no doubt that, at a minimum, the legislator who has provided an affidavit on behalf of Petitioners was surprised by the Amendment." *Id.* "As the Court previously has found, the bill addresses circumstances in which a court may require withdrawal of life-sustaining procedures from a minor child over the objection of the parent or guardian." *Id.* This Court concluded, "This is clearly a different subject than a 24 hour waiting period for an abortion. The initial title of the bill does not contain any subject matter regarding abortion or waiting periods, and it is likely that Petitioners will be able to show that the 24 hour waiting period for abortions is invalid, and is not germane to the 'one general idea' of the bill." *Id.*

Importantly, Petitioners argue, and Respondents do not contest, that nothing in the record available to the Court at the time of the temporary injunction order has changed or been either challenged or controverted by Respondents. *See P. Reply* at 9. Indeed, the Court finds that Petitioners' materials submitted in support of its temporary injunctive relief are nearly identical to the materials submitted in Petitioners' 376-page appendix in support of its motion for summary judgment.[4] The Court finds nothing in the affidavits or record available to the Court in June 2020 has materially changed in the record that is available to the Court today.

The Court finds Amendment H-8314 to HF 594 violates the single-subject requirement of the Iowa Constitution. Respondents argue this is not an extreme case where legislation is clearly, plainly and palpably unconstitutional. The Court disagrees and, in fact, wholeheartedly agrees with Petitioners that this *is* an extreme case. *See P. Reply in Support of TI Relief* at 1

[4] This Court previously set forth Petitioners' documentation as:

> [A]ffidavits from Representative Beth Wessel-Kroeschell of the Iowa House of Representatives (Exhibit 1); Connie Ryan, the Executive Director of the Interfaith Alliance of Iowa and the Interfaith Alliance of Iowa Action Fund (Exhibit 2); Dr. Meadows, who is an obstetrician and gynecologist licensed to practice in Iowa (Exhibit 3); Daniel Grossman, M.D., a professor in the Department of Obstetrics, Gynecology, and Reproductive Sciences at the University of California, San Francisco (Exhibit 4); Lenore Walker, Ed.D., a clinical psychologist licensed to practice psychology in Florida, New Jersey, and Colorado (Exhibit 5); Jane Collins, PhD, a professor emeritus (pending) at the University of Wisconsin, Madison (Exhibit 6); and Jason Burkhiser Reynolds, the Regional Director of Health Services at Planned Parenthood of the Heartland (Exhibit 7).

TI Ruling at 6. It appears that from these June 2020 materials, Jason Burkhiser Reynolds' affidavit is the only omission from Petitioners' current summary judgment appendix. Mr. Reynolds testified primarily to the expected harm to PPH patients who were already scheduled for abortion care on or after July 1, 2020.

("Respondents answer only that single-subject violations are rare, but they fail to grapple with the fact that this is precisely that rare case.").

The Court echoes the initial sentiments on the Amendment as Representative Meyer, who stated, "I'm very confused on this amendment." The Court, too, finds the Amendment is indisputably not germane to the underlying bill. Indeed, Speaker of the House Grassley found the Amendment is not germane. *House Video* at 10:21 p.m. ("Representative Meyer, your point is well taken, the amendment is not germane.").[5] Respondents argue an amended bill is allowed to change subject during the legislative process and have a "new broader single subject." While it is true that matters are allowed to relate to "some single more broadly stated subject," upon review of the entire record, the Court finds that what Respondents allege is clearly not what happened in this case. *See Iowa Dist. Court*, 410 N.W.2d at 686. Further, "[L]imiting each bill to one subject means that *extraneous matters may not* be introduced into consideration of the bill by proposing amendments *not germane* to the subject under consideration." *Long*, 142 N.W.2d at 382 (emphasis added).

Respondents further argue that many of Petitioners' alleged facts, such as the legislative process leading to the enactment of the act, are irrelevant and not material to the claims. The Court disagrees. The *Mabry* Court explained the three-fold purpose of the single-subject rule: to prevent logrolling legislation; to prevent surprise upon legislators; and to keep citizens fairly informed of the subjects the legislature is considering, so they may have an opportunity to be heard if they so desire. *See Mabry*, 460 N.W.2d at 474; *see also* William J. Yost, Note, *Before a Bill Becomes a Law—Constitutional Form*, 8 DRAKE L. REV. 66, 66-71 (1958); *see also Chicago, R.I. & P. Ry. Co. v. Streepy*, 224 N.W. 41, 43 (Iowa 1929).

The *Streepy* Court sheds more light on the purpose behind the single-subject rule:

> One of the mischiefs to be prevented is the enactment of laws under false and delusive titles whereby measures might procure support of legislators who are deceived as to the character of the law, and also to prevent the conjunction, in one act, of two or more subjects having no legal connection for the purpose of the passage of a law which alone might not command legislative sanction without the strength of a popular measure in the same act. It is to prevent such tricks in legislation that the Constitution forbids the passage of any law unless the subject be expressed in the title, and, in a like manner, inhibits the embodying in the same act of two or more subjects having no legal connection, and when it is clear that this provision of the Constitution has been disregarded, we must not hesitate to proclaim the supremacy of the Constitution.

Streepy, 224 N.W. at 43.

Here, the legislative process leading to the enactment of the act involved each of the three problems above. The initial bill was titled "an Act relating to the limitations regarding the

[5] This Court previously found the Speaker of the House (who "upon the Court's information and belief, is Patrick Grassley, who is a member of the same political party as the representatives who introduced the Amendment)" concurred to the germane objection. *TI Ruling* at 15. "[I]t would be difficult for this Court to 'embarrass legislation' or 'hamper the Iowa Legislature' by finding it likely that Petitioners will succeed on the merits of the issue regarding germaneness, when the Speaker of the Iowa House apparently found that the Amendment was not germane to the underlying bill it was amending. The Court is giving deference to Speaker Grassley." *Id.*

withdrawal of a life-sustaining procedure from a minor child." The Amendment involves a 24-hour waiting period for an abortion. The Amendment was passed under highly unusual circumstances, including the speed at which the Amendment was passed. The entire process, from the time Senator Schultz introduced HF 594 (June 13, 2020, 4:02 p.m.) to the time it was passed in its final form (June 14, 2020, 5:41 a.m.), took just over 12 hours. *See Senate Video*; *see House Video*. Abortion is, under any analysis, a polarizing and highly controversial topic. *See PPHI*, 915 N.W.2d at 246 (Mansfield, J. dissenting) ("Abortion is one of the most divisive issues in America today."). Yet, the Amendment was passed with limited to no debate, and without Iowans being given a chance to respond to the Amendment.[6] Rep. Wessel-Kroeschell stated in her sworn affidavit, "[T]he voters of Iowa were deprived of *any* opportunity to provide any comment on the bill or engage with their representatives on its substance." *P. App.* at 006 *(Affidavit of Rep. Beth Wessel-Kroeschell*) (emphasis in affidavit). She continued that other "subcommittee hearings on abortion-related bills this legislative session were extremely well attended." *Id.* at 013. She stated, "I feel confident that if H-8314 had been the subject of a subcommittee hearing, a substantial number of Iowans would have spoken or otherwise submitted comment on this bill." *Id.*

The Court finds the Amendment was clearly logrolled with other legislation, since the Amendment was attached to a non-controversial provision regarding withdrawal of life-sustaining procedures from a minor child. Further, there is no doubt that, at a minimum, the legislator, Rep. Wessel-Kroeschell, who has provided an affidavit on behalf of Petitioners was surprised by the Amendment. As the Court previously has found, the bill addresses circumstances in which a court may require withdrawal of life-sustaining procedures from a minor child over the objection of the parent or guardian. This is clearly a different subject than a 24-hour waiting period for an abortion. Petitioners have successfully shown that the 24-hour waiting period for abortions is invalid, and is not germane to the "one general idea" of the bill.

The Court notes that Respondents' arguments relying on *Miller* and *Utilicorp* are unpersuasive. Respondents argue the Court must "search for […] a single purpose toward which the several dissimilar parts of the bill relate." *Miller*, 444 N.W.2d at 490. However, only a few sentences after this quoted sentence, the *Miller* Court states, "The breadth of both the state and local revenue provisions in the act is, we believe, an effort by the legislature to develop a coherent revenue-neutral fiscal package that complements the economic development incentives." *Id.* This Court does not believe the present act was an effort by the legislature to develop any form of coherent "single purpose" package. Respondents also maintain this is not an "extreme case" and cite to *Utilicorp*. 570 N.W.2d at 454. However, *Utilicorp* is factually distinguishable from this case. The *Utilicorp* Court states, "This is certainly not an extreme case where unconstitutionality appears beyond a reasonable doubt. Indeed the challenge would cry

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[6] Sen. Peterson noted during the discussion, "And the interesting thing about it, it's a 24-hour waiting period, and you didn't even give women 24-hour notice that you would be stripping them of their rights." *Senate Video* at 4:43 a.m. Sen. Celsi noted during the discussion:

> [T]here would have been more people here if we'd given them notice—maybe even 24-hour's notice—which we did not. You know what happens when we give people proper notice of a subcommittee around here regarding women's health and health care. They show up by the hundreds. And I'm sure you wanted to avoid that kind of a scene here in the Capitol, the people's house.

Id. at 4:51 a.m.

out for rejection under a far less rigid test. No logrolling is involved." *Id.* at 454-55. This Court has already stated above that this *is* an extreme case and logrolling clearly occurred. Respondents are correct that the question is whether the Act "embraces but one subject, and matters *properly* connected therewith." Iowa Const. art. III, § 29 (emphasis added). The Court finds this Act does not.

Upon review of both the Iowa Senate and House videos, it is abundantly clear to this Court that what occurred in the Iowa Legislature on June 13th and 14th, 2020 was exactly such "tricks in legislation" and "mischiefs" that the single-subject rule exists to prevent. *See Streepy*, 224 N.W. at 43. Surely, it is introduction of legislation in cases precisely like this one, which the framers of the Iowa Constitution intended the single-subject rule to protect against.[7] "When it is clear that [article III, section 29] of the Constitution has been disregarded, we must not hesitate to proclaim the supremacy of the Constitution." *Western Int'l*, 396 N.W.2d at 366; *Streepy*, 224 N.W. at 43. The Court finds Amendment H-8314 to HF 594 violates the single-subject requirement of the Iowa Constitution; thus, Petitioners have established success on the merits of this claim.

Further, Petitioners have established an invasion or threatened invasion of a right. This Court previously found that Petitioners have standing to invoke the rights of their actual or potential patients in abortion-related challenges such as this one. *See TI Ruling* at 13-14. This Court has already stated, it is bound by Iowa precedent, including the standards clearly set forth by the *PPHI* Court. *Id.* at 15. The *PPHI* Court held, under the Iowa Constitution, that implicit in the concept of ordered liberty is a woman's ability to decide whether to continue or terminate a pregnancy. *See PPHI*, 915 N.W.2d at 237. The *PPHI* Court, applying the strict scrutiny standard, further held that the seventy-two hour waiting requirement violates due process and equal protection rights under the Iowa Constitution. *Id.* at 244-46. The *PPHI* Court found, "The Act's mandatory delay indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim." *Id.* at 243. Given this clear *PPHI* precedent, this Court finds that

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[7] Former Justice Wiggins aptly surmised the framers' intent as follows:

> The single-subject clause prevents logrolling, the practice whereby the legislature joins two or more unconnected matters in one bill to coerce legislators who support one of the matters into voting for the entire bill so they can secure passage of the individual matter they favor. Logrolling is not only inducive of fraud, it also makes it difficult to ascertain whether the legislature would have passed either of the matters had they been voted on separately. *State ex rel. Clark v. State Canvassing Bd.*, 119 N.M. 12, 888 P.2d 458, 461 (1995).
>
> The federal Constitution does not contain a single-subject clause. However, the framers of the Iowa Constitution thought a single-subject clause was important enough to include in both the 1846 constitution and our present-day constitution. *See* Iowa Const. art. III, § 26 (repealed 1857); Iowa Const. art. III, § 29. The single-subject clause is an essential constitutional restriction on the power of the legislature to enact laws . . . The joinder of two or more unconnected matters in a bill is no mere irregularity. The single-subject clause goes to the heart of the legislative process mandated by the people of the State of Iowa when they adopted our constitution.

Godfrey v. State, 752 N.W.2d 413, 430 (Iowa 2008) (Wiggins, J., dissenting).

Petitioners have established that a twenty-four hour waiting requirement is an invasion or threatened invasion "upon the fundamental rights of the people." *See id.* at 244.

Petitioners meet the first factor necessary for providing a basis for the Court to grant permanent injunctive relief.

Second, the Court concludes that Petitioners and their patients will be substantially injured if the Court does not permanently enjoin Respondents from enforcing the Amendment, and the balance of hardships warrants permanent injunctive relief. On this issue, the Court finds that the evidence offered by Petitioners at the time of ruling on temporary injunctive relief has not changed from the evidence offered now. Respondents do not contest such evidence. *See P. SOF* at ¶¶ 15-26; *see R. SODF* at ¶¶ 2-3; *see P. App.* at 029-34, 094-100, 215-24, 277-84 (*Affidavits of: Jill Meadows, M.D., Daniel Grossman, M.D., Lenore Walker, Ed.D.,* and *Jane Collins, Ph.D.* respectively). Thus, the Court concludes that the time sensitive nature of abortion procedures supports a determination that substantial injury will result to Petitioners' patients if permanent injunctive relief is not granted. In cases where a patient is at or nearing the twenty-two week mark of a pregnancy, the patient may be deprived entirely of the fundamental right to an abortion. Petitioners also have offered evidence of the psychological and physical harm that can result to a patient who is deprived of this fundamental right, including that the abortion may become less safe due to the progression of the pregnancy; that a woman may face increased travel distances, costs, and stress; and that the vulnerable population may suffer. When these interests are balanced against the harm to be suffered by Respondents if the abortion procedures take place without a 24-hour waiting period, the harm to Petitioners clearly outweighs the potential for harm to Respondents, which, at most, would be a continuance of the status quo law in Iowa regarding abortion, as set forth by the *PPHI* Court.

Petitioners meet the second factor necessary for providing a basis for the Court to grant permanent injunctive relief.

Finally, the Court considers whether Petitioners have an adequate legal remedy. This Court has already found: They clearly do not. *TI Ruling* at 16. Upon review of the entire record, the Court finds nothing has changed since June 2020 so as to give Petitioners an adequate legal remedy. If the Amendment is permitted to take effect, Petitioners will be delayed, or in some cases, entirely deprived of a fundamental right under the Constitution, and there is no legal remedy available to Petitioners under such circumstances.

Petitioners meet the final factor necessary for providing a basis for the Court to grant permanent injunctive relief.

The Court finds that Petitioners have established success on the merits of their single-subject claim and meet all three factors necessary for the Court to grant permanent injunctive relief; thus, Petitioners are entitled to summary judgment on this ground and a permanent injunction to prohibit the Amendment's enforcement is appropriate.

Having found that the Amendment violates the single-subject requirement of the Iowa Constitution and that summary judgment in favor of Petitioners is, therefore, appropriate on that ground, the Court notes that it is not necessary to address Petitioners' Due Process and Equal Protection claims. Nonetheless, the Court does further conclude that there is no genuine issue as

to any material fact in this regard; therefore, summary judgment is also appropriate based on this ground.

The Court finds Amendment H-8314 to HF 594 is unconstitutional under *PPHI*, and Respondents are barred from relitigating that case. As the Court has already stated, it is bound by Iowa precedent, including the standards clearly set forth by the *PPHI* Court. Not quite three years ago, in 2018, the late Chief Justice Cady held that a woman's right to decide whether to continue or terminate a pregnancy is a fundamental right under the Iowa Constitution, and applied strict scrutiny to review the governmental limit on that right. *PPHI*, 915 N.W.2d at 237, 241. Under strict scrutiny, Respondents are not permitted to restrict surgical abortion procedures unless they can prove that the "infringement is narrowly tailored to serve a compelling state interest." *Id.* at 238.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the United States Supreme Court established an "undue burden" standard in analyzing state restrictions on previability abortions. *Id.* at 878. The *PPHI* Court expressly rejected the *Casey* undue burden standard and held that any legislative restrictions on a woman's fundamental right to decide whether to continue or terminate a pregnancy should be analyzed under a strict scrutiny analysis:

> Ultimately, adopting the undue burden standard would relegate the individual rights of Iowa women to something less than fundamental. It would allow the legislature to intrude upon the profoundly personal realms of family and reproductive autonomy, virtually unchecked, so long as it stopped just short of requiring women to move heaven and earth. By applying the narrow tailoring framework, however, we fulfill our obligation to act as a check on the powers of the legislature and ensure state actions are targeted specifically and narrowly to achieve their compelling ends. The guarantee of substantive due process requires nothing less. Accordingly, we conclude strict scrutiny is the appropriate standard to apply.

PPHI, 915 N.W.2d at 240-41.

Thus, it is clear to the Court that strict scrutiny applies to the 24-hour Amendment. In relevant part, the *PPHI* Court identified the State's interest as an interest in promoting potential life. *Id.* at 220, 239. Respondents do not appear to dispute that is also the State's interest in the present case. The *PPHI* Court held the Act "does not, in fact, further any compelling state interest and cannot satisfy strict scrutiny," and even if the Act did confer some benefit to the State's identified interest, "it sweeps with an impermissibly broad brush." *Id.* at 243. Under the clear binding precedent of *PPHI*, the Court finds Respondents have not set forth specific, relevant, evidentiary facts that demonstrate there are any unanswered issues in this case. *See Matter of Estate of Henrich,* 389 N.W.2d at 80 (The resisting party must set forth specific, relevant, evidentiary facts that demonstrate there are unanswered issues of material facts.).

For reasons further detailed below, Petitioners have successfully shown the overwhelming weight of the evidence demonstrates that requiring all women, regardless of decisional certainty, to wait twenty-four hours between appointments will not impact patient decision-making, nor will it result in a measurable number of women choosing to continue a pregnancy they otherwise would have terminated without the mandatory delay. *See PPHI*, 915

N.W.2d at 243. The 24-hour Amendment, therefore, does not, in fact, further any compelling state interest and cannot satisfy strict scrutiny. As such, it violates both the due process and equal protection provisions of the Iowa Constitution and Petitioners are successful in those claims.

In the face of this clear *PPHI* precedent, Respondents maintain this Court is not precluded from determining the constitutionality of the Act and focus their arguments entirely on issue preclusion. In fact, Respondents admit, "*Planned Parenthood* is binding precedent on this Court," and make the State's intent clear, stating, "[I]t was wrongly decided, and such arguments could be considered on appeal under principles of stare decisis." *R. MSJ Br.* at 10 n.6.[8]

This Court previously stated, "As a matter of res judicata, issue preclusion likely would bar Respondents from re-litigating certain matters within *PPHI*, including identical issues that were raised and litigated in, and were material and relevant to, the determination of issues by the Iowa Supreme Court that were essential to its ultimate opinion." *TI Ruling* at 15. "The Iowa Supreme Court already has made several determinations regarding mandatory delay laws and the obstacles they present to individuals seeking abortions, and these same parties had a full and fair opportunity to litigate those issues in *PPHI*." *Id.*

The Court reaffirms this previous statement. The Court agrees with Petitioners that, in *PPHI*, the Iowa Supreme Court recently held, based on a full trial record that included evidence about the effects of mandatory delay laws of various lengths across the country, including research focused on 24-hour waiting periods, these laws do not benefit individuals seeking an abortion or change their minds about their decision. *See PPHI*, 915 N.W.2d at 219-31, 241-43; *see, e.g.*, *id.* at 241 ("Importantly, the factual question in this case is not whether some women enter PPH clinics conflicted or even whether some women benefit from additional time to

[8] Although Respondents cite to Justice McDonald's concurrence in *Goodwin v. Iowa Dist. Ct. for Davis Cty*., 936 N.W.2d 634, 649 (Iowa 2019), discussing the "limited application of stare decisis in constitutional matters" and that Justice McDonald's rule is that "demonstrably erroneous precedent" should not be followed, this Court finds it worth noting that it is well established, by both the Iowa Supreme Court and federally, that adherence to principles of stare decisis supports stability and predictability in the law. *See Youngblut v. Youngblut*, 945 N.W.2d 25, 40 (Iowa 2020), reh'g denied (July 17, 2020) ("We remain mindful of the importance of stare decisis as a force of stability and predictability in the law.") (internal citations omitted); *see also State v. Brown*, 930 N.W.2d 840, 854 (Iowa 2019) (Justice Christensen held that the Court "recognizes this need for consistency by adhering to our prior holdings . . . From the very beginnings of this court, we have guarded the venerable doctrine of stare decisis and required the highest possible showing that a precedent should be overruled before taking such a step . . . Stare decisis alone dictates continued adherence to our precedent absent a compelling reason to change the law . . . Though it is our role as a court of last resort ... to occasionally reexamine our prior decisions, we must undertake this weighty task only for the most cogent reasons and with the greatest caution.") (internal quotation marks and citations omitted); *see also Alleyne v. United States*, 570 U.S. 99, 118 (2013) (Sotomayor, J., concurring) ("We generally adhere to our prior decisions, even if we questions their soundness, because doing so 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'"); *see also Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 854 (1992) ("[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable.") (internal citations omitted); *see also Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986) ("[T]he important doctrine of stare decisis [is] the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact."); *see also* BRANDON J. MURRILL, THE SUPREME COURT'S OVERRULING OF CONSTITUTIONAL PRECEDENT, CONGRESSIONAL RESEARCH SERVICE 6-7 (2015), https://fas.org/sgp/crs/misc/R45319.pdf [hereinafter CRS REPORT].

consider their options. The record confirms that PPH's current same-day regime ensures that women who are conflicted or who need more time are, in fact, given extra time or are given the resources to pursue other options. Rather, the factual issue in this case is whether requiring all women to wait at least three days between the informational and procedural appointments will impact patient decision-making."); *see, e.g.*, *id.* ("The imposition of a waiting period may have seemed like a sound means to accomplish the State's purpose of promoting potential life, but as demonstrated by the evidence, the purpose is not advanced. Instead, an objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period."); *see, e.g.*, *id.* ("Thus, the study that is most probative of the factual issue in this case demonstrates that mandatory waiting periods have no effect on patient decision-making."); *see, e.g.*, *id.* at 242 ("Moreover, the burdens imposed on women by the waiting period are substantial, especially for women without financial means. Under the Act, patients will need to make two trips to a PPH clinic since it is likely they would not be readily able to obtain certification from a local, non-PPH provider. The Act requires poor and low-income women, which is a majority of PPH patients, to amass greater financial resources before obtaining the procedure. Patients will inevitably delay their procedure while assembling the resources needed to make two trips to a clinic."); *see, e.g.*, *id.* at 243 ("The Act's mandatory delay indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim. The Act takes no care to target patients who are uncertain when they present for their procedures but, instead, imposes blanket hardships upon all women.").

A large portion of the *PPHI* Court's ruling focused on evidence that showed PPH patients would be required to make two trips to a PPH clinic in order to comply with the Act *and* a two-trip requirement substantially burdens women, especially women without financial means. *See id.* at 227-42. Importantly, the 24-hour Act currently before the Court *still imposes* a two-trip requirement, which was already extensively considered by the Iowa Supreme Court. Accordingly, this Court is convinced that research on abortion-related decision-making confirms that waiting periods do not change a woman's decision to have an abortion. *See id.* at 241; *see P. Br. in Support of TI Relief* at 9; *see P. App.* at 097-98 (*Affidavit of Daniel Grossman, M.D.*) (citing new evidence since 2017).

Respondents argue that because the *PPHI* Court did not specifically hold "that mandatory delay laws cannot survive strict scrutiny," any "overbroad dicta" in *PPHI* regarding mandatory delay laws would not have been essential to the resulting judgment as required for issue preclusion to apply. The Court disagrees; case law holdings do not exist in a bubble. The Court finds, upon review of the *entire PPHI* decision, that these same parties had a full and fair opportunity to litigate the issue of mandatory delay laws and patient decision-making in the first action. The Court finds that issue preclusion bars Respondents from re-litigating certain matters within *PPHI*, which includes the issue of whether "mandatory waiting periods" (whether it is 72-hour, 24-hour, or any time frame contrary to "PPH's current same-day regime") between women's informational and procedural abortion appointments "will impact patient decision-making," as these identical issues were raised and litigated in, and were material and relevant to, the determination of issues by the Iowa Supreme Court that were essential to its ultimate opinion. *See PPHI*, 915 N.W.2d at 241.

Moreover, as Petitioners note, there are no other changed legal or factual circumstances that would justify relitigating the issue and Respondents offer no reason why these standards, which were set forth less than three years ago, and based on a substantial record and expert social scientific consensus on abortion related evidence, should be ignored and re-litigated. Respondents do contend that the "fluid abortion industry [] is not necessarily affected in the same way in 2021 as it was in 2017" and "[t]he passage of time, year-long pandemic, and change in federal Administrations make this observation self-evident." Although Respondents cite to multiple "public sources" to support this argument, they do not explain how these sources are relevant or would support the argument that "other circumstances justify affording [Respondents] an opportunity to relitigate the issue." *See Employers Mut. Cas. Co.*, 815 N.W.2d at 27. It is unclear to the Court what Respondents mean or why the supposed "fluidity" of the "abortion industry" would constitute "other circumstances" to justify relitigating the issue. It appears to the Court that Respondents main argument against *PPHI* seems to be that "it was wrongly decided" and it could be reconsidered "on appeal under principles of stare decisis." It is unclear what, if anything, Respondents are implying by these statements—however, it further appears to the Court that there has been a significant change in the composition of the Iowa Supreme Court since 2018, including, tragically, the deaths of two members of that Court, as well as the retirement of two other members of that Court. This Court cannot know how the current Iowa Supreme Court Justices would view the issues presented by this case, but, in any matter, this, of course, does not justify relitigation or reconsideration of the issues in the present case.[9]

Further, as Petitioners note, and this Court has already recognized, the ongoing COVID-19 public health emergency makes waiting periods and a two-trip requirement more burdensome, especially to vulnerable groups of Iowans. *See TI Ruling* at 15; *see P. App.* at 098-100 (*Affidavit of Daniel Grossman, M.D.*). Respondents have not sufficiently shown in the record before the Court that any changed legal or factual circumstances exist since *PPHI* that would justify relitigating the issues.

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[9] "As Justice Lewis Powell once remarked, 'the elimination of constitutional stare decisis would represent an explicit endorsement of the idea that the Constitution is nothing more than what five Justices say it is.'" CRS REPORT at 7 (citing Lewis F. Powell, Jr., *Stare Decisis and Judicial Restraint*, 47 WASH. & LEE L. REV. 281, 288 (1990)); *see also id.* at 1, 7-8 ("[O]verruling incorrect precedents may occasionally be necessary to rectify egregiously wrong or unworkable decisions or to account for changes in the Court's or society's understandings of the facts underlying a legal issue.") (citing William S. Consovoy, *The Rehnquist Court and the End of Constitutional Stare Decisis*: Casey, Dickerson, *and the Consequences of Pragmatic Adjudication*, 2002 UTAH L. REV. 53, 54 (2002) (discussing the argument that "strict adherence to precedent" may "fail to take into consideration developing social and political factors that make the prior decision either outdated or ineffective.")); *see also Jones v. Mississippi*, 593 U.S. ___ (2021) (Sotomayor, J., dissenting) (slip op., at 14, 16) (Justice Sotomayor very recently explained in dissent "[h]ow low the Court's respect for *stare decisis* has sunk" and reminded the Court that "traditional *stare decisis* factors include the quality of the precedent's reasoning, its consistency with other decisions, legal and factual developments since the precedent was decided, and its workability." She further reminded the Court that the doctrine is "recognized as a pillar of the rule of law, critical to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion.") *Id.* at 16 (citing *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (2020) (opinion of Kavanaugh, J.) (slip op., at 1-2) (internal quotation marks omitted); *see also Senate Video* at 5:05 a.m. (Sen. Bolkcom stated, "We are wasting our valuable time blatantly politicizing the state court by forcing it to revisit this issue that was decided less than two years ago."); *see supra* this Court's footnote 8 on stare decisis.

Lastly, the Court notes that Respondents' arguments relying on *Planned Parenthood of Montana*, 342 P.3d at 686-88, are unpersuasive. Case law from other jurisdictions do not constitute controlling legal authority, although it may be persuasive. Additionally, *Planned Parenthood of Montana* is factually distinguishable from this case. Respondents rely on *Montana* to argue that even "minor" differences in statutes is a question to be addressed on the merits. However, the Court finds the two statutes and issues in *Montana* were clearly dissimilar, whereas this Court has already found, for the reasons stated above, that the issues here are precisely the same. The statutes and issues in *Montana* involved entirely different facts than the present case and compared a 1995 Act to a 2011 and 2013 Act. *See id.* at 687 (the statutes at issue concerned differing ages of minors in parental consent for abortion). The Court agrees with Petitioners that those statutes were different in a way that went straight to the heart of the constitutional question. *See P. Reply* at 13. It does not appear that Iowa Courts have addressed an issue preclusion question with facts such as those presented here. However, for all the reasons stated above, the Court finds *Montana* unpersuasive and finds issue preclusion applies; Respondents had a full and fair opportunity to litigate in *PPHI*, not quite three years ago.

In conclusion, there is no genuine issue of material fact in this case. Summary judgment is appropriate if the only conflict concerns the legal consequences of undisputed facts. *See Honomichi*, 914 N.W.2d at 230. Petitioners have affirmatively established the existence of undisputed facts, and have established success on the merits of their claims; thus, Petitioners are entitled to a permanent injunction under controlling law. *See McVey,* 719 N.W.2d at 802. The Court finds summary judgment is appropriate and Petitioners are entitled to judgment as a matter of law.

RULING

IT IS THEREFORE ORDERED that Petitioners' Motion for Summary Judgment is **GRANTED**. Amendment H-8314 to House File 594, 88th Gen. Assemb. (Iowa 2020), to be codified at Iowa Code § 146A.1(1) (2020) is declared unconstitutional, as it violates the Iowa Constitution. Respondents are permanently enjoined from implementing, effectuating or enforcing Section 2 of HF 594, regarding the requirement that women seeking an abortion first receive an ultrasound and certain state-mandated information, and then wait at least 24 hours before returning to a health center to have an abortion.

IT IS FURTHER ORDERED that Respondents' Cross-Motion for Partial Summary Judgment is **DENIED**. This matter is deemed closed and finalized, and the trial set for January 18, 2022 shall be removed from the Court's schedule. Court costs are assessed to Respondents.

Clerk to notify.

State of Iowa Courts

Case Number	**Case Title**
EQCV081855	PLANNED PARENTHOOD OF THE HEARTLAND V. REYNOLDS
Type:	Other Order

So Ordered

Mitchell E. Turner, District Court Judge,
Sixth Judicial District of Iowa

Electronically signed on 2021-06-21 15:43:06