IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., *et al*., Petitioners, v. KIM REYNOLDS, ex rel. STATE OF IOWA, *et al*., Respondents.	Case No. _____ **BRIEF IN SUPPORT OF PETITIONERS' MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

COME NOW Petitioners, Planned Parenthood of the Heartland, Inc. ("PPH") and Jill Meadows, M.D., and for their Motion for Temporary Injunctive Relief, pursuant to Iowa R. Civ. P. 1.1502, state:

INTRODUCTION

Petitioners ask this Court to enjoin Amendment H-8314 ("the Amendment") to House File ("H.F.") 594, 88th Gen. Assemb. (Iowa 2020),[1] to be codified at Iowa Code § 146A.1(1) (2020), a law passed in violation of procedural and substantive requirements of the Iowa Constitution: specifically, the single-subject rule, the Due Process Clause, the Equal Protection Clause, and the Privileges and Immunities Clause. If Governor Reynolds signs the Amendment into law before July 1, 2020, it will take effect that day absent immediate relief from this Court, violating settled precedent and abruptly disrupting time-sensitive care for individuals seeking to end a pregnancy.[2]

Thousands of Iowa women each year, and one in four women nationally, are faced with an unintended pregnancy or medical complications during their pregnancy, and decide to end that pregnancy.[3] Only two years ago, in *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State* ("*PPH II*"), 915 N.W.2d 206 (Iowa 2018), the Iowa Supreme Court invalidated a statute that would have required patients to make two separate trips to the health center and delay their abortion at least 72 hours after having an ultrasound on the first trip, affirming that the Iowa Constitution

[1] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=H8314.

[2] As the Iowa Supreme Court has recognized, injunctive relief is appropriate here to prevent the immediate disruption of patient care that would ensue absent relief, even though the Governor has not signed this bill. *See Planned Parenthood of the Heartland, Inc. v. Branstad ex rel. State,* No. 17-0708 (Iowa May 5, 2017) (enjoining enforcement of 72-hour mandatory delay law prior to governor's signature).

[3] Petitioners use "women" as a shorthand for many of the people who are or may become pregnant, but people of all gender identities, including transgender and gender non-conforming individuals, may also become pregnant and seek abortion services, and thus are equally harmed by the Amendment.

guarantees Iowans a fundamental right to end a pregnancy free from governmental intrusion because "[a]utonomy and dominion over one's body go to the very heart of what it means to be free." *PPH II*, 915 N.W.2d at 237 (applying strict scrutiny to laws regulating the fundamental right to seek an abortion). The medical consensus affirmed by numerous medical and health organizations, such as the American Medical Association, the American College of Obstetricians and Gynecologists, the American Academy of Family Physicians, the American Osteopathic Association, the American Academy of Pediatrics, and the American Psychiatric Association, is that timely access to abortion care is critical to women's health and that state-mandated delays in accessing abortion care are contrary to medical ethics and best medical practice.

Despite this binding precedent and overwhelming medical and public health consensus, the legislature enacted another virtually identical mandatory delay requirement less than two weeks ago, on June 14, 2020—this time as an amendment to an unrelated bill, in the middle of the night and with only a few hours of debate, on the final day of session. The Amendment was attached to an entirely unrelated piece of legislation, violating the single-subject requirement of article III, section 29 of the Iowa Constitution. Moreover, the Amendment is plainly invalid under *PPH II* because, in its practical effect, it is indistinguishable from the mandatory delay law invalidated in that case. *PPH II* fully and finally litigated the constitutionality of two-trip mandatory delay laws, making substantial fact findings concerning the effects of such laws, in a case with identical parties to the present matter. As a result, absent significant new facts or law (of which there are none), Respondents cannot now claim that the mandatory delay at issue here furthers a compelling government interest or otherwise relitigate the findings of fact or legal holdings in *PPH II*.

Simply put, as *PPH II* recognized, women faced with an unwanted pregnancy take the time they need to decide whether or not to continue that pregnancy, and providers also adhere to a

rigorous informed consent process to ensure patients are firm in their decision before proceeding. *Id.* at 216–17, 224–25. Far from enhancing this process, the Amendment only serves to shame women, convey doubt about their capacity, undermine their autonomy as patients and as individuals, and impose obstacles that will delay them, reduce their medical options, increase their medical safety risks, and in some cases prevent them altogether from accessing safe, legal abortion care. If anything, the Amendment's extra trip requirement is *more* harmful now than in 2017, as the COVID-19 pandemic and attendant economic crisis have exacerbated poverty and intimate partner violence and created a public health imperative for Iowans to avoid unnecessary travel and social contact.

The Amendment is patently unconstitutional and should be enjoined.

STATEMENT OF THE FACTS

A. The Amendment

The Amendment requires "[a] physician performing an abortion" to "obtain written certification from the pregnant woman . . . at least twenty-four hours prior to performing the abortion" that she has undergone an ultrasound, has been given the option to view and/or hear the ultrasound and/or listen to a description of the fetus based on the ultrasound image, and has been provided certain state-mandated information about abortion and abortion alternatives. Petition Ex. A ("H-8314"); Iowa Code § 146A.1(1) (2020). The Amendment provides only extremely narrow exceptions for "an abortion performed in a medical emergency," defined as a "a situation in which an abortion is performed to preserve the life of the pregnant woman" or "when continuation of the pregnancy will create risk of substantial and irreversible impairment of a major bodily function." H-8314; Iowa Code §§ 146.A.1(2), (6)(a) (2020). Physicians who violate the Amendment are

subject to license discipline by the Board of Medicine ("Board"). H-8314; Iowa Code §§ 146A.1(3); 148.6(2)(c) (2020).

The Amendment was passed in total circumvention of the ordinary legislative process, depriving legislators and voters of the opportunity to fairly debate or otherwise weigh in on the Amendment prior to its passage. *See* Aff. of Rep. Beth Wessel-Kroeschell ("Wessel-Kroeschell Aff.") ¶¶ 3–5, 7–16, attached as Ex. 1 to Pet'rs' Mot. Temporary Inj. Relief; Aff. of Connie Ryan ("Ryan Aff.") ¶¶ 15–20, attached as Ex. 2 to Pet'rs' Mot. Temporary Inj. Relief. In substance, the Amendment revives the provision recently struck down by *PPH II*, section 1 of Senate File 471 (2017), by replacing the phrase "seventy-two hours" with "twenty-four hours." H-8314. It was introduced as an amendment to an amendment to an entirely unrelated bill, H.F. 594, 88th Gen. Assemb. (Iowa 2020),[4] on a Saturday night at the tail end of the legislative session. Wessel-Kroeschell Aff. ¶¶ 10, 13, 16; Ryan Aff. ¶ 18. The underlying bill, H.F. 594, restricts courts from mandating the withdrawal of certain life-sustaining medical procedures, treatments, or interventions from minor children without parental consent. H.F. 594 (referencing Iowa Code § 144A.2 (2020)).

When the Amendment was introduced into the House, Rep. B. Meyer objected that the amendment was not germane to H.F. 594. Wessel-Kroeschell Aff. ¶ 17. Rather than solicit debate on the issue, as would normally occur after such an objection, the Speaker of the House immediately concurred that the amendment was not germane. *Id.* ¶¶ 18–19.[5] Thereafter, the Amendment's sponsor, Rep. S. Lundgren, moved to suspend procedural rules to allow the

[4] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF594.

[5] *See also* Iowa Legislature, *House Video (2020-06-13)* at 10:20:40 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.

Amendment to come up for a vote despite being unrelated to the subject of the underlying bill. *Id.* ¶ 20. Rep. S. Lundgren later admitted that "Republicans had been looking for a bill to which to attach the waiting-period amendment"—further confirming the wholly arbitrary relationship between this amendment and the amendment to which it was ultimately attached.[6]

Attaching the mandatory delay requirement to this unrelated bill—a bill on which no action had been taken for over a year[7]—on the evening before the last day of the legislative session circumvented the many opportunities for debate and comment that form a core component of the legislative process. *See* Wessel-Kroeschell Aff. ¶¶ 11, 14–15, 23–30; Ryan Aff. ¶¶ 15–20. As a result, the Amendment was not posted on the legislative website until the evening it came up for a vote; no public hearing was ever held on the Amendment; and the Amendment did not come up for debate or vote by either the relevant committee or subcommittee. Wessel-Kroeschell Aff. ¶¶ 23–28; Ryan Aff. ¶ 19. Moreover, because H-8134 was introduced via "double-barrelling"—as an amendment to an entirely unrelated amendment—legislators were not permitted to consider any amendments or fixes to the contents of H-8134. Wessel-Kroeschell Aff. ¶¶ 11–15; Ryan Aff. ¶ 16. The Senate originally amended H.F. 594 to add subheadings (such as "a.") and an unnecessary definition of "minor," *see* Amendment H-8132,[8] changes that the amendment's sponsor admitted

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[6] Stephen Gruber-Miller & Ian Richardson, *Iowa Legislature Passes Late-Night Bill Requiring 24-Hour Abortion Waiting Period, Sending It to Governor*, Des Moines Register (last updated June 14, 2020), https://www.desmoinesregister.com/story/news/politics/2020/06/13/24-hour-abortion-waiting-period-iowa-republicans-last-minute-amendment-legislature/3148169001/.

[7] Iowa Legislature, *Bill History for House File 594*, https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=HF%20594&ga=88 (last visited June 22, 2020).

[8] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=H-8312.

were "basically technical" and involved "restructur[ing] the bill."[9] The Senate amendment included nothing about abortion care or mandatory delays. *See* H-8132. Indeed, the first time any mention of abortion or mandatory delays appeared in connection with H.F. 594 was the evening of June 13, 2020—only hours before the final vote on the Senate, at 5:30 a.m. the next morning. Wessel-Kroeschell Aff. ¶¶ 8, 13, 17; Ryan Aff. ¶¶ 15, 19.

Nothing about the way that the Amendment was passed conformed to the normal procedure for passing legislation in Iowa. *See* Wessel-Kroeschell Aff. ¶¶ 3, 23; Ryan Aff. ¶ 18. Five other bills seeking to restrict abortion access during this legislative session (including a proposed constitutional amendment banning abortion) *did* follow this normal procedure—they were introduced into the relevant chamber, assigned to subcommittes, and subjected to hearings. Each bill was met with substantial opposition, with Iowans packing hearing rooms seeking to be heard. *See* Wessel-Kroeschell Aff. ¶¶ 31–32, 34; Ryan Aff. ¶¶ 12, 24. None of those bills became law. By contrast, the Amendment—attached at the eleventh hour to an unrelated and deeply sympathetic bill concerning a parent's right to make medical decisions for their terminally ill child—did become law. *See* H.F. 594.

B. Abortion Services in Iowa

PPH provides a wide range of healthcare at its Iowa health centers, including well-woman exams, cancer screenings, testing and treatment for sexually transmitted infections, contraceptive counseling and care, transgender healthcare, and abortion care. Aff. of Jill Meadows, M.D. ¶ 11 ("Meadows Aff."), attached as Ex. 3 to Pet'rs' Mot. Temporary Inj. Relief. PPH provides two methods of abortion: medication abortion, which uses medication alone to end a pregnancy in a

[9] Iowa Legislature, *Senate Video (2020-06-13)* at 4:02:45 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.

process similar to a miscarriage, and procedural abortion, in which the uterus is emptied using instruments inserted through the cervix. *Id.* ¶¶ 11, 13, 16. PPH provides medication abortion in the first eleven weeks of pregnancy as measured from the first day of the last menstrual period (lmp),[10] and procedural abortion up to 20 weeks, 6 days lmp.[11] Meadows Aff. ¶ 11. Over the past year, PPH provided over 2,200 medication abortions and over 950 procedural abortions in Iowa. Meadows Aff. ¶ 18. PPH provides both medication and procedural abortion at two Iowa clinics: in Des Moines and Iowa City. *Id.* ¶ 11. Another four of PPH's health centers—in Ames, Cedar Falls, Council Bluffs, and Sioux City—provide only medication abortion.[12] *Id.*

As the Iowa Supreme Court previously found, there are many reasons why women decide to end a pregnancy:

> Sixty percent of abortion patients already have at least one child and many feel they cannot adequately care for another child. Other women feel they are currently unable to be the type of parent they feel a child deserves. Patients frequently identify financial, physical, psychological, or situational reasons for deciding to terminate an unplanned pregnancy. Some patients are victims of rape or incest, and others are victims of domestic violence. Women also present with health conditions that prevent a safe pregnancy or childbirth. Sometimes, women discover fetal anomalies later in their pregnancies and make the choice to terminate.

PPH II, 915 N.W.2d at 214–15. Both medication and and procedural abortions are extremely safe, but the risks associated with these methods increase with every week of gestation. *Id.* Abortion is many times safer than labor and delivery. *Id.*

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[10] At the time *PPH II* was tried, medication abortion was only available through ten weeks lmp. *PPH II*, 915 N.W.2d at 230. Since that time, PPH has extended this method through eleven weeks lmp based on evidence demonstrating its safety and efficacy throughout that gestational period. Meadows Aff. ¶ 30.

[11] PPH's limit is within the legal limit in Iowa of 20 weeks post-fertilization, a different measure of pregnancy that corresponds to approximately 22 weeks lmp. Iowa Code § 146B.2 (2020).

[12] Upon information and belief, there is only one other abortion provider in the state whose services are generally available to the public, the Emma Goldman Clinic in Iowa City.

C. PPH's Informed Consent Process

PPH always obtains the informed consent of its patients for all of their care, as required by good medical practice and Iowa law. *See, e.g., PPH II*, 915 N.W.2d at 216–17; *Estate of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC*, 819 N.W.2d 408, 416 (Iowa 2012); *Morgan v. Olds*, 417 N.W.2d 232, 235 (Iowa Ct. App. 1987) (citing *Pauscher v. Iowa Methodist Med. Ctr.*, 408 N.W.2d 355, 358 (Iowa 1987)). Informed consent includes disclosing "information material to a patient's decision to consent to medical treatment," *Estate of Anderson ex rel. Herren*, 819 N.W.2d at 416 (citing *Pauscher*, 408 N.W.2d at 360), and "all material risks involved in the procedure," *Doe v. Johnston*, 476 N.W.2d 28, 31 (Iowa 1991) (citing *Pauscher*, 408 N.W.2d at 358; *Cowman v. Hornaday*, 329 N.W.2d 422, 425–26 (Iowa 1983)). However, prior to the Amendment, Iowa did not require a mandatory delay and additional clinic trip for any medical procedure, including abortion. *See* Meadows Aff. ¶¶ 20–21 (explaining PPH's same-day informed consent and screening process).

The overwhelming majority of women are certain in their decision to terminate their pregnancy by the time they arrive at their appointment. *PPH II*, 915 N.W.2d at 217; Meadows Aff. ¶ 22; *see also* Aff. of Daniel Grossman, M.D. ("Grossman Aff.") ¶ 10, attached as Ex. 4 to Pet'rs' Mot. Temporary Inj. Relief. PPH uses a comprehensive informed consent process, which provides patients with all information necessary for them to fully understand the risks and benefits of abortion, and the alternatives to abortion, including carrying the pregnancy to term. *PPH II*, 915 N.W.2d at 216–17; Meadows Aff. ¶¶ 20–21. PPH gives its patients multiple opportunities to ask questions and discuss any concerns with their physician prior to an abortion. *PPH II*, 915 N.W.2d at 216–17; Meadows Aff. ¶ 20. PPH's informed consent process thus allows a patient, after considering this information, to give consent that is informed and voluntary. *PPH II*, 915 N.W.2d

at 217; Meadows Aff. ¶ 20. And if a patient is not sure about her decision, PPH advises her to take more time to deliberate. *PPH II*, 915 N.W.2d at 217; Meadows Aff. ¶ 23.

Consistent with Iowa law, *see* Iowa Code § 146A.1 (2020), and in accordance with PPH's medical guidelines, PPH also provides an ultrasound to every patient seeking an abortion and gives her the opportunity to view the ultrasound, if she chooses. *PPH II*, 915 N.W.2d at 216; Meadows Aff. ¶ 21. Most patients do not choose to view the ultrasound. *PPH II*, 915 N.W.2d at 216; Meadows Aff. ¶ 21.

D. The Amendment's Effects on Women Seeking Abortions in Iowa

As the Iowa Supreme Court recently held based on a full trial record, mandatory delay laws do not benefit women seeking an abortion or change their minds about their decision. *PPH II*, 915 N.W.2d at 242–43. Women already deliberate on their decision, and take the time they need with that deliberation. *Id.* at 224–25. Providers already undertake a rigorous informed consent procedure to ensure that each patient's decision is voluntary and informed before beginning treatment. *Id.* at 216–17; *see also* Meadows Aff. ¶¶ 20–21. And research on abortion-related decision-making confirms that mandatory delay periods do not change patients' minds, and also that women who have had an abortion report relief as their overriding emotion afterward, both in the short term and in the long term, as well as reporting confidence that they made the right decision. *PPH II*, 915 N.W.2d at 218; *see also* Grossman Aff. ¶ 15 (citing new evidence since 2017).[13] Rather than helping women, these laws irreparably harm them by obstructing and stigmatizing their efforts to access care. *PPH II*, 915 N.W.2d at 245.

[13] Self-evidently, if a state-mandated 72-hour mandatory delay does not change patients' minds, as the Iowa Supreme Court found, the shorter minimum period prescribed by the Amendment will not either.

As the Court found, most Iowa women seeking an abortion are struggling with poverty, with limited access to transportation, time off from work, and child care. *Id.* at 218–20; Aff. of Jane Collins, Ph.D. ("Collins Aff.") ¶¶ 10–11, attached as Ex. 6 to Pet'rs' Mot. Temporary Inj. Relief. Without extra trip and mandatory delay requirements, these patients already face many obstacles in accessing an abortion in Iowa due, in part, to the fact that so few physicians offer this care and Iowa law includes a medically unnecessary prohibition on other licensed clinicians' doing so. Meadows Aff. ¶ 35; Transcript of Bench Trial Volume I, 142:1–7 (Grossman), *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. EQCE081503 (Iowa Dist. Ct. Polk Cty. July 17, 2017) ("Grossman Tr."), attached as Ex. C to Grossman Aff.; *see also PPH II*, 915 N.W.2d at 219 ("[W]omen in Iowa travel much farther than the average patient to receive an abortion, which requires greater resources and support"). The 24-hour mandatory delay and additional trip requirement will exponentially compound these obstacles. *PPH II*, 915 N.W.2d at 227–29.

To begin with, to make the extra trip, patients will have to take far more time off school, work, and/or home, which would be extremely difficult for many of them to do. Many will lose wages and/or have to pay for child-care. *Id*. at 227. Patients will also have to pay for additional travel costs, including potentially hotel costs for one or more nights if they are unable to make two separate trips to the health center at least 24 hours apart. *See generally* Collins Aff.; *see also* Meadows Aff. ¶¶ 27–28; Grossman Aff. ¶ 14; *PPH II*, 915 N.W.2d at 227–28. There is no reason these burdens would be materially different for the Amendment than they were for the 72-hour mandatory delay law invalidated in *PPH II*. Meadows ¶ 29; Grossman Aff. ¶¶ 13–14; Collins Aff. ¶¶ 13–17.

Moreover, as *PPH II* found, because PPH's health centers are already stretched thin, the requirement that patients schedule an extra visit before receiving care will cause additional scheduling days across the board. *PPH II*, 915 N.W.2d at 222. Due to limited clinician availability and the fact that PPH is restricted by other laws from expanding access to care, PPH is only able to schedule abortion patients one to two days a week at many of its health centers, and even less frequently at the others. Meadows Aff. ¶ 35. As a result, staff already have to schedule patients at least one week out. *Id.* If PPH has to schedule an extra appointment for each patient, this is likely to push patients out significantly farther. *Id.* ¶ 37; *PPH II*, 915 N.W.2d at 222 (the necessity of scheduling additional visits for every abortion patient would lead to a one- to two-week delay between appointments). In fact, scheduling delays are likely to be particularly prolonged currently because the pandemic prevented many women from receiving care earlier in pregnancy and PPH is experiencing a surge of patients, including patients later in their pregnancy who need more intensive care. Meadows Aff. ¶ 36. The Amendment will thus substantially delay women seeking abortion, in ways that are indistinguishable from the 72-hour delay law invalidated in *PPH II*. *See generally* Meadows Aff. ¶¶ 30–38, 40; Grossman Aff. ¶¶ 13–14.

The delays caused by the Amendment will harm women's health. While abortion is an extremely safe procedure, the later an abortion takes place in pregnancy, the greater the medical risks for the woman, as well as the cost. *PPH II*, 915 N.W.2d at 230; Meadows Aff. ¶ 26; Grossman Aff. ¶ 8. (Those increased costs will come on top of additional clinic-related costs from extra appointments. Meadows Aff. ¶ 35.) Additionally, the Amendment will prevent a significant number of women—potentially hundreds every year—from obtaining a medication abortion because it will push them past the gestational age at which this method is available (i.e., eleven weeks lmp). *PPH II*, 915 N.W.2d at 230; Meadows Aff. ¶¶ 30–31. As *PPH II* recognized, this is

a particular harm. *PPH II*, 915 N.W.2d at 230. Some patients prefer a medication abortion over a procedural abortion because they "view medication as a less invasive and more natural procedure and prefer to terminate the pregnancy in the comfort of their own homes." *Id.* at 215. Additionally, "[m]edication avoids needles and surgical instruments inserted into the vagina and cervix, which may be traumatic for victims of sexual assault." *Id.* For others with particular conditions, medication abortion is medically indicated. *Id*. During the COVID-19 pandemic, which is expected to continue until a vaccine is developed and available for widespread use, i.e., until early or mid-2021 at the earliest, medication abortion offers the safety advantage of reducing physical interactions at the clinic and thereby reducing transmission risks. Meadows ¶ 31; Grossman ¶¶ 16–18.

By making it impossible for many women to have a medication abortion, the Amendment will not only deprive women of a preferred or even safer option, but also force some of these women to travel significantly farther to get a surgical abortion. As stated above, PPH only provides surgical abortion at two of its health centers, in Des Moines and Iowa City; medication abortion is available at these two centers as well as four additional health centers, which are spread across the state in Ames, Cedar Falls, Council Bluffs, and Sioux City. Meadows Aff. ¶ 11. Thus, for example, a patient in Sioux City who loses her chance to have a local medication abortion via telemedicine will have to travel approximately 400 miles round-trip to Des Moines twice or stay there at least one night. *PPH II*, 915 N.W.2d at 228. Increased travel increases COVID-19-related risks, as patients have to stop more on the road and potentially find someplace to stay overnight. Meadows Aff. ¶ 29; Grossman Aff. ¶ 18. Additionally, research has demonstrated that increased travel distances delay and/or prevent women seeking abortion care. *PPH II*, 915 N.W.2d at 229–31; *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 267 (Iowa 2015)

("*PPH I*"). For other women seeking a procedural abortion later in pregnancy, the mandatory delay will push them past the gestational age at which procedural abortions are available in the state. *PPH II*, 915 N.W.2d at 229; Meadows Aff. ¶ 32. These patients will be forced either to travel out of state to obtain an abortion, or, if they lack the resources to do so, carry a pregnancy to term.

Research has shown that imposing an additional-trip requirement on patients seeking an abortion causes them severe stress. It also poses a very real threat to a woman's confidentiality and privacy by increasing the risk that partners, family members, employers, co-workers, or others will discover that she is having an abortion. *PPH II*, 915 N.W.2d at 227, 231; *PPH I*, 895 N.W.2d at 267; Meadows Aff. ¶ 28; Collins Aff. ¶¶ 15–16. Many patients are quite anxious to end their pregnancy as soon as possible—to conceal an unwanted pregnancy from an abusive or controlling partner or family member, or from others who would disapprove or shame her, to terminate a debilitating pregnancy, or for some other reason. *See generally PPH II*, 915 N.W.2d 206; *see also* Meadows Aff. ¶ 28; Grossman Aff. ¶ 8; Aff. of Lenore Walker, Ed.D. ("Walker Aff.") ¶ 16, attached as Ex. 5 to Pet'rs' Mot. Temporary Inj. Relief.

The mandatory delay and additional trip requirements will pose particular harms to especially vulnerable groups of Iowa women. For example, most of PPH's abortion patients are struggling with poverty, a situation that has only worsened with the economic crises and mass unemployment caused by the pandemic. Meadows Aff. ¶ 29; Collins Aff. ¶¶ 7, 10. These patients, who are disproportionately women of color, will have the greatest difficulty in rearranging inflexible work schedules at low-wage jobs; arranging and paying for child care; paying for the travel costs for an additional trip to the clinic; foregoing lost wages for missed work; and paying any additional costs associated with a later procedure. *See PPH II*, 915 N.W.2d at 227–29; Meadows Aff. ¶ 39; Collins Aff. ¶¶ 8, 10–15. The process of finding and saving money to pay for

additional costs resulting from the Amendment will likely further delay them, exacerbating the harms associated with delay discussed above. *PPH II*, 915 N.W.2d at 229; Meadows Aff. ¶ 27; Grossman Aff. ¶¶ 14–15. For some of these women, the Amendment will in fact make it impossible for them to terminate their pregnancy. *PPH II*, 915 N.W.2d at 229–31; Meadows Aff. ¶ 32; Collins Aff. ¶¶ 20–21.[14]

The Amendment will also be particularly burdensome for the significant percentage of women and adolescents with abusive partners or family members. *PPH II*, 915 N.W.2d at 231; Walker Aff. ¶¶ 19–25 (detailing, for example, how abusive partners exercise monitoring and control financially, emotionally, and logistically). Not only do two-trip mandatory delay laws make it harder for individuals in these circumstances to access abortion care, but without that access, they and their families are less likely to escape their abuser. *PPH II*, 915 N.W.2d at 231; Walker Aff. ¶¶ 13–14. Abuse rates have not declined since *PPH II*; to the contrary, experts believe they are increasing under the economic and social stress of the COVID-19 pandemic. Walker Aff. ¶¶ 23–25.

Similarly, forcing women whose pregnancies are the result of rape or other violent crimes to comply with the Amendment's requirements may cause them further psychological harm, and could even prevent them from accessing care altogether (which itself could cause further trauma). *PPH II*, 915 N.W.2d at 220 ("Many rape and incest survivors are extremely distraught, and a pregnancy serves as a constant physical reminder of the assault. For many, termination is an

[14] The Amendment's requirements are also likely to be particularly burdensome, if not prohibitive, for minors seeking an abortion without parental involvement, who are already required by Iowa law to navigate a judicial bypass before obtaining care. Iowa Admin. Code 641-89.21(135L).

important step in the recovery process."); Grossman Aff. ¶ 8; Walker Aff. ¶¶ 15–21, 27. The Amendment, like the law invalidated in *PPH II*, makes no exceptions for these circumstances.

Women with wanted pregnancies who seek abortions to protect their medical well-being will also face grave harms, unless they are at serious risk of losing their lives or impairment of "a major bodily function" (a determination their physician must make knowing she could lose her license if the Board of Medicine disagrees). Iowa Code §§ 146A.1(3), (6)(a)). The Amendment will thus impose serious medical risks on women facing one of the numerous complications of pregnancy that threaten a woman's health outside the dangerously narrow confines of the Amendment's exceptions. Meadows Aff. ¶ 12; Grossman Aff. ¶ 8. And for patients who decide to terminate a wanted pregnancy after receiving a diagnosis of a severe fetal anomaly, the mandatory delay and additional-trip requirements are especially cruel; they will prolong what is an extremely painful experience and will interfere with physicians' ability to exercise medical judgment and provide compassionate care to these patients. Transcript of Bench Trial Volume I, 54:24–55:9 (Meadows), *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. EQCE081503 (Iowa Dist. Ct. Polk Cty. July 17, 2017), attached as Ex. C to Meadows Aff.; Grossman Aff. ¶ 8.

When legal abortion is unavailable or difficult to access, some women turn to illegal, and sometimes unsafe, methods to terminate unwanted pregnancies. *PPH II*, 915 N.W.2d at 230–31 (citing 2016 Iowa study finding "that 30% of Iowa women surveyed had investigated options for clandestine home use of misoprostol, and 8.6% reported prior attempts to self induce"). Other women, deprived of access to legal abortion, are forced to carry an unwanted pregnancy to term. Grossman Tr. 189:7–16. These women are exposed to increased risks of death and major complications from childbirth and they and their newborns are at risk of negative health

consequences, including reduced use of prenatal care, lower breastfeeding rates, and poor maternal and neonatal outcomes. *Id.* at 189:17–22, 190:22–191:6, 195:10–19; Affidavit of Daniel Grossman, M.D. ¶ 10, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. EQCE081503 (Iowa Dist. Ct. Polk Cty. May 3, 2017), attached as Ex. B to Grossman Aff.

Finally, by singling abortion out from all other medical care and imposing a mandatory delay on women seeking this care, the Amendment perpetuates the gender stereotype that women do not understand the nature of the abortion procedure, have not thought carefully about their decision to have an abortion, and are less capable of making an informed decision about their health care than men.[15] The Amendment thus stigmatizes women seeking abortions and sends the harmful message that they are incompetent decision-makers. It also overrides their strong preferences; in one Iowa study, 94% of patients stated that it was very important for them to receive care as soon as possible. *PPH II*, 915 N.W.2d at 230.

Because mandatory delay laws like the Amendment harm women's health and violate the medical ethical principle of patient autonomy, they are opposed by major medical groups and bioethicists. *See* Brief of Amicus Curiae of the American College of Obstetricians and Gynecologists in Support of Plaintiffs-Appellees at 8–14, 17–20, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. 17-1579 (Iowa Oct. 13, 2017) (advising the Iowa Supreme Court that the 72-hour mandatory delay law in *PPH II* undermines patient autonomy and

[15] The Amendment (and the stereotype it embodies) is flatly contradicted by evidence about patients' abortion-related decision-making. *See PPH II*, 915 N.W.2d at 242–43 (citing studies showing that "abortion patients are firm in their decisions, the typical abortion patient has an over 99% chance of reporting that the decision to terminate was right for her, and that waiting periods do not impact decisional certainty"); Grossman Aff. ¶ 10 (citing study indicating that waiting period requirements did not affect patient certainty); Meadows Aff. ¶ 22 (stating that patients "do not take the decision lightly" and most "are already firm in their decision" by the time of their appointment).

potentially endangers patient health); Brief of Amici Curiae Biomedical Ethicists in Support of Petitioners-Appellants at 7–9, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. 17-1579 (Iowa Nov. 20, 2017) (stating that "injecting a mandatory waiting period into the informed consent process . . . undermines the basic principles of respect for autonomy").

ARGUMENT

I. Standard for Temporary Injunctive Relief

The Iowa Rules of Civil Procedure establish that the Court may grant a temporary injunction "[w]hen the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff." Iowa R. Civ. P. 1.1502(1). "A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation," *Kleman v. Charles City Police Dep't,* 373 N.W.2d 90, 95 (Iowa 1985) (citing *Kent Products v. Hoegh*, 245 Iowa 205, 214, (Iowa 1953)), specifically in situations where a petitioner is likely to succeed on the merits of her claim and is at risk of irreparable harm absent immediate judicial intervention, *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001).

When recently considering two other abortion restrictions, Iowa courts determined that temporary injunctive relief was appropriate. *See* Ruling on Motion to Stay Pending Judicial Review of Agency Action and Declaratory Judgment and Injunctive Relief, *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, No. CVCV046429 (Iowa Dist. Ct. Polk Cty. Nov. 5, 2013) (enjoining enforcement of challenged regulation); Order, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. 17-1579 (Iowa Oct. 23, 2017) (staying enforcement of statute). Petitioners easily meet the standard for this relief here as well.

II. Petitioners Have Established a Likelihood of Success on Their Claims

A. Petitioners are Likely to Show that the Amendment Was Passed in Violation of the Constitution's Single-Subject Rule

The Constitution of the State of Iowa is clear: "Every act shall embrace but one subject, and matters properly connected therewith." Iowa Const. art. III, § 29. This is known as the "single-subject rule" and is mandatory, not directory. *C.C. Taft Co. v. Alber*, 171 N.W. 719, 720 (Iowa 1919) ("[T]he provisions of the Constitution are mandatory and binding upon the Legislature, and that any act that contravenes the provisions of the Constitution . . . is not binding upon the people or any of the agencies of government."); *Green v. City of Mt. Pleasant,* 131 N.W.2d 5, 18 (Iowa 1964) (same); *Western Int'l v. Kirkpatrick*, 396 N.W.2d 359, 366 (Iowa 1986) (referring to "the mandate" of article III, section 29 and striking portions of statute that violated article III, section 29). As a result, an act that violates the single-subject rule is invalid and unenforceable.

> [T]o 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."

State v. Mabry, 460 N.W.2d 472, 474 (Iowa 1990) (quoting *Long v. Bd. of Supervisors,* 258 Iowa 1278, 1283 (Iowa 1966)). An Amendment violates the single-subject rule where it "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection to or relation to each other." *State v. Iowa Dist. Court,* 410 N.W.2d 684, 686 (Iowa 1987) (citing *Long*, 258 Iowa at 1282–83).

The Amendment was passed in plain violation of this constitutional requirement. The bill to which the Amendment was attached, H.F. 594, was originally entitled "an Act relating to the limitations regarding the withdrawal of a life-sustaining procedure from a minor child." The bill restricts the circumstances in which court may "require the withdrawal of life-sustaining

procedures from a minor child over the objection of the minor child's parent or guardian," where such procedures are defined as "any medical procedure, treatment, or intervention, including resuscitation, which meets both of the following requirements: (1) Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function. (2) When applied to a patient in a terminal condition, would serve only to prolong the dying process." H.F. 594; Iowa Code § 144A.2(8) (2020).

In this instance, not only is the single-subject violation clear from the text of the bill and challenged amendment, which bear no relation to one another, but it was admitted to without debate by the Speaker of the House. Wessel-Kroeschell Aff. ¶¶ 18–19. While the House ultimately voted to suspend its own procedural rules to allow the Amendment to be voted on despite not being germane, that rule suspension in no way cures the constitutional defect. *Cf. Des Moines Reg. & Trib. Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996) (holding that legislature has prerogative to enforce its own procedures "so long as constitutional questions are not implicated").

This violation of the single-subject rule resulted in precisely the outcomes the single-subject rule is intended to avoid:

> The purpose of the single-subject rule is three-fold. First, it prevents logrolling. Logrolling occurs when unfavorable legislation rides in with more favorable legislation. Second, it facilitates the legislative process by preventing surprise when legislators are not informed. Finally, it keeps the citizens of the state fairly informed of the subjects the legislature is considering.

Mabry, 460 N.W.2d at 473 (internal citations omitted).

Firstly, the violation of the single-subject rule involved attaching an abortion restriction—a topic so controversial in Iowa that of the *five other* abortion restrictions that were properly introduced this session, *none* became law—to an uncontroversial bill concerning a parent's rights

to control medical care provided to a dying child. This is *Mabry*'s exact definition of log-rolling. Secondly, the single-subject violation resulted in total surprise among legislators, as attested to by Rep. Wessel Kroeschell, the ranking member of the Human Resources Committee (the Committee to which the Amendment would have been assigned had it been properly introduced), affording legislators no time to consider or debate its substance. Wessel-Kroeschell Aff. ¶¶ 4, 8, 23, 25. Finally, the single-subject violation prevented the citizens of the state from being "fairly informed of the subjects the legislature is considering." *Mabry,* 460 N.W.2d at 473. Even heavily engaged citizenry, such as the Executive Director and supporters of the Interfaith Alliance of Iowa, knew nothing of the Amendment until hours before it was voted on, depriving them of the opportunity to timely communicate with their elected representatives or speak at a public hearing to inform other voters of their position on the Amendment or its potential harmful consequences. Ryan Aff. ¶¶ 15–16, 18–20. By contrast, the other bills seeking to restrict abortion access during this same legislative session, which did go through the proper legislative procedures, were subjected to substantial opposition, with so many individuals attending the subcommittee hearings that they were scheduled in a larger room than other hearings. Wessel-Kroeschell Aff. ¶¶ 31–32; Ryan Aff. ¶¶ 12, 24.

Moreover, the single-subject violation here is, in essence, a two-fold violation—not only was the Amendment attached onto an entirely unrelated *bill*, it was amended to an entirely unrelated *amendment*. H-8134; H-8312. This is a process known as "double-barreling," whereby debate on an issue is constrained by ensuring that no further amendments are permitted, as no third-degree amendments are permitted. Wessel-Kroeschell Aff. ¶¶ 11–14; Ryan Aff. ¶ 16. H.F. 594 was originally subject to a technical, non-substantive amendment, *see* H-8312, and then that amendment, in turn, was amended to require the mandatory delay before obtaining an abortion,

see H-8314. Because the substance of the Amendment was introduced as an amendment to an unrelated amendment (to an unrelated bill), no further changes to the Amendment could be proposed in either chamber of the legislature. Thus, for example, there was no opportunity for a legislator to propose alterations to make the Amendment potentially less burdensome, such as removing the extra trip requirement or providing exemptions for patients living far from a clinic. Wessel-Kroeschell Aff. ¶ 15. Rather, lawmakers were forced to vote on the entire bill, as amended. *Id.* ¶ 16. Voting down the controversial mandatory delay requirement would thus have meant *also* voting down a bill protecting parents' autonomy to make end-of-life decisions for their children.

This combination of logrolling and double-barreling amounts to an egregious violation of the deliberative process that the Constitution's single subject rule was intended to protect. The fact that it was done during a pandemic hours before the legislative session ended only magnifies these errors. Petitioners are, therefore, highly likely to prevail on their single-subject challenge.

B. Petitioners are Likely to Show that the Amendment Violates the Due Process and Equal Protection Clauses of the Iowa Constitution

Even if the Amendment did not violate the Constitution's single-subject rule, it would plainly violate the Due Process and Equal Protection Clauses of the Iowa Constitution under *PPH II*.

As an initial matter, Respondents are precluded from seeking to relitigate the factual findings and legal conclusions concerning the unconstitutionality of mandatory delay requirements, since those issues were already fully litigated and decided in *PPH II*, a case in which Respondents were parties.

> In general, the doctrine of issue preclusion prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action. "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the

> judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim."

Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981) (quoting Restatement (Second) of Judgments § 68 (Tentative Draft No. 4 1977)) (footnote omitted), *quoted in Fischer v. City of Sioux City*, 654 N.W.2d 544, 546–47 (Iowa 2002). This doctrine "prevent[s] 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." *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 178 (Iowa 2006), *quoted in Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W. 2d 17, 22 (Iowa 2012).

The Supreme Court of Iowa only two years ago, in a lawsuit with parties identical to this one, made substantial findings of fact and legal holdings, on a full trial record, related to the very law revived here, which were unrelated to the statutory minimum number of hours required between the two mandatory health center visits. *See PPH II*, 915 N.W.2d 206. The Supreme Court found that "an objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period," *id.* at 241; that mandatory delays create substantial obstacles to abortion access and result in delays of, not seventy-two (or in this case, twenty-four) hours, but rather one or two *weeks*, *id.* at 229; that mandatory delay laws such as this Amendment "indiscriminately subject[] 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; that mandatory delay laws that require a prior ultrasound force patients to visit an abortion-providing health center twice, *id.* at 221–22; that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free," *id.* at 237; and that the Iowa Constitution's guarantees of due process of law and equal protection thus require that abortion restrictions be analyzed under a strict scrutiny framework, *id*. at 244–46. The text of H-8314 does

no more than simply revive the stricken portions of the prior act and replace the words "seventy-two" with the words "twenty-four." H-8314. Nothing about changing the words "seventy-two" to "twenty-four" changes this legal analysis or these findings of fact. Thus, Respondents are precluded from seeking to relitigate these issues of law or fact only two years after a final and full judgment on the merits.

Issue preclusion is proper here because Respondents were afforded a full and fair opportunity to litigate the issues at stake and there are no "other circumstances that would justify granting the party resisting issue preclusion occasion to relitigate the issue." *Fischer*, 654 N.W.2d at 546–47 (citing *Hunter*, 300 N.W.2d at 126); *see also Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 107 (Iowa 2011) (listing examples of "other circumstances" (citing Restatement (Second) of Judgments § 29)). As the Iowa Supreme Court has noted, "the 'other circumstances' element . . . primarily protects defendants from the offensive use of issue preclusion when the prior proceeding is unreliable because of legal procedure or changed legal circumstances." *Soults Farms*, 797 N.W.2d at 106. There is nothing about the legal procedure in *PPH II* that made its holdings or findings of fact unreliable. Nor have there been changed legal circumstances over the mere two years since *PPH II* was fully decided.

Even if Respondents were not precluded from relitigating the constitutionality of, or underlying factual issues related to, two-trip mandatory delay laws such as the Amendment, Petitioners are more than likely to succeed in showing that the Amendment fails the standard set forth in *PPH II*. Just two years ago, that Court found that restrictions on abortion implicate "fundamental . . . 'rights and liberties which are deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty.'" *PPH II*, 915 N.W.2d at 233 (quoting *State v. Steering*, 701 N.W.2d 655, 664 (Iowa 2005)). A person's ability to choose "whether to continue

or terminate a pregnancy" goes to the "very heart of what it means to be free." *Id.* at 237. Because the abortion right is fundamental, it cannot be infringed "at all" unless the state satisfies strict scrutiny. *Id.* at 238 (quoting *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 694 (Iowa 2002)). Thus, Respondents cannot restrict abortion unless they can prove that "the infringement is narrowly tailored to serve a compelling state interest." *Id.*

In finding that a strict scrutiny analysis is appropriate for cases involving abortion restrictions, the Iowa Supreme Court explicitly and specifically rejected the "downward" "deviat[ion]" from strict scrutiny found in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which held that an abortion restriction violates the federal constitution only if it presents an "undue burden" on the abortion right. *PPH II*, 915 N.W.2d at 238. The Iowa Constitution thus affords patients seeking access to abortion even *greater* protections than those guaranteed under the federal Constitution. The Court also recognized that restrictions that substantially delay patient access are especially harmful. *Id.* at 243.

In *PPH II*, Respondents argued that the mandatory delay law at issue there satisfied strict scrutiny because it was narrowly tailored to the compelling state interest of "promoting potential life." *Id*. at 241. The Court rejected this argument because it found, "an objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period." *Id*. This finding that mandatory delay periods do not enhance patient decision-making was not tied to the prescribed minimum length of the waiting period at issue in *PPH II*, nor has it been called into question by any subsequent research, *see* Grossman Aff. ¶ 10. Indeed, were it the case that waiting periods increased decisional certainty, the shorter mandatory delay at issue here would be expected to have even less benefit, though in reality the Court found that waiting periods provide *no* such benefit. This finding of *PPH II* therefore self-evidently applies to the 24-hour

mandatory delay at issue here. Based on this finding alone, the Amendment fails strict scrutiny because it cannot be narrowly tailored to a compelling state interest.[16]

This is all the more so because of the serious harms caused by the Amendment. In practical effect, the Amendment will burden and harm patients in substantially the same way a 72-hour mandatory delay would have: delaying their care, increasing their medical risks, jeopardizing their financial stability and physical safety, and in some cases preventing them from accessing safe, legal abortion care altogether. *See* Statement of the Facts, Part D, *above*. Not only have these facts not changed in Respondents' favor since *PPH II* but the ongoing pandemic has made the Amendment's extra trip requirement especially harmful by exacerbating poverty and intimate partner violence and by creating a public health imperative to avoid unnecessary travel and interpersonal contact. Meadows Aff. ¶ 29; Grossman Aff. ¶¶ 16–18; Walker Aff. ¶¶ 22–26. For these reasons, the Amendment fails strict scrutiny.

Petitioners thus are highly likely to succeed on the merits of all their claims, any one of which on its own would be sufficient to justify temporary relief.

III. Petitioners and Their Patients Will Be Substantially Injured if This Court Does Not Enjoin Respondents from Enforcing the Amendment, and the Balance of Hardships Warrants Injunctive Relief

In addition to demonstrating that Petitioners are likely to succeed on the merits of their petition, the record also demonstrates that Petitioners and their patients will be substantially injured if the Amendment is enforced. *See Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa 2017) (district court

[16] While H-8314 did include language concerning the bill's intent, when H-8314 was introduced, one of the bill's sponsors, Rep. Sandy Salmon, noted she believed it was reasonable to expect that the mandatory delay would cause women seeking abortions to change their mind. Iowa Legislature, *House Video (2020-06-13)* at 10:19:30 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.

may issue an injunction when "substantial injury will result from the invasion of the right or if substantial injury is to be reasonably apprehended to result from a threatened invasion of the right").

As an initial matter, the Amendment's requirements will irreparably harm Petitioners' patients by violating their constitutional rights: "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (infringement of constitutional rights by facially invalid law causes irreparable harm) (citing 11A Charles Wright et al., Practice & Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")).

As outlined in more detail above, the mandatory delay and additional-trip requirements will also irreparably harm women by delaying them from accessing care, which will also expose them to increased medical risk and in some cases deprive them of the option of a medication abortion (or any option whatsoever). These requirements will also burden women with increased travel distances, costs, and stress. It is unlikely that PPH can comply with the Amendment without scheduling patients much further out and charging patients more for an abortion. Vulnerable groups of women will be injured most severely by these requirements, including: low-income women, who make up the majority of PPH's abortion patients and are disproportionately women of color; victims of rape, incest, or domestic abuse; women who have received a diagnosis of a severe fetal anomaly; and women with medical conditions that threaten their health but who do not fall into the narrow medical emergency exception provided in the Amendment. In subjecting women to these harms, the Amendment will also irreparably harm Petitioners by preventing them

from providing timely, patient-centered care. Meadows Aff. ¶¶ 10, 32.

These harms are more than sufficient to meet the standard for temporary injunctive relief. *See, e.g.,* Order, *Planned Parenthood of the Heartland, Inv. v. Reynolds ex rel. State*, No. 17-1579 (Iowa Oct. 23, 2017) (staying enforcement of statute); Ruling on Motion to Stay Pending Judicial Review of Agency Action and Declaratory Judgment and Injunctive Relief, *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, No. CVCV046429 (Iowa Dist. Ct. Polk Cty. Nov. 5, 2013) (enjoining enforcement of challenged regulation); *Emma Goldman Clinic v. Holman*, 728 N.W.2d 60 (Table), *6 (Iowa Ct. App. 2006) (injunction necessary "to protect the plaintiffs and the clinic's patients and staff from harm"); *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 640 (Iowa 1991) (injunction necessary to protect "Planned Parenthood's right and ability to conduct its business"); *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 795 (2017); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit. B Nov. 1981) (an infringement on a woman's constitutional right to have an abortion "mandates" a finding of irreparable injury because "once an infringement has occurred it cannot be undone by monetary relief"); *Roe v. Crawford*, 396 F. Supp. 2d 1041, 1044 (W.D. Mo. 2005) (delay in obtaining abortion procedure "may cause Plaintiff substantial injury, exposing her to increased medical, financial, and psychological risks"), *stay of injunction denied*, 546 U.S. 959 (2005).

Furthermore, weighing the relative harms of the parties further supports a grant of temporary injunctive relief. While Petitioners and their patients will be severely harmed by the Amendment's requirements, Respondents will not suffer any harm from Petitioners' patients' continuing to receive care without mandatory delay, as they have for over forty years. Petitioners' existing informed consent process is consistent with current best medical practices, requirements under Iowa law prior to the Amendment, and informed consent processes for medical procedures

with a comparable degree of risk. Thus, as abortion patients in Iowa are already capable of providing informed and voluntary consent, the Amendment's requirements provide no benefit whatsoever and Respondents will not be harmed by being unable to temporarily enforce the Amendment. *See Am. Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) ("[T]hreatened injury to [constitutional rights] outweighs whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute.") (citation omitted); *Saint v. Neb. Sch. Activities Ass'n*, 684 F. Supp. 626, 628 (D. Neb. 1988) (no harm to defendant in losing the ability to enforce unconstitutional regulations).

IV. There is No Adequate Legal Remedy Available

Finally, Petitioners are entitled to an injunction because they have no adequate legal remedy. *See Ney*, 891 N.W.2d, at 452 (there is no adequate legal remedy "if the character of the injury is such that it cannot be adequately compensated by damages at law") (internal quotation marks omitted). The Amendment will cause women subject to its mandate grievous injuries, including delaying or preventing them from terminating an unwanted pregnancy. Such injuries cannot later be compensated by damages.

CONCLUSION

WHEREFORE, Petitioners pray this Court grant their Motion for Temporary Injunctive Relief and enjoin Respondents from enforcing the Proclamation to ban abortion procedures during the pendency of this case.

Respectfully submitted,

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