

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE
HEARTLAND, INC., on behalf of itself and its
patients,

Petitioner,

v.

KIM REYNOLDS ex rel. STATE OF IOWA, et al.,

Respondents.

Equity Case No. _____

**BRIEF IN SUPPORT OF
PETITIONER'S MOTION
FOR TEMPORARY
INJUNCTIVE RELIEF**

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INTRODUCTION

For many years, Petitioner Planned Parenthood of the Heartland, Inc. (“PPH”) has received two types of grants administered by the Iowa Department of Human Services (“IDHS”) and the Iowa Department of Public Health (“IDPH”). These grants, which are part of the Community Adolescent Pregnancy Prevention and Services Program (“CAPP”) and the Personal Responsibility Education Program (“PREP”), enable PPH and other grantees throughout Iowa to provide sexual education and teen pregnancy prevention services in communities that desperately need them. As a condition of the grants, PPH and all other grantees use state-selected curricula in both programs.

On April 27, 2019, the Iowa Legislature passed Sections 99 and 100 of House File 766 (hereinafter, “the Act”), which provide in nearly identical language that:

[a]ny contract entered into on or after July 1, 2019 [for CAPP or PREP funding] . . . shall exclude as an eligible applicant, any applicant entity that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that provides or promotes abortions or maintains or operates a facility where abortions are performed.

2019 Iowa Acts, House File 766 §§ 99, 100 (pp. 90–93), attached as Exhibit 1 to Pet’r Mot. for a Temporary Inj. IDHS plans to announce by May 17, 2019, those applicants selected to enter into grant contracts for the upcoming contract period, and IDPH has stated it will do so by May 22. The agencies may enter into contracts with selected entities soon after those announcements.

Without emergency intervention by this Court, PPH will be barred from receiving CAPP and PREP funding based on its provision of and referral for abortion services, its advocacy for access to comprehensive reproductive health services, including abortion, and its affiliation with

other likeminded organizations. The ultimate result of PPH's exclusion from these programs is that fewer young people will receive evidence-based sexual education and pregnancy prevention programming in communities where the need is greatest. The exclusion will also stall recent momentum PPH has gained in its communities, risk damaging productive partnerships, and harm PPH's reputation as a dependable provider of educational services.

The Act violates numerous provisions of the Iowa Constitution and should be temporarily enjoined while this litigation proceeds. **First**, the Act conditions PPH's participation in the CAPP and PREP programs on abandonment of its constitutionally protected rights outside of those programs to advocate for safe and lawful abortions and associate with other organizations that do the same. That use of leverage over government funds is impermissible and violates PPH's right of free speech under the Iowa Constitution. It also curbs PPH's right of free association with other Planned Parenthood entities that engage in the same advocacy and provide the same clinical services as PPH.

Second, the Act impermissibly conditions participation in government programs on abandoning conduct protected by the Iowa Constitution's guarantee of due process: providing safe and lawful abortions. The question here is whether the State may force a choice between participating in a government program and engaging in constitutionally protected activity. The Iowa Supreme Court's precedent makes clear it may not.

Third, the Act violates the Iowa Constitution's equal protection guarantee. The Act was passed for the sole and bare purpose of penalizing PPH for its abortion advocacy and activities. A law based on sheer animus cannot survive any level of review, much less the strict scrutiny appropriate in light of the Act's related burden on PPH's free-speech, association, and due-process rights.

Each of these claims independently requires invalidation of the Act. To protect PPH, its patients, and individuals served by its programs while this case proceeds, Petitioner requests that the Act be temporarily enjoined pending resolution of Petitioner's legal claims.

FACTUAL BACKGROUND

A. Funding for Sexual Education and Teen Pregnancy Prevention Programs

CAPP is a grant program administered by the Iowa Department of Human Services (IDHS), which obtains these funds through a federal Temporary Assistance to Needy Families (TANF) block grant from the U.S. Department of Health and Human Services (HHS). Affidavit of Sarah Stoesz ("Stoesz Aff.") ¶ 6, attached as Exhibit 2 to Pet'r Mot. for a Temporary Inj. Through a competitive bidding process, IDHS then contracts with entities in Iowa to provide evidence-based or evidence-informed comprehensive sex education and/or adolescent pregnancy prevention programs. *Id.* All counties in Iowa are eligible service areas for CAPP programming, though not all counties are currently served. *Id.* ¶ 7.

PREP was authorized by Congress as part of the Patient Protection and Affordable Care Act of 2010. HHS provides this funding to state agencies, including IDPH, and other entities to educate young people regarding abstinence and contraception and other topics that prepare youth for success in adulthood. *Id.* ¶ 13. Through a competitive bidding process, IDPH awards PREP funding to community-based organizations and agencies to deliver educational programming to youth, with the goal of reducing teen pregnancy and sexually transmitted infections (STIs) in parts of the state with the highest teen birth rates. *Id.* ¶ 14. Accordingly, IDPH identifies a select group of counties to serve with PREP programming, and it awards contracts for service delivery only in those counties. *Id.* ¶ 15.

B. PPH's Services to the Community and Advocacy Efforts

Petitioner PPH is a not-for-profit corporation organized under the laws of Iowa and operating in Iowa and Nebraska. *Id.* ¶ 1. In Iowa, PPH delivers clinical, educational, and counseling services at eight health centers across the state, and education programs in reproductive health, human development, and sexuality throughout the communities in which it serves. *Id.*

In FY 2018, PPH provided 2,644 educational presentations in Iowa reaching 40,579 individuals. *Id.* 5. Seventy-six percent of those participants were youth. *Id.* To support some of its educational services, PPH has received funding through CAPP since at least 2005, and from PREP since 2012. *Stoesz Aff.* ¶ 8, 14.

PPH has four existing contracts with IDHS to provide CAPP-funded services to Iowans in Dallas, Des Moines, Henry, Jasper, Lee, Linn, Polk, Plymouth, and Woodbury Counties. *Stoesz Aff.* ¶ 8. PPH currently has a contract to offer PREP services in Polk, Pottawattamie, and Woodbury Counties. *Id.* at ¶ 17. To PPH's knowledge, PPH is the only grantee providing CAPP and PREP programming in those respective counties. *Id.*

In each program, PPH is required to rely on existing curricula selected by the respective state agencies administering the programs. *Id.* ¶ 9, 16; *see also, e.g., Stoesz Aff., Ex. B* at B22 (requiring program fidelity). For CAPP, the curricula include, for example, *Love Notes*, a program model derived from the Dibble Institute for older youth that teaches young people how to build healthy relationships and prevent dating violence. *Id.* ¶ 9. Similarly, the *Draw the Line/Respect the Line* program is for students grades six to eight, and the focus of this curriculum is to provide students with knowledge to prevent HIV and other sexually transmitted diseases (STDs), as well as pregnancy. *Id.* ¶ 9. And in PREP, IDPH has selected as the only approved curricula the Teen

Outreach Program (TOP) curriculum, targeted at youth in at-risk communities, and Wise Guys for adolescent boys. *Id.* ¶ 16.

As required by IDHS, PPH also uses CAPP funding to support its role as the coordinator of coalitions of community partners, whose missions are to provide skills and information that adolescents need to delay sexual activity, to educate sexually active youth by encouraging consistent and proper use of contraceptives, and to support medically accurate comprehensive sex education for all. *Id.* ¶ 10. For example, the Southeast Iowa Pregnancy Prevention Coalition, a coalition coordinated by PPH, identifies relevant community resources, disseminates information, and educates the public. It also fosters collaboration between public and private stakeholders. *Id.*

PPH complies with significant reporting and other documentation requirements for both of these programs, such as the preparation of quarterly reports, fidelity logs, and implementation plans; submission to external performance evaluations and site visits; and participation in regular meetings for awardees. *Id.* ¶ 11, 18. These requirements—along with the substantial institutional capacity necessary to administer funding—are not easy to meet. *Id.* For example, some organizations have considered applying for CAPP funding but have not done so because they determined they could not meet the program requirements. *Id.*

During its current CAPP contract period, which runs from July 1, 2018, to June 30, 2019, PPH was awarded \$182,797 in funding from IDHS and is projected to serve 3,529 unduplicated youth and an additional 4,463 duplicated youth in 33 settings, including middle and high schools, community-based and afterschool programs, juvenile detention centers, substance abuse treatment facilities, and out-of-home placements for youth in foster care. *Id.* ¶ 12. In the current PREP contract period, which runs from August 1, 2018, through July 31, 2019, PPH has received a contract in the amount of \$85,000 and, to date, has provided time-intensive services to 235 Iowan

youth in eight settings. *Id.* ¶ 19; *see also* Stoesz Aff., Ex. B at B21 (describing the nature of these services).

In addition to its educational work, PPH provides comprehensive reproductive health services at eight health centers in Iowa and two health centers in Nebraska. In Iowa, those services include well-patient exams, cancer screening, STI testing and treatment, a range of birth control options including long-acting reversible contraceptives, and transgender healthcare. *Id.* ¶ 20. As part of its clinical services, PPH also provides medication and/or surgical abortion at health centers in Des Moines, Iowa City, Ames, Cedar Falls, and Council Bluffs, Iowa, and at health centers in Lincoln and Omaha, Nebraska. *Id.* ¶ 21. In 2017, the last year for which aggregate state data are available, PPH performed roughly 95 percent of all abortions in Iowa and 55 percent of abortions in Nebraska. *Id.* Upon patient request, all PPH health centers refer patients for abortion care. *Id.* ¶ 22. And to ensure that patients are aware of and able to exercise their rights, PPH also engages in advocacy intended to protect and expand access to safe and legal abortion services for women who decide to have an abortion. *Id.* ¶ 24.

PPH also associates with other organizations that provide abortion or advocate for abortion access. Until December 2018, PPH was a direct affiliate of, though independent from, Planned Parenthood Federation of America, Inc. (PPFA). *Id.* ¶ 25. Like PPH, PPFA advocates for access to comprehensive reproductive health care, including abortion services. *Id.* Moreover, since January 1, 2019, PPH has been an ancillary organization of Planned Parenthood North Central States (PPNCS), one of the largest Planned Parenthood affiliates in the country. *Id.* ¶ 26. As a PPFA affiliate, PPNCS advocates for access to expert, comprehensive reproductive health care, including abortion services. *Id.* Through PPH and Planned Parenthood Minnesota, North Dakota,

South Dakota, PPNCS ensures the affiliate provides a full range of reproductive health care, including abortion services. *Id.*

PPH is well aware that federal and Iowa law prohibit, with a few, narrow exceptions, the use of federal and state funds to carry out abortions. *Id.* ¶ 27. PPH rigorously adheres to those provisions, following strict rules for operational separation and accounting methods to ensure that funds are only expended for permitted purposes. *Id.* It has never used its CAPP or PREP funding to provide or “promote” abortions. *Id.* ¶ 3.

C. The Application Process for Upcoming CAPP and PREP Funding

Existing contracts for CAPP and PREP funding in Iowa will expire this summer on June 30 and July 31, respectively. Accordingly, IDHS and IDPH have issued Requests for Proposal (RFPs) announcing the availability of a new round of CAPP and PREP funding through competitive bid processes. *Id.* ¶¶ 28, 31.

The proposal for CAPP funding is for a three-year project period to run from July 1, 2019, through June 30, 2022. *Id.* ¶ 28. Entities selected will initially enter into a two-year contract with the agency, beginning July 1, 2019. *Id.* IDHS will then have the option to renew those contracts for up to one additional one-year term without any further competitive bid process. *Id.* The RFP states that IDHS intends to make up to \$1,550,000 available for grants, though more specific caps will apply depending on the areas to be served and the types of services to be provided. *Id.*

Applications in response to the RFP, as amended, were due on March 11, 2019. *Id.* ¶ 29. Before the deadline, PPH submitted four applications—one per designated service area that it seeks to serve—to continue to provide services in five counties in which it is currently operating: Des Moines, Lee, Linn, Polk, and Woodbury. *Id.*

According to the RFP, IDHS intends to announce applicants selected for CAPP grants by posting a Notice of Intent to Award on May 17, 2019. *Id.* ¶ 30. The RFP states that after this Notice of Intent to Award is posted, the agency will negotiate contracts with entities selected. *Id.* It further states that the Notice does not constitute the formation of a contract between IDHS and selected bidders, and may be revoked at any time before a contract is signed. *Id.*

The PREP RFP is for a four-year project period to run from August 1, 2019, through July 31, 2023. *Id.* ¶ 31. Entities selected will initially enter into a one-year contract, beginning August 1, 2019, with the agency. *Id.* IDPH will then have the option to renew those contracts for up to three additional one-year terms without any further competitive bid process. *Id.* The RFP states that IDPH intends to make up to \$260,000 available to at least five awardees. *Id.*

Applications in response to the RFP were due on April 17, 2019. *Id.* Before the deadline, PPH submitted an application to continue to provide services in Polk, Pottawattamie, and Woodbury Counties. *Id.*

According to an amendment to the RFP, IDPH intends to announce applicants selected for PREP grants by posting a Notice of Intent to Award by May 22, 2019. *Id.* ¶ 32. IDPH has reserved the right to change this date at its discretion. *Id.* The RFP states that after this Notice of Intent to Award is posted, the agency will send a contract document to each entity selected, and those entities will have ten working days to negotiate and sign the contract. *Id.* ¶ 33. This deadline for finalizing contracts can be extended by the Department in its discretion. *Id.*

D. The Act and Its Bar on Funding to PPH

After PPH submitted its most recent CAPP and PREP applications, the Iowa legislature passed and Defendant Governor Reynolds signed a budget for Fiscal Year (FY) 2020, which

begins on July 1, 2019, and includes House File 766. Sections 99 and 100 of the Act provide in nearly identical language that:

[a]ny contract entered into on or after July 1, 2019 [for CAPP and PREP funding] . . . shall exclude as an eligible applicant, any applicant entity that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that provides or promotes abortions or maintains or operates a facility where abortions are performed.

2019 Iowa Acts, House File 766, §§ 99, 100. The Act includes an exception for CAPP and PREP applicants that are affiliated with a “nonprofit health care delivery system.” *Id.* § 99(1)–(3); § 100(2)–(4). This exception was intended to carve out at least two existing entities affiliated with the Unity Point hospital system in Iowa. *Stoesz Aff.* ¶ 46.

House File 766 will render PPH ineligible to receive CAPP and PREP funding for any respective contracts entered into on or after July 1, 2019, because PPH provides abortions, refers for abortions, advocates for access to reproductive health services, including abortion, and affiliates with other organizations that provide abortions and advocate for access to them. IDPH has already indicated that it will apply the Act to the current bid process. On May 7, PPH received an e-mail from the contract issuing officer assigned to the PREP RFP that was directed to all applicants. *Id.* ¶ 36. That email indicated that effective immediately, the eligibility requirements under the RFP had changed in accordance with the Act. *Id.* The RFP amendment indicated that applicants were required to submit an attestation form consistent with the new eligibility requirement by May 9, 2019, at 4:00 p.m. *Id.* It also directed entities that could not provide the attestation form to advise IDPH by that date if they wished to withdraw their applications. *Id.* It

stated that applications from entities that could not complete the attestation form but that were not withdrawn would be rejected without further consideration by the agency. *Id.*

On the morning of May 9, 2019, PPH, through its counsel, e-mailed a letter to IDPH stating that PPH could not complete the attestation form because PPH provides and refers patients for abortion care, advocates for comprehensive reproductive health care, including abortion, and is affiliated with an organization that likewise engages in such advocacy. *Id.* ¶ 37. However, it advised IDPH that it would not withdraw its application for PREP funding because it believes that the Act is unlawful. *Id.*

IDHS has not yet indicated whether it intends to apply the Act to its ongoing bid process. Although the upcoming CAPP contract period will begin on July 1, 2019, the underlying contracts for that term should be entered into in advance of that date, in which case the plain language of the Act provides no basis for excluding PPH from consideration at this time. Either way, however, the Act will, at a minimum, make PPH ineligible to seek a contract renewal next summer.

E. Effect of the Act on PPH and Iowa Youth Receiving Its Services

As a direct result of the Act, PPH expects to lose significant CAPP and PREP funding. That is so even though neither of those programs has anything to do with PPH's provision of abortion services or advocacy for safe and legal abortion, the funds under those programs have never been used by PPH for providing or "promoting" abortions, and PPH uses, as required by the state, curricula for the programs that has been selected by the state. *Id.* ¶¶ 3, 9, 16.

If the Act's provisions targeting abortion providers and abortion-rights advocates are permitted to be implemented and enforced, they will cause irreparable harm to PPH and those benefiting from its education and outreach services. *Id.* ¶ 4. In total, PPH expects that it will lose approximately \$268,000 in grant funds annually, representing a 28 percent reduction in PPH's

Iowa education budget. *Id.*¹ Without that funding, PPH's ability to offer critical educational services will be severely limited, likely leaving some areas without other providers capable of filling the sudden void left by PPH, to the detriment of Iowa's youth and underserved populations. *Id.*

For example, PPH's educator in Pottawattamie County is leaving the organization in the near future, and PPH is unable to fill his position unless and until it is again able to compete for and obtain PREP funding. *Id.* ¶ 38. He has been serving two middle schools and three high schools in that county and was projected in PPH's most recent PREP application to serve more than 175 students going forward. *Id.*

Youth in Woodbury County will also immediately be harmed by PPH's loss of funding. *Id.* ¶ 39. For example, under the PREP grant, PPH staff coordinated with area high school Genders and Sexualities Alliance (GSA) afterschool programs and were the main source of programming for students who sought information about reproductive health. *Id.* Without PREP and CAPP funding, staff will no longer be able to cover that service area. *Id.*

No other direct recipients of CAPP or PREP funding currently offer programming in the counties served by PPH. *Id.* ¶ 40. There is no other provider in the areas served by PPH with the same expertise and experience in teen-pregnancy and health-relationships curricula. *Id.*

The exclusion of PPH from funding will also stall some of the recent momentum PPH has gained in communities where it works and risk damaging productive partnerships it has been able to develop through its CAPP and PREP programming. *Id.* ¶ 41. Subgrantees with whom it works

¹ Although the budget bill is for the next fiscal year, applicants selected for CAPP and PREP funding will be the exclusive organizations eligible to apply for contract renewals through these programs for three and four years, respectively. Accordingly, PPH stands to lose far more than the annual shortfall applicable to the coming fiscal year.

rely on PPH to take the lead grantee role because of its demonstrated commitment to the grant programs and its administrative expertise in grant administration and reporting. *Id.* PPH's partner schools rely on PPH to provide programming, as they do not have teachers trained in the state-approved curricula and, in fact, utilize some of the programs to meet their required educational standards. *Id.* Additionally, organizations that serve underserved populations, which are already under tremendous stress and require their staff to focus on other areas of service delivery, do not have the capacity to take this work on, and therefore rely on the trained, experienced health educators from PPH to provide programming. *Id.*

Additionally, exclusion of PPH from the CAPP and PREP programs will cause it reputational harm. It has developed partnerships in the target communities and has already laid the groundwork for CAPP and PREP programming in the coming year. *Id.* ¶ 42. For example, for its most recent applications, it solicited subgrantees for some of the counties in which it has proposed to work and has finalized memoranda of understanding with schools and other community-based partners. *Id.* Although these agreements are contingent on grant approval, all involved entered into them with the expectation that PPH would be eligible to compete for CAPP and PREP funding and would be evaluated based on its demonstrated record in these programs. *Id.* One of PPH's PREP subgrantees has notified it that it has already recruited 25 students for the upcoming year in Woodbury County. *Id.* Without funding to continue its work, PPH and its subgrantee may have to turn these students away. *Id.*

The funding exclusion will damage not only PPH as an organization that is committed to and recognized for providing comprehensive educational programming, but it will also significantly hurt the young people who already rely on PPH's services and those who would have benefitted from future programs. *Id.* ¶ 43. The ultimate result of PPH's exclusion from these

programs is that fewer young people will receive evidence-based programming in communities where the need is greatest. According to the CAPP evaluation report for FY2018, for example, from 2013–2017, the following counties where PPH currently works experienced decreases in teen birth rates: Des Moines County saw a 24.3% decrease, Lee County saw a 9.7% decrease, Linn County saw a 25.6% decrease, Polk saw a 20.3% decrease, Dallas saw a 37.1% decrease, Woodbury saw a 21.8% decrease, and Plymouth saw a 50.4% decrease. *Id.* ¶ 44. If PPH is excluded from CAPP and PREP, fewer Iowa young people will receive services, creating the potential for an increase in teen birth rates in these counties. *Id.*

ARGUMENT

I. Standard for Temporary Injunctive Relief

“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). It is available to prevent an “act which would greatly or irreparably injure” the petitioner, or to restrain a party who is “about to” take an action “violating the other party’s right . . . and tending to make the judgment ineffectual.” Iowa R. Civ. P. 1.1502(1), (2). A court considering temporary injunctive relief must consider “the likelihood of success on the merits at the final hearing,” in addition to “traditional equitable principles.” *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 182 (Iowa 2001). Those principles include consideration of “circumstances confronting the parties and [the] balance [of] harm that a temporary injunction may prevent against the harm that may result from its issuance.” *Id.* at 181 (quoting *Kleman*, 373 N.W.2d at 96).

For the reasons set forth below, Petitioner meets this standard.

II. Petitioner Is Likely to Succeed on Its Claims That the Act Unconstitutionally Conditions Funding on the Abandonment of State Constitutional Rights to Free Speech, Free Association, and Substantive Due Process.

Iowa has declared in the Act that anyone who engages in certain activity protected by the Iowa Constitution—advocacy in favor of a woman’s right to terminate her pregnancy, the provision of and referral for safe and lawful abortions, and/or association with advocacy in support of abortion rights and provision of that service—must be excluded from two vital public health and education programs, even though those programs have nothing to do with abortion. In so doing, Iowa is attempting to leverage its funding control to pressure those who speak and work in favor of safe and lawful abortion to abandon their efforts. That is prohibited by the Iowa Constitution.

Under the unconstitutional-conditions doctrine, the Act violates PPH’s rights to free speech, free association, and due process protected by the Iowa Constitution. The Iowa Supreme Court has recognized that although the government need not subsidize an organization’s constitutionally protected activity, it “may not deny a benefit to an organization” that—without resort to the benefit—“decides to exercise its constitutional rights” under the Iowa Constitution. *Hearst Corp. v. Iowa Dep’t of Revenue & Fin.*, 461 N.W.2d 295, 304 (Iowa 1990) (citing *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 545 (1983)).

The unconstitutional conditions doctrine applies in a “variety of contexts,” *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013), including in cases raising free speech, *Hearst Corp. v. Iowa Dep’t of Revenue & Fin.*, 461 N.W.2d 295, 304 (Iowa 1990), and due process claims, *see, e.g., Koontz*, 133 S. Ct. 2586. *See also State v. Cullison*, 173 N.W.2d 533, 540 (Iowa 1970) (applying the doctrine with respect to the Iowa Constitution’s right to be free of unreasonable searches and seizures as a condition of parole).

Federal law, upon which the Iowa Supreme Court has relied where persuasive, holds that the unconstitutional-conditions doctrine applies even if a person “has no entitlement to th[e] benefit.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013); *see also FCC v. League of Women Voters*, 468 U.S. 364, 399–401 (1984); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Were it otherwise, the exercise of constitutionally protected “freedoms would in effect be penalized and inhibited,” thus allowing “the government to ‘produce a result which [it] could not command directly.’” *Perry*, 408 U.S. at 597 (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)).

This authority also makes clear that the unconstitutional-conditions doctrine does not require acceding to the government’s conditions, but protects those targeted from having to make that choice in the first place. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 350 (1976) (in challenge to patronage hiring, public employees gave no indication that they were willing to change political parties); *Sherbert v. Verner*, 374 U.S. 398, 401 (1963) (former government employee denied unemployment compensation due to religious prohibition against working on the Sabbath); *Bd. of Cty. Com’rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668, 672 (1996) (contractor alleged that county government terminated his contract in retaliation for past criticism of the county and its board of commissioners); *Perry*, 408 U.S. at 595 (state college professor’s contract not renewed in retaliation for his public criticism of the college administration’s policies).

A. The Act violates the free speech protection afforded by the Iowa Constitution.

Article I, section 7, of the Iowa Constitution provides in pertinent part that “[n]o law shall be passed to restrain or abridge the liberty of speech.” This provision “generally imposes the same restrictions on the regulation of speech as does the federal constitution,” *Bierman v. Weier*, 826 N.W.2d 436, 451 (Iowa 2013), but is still interpreted independently, *see City of W. Des Moines v.*

Engler, 641 N.W.2d 803, 805 (Iowa 2002). Although Iowa courts look to federal courts' interpretation of the U.S. Constitution in construing parallel provisions of the Iowa Constitution, they "jealously reserve the right to develop an independent framework under the Iowa Constitution." *NextEra Energy Res., LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 45 (Iowa 2012); see also *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010). That is so because the rights guaranteed to individuals under the Iowa Constitution have critical, independent importance. *Godfrey v. State*, 898 N.W.2d 844, 864–65, 869 (Iowa 2017).

The Iowa Constitution unquestionably bars the state from commanding directly that PPH refrain from "promoting" or referring for abortions. See *State v. Hardin*, 498 N.W.2d 677, 679 (Iowa 1993) (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992)); see also *Bigelow v. Virginia*, 421 U.S. 809 (1975). Such a restriction would bar PPH's speech based on its content: abortion. The restriction would also bar PPH's speech based on its viewpoint, forbidding only speech *for* access to safe and lawful abortion. "Government discrimination among viewpoints—or the regulation of speech based on 'the specific motivating ideology or the opinion or perspective of the speaker'—is a 'more blatant' and 'egregious form of content discrimination.'" *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2230 (2015) (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). The Act's content-based and viewpoint-based restriction on speech is "presumptively invalid," *Hardin*, 498 N.W.2d 677, 679 (Iowa 1993) (citing *R.A.V.*, 505 U.S. at 382), and "may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests," *Reed v. Town of Gilbert*, 135 S. Ct. at 2226.

The Iowa Supreme Court's case law makes clear that the State may not use its spending powers to accomplish the same result. See *Hearst*, 461 N.W.2d at 304. Because the Act conditions receipt of government funds on the recipient's agreement to forego "promot[ing]" abortions, it

violates Article I, section 7, of the Iowa Constitution.

Although the State may require that government money be used only for program-related purposes—and thus may also limit the subjects that funding recipients address *within the confines* of the program—that is not what Iowa has done here. Here, Iowa has imposed content and viewpoint restrictions on recipients’ speech *outside* the government-funded program. The U.S. Supreme Court’s decision in *Alliance for Open Society International* (“*AOSI*”) offers persuasive authority that this distinction is fundamental. At issue in that case was a federal law that denied HIV/AIDS funding to any organization that did not have a policy opposing prostitution and sex trafficking. *AOSI*, 570 U.S. at 208. The government maintained that the funding condition was consistent with the First Amendment because it had an interest in ensuring that its “message opposing prostitution and sex trafficking” not be “undermine[d]” or “confuse[d]” by providing HIV/AIDS funding to organizations that did not conform to the government’s anti-prostitution position. *Id.* at 220. The U.S. Supreme Court rejected that argument, stressing that the government had crossed the constitutional line when it attempted to regulate the grantee’s speech *outside* the confines of the HIV/AIDS program.

As the Court explained, recipients of government funding are free under the First Amendment to express their own views “when participating in activities on [their] own time and dime.” *Id.* at 218. Hence, “the relevant distinction” between permissible and impermissible funding conditions, the Court emphasized, “is between conditions that define the limits of the government spending program—those that specify the activities [the government] wants to subsidize—and conditions that seek to leverage funding to regulate speech outside the contours of the program itself.” *Id.* at 214–15. *Cf. Rust v. Sullivan*, 500 U.S. 173, 196 (1991) (upholding restrictions on federal family planning funding that governed only “the scope of the Title X

project's activities" and left the grantee free to "continue to perform abortions, provide abortion-related services, and engage in abortion advocacy" with its separate, non-federal funding).

The same distinction applies to the Iowa Constitution's free-speech guarantee. The activities funded through CAPP and PREP have nothing to do with abortion. PREP is designed to educate young people on both abstinence and contraception to prevent pregnancy and STIs, including HIV/AIDS. Bureau of Family Health, *Personal Responsibility Education Program*, Iowa Department of Public Health, <https://idph.iowa.gov/family-health/prep> (last visited May 13, 2019). And CAPP provides curriculum-based, comprehensive sexuality education to adolescents that focuses on sexual and non-sexual risks, personal and academic youth development programs, and family planning education. Abortion is not discussed under either of the programs, which follow curricula selected by the State. Because the Act requires PPH, as a condition of eligibility for CAPP and PREP, to abandon its advocacy for abortion rights *outside* the scope of any government program, the statute "goes beyond defining the limits of the . . . program" and imposes an unconstitutional condition on PPH's right to free speech. *AOSI*, 570 U.S. at 218.

An impressive line of analogous authority holds that state efforts to exclude Planned Parenthood affiliates from participating in government programs because of advocacy in favor of safe and lawful abortion violate the First Amendment. *See Planned Parenthood Ass'n of Utah v. Herbert* ("PPAU"), 828 F.3d 1245, 1259 (10th Cir. 2016) (exclusion of Planned Parenthood from state programs likely violated First Amendment); *Planned Parenthood of Cent. & N. Ariz. v. Ariz.*, 718 F.2d 938, 944–945 (9th Cir. 1983) (state may not deny funding to otherwise eligible entities "merely because they engage in abortion-related activities [including speech activities] disfavored by the state"); *Planned Parenthood of Cent. N. Carolina v. Cansler*, 877 F. Supp. 2d 310, 319–321 (M.D.N.C. 2012) (statute excluding Planned Parenthood from state-administered programs

violated First Amendment); *Planned Parenthood of Kan., Inc. v. City of Wichita*, 729 F. Supp. 1282, 1289 (D. Kan. 1990) (denying funding to plaintiff based on its stance on abortion would likely violate First Amendment). This Court should do the same.

B. The Act violates Petitioner’s right to free association under the Iowa Constitution.

The Act also conditions CAPP and PREP participation on recipients’ willingness to abandon affiliation with organizations that perform or “promote[]” abortions. Although the Act does not define the term “affiliate,” it appears to target PPH’s association with Planned Parenthood Federation of America (PPFA), a nationwide organization that engages in education and advocacy to secure a woman’s right to safe and lawful abortion, and its relationship as an ancillary organization of PPNCs, a regional Planned Parenthood affiliate covering Iowa and four other states. This provision of the Act would bar PPH from participating in government programs based on its association with PPFA and PPNCs alone—even if PPH stopped providing and promoting access to abortion entirely.

Although the Iowa Supreme Court has not defined the precise contours of the freedom of association under the Iowa Constitution, it has acknowledged that such a right under Article I, section 7, of the Iowa Constitution exists and is at least coextensive with the analogous federal constitutional right. *See Formaro v. Polk Cty.*, 773 N.W.2d 834, 840 (Iowa 2009) (holding that the right to association under the state constitution was not violated by a residency requirement for sex offenders); *Iowans for Tax Relief v. Campaign Fin. Disclosure Comm’n*, 331 N.W.2d 862, 868 (Iowa 1983) (addressing a challenge based on rights of free speech and association under the First Amendment and Article I, section 7, of the Iowa Constitution and stating that “the applicable [F]irst [A]mendment standard” was “the same” as that for the state constitutional challenge). The Iowa Constitution must, therefore, protect a “fundamental right” to “engage in associations for the

advancement of economic, religious, or cultural matters.” *City of Maquoketa v. Russell*, 484 N.W.2d 179, 184 (Iowa 1992) (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)). By conditioning funding on PPH’s agreement not to exercise that right, the Act functions as an unconstitutional condition on the right to freedom of association under the Iowa Constitution.

C. The Act violates the Iowa Constitution’s substantive due process protections.

The Act violates the substantive due process right protected by Article I, section 9, of the Iowa Constitution for much the same reason that it violates the free-speech and free-association guarantees: The statute requires that providers abandon constitutionally protected activity—performing safe and lawful abortions—to remain eligible to participate in government programs wholly unrelated to abortion.

Iowa indisputably could not ban PPH from providing abortions altogether. In *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d 206, 237 (Iowa 2018), the Iowa Supreme Court held that the right to abortion was a fundamental right under Article I, section 9’s protection for substantive due process. *Id.* at 237. It rejected the “undue burden” framework applicable to due process claims under federal law with respect to restrictions on abortion, and instead applied more stringent precedent that laws alleged to violate fundamental rights are subject to strict scrutiny. *Id.* at 240–41. Accordingly, Iowa may not use its leverage over public funds to demand that PPH surrender the right to engage in that same constitutionally protected activity. *See Hearst*, 461 N.W.2d at 304.

In persuasive authority, other courts have held that federal law prohibits States from excluding Planned Parenthood affiliates from participation in public programs because they provide abortions with funds unrelated to those programs. *See PPAU*, 828 F.3d at 1262 (“depriv[ing] [a Planned Parenthood affiliate] of pass-through federal funding” to “punish” it for

its exercise of “Fourteenth Amendment rights” likely amounts to an unconstitutional condition); *Planned Parenthood of Sw. & Cent. Fla. v. Philip*, 194 F. Supp. 3d 1213, 1216 (N.D. Fla. 2016) (holding a Florida statute similar to the Act likely an unconstitutional condition, because “as a condition of receiving state or local funds for unrelated services, the plaintiffs must stop providing abortions that women are constitutionally entitled to obtain”); *Planned Parenthood of Cent. N. Carolina*, 877 F. Supp. 2d at 319–20 (applying unconstitutional-conditions doctrine to hold that a statute barring Planned Parenthood from receiving state funds not used for abortion violated the organization’s constitutional rights under the Fourteenth Amendments).² This Court should do the same.

² Because the Act imposes an unconstitutional condition on PPH’s due-process right, this Court need not predict the law’s effect on abortion access in Iowa. *See, e.g., Planned Parenthood of Mid-Mo. & E. Kan. v. Dempsey*, 167 F.3d 458, 464 (8th Cir. 1999); *Planned Parenthood of Cent. & N. Arizona*, 718 F.2d at 944. However, even if such a prediction were required, as one court has held, *see Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State Dep’t of Health*, 699 F.3d 962, 986–88 (7th Cir. 2012), there can be no doubt that if PPH acceded to the condition, it would unconstitutionally restrict abortion access. In 2017, PPH provided 95 percent of all Iowa abortions. *Stoesz Aff.* ¶ 45. *Planned Parenthood of Greater Ohio v. Hodges*, 917 F.3d 908, 912 (6th Cir. 2019) (en banc), also does not undermine Petitioner’s motion. *Hodges* was wrongly decided under federal law and contrary to the established unconstitutional-conditions doctrine. Certainly, *Hodges* is wholly unpersuasive under the Iowa Constitution given the nature of the abortion right, which the Supreme Court has deemed fundamental, subject to the highest level of scrutiny, and which requires a provider to offer the services that women seek. “[B]ecause abortion is a medical procedure, the full vindication of the woman’s fundamental right necessarily requires that her medical provider be afforded the right to make his best medical judgment, which includes implementing the woman’s decision should she choose to have an abortion.” *PPAU*, 828 F.3d at 1260; *see also Singleton v. Wulff*, 428 U.S. 106 (1976) (“A woman cannot safely secure an abortion without the aid of a physician [T]he constitutionally protected abortion decision is one in which the physician is intimately involved.”).

For all these reasons, Petitioner is likely to succeed in its claim that the Act is an unconstitutional condition on the substantive due process rights of PPH’s patients to receive abortions and PPH’s corresponding right to provide them.

III. PPH Is Likely To Succeed on Its Claim That The Act Violates Its State Constitutional Right to Equal Protection Under the Law.

The Iowa Constitution, Article I, §§ 1, 6, guarantees equal protection of the law. Although federal case law may be persuasive in interpreting this provision, Iowa courts interpret it independently. *See NextEra Energy Res., LLC*, 815 N.W.2d at 45; *Godfrey*, 898 N.W.2d at 864–65, 869. Iowa’s “equal protection guarantee requires that laws treat all those who are similarly situated *with respect to the purposes of the law* alike.” *Gartner v. Iowa Dep’t of Pub. Health*, 830 N.W.2d 335, 351 (Iowa 2013), *as amended* (May 23, 2013); *see also Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009); *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002). For purposes of the Act, PPH—an abortion provider and advocate for abortion access—is similarly situated to non-abortion providers who seek government funds having nothing to do with abortion. PPH and other applicants are the same in all legally relevant ways because each desires to provide CAPP and PREP programming, has an obligation to demonstrate its competency and capacity to do so, and would not in any event use that funding toward activities and advocacy targeted by the Act.

Despite the fact that PPH is similarly situated to other CAPP and PREP applicants, the law targets for disfavored treatment only those entities that “promote” or “perform” abortions, or “affiliate” with entities that do so, categorically barring them from receipt of government funds. By barring PPH from government programs because it “perform[s]” abortions, the Act burdens the fundamental right under Iowa’s Constitution to an abortion. *Planned Parenthood of the*

Heartland v. Reynolds ex rel. State, 915 N.W.2d at 237. And by barring PPH because it “promote[s]” and “refer[s]” for abortion and “affiliate[s]” with entities that “perform” or “promote” abortion, the Act burdens PPH’s right under the Iowa Constitution to engage in speech and associational conduct protected by Iowa’s free-speech guarantee. *See Hardin*, 498 N.W.2d at 679; *Iowans for Tax Relief*, 331 N.W.2d at 868; *City of Maquoketa*, 484 N.W.2d at 184.

Because the Act impinges on the fundamental rights to free speech, free association, and abortion, it is subject to strict scrutiny. *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, 915 N.W.2d at 237; *Varnum*, 763 N.W.2d at 880. And as a restriction on fundamental rights, the Act is presumptively invalid. *In re S.A.J.B.*, 679 N.W.2d 645, 649 (Iowa 2004). To justify it, the State must establish that the Act is “narrowly tailored to serve a compelling government interest.” *Id.* (citing *Santi v. Santi*, 633 N.W.2d 312, 318 (Iowa 2001)). The State cannot meet this burden.

The Act identifies *no* legitimate interest—much less a compelling one—actually served by barring PPH from participating in non-abortion education programs simply because, with entirely separate funds, it “perform[s]” or refers for abortion, “promote[s]” abortion access, or “affiliate[s]” with entities that provide or “promote” abortion. The Act sweeps in organizations that engage in advocacy far removed from the spending programs. PPH would be excluded, for example, on its advocacy to abortion access in Nebraska *alone*, even if PPH engaged in no conduct or speech in Iowa covered by the Act. Meanwhile, the Act carves out an arbitrary exception for applicants affiliated with abortion providers working in a hospital or other nonprofit health care delivery system. 2019 Iowa Acts, House File 766, § 100(2)–(4). A statute that is “simultaneously over-inclusive and under-inclusive” in this way cannot be narrowly tailored. *Varnum*, 763 N.W.2d at 901.

In addition, the history of the Act confirms that the Iowa Legislature specifically crafted this gerrymandered law to target PPH for disfavored treatment. Legislative opponents and supporters alike acknowledged that PPH was the only current grantee who would be excluded from funding. *See, e.g.*, Iowa H. Debate of Apr. 27, 2019, at 12:38:00–12:43:00 (statement of Rep. Mascher); Iowa Sen. Debate of Apr. 26, 2019, at 3:55:47–4:00:23, 4:00:36–42, 4:00:45–51, 4:01:05–10, 4:01:27–33, 4:01:37–43, 4:02:20–28, 4:02:32–4:03:05 (statement of Sen. Peterson); *id.* 4:00:24–4:00:35, 4:00:43–45, 4:00:52–4:01:04, 4:01:11–28, 4:01:34–36, 4:01:43–4:02:20, 4:02:28–32 (statement of Sen. Costello) (“We are not targeting [Planned Parenthood] by name, but the fact that they provide abortions is the criteria that we’re setting up to not be able to participate in this program.”).³ After being asked to explain the Act’s exclusion of PPH alongside an exemption for Unity Point, Senator Costello, the Senate floor manager for the bill, answered: “We don’t feel that the people of Iowa should be required to do business with people that provide abortions.” Iowa Sen. Debate of Apr. 26, 2019, at 4:01:11–28 (statement of Sen. Costello); *see also* Iowa H. Debate, 1:19:00–11:19:20 (statement of Rep. Fry) (emphasizing the exemption for Unity Point but providing no rationale for it).

Even if the Act did not impinge on fundamental rights, it could not withstand any lesser form of constitutional review. Even rational-basis review requires a “plausible policy reason for the classification.” *Varnum*, 763 N.W.2d at 879 (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) (“*RACF*”)); *RACI*, 675 N.W.2d at 9 (noting that although the rational-

³ A video record of the House debate is available at <https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20190427092516225&dt=2019-04-27&offset=6564&bill=HF%20766&status=r>. The Senate debate is available at <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190426012941549&dt=2019-04-26&offset=2721&bill=HF%20766&status=r>.

basis test is “deferential to legislative judgment, ‘it is not a toothless one’ in Iowa” (quoting *Mathews v. De Castro*, 429 U.S. 181, 185 (1976)). The “relationship of the classification to its goal” cannot be “so attenuated as to render the distinction arbitrary or irrational” or evince a basis in some other form of “invidious discrimination.” *Varnum*, 763 N.W.2d at 879 (quoting *RACI*, 675 N.W.2d at 7); *see also, e.g., U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

Here, there simply is no plausible policy reason advanced by, or rationally related to, excluding organizations from CAPP and PREP programming simply because they also use non-government funds to provide or refer for abortions, promote abortion access, or affiliate with other organizations that do the same. *See Planned Parenthood of the Heartland v. Bd. of Medicine*, 865 N.W.2d 252, 269 (Iowa 2015) (recognizing that where the Board of Medicine had taken steps to facilitate the use of telemedicine in accordance with “evidence-based” standards, but sought to restrict telemedicine for abortion, “[a]n issue of equal protection of the laws [was] lurking in th[e] case” (internal alterations omitted)).

This Court should find that Petitioner is likely to succeed in demonstrating that the Act violates its right to equal protection under the Iowa Constitution.

IV. Petitioner Has Demonstrated a Grave Threat of Harm for Which There Is No Adequate Legal Remedy.

In addition to demonstrating that Petitioner is likely to succeed on the merits, the record also demonstrates that Petitioner and the beneficiaries of its programs will be substantially injured if the Act is enforced, and those injuries cannot be remedied after judgment. *See Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa Mar. 10, 2017) (district court 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” and where injury “cannot be

adequately compensated by damages at law” (quoting *Martin v. Beaver*, 29 N.W.2d 555, 558 (Iowa 1947)); accord *Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 186 (Iowa 2005).

As an initial matter, where “an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary” to warrant temporary injunctive relief. *PPAU*, 828 F.3d at 1263; *Elrod*, 427 U.S. at 373 (holding that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”); *Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir. 1977) (holding that “Planned Parenthood’s showing that [an] ordinance” imposing a moratorium on construction of abortion facilities “interfered with the exercise of its constitutional rights and the rights of its patients supports a finding of irreparable injury”).

Moreover, the Act will impair PPH’s core mission of ensuring access to high-quality sexual education services, particularly with low-income and at-risk populations. Without access to funding under the affected programs, PPH will be forced to curtail education programs now offered to vulnerable and hard-to-reach populations in Iowa. *Stoesz Aff.* ¶¶ 38–40, 43–44. These cuts will harm students, as well as PPH. *See Cheema v. Thompson*, 36 F.3d 1102 (9th Cir. 1994) (holding that children barred from attending school due to a dress-code rule would “suffer not just hardship, but possibly irreparable injury if they are not allowed to attend school during the pendency of” litigation); *Planned Parenthood Se., Inc. v. Bentley*, 141 F. Supp. 3d 1207, 1225 (M.D. Ala. 2015) (finding a likelihood of irreparable harm where an abortion patient “would be forced to stop seeking services from a provider with whom she is comfortable,” and where “she might well not be able to identify another provider with whom she could forge such a relationship”).

In addition, the exclusion of PPH will result in injuries to its reputation and relationships that it has worked for years to foster. *Id.* ¶¶ 41–42. These injuries are irreparable. *See, e.g., Rogers*

Grp., Inc. v. City of Fayetteville, 629 F.3d 784, 790 (8th Cir. 2010) (finding of irreparable harm where a business would suffer a loss of goodwill, be unable to expand, and lose customers who were unlikely to return); *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1157 (10th Cir. 2001) (holding that “no remedy could repair the damage to [a business’s] reputation and credibility”).

Nor is there any evidence that alternative providers could replace PPH. No other direct recipients of CAPP or PREP funding currently offer programming in the counties served by PPH. Stoesz Aff. ¶ 40. And there is no other provider in the areas served by PPH with the same expertise and experience in teen-pregnancy curricula, healthy-relationships curricula, and direct grant administration. *Id.* PPH is intimately familiar with the needs and challenges of the communities it serves and is highly qualified to provide these services, as evidenced by its long history in the CAPP and PREP programs. The Act would thus harm both PPH and the public.

V. The Balance of Equities Favors Entry of Temporary Injunctive Relief.

Weighing the relative harms to the parties further supports a grant of temporary injunctive relief. While Petitioner will be severely harmed by the Act’s funding bar, the Act’s requirements provide no legitimate benefit whatsoever. *See supra*, pp. 23. Moreover, Respondents will not be harmed by being temporarily unable to enforce an unconstitutional law. *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); *cf. MKB Mgmt. Corp. v. Burdick*, 954 F. Supp. 2d 900, 913 (D.N.D. 2013) (“[T]he protection of constitutional rights is always in the public interest.”).

CONCLUSION

WHEREFORE, Petitioner prays that this Court grant its Motion for Temporary Injunctive Relief and enjoin Respondents from implementing and enforcing the Act's prohibition on CAPP and PREP funding to PPH.

Respectfully submitted,

/s/ Rita Bettis Austen

RITA BETTIS AUSTEN (AT0011558)
American Civil Liberties Union of Iowa Foundation
505 Fifth Ave., Ste. 808
Des Moines, IA 50309-2316
Telephone: 515.243.3988
Fax: 515.243.8506
rita.bettis@aclu-ia.org

/s/ Julie A. Murray

JULIE A. MURRAY*
CARRIE Y. FLAXMAN*
Planned Parenthood Federation of America
1110 Vermont Ave., NW, Ste. 300
Washington, DC 20005
Phone: (202) 803-4045
julie.murray@ppfa.org
carrie.flaxman@ppfa.org

Attorneys for Petitioner Planned Parenthood of the Heartland, Inc.

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** motion for admission pro hac vice forthcoming*