

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>PLANNED PARENTHOOD OF THE HEARTLAND, INC., on behalf of itself and its patients,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>KIM REYNOLDS ex rel. STATE OF IOWA; IOWA DEPARTMENT OF HUMAN SERVICES; JERRY FOXHOVEN, in his official capacity as the Director of the Iowa Department of Human Services; IOWA DEPARTMENT OF PUBLIC HEALTH; and GERD W. CLABAUGH, in his official capacity as Director of the Iowa Department of Public Health,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">Equity Case No. _____</p> <p style="text-align: center;">PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF</p>
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COMES NOW Petitioner Planned Parenthood of the Heartland, Inc., on behalf of itself and its patients, by and through its attorneys, Rita Bettis Austen of the American Civil Liberties Union of Iowa Foundation, and Julie Murray and Carrie Flaxman of Planned Parenthood Federation of America, and prays for emergency temporary injunctive relief and permanent injunctive relief, restraining Respondents from enforcing Sections 99 and 100 of House File 766, (“the Act”), as well as a declaratory judgment that the Act violates the Iowa Constitution, and in support thereof states as follows:

STATEMENT OF THE CASE

1. Petitioner brings this action to challenge the validity of recently enacted House File 766, Sections 99 and 100 (hereinafter “the Act”) under the Iowa Constitution. The Act, which was recently adopted by the Iowa Legislature, bars any organization that provides or “promotes” abortion (or that is an affiliate of or refers to such an organization) from receiving grant funding under the Personal Responsibility Education Program (“PREP”) and the Community Adolescent

Pregnancy Prevention Program (“CAPP”), two programs administered by Respondent Iowa state agencies. CAPP provide grants for the provision of sexual education and related services to youth in Iowa. Planned Parenthood of the Heartland (“PPH”) has for years participated in these programs to provide critically needed sexual education programming and would be the only organization excluded from the programs as a result of the new legislation. At this time, PPH has grant applications pending for the coming year for both programs, and Respondents have indicated that they, in the absence of an injunction, will announce award recipients for CAPP and PREP contracts on May 17 and May 22, respectively.

2. The State of Iowa has decided to bar PPH from receiving funding for these health education programs solely because PPH—separate and apart from the PREP and CAPP programs—also provides abortion services (along with other reproductive health services), advocates and refers for safe and legal abortions, and affiliates with entities that provide and advocate for the availability of abortion, all of which are constitutionally protected activities under the Iowa Constitution.

3. Petitioner seeks injunctive relief preventing enforcement of the Act and a declaration that the Act violates Article I, sections 1, 6, 7, 9, and 21 of the Iowa Constitution. The Act impermissibly disqualifies PPH from receiving certain funds because of its constitutionally protected advocacy in support of safe and legal abortion, and its affiliation with other entities that advocate for and provide safe and legal abortion, all of which it conducts wholly apart from the programs at issue. The Act also impermissibly disqualifies PPH from receiving the funds at issue because of its provision of constitutionally protected abortions, even though those abortion services are undertaken without any government funding or involvement. The Act exacts an

extreme punishment—total disqualification—even though the funds at issue have nothing to do with abortion.

4. The principal effect of the Act will be to deprive Iowa teens and families, including low-income people and people of color, of much needed sexual educational services. The elimination of grant funds to PPH will likely leave areas of Iowa without these services entirely. Disruptions in access to sexual education services provided under the PREP and CAPP programs could have a serious impact on the health, well-being and futures of the Iowa teens who rely on those programs.

JURISDICTION AND VENUE

5. This action seeks a declaratory judgment and injunctive relief pursuant to Iowa Rule of Civil Procedure 1.1101 et seq., 1.501 et seq., and the common law. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.6101.

6. Venue in this judicial district is proper pursuant to Iowa Code § 616.3(2) because part of the cause arose in Polk County and Respondents' primary offices are located in Polk County.

PARTIES

7. Planned Parenthood of the Heartland, Inc. (hereinafter, "PPH") is a nonprofit corporation doing business in Des Moines, Iowa. PPH sues on its own behalf and on behalf of its patients who will be adversely affected by Respondents' actions. At its eight Iowa health centers, PPH provides a wide range of health care, including well-woman exams, cancer screenings, sexually-transmitted infection testing and treatment, a range of birth control options, transgender health care, and abortion care.

8. Respondent Kim Reynolds is the Governor of the State of Iowa, and as such, is the

chief executive for the state, responding for ensuring the enforcement of the state's statutes. Iowa Const. art. IV, §§ 1, 9. The Governor is sued in her official capacity.

9. Respondent Iowa Department of Human Services is a state agency charged with administering CAPP in the State of Iowa.

10. Respondent Jerry Foxhoven is the Director of the Iowa Department of Human Services. He is sued in his official capacity. He is sued in his official capacity.

11. Respondent Iowa Department of Public Health is a state agency charged with administering the PREP program in the State of Iowa.

12. Respondent Gerd Clabaugh is the Director of the Iowa Department of Public Health. He is sued in his official capacity.

FACTUAL ALLEGATIONS

I. Funding for Sexual Education and Teen Pregnancy Prevention Programs Through CAPP and PREP

13. 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).

14. Through a competitive bidding process, IDHS contracts with entities in Iowa to provide evidence-based or evidence-informed comprehensive sex education and/or adolescent pregnancy programs, all of which are selected by the state. All counties in Iowa are eligible service areas for CAPP programming, though not all counties are currently served.

15. 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 to prepare youth for success in adulthood.

16. Through a competitive bidding process, IDPH awards PREP funding to community-based organizations and agencies to deliver educational programming to youth aged 10 to 19, with the goal of reducing teen pregnancy and sexually transmitted infections (STIs) in parts of the state with the highest teen birth rates. IDPH identifies a select group of counties to serve with PREP programming, and it awards contracts for service delivery only in those counties.

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

17. Petitioner PPH is a not-for-profit corporation organized under the laws of Iowa and operating in Iowa and Nebraska. 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.

18. 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. PPH currently has a contract to offer PREP services in Polk, Pottawattamie, and Woodbury Counties. On information and belief, PPH is the only grantee providing CAPP and PREP programming in those respective counties.

19. In each program, PPH is required to use existing evidence-based curricula selected by the respective state agencies.

20. 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.

21. PPH complies with significant reporting and other documentation requirements for both of these programs.

22. 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 after school programs, juvenile detention centers, substance abuse treatment facilities and out-of-home placements for youth in foster care.

23. 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 served 235 Iowan youth in eight settings.

24. 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.

25. 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 facilities in Lincoln and Omaha, Nebraska. In 2017, PPH performed roughly 95 percent of all abortions in Iowa and 55 percent of abortions in Nebraska.

26. Upon patient request, all PPH health centers refer patients for abortion care.

27. To ensure that patients are aware of and able to exercise their rights, PPH engages in advocacy intended to protect and expand access to safe and legal abortion services for women who decide to have an abortion.

28. Until December 2018, PPH was an affiliate of, though independent from, Planned Parenthood Federation of America, Inc. (PPFA). Like PPH, PPFA advocates for access to comprehensive reproductive health care, including abortion services.

29. 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. As a PPFA affiliate, PPNCS advocates for access to expert, comprehensive reproductive health care, including abortion services. Through PPH and Planned Parenthood Minnesota, North Dakota, South Dakota, PPNCS provides reproductive health care, including abortion services.

30. Federal and Iowa law prohibit, with a few, narrow exceptions, the use of federal and state funds to carry out abortions. 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.

31. Neither CAPP nor PREP has anything to do with PPH's provision of abortion services or advocacy for safe and legal abortions.

III. The Application Process for Upcoming CAPP and PREP Funding

32. Existing contracts for CAPP and PREP funding in Iowa will expire this summer on June 30 and July 31, respectively. IDHS and IDHS have issued Requests for Proposal (RFPs)

announcing the availability of new CAPP and PREP funding, respectively, through competitive bid processes.

33. The proposal for CAPP funding is for a three-year project period to run from July 1, 2019, through June 30, 2022. Entities selected will initially enter into a two-year contract with the agency, beginning July 1, 2019. IDHS will have the option to renew those contracts for up to one additional one-year term without any further competitive bid process. 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.

34. Applications in response to the RFP, as amended, were due on March 11, 2019. 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.

35. 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. The RFP states that after this Notice of Intent to Award is posted, the agency will negotiate contracts with entities selected. 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.

36. The PREP RFP is for a four-year project period to run from August 1, 2019, through July 31, 2023. Entities selected will initially enter into a one-year contract, beginning August 1, 2019, with the agency. IDPH will have the option to renew those contracts for up to three additional

one-year terms without any further competitive bid process. The RFP states that IDPH intends to make up to \$260,000 available to at least five awardees.

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

38. 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. IDPH has reserved the right to change this date at its discretion. 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. This deadline for finalizing contracts can be extended by the Department in its discretion.

IV. The Act and Its Bar on Funding to PPH

39. After PPH submitted both of its applications, the Iowa legislature passed and Defendant Governor Reynolds signed a budget for Fiscal Year (FY) 2020, which begins on July 1, 2019.

40. Sections 99 and 100 of House File 766, (“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.

41. The Act includes an exception for CAPP and PREP applicants that are affiliated with a “nonprofit health care delivery system.” This exception carves out from the exclusion at least two existing grantees affiliated with the Unity Point hospital system in Iowa.

42. 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.

43. On May 7, PPH received an e-mail from the contract issuing officer assigned to the PREP RFP that was directed to all applicants. That email indicated that effective immediately, the eligibility requirements under the RFP had changed in accordance with the Act. The RFP amendment indicated that applicants were required to submit an attestation form consistent with the new eligibility requirement by May 9, 2019, by 4:00 p.m. It also directed entities that could not provide the attestation form to advise IDPH by that date if they wished to withdraw their applications. 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.

44. 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. It advised IDPH that it would not withdraw its application for PREP funding because it believed that the Act is unlawful.

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

45. PPH expects that it will lose approximately \$268,000 in CAPP and PREP grant funds annually, representing a 28 percent reduction in PPH’s Iowa education budget. Without that

funding, PPH's ability to offer critical educational services will be severely limited, leaving some areas without other providers capable of filling the sudden void left by PPH, to the detriment of Iowa's youth and under-served populations.

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

47. The exclusion of PPH from PREP and CAPP funding will stall some of the recent momentum PPH has gained in its communities and risk damaging productive partnerships it has been able to develop through its CAPP and PREP programming. Subgrantees with whom it works rely on PPH to take the lead grantee role because of its demonstrated commitment to the programs and its administrative expertise in grant administration and reporting. PPH's partner schools rely on PPH to provide programming, as they do not have teachers trained in the approved curricula and, in fact, utilize some of the programs to meet their required educational standards. Additionally, organizations that serve under-served populations, which are already under tremendous stress and require their staff to focus on other areas of service delivery, do not have capacity to take this work on, and therefore rely on the trained, experienced health educators from PPH to provide programming.

48. 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. 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. Although these agreements are contingent on grant approval, all parties 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.

49. 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 and harms to teen health in these counties.

CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
(Free Speech)**

50. Petitioner hereby reaffirms and realleges each and every allegation made above as if set forth fully herein.

51. The Act violates Article I, § 7, of the Iowa Constitution by denying government funds to PPH because of—and in retaliation for—its constitutionally protected advocacy for abortion rights and referrals for abortion.

**SECOND CLAIM FOR RELIEF
(Free Association)**

52. Petitioner hereby reaffirms and realleges each and every allegation made above as if set forth fully herein.

53. The Act violates Article I, § 7, of the Iowa Constitution by denying government funds to PPH because of—and in retaliation for—its constitutionally protected right to associate with other organizations that also advocate for abortion rights and/or provide abortion services.

**THIRD CLAIM FOR RELIEF
(Due Process)**

54. Petitioner hereby reaffirms and realleges each and every allegation made above as if set forth fully herein.

55. The Act violates Article I, § 9, of the Iowa Constitution by denying government funds to PPH because of—and in retaliation for—its exercise of its own constitutionally protected right to provide abortions and its patients’ exercise of the constitutional right to choose to have an abortion.

**FOURTH CLAIM FOR RELIEF
(Equal Protection)**

56. Petitioner hereby reaffirms and realleges each and every allegation made above as if set forth fully herein.

57. The Act violates Article I, §§ 1 and 6, of the Iowa Constitution by singling out abortion providers and those who “promote” abortions, including PPH, for unfavorable treatment without a constitutionally sufficient justification.

**FIFTH CLAIM FOR RELIEF
(Bill of Attainder)**

58. Petitioner hereby reaffirms and realleges each and every allegation made above as if set forth fully herein.

59. The Act violates Article I, § 21, of the Iowa Constitution by targeting PPH as an abortion provider and advocate for abortion access for punishment without a judicial trial.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully urges this Court to enter judgment as follows:

1. Declaring House File 766, §§ 99 and 100, unconstitutional because they violate the Iowa Constitution;
2. Enjoining Respondents from implementing and enforcing House File 766, §§ 99 and 100;
3. Awarding Petitioner’s costs incurred herein; and

4. Providing such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Rita Bettis Austen

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Dated: May 15, 2019

** pro hac vice motion to be filed*