IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC.; EMMA GOLDMAN CLINIC; and SARAH TRAXLER, M.D., Petitioners, v. KIM REYNOLDS, ex rel. STATE OF IOWA, IOWA BOARD OF MEDICINE, Respondents.	Case No. _____ **BRIEF IN SUPPORT OF PETITIONERS' EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

TABLE OF CONTENTS

INTRODUCTION

In 2019, this Court permanently enjoined a ban on abortions upon the detection of embryonic or fetal cardiac activity (the "2018 Six-Week Ban"), which can occur starting at approximately six weeks of pregnancy, as measured from the first day of a patient's last menstrual period ("LMP"). *See* Ruling on Mot. for Summ. J., *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE83074 (Polk Cnty. Dist. Ct. Jan. 22, 2019); Affidavit of Sarah A. Traxler, M.D. ("Traxler Aff.") ¶ 13. In December 2022, this Court reaffirmed that the 2018 Six-Week Ban violated the Iowa Constitution, recognizing that it was "a ban on nearly all abortions," and denied the State's motion to dissolve the permanent injunction. *See* Ruling on Mot. to Dissolve Perm. Injunction Issued Jan. 22, 2019, *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE83074 (Polk Cnty. Dist. Ct. Dec. 12, 2022). Just last month, the Iowa Supreme Court affirmed by operation of law, allowing this Court's ruling to remain in effect. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. 22-2036 (Iowa June 16, 2023) ("*PPH V*").

The ink on the Iowa Supreme Court's order was barely dry before Governor Reynolds called a special session of the Iowa General Assembly to enact a new abortion ban. *See* Proclamation of Special Session (July 5, 2023). During this one-day special session on July 11, 2023, the General Assembly passed House File 732 ("HF 732" or "the Act"), a law virtually identical to the 2018 Six-Week Ban that again bans abortions upon the detection of embryonic or fetal cardiac activity. The General Assembly rushed to introduce, debate, and pass the Act as quickly as it could. Each chamber debated the Act for less than seven hours, and the entire special session, from convening to passage of the Act by both chambers, took less than a day—less than the twenty-four hours that Iowa law requires patients to wait before having an abortion, *see* Iowa Code § 146A.1.

Shortly thereafter, Governor Reynolds issued a statement in response to the passage of the Act, stating that she will sign it into law on Friday, July 14, 2023. *See* Press Release, Office of Gov. Kim Reynolds, Gov. Reynolds Statement on Special Session to Protect Life (July 11, 2023), https://governor.iowa.gov/press-release/2023-07-11/gov-reynolds-statement-special-session-protect-life. The Act will take effect immediately upon Governor Reynolds's signature. *See* HF 732 § 3.

The Act bans the vast majority of abortions in Iowa: nearly 92% of the abortions that Petitioner Planned Parenthood of the Heartland, Inc. ("PPH") provided in Iowa in the first half of 2023 and 99% of the ones that Petitioner Emma Goldman Clinic ("EGC") provided between October 2022 and May 2023 took place once the patients' pregnancies had already reached six weeks LMP. Traxler Aff. ¶ 20; Affidavit of Abbey Hardy-Fairbanks, M.D. ("Hardy-Fairbanks Aff.") ¶ 4.[1]

The Act blatantly violates the Iowa Constitution. This case is squarely controlled by precedent from the Iowa Supreme Court holding that abortion restrictions must be evaluated under the undue burden standard. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710, 716 (Iowa 2022) ("*PPH IV*"); *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 865 N.W.2d 252 (Iowa 2015) ("*PPH I*"). The Act cannot survive the undue burden test. It bans the vast majority of abortions in Iowa, forcing people seeking an abortion to carry a pregnancy to term against their will, travel out of state to access care at great cost to themselves and their families, or attempt to self-manage their abortions outside the medical system. The Act is an affront to the dignity and health of Iowans. In particular, it is an attack on families with low incomes,

[1] The affidavits accompanying this motion cite to both Senate File 579 and House File 732 or to "SF 579/HF 732." During the special session, these identical bills were debated simultaneously. Ultimately, the House passed HF 732 and transmitted it to the Senate, which substituted HF 732 for SF 579 and passed it.

Iowans of color, and rural Iowans, who already face inequities in access to health care and who will bear the brunt of the law's cruelties.

Petitioners PPH, EGC, and Sarah Traxler, M.D. (collectively, "Petitioners") seek a temporary injunction to prevent the widespread and irreparable harm that the Act will inflict each day it is in effect on Petitioners' patients and on their medical providers and other staff members. Petitioners have 200 patients scheduled for abortion services in the weeks of July 10 and 17. If the Act goes into effect, they will not be able to provide abortions to most of those patients.

FACTUAL BACKGROUND

PPH and EGC are the only abortion providers that operate health centers in Iowa. Traxler Aff. ¶ 21. PPH operates eight health centers throughout Iowa, and in 2022, it provided over 3300 abortions in the state. *Id.* ¶ 20. EGC is a clinic in Iowa City that, between October 2021 and September 2022, provided 703 abortions. Hardy-Fairbanks Aff. ¶ 4.

Legal abortion is one of the safest procedures in contemporary medical practice, and it is much safer than carrying a pregnancy to term. *See* Traxler Aff. ¶ 22. It is also very common: nearly one in four women will have an abortion by age 45, and this number does not account for the transgender men, gender nonconforming people, and nonbinary people who have abortions. *See id.* Patients' decisions to have an abortion often involve multiple considerations that reflect the complexities of their lives. *See id.* ¶ 23. Many are already parents, and they decide to have an abortion based on what is best for them and their existing families. *See id.* Others decide that they are not ready to become parents because they are too young or want to finish school before starting a family. *See id.* Some patients conclude that abortion is the right choice for them because of health complications during pregnancy or a life-limiting fetal diagnoses, or because they have an abusive partner or a partner with whom they do not wish to have children. *See id.* Access to legal abortion

is critical for the welfare of pregnant people.

On July 5, 2023, less than three weeks after an evenly divided Iowa Supreme Court allowed this Court's permanent injunction against the 2018 Six-Week Ban to remain in effect, Governor Reynolds issued a proclamation calling the Iowa General Assembly into a special session on July 11 "for the sole and single purpose" of enacting a new ban on abortion. *See* Proclamation of Special Session. The Governor's proclamation noted that the Supreme Court's ruling had prevented the State from enforcing the 2018 Six-Week Ban, and asserted that "Iowans deserve to have their legislative body address the issue of abortion expeditiously and all unborn children deserve to have their lives protected by their government as the fetal heartbeat law did." *Id.* at 2.

The General Assembly met in a special session on July 11, 2023. Debate in each chamber lasted less than seven hours, and before debate on the floor of the Senate was complete, proponents of the bill forced a vote at around 11:00 p.m., in the dead of night. The entire session—from convening of the special session to passage of the Act by both chambers of the General Assembly—took less than a day. Governor Reynolds announced she will sign the Act into law on Friday, July 14, 2023. *See* Press Release, Gov. Reynolds Statement on Special Session to Protect Life, *supra* at 2.

Just like the 2018 Six-Week Ban, the Act bans abortions when there is a "detectable fetal heartbeat." HF 732 § 2(2)(a). When a pregnant person seeks an abortion, the Act requires the abortion provider to perform an abdominal ultrasound to detect whether there is cardiac activity and to inform the patient in writing both (1) whether cardiac activity was detected; and (2) that if cardiac activity was detected, the patient cannot have an abortion. *Id.* § 2(1)(a)–(b). The Act then requires the patient to sign a form acknowledging that they received this information. *Id.* § 2(1)(c).

The Act's references to a "fetal heartbeat" are inaccurate and misleading. The Act defines

"fetal heartbeat" as "cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac" and bans abortions if a "fetal heartbeat" is detected via ultrasound. *Id.* § 1(2). Cardiac activity may be detected via abdominal ultrasound as early as six weeks LMP. *See* Traxler Aff. ¶ 13. At this very early stage of pregnancy, cardiac activity is merely an electrical pulse; nothing that could be considered a "heart" has yet formed. *See id.* Further, despite the Act's use of the term "fetal heartbeat," a pregnancy is still an embryo when cardiac activity may first be detected, not a fetus; the developing pregnancy is an embryo until at least ten weeks LMP, only after which the term "fetus" is used. *See id.* ¶ 12.

Because embryonic or fetal cardiac activity can be detected as early as six weeks LMP, the Act bans abortions starting at approximately six weeks LMP. *See id.* ¶ 13. By banning abortions so early in pregnancy, the Act will prevent the vast majority of people from having an abortion in Iowa. *See id.* ¶ 16. Although most abortion patients get an abortion as soon as they are able, nearly 92% of the abortions PPH provided in Iowa during the first half of 2023—and 99% of the ones EGC provided between October 2022 and May 2023—took place after six weeks LMP. *See id.* ¶ 20; Hardy-Fairbanks Aff. ¶ 16. Even for patients with regular four-week menstrual cycles, six weeks LMP is only two weeks past the first missed period. *See* Traxler Aff. ¶ 26. Further, many people do not know that they are pregnant by six weeks LMP for a wide variety of reasons, including because of irregular menstrual cycles as a result of common medical conditions, contraceptive use, age, and breastfeeding; because implantation of a fertilized egg can cause light bleeding, which is often mistaken for a period; and because pregnancy is not always easy to detect. *See id.* ¶¶ 27–28. And even those who do know they are pregnant by six weeks LMP will face substantial logistical and financial obstacles in arranging to have an abortion in Iowa before their time runs out, including raising money for the abortion and arranging time off work, transportation,

childcare, and care for other family members. *See id.* ¶¶ 29–32.

The Act allows for only a few narrow exceptions under which either a provider need not test for cardiac activity or a patient can have an abortion despite the detection of cardiac activity. First, an exception applies if the provider determines in their "reasonable medical judgment" that there is a "medical emergency." HF 732 §§ 1(4), 2(2)(a); Iowa Code § 146A.1(6)(a). Second, an exception applies if the pregnancy resulted from rape or incest *and* the patient reports the rape or incest to law enforcement or to a "public or private health agency which may include a family physician" within a limited time window (45 days for rape, and 140 days for incest). HF 732 §§ 1(3)(a)–(b), 2(2)(a). This exception is no longer available once the pregnancy reaches a "postfertilization age" of "twenty or more weeks"—approximately twenty-two weeks LMP or later. *Id.* § 2(2)(b). Third, an exception applies if the provider certifies that the fetus has a "fetal abnormality" that is "incompatible with life" in the provider's "reasonable medical judgment." *Id.* §§ 1(3)(d), 2(2)(a). As with the exception for reported rape and incest, this fetal abnormality exception is no longer available once the pregnancy reaches approximately twenty-two weeks LMP. *Id.* § 2(2)(b).

Further, the Act includes several unclear provisions that will cause needless confusion for Petitioners and their patients. The General Assembly rushed to pass the Act in less than one day, without making changes to the enjoined 2018 law necessary to avoid uncertainty.[2] Notably, the

[2] For example, the Act requires the Board of Medicine to promulgate regulations to administer the ban, *id.* § 2(5), but the Board of Medicine has not yet done so. This provision was copied verbatim from the 2018 Six-Week Ban, Iowa Code § 146C.2(5), but that bill did not have an immediate effective date. *See* 2018 Senate File 359. By including an immediate effective date, the General Assembly eliminated the time built into the 2018 Six-Week Ban for the Board of Medicine to promulgate rules. Moreover, the Board of Medicine's ability to make rules has been hamstrung by Governor Reynolds's executive order issuing a "moratorium on rulemaking." Exec. Order No. 10, § IV, https://governor.iowa.gov/media/182/download?inline.

And for abortions "necessary to preserve the life of an unborn child"—which appears to refer to abortions necessary to preserve the life of a twin fetus—the Act nonsensically includes

rape and incest exceptions in the Act do not provide sufficient clarity about when they apply. The Act fails to define its use of the word "rape," even though "rape" is not a crime defined elsewhere in the Iowa Code, which instead uses the term "sexual abuse," Iowa Code §§ 709.1 *et seq*. The Act also does not define "incest," which is defined in the criminal code as a sex act with "an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew," Iowa Code § 726.2, leaving it unclear whether the term includes, for example, a stepsibling or stepparent. Further, the rape and incest exceptions require that the incident be reported "to a law enforcement agency or to a public or private health agency which may include a family physician." HF 732 §§ 1(3)(a)–(b). The Act does not define "private health agency" or "family physician," leaving unclear whom a survivor needs to report to in order to qualify for an abortion. Reporting rape or incest, even to a medical provider, can be retraumatizing for survivors. Meek Aff. ¶ 24. The Act fails to give survivors the clarity they need to access abortion care, and it fails to give abortion providers the clarity they need to determine whether they can provide the requisite care to this vulnerable population.

The rape and incest exceptions language was copied verbatim from the 2018 Six-Week Ban, Iowa Code §§ 146C.1(4)(a)–(b). As Justice Waterman explains in his non-precedential *PPH V* opinion, "when the statute was enacted in 2018, it had no chance of taking effect. To put it politely, the legislature was enacting a hypothetical law." *PPH V*, slip. op. at 10 (Waterman, J., non-precedential op.). As such, the 2018 General Assembly did not draft the 2018 Six-Week Ban with the care needed to ensure clarity were it to take effect. And Petitioners raised these issues in the litigation about the 2018 ban. Petition, ¶ 28, *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE83074 (Polk Cnty. Dist. Ct. filed May 15, 2018); Appellees' Final Brief at 23

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these among the abortions allowed after twenty weeks post-fertilization, *id*. § 2(2)(b), but not those allowed from six weeks LMP up to twenty weeks post-fertilization, *id*. § 2(2)(a).

n.1, *PPH V*. Nonetheless, the General Assembly again refused to fix these flaws when it passed the Act.

The Act also fails to specify what penalties providers could face for a violation. It does, however, require the Iowa Board of Medicine to adopt rules to administer the Act. HF 732 § 2(5). The Board of Medicine has the authority to discipline providers for violating a state law, including by imposing civil penalties of up to ten thousand dollars and revoking their medical licenses. *See* Iowa Code §§ 148.6(1), (2)(c); Iowa Code § 272C.3(2).

LEGAL STANDARD

Under Rule 1.1502 of the Iowa Rules of Civil Procedure, temporary injunctive relief is appropriate when necessary "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). Such relief is appropriate if the movant demonstrates: (1) a likelihood of success on the merits; (2) a threat of irreparable injury; and (3) that the balance of harms favors relief. *See generally Opat v. Ludeking*, 666 N.W.2d 597, 603–04 (Iowa 2003); *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001).

ARGUMENT

I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

A. The Act violates the Iowa Constitution's Due Process Clause because it imposes an undue burden on the right to abortion.

The Iowa Supreme Court has addressed the status of abortion restrictions under the Iowa Constitution several times since 2015, but the applicable level of scrutiny is clear: as Justice Waterman unequivocally stated in *PPH V* last month, "the undue burden test remains the governing standard." *PPH V*, slip op. at 6 (Waterman, J., non-precedential op.). The Act

unquestionably imposes an undue burden on the right to abortion and therefore violates Petitioners' patients' substantive due process rights under the Iowa Constitution.

In 2015, the Iowa Supreme Court applied the undue burden standard[3] to hold that a ban on telemedicine medication abortions violated the Iowa Constitution. *See PPH I*, 865 N.W.2d at 262–69. The Court later held that abortion restrictions should be reviewed under strict scrutiny. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, 915 N.W.2d 206 (Iowa 2018) ("*PPH II*"). The Court subsequently overturned *PPH II*'s holding that strict scrutiny applies, but it explicitly held that the undue burden standard articulated in *PPH I* remains the "governing standard." *PPH IV*, 975 N.W.2d at 716. It explained, "[A]ll we hold today is that the Iowa Constitution is not the source of a fundamental right to an abortion *necessitating a strict scrutiny standard of review* for regulations affecting that right." *Id.* (emphasis added). In *PPH IV*, the Court expressly declined to hold that the rational basis standard applied, even though an amicus curiae requested that it do so. *Id.* at 745. In fact, two justices specifically *dissented* on this point, stating that they would direct the trial court on remand to apply rational basis. *Id.* at 746 (McDermott, J., concurring in part and dissenting in part).

Unlike rational basis, the undue burden standard accounts for the competing interests at stake in the abortion context. *See PPH V*, slip op. at 21 ("The undue burden test balances the state's interest in protecting unborn life and maternal health with a woman's limited liberty interest in

[3] The undue burden standard from *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), governed abortion restrictions under the United States Constitution before the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___, 142 S. Ct. 2228 (2022). The standard has parallels in other constitutional contexts in which the Iowa Supreme Court has rejected strict scrutiny but adopted a standard of review higher than rational basis scrutiny. *See, e.g.*, *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 7 (Iowa 2020) (election law); *State v. Musser*, 721 N.W.2d 734, 743 (Iowa 2006) (commercial speech and content-neutral regulations of speech). And Iowa's adoption of the undue burden standard allows Iowa courts to draw on the ample federal precedent applying the standard between *Casey* and *Dobbs*.

deciding whether to terminate an unwanted pregnancy.") (Waterman, J., non-precedential op.); *PPH II*, 915 N.W. 2d at 249–50 (Mansfield, J., dissenting) ("The fact that there are *two* profound concerns—a woman's autonomy over her body and human life—has to drive any fair-minded constitutional analysis of the problem. . . . *Casey*'s undue burden standard was not an unprincipled decision by Justices O'Connor, Kennedy, and Souter 'to deviate downward' in constitutional jurisprudence. It was an effort to recognize the unique status of this particular constitutional conflict between a woman's autonomy and respect for human life.").

Notably, the Iowa Supreme Court chose not to wait for the United States Supreme Court's decision in *Dobbs* before issuing its decision reiterating the undue burden standard, even though Mississippi had asked the United States Supreme Court to overrule *Casey* many months before—not to mention that Justice Alito's draft opinion in *Dobbs* already had become public. The United States Supreme Court ultimately decided *Dobbs*—a *federal* constitutional case—one week after *PPH IV*, but *Dobbs* did not change *PPH IV*'s holding that the undue burden test remains the standard under the *Iowa* Constitution. In *PPH IV*, the Court noted that the opinions of the U.S. Supreme Court could inform how it should rule, but also made clear that it "zealously guard[s] [its] ability to interpret the Iowa Constitution independently of the Supreme Court's interpretations of the Federal Constitution." *PPH IV*, 975 N.W.2d at 716, 745–46. After *Dobbs*, the State petitioned the Iowa Supreme Court for rehearing in an effort to convince the Court to establish rational basis as the new standard of review in abortion rights cases. Appellants' Pet. for Reh'g, *PPH IV* (No. 21-0856). The Court summarily rejected this invitation to set a new and lower standard of review than the federal undue burden standard applied in *PPH I*. Pet. for Reh'g Denied, *PPH IV* (No. 21-0856); *see also PPH V*, slip op. at 18 (describing the petition for rehearing as an "attempt at a shortcut to adopting *Dobbs*") (Waterman, J., non-precedential op.). Indeed, as Justice

Waterman noted in his non-precedential *PPH V* opinion, "To date, not a single state supreme court that previously recognized protection for abortion under its state's constitution has overruled its precedent in light of *Dobbs* to adopt rational basis review." *PPH V*, slip op. at 19 (Waterman, J., non-precedential op.).

Because the opinions of the evenly divided Iowa Supreme Court in *PPH V* are non-precedential, the undue burden standard that the Iowa Supreme Court left in place in *PPH IV* remains the governing standard. *See id.* at 6 ("[T]he undue burden test remains the governing standard . . . .") (Waterman, J., non-precedential op.). As this Court explained last December when it denied the State's motion to dissolve the injunction against the 2018 Six-Week Ban, *PPH IV* "was clear in its holding that 'for now, this means that the *Casey* undue burden test [the court] applied in *PPH I* remains the governing standard.'" Ruling on Mot. to Dissolve Perm. Injunction at 14 (alteration in original). This Court therefore concluded that the 2018 Six-Week Ban "would be an undue burden and, therefore, the statute would still be unconstitutional and void." *Id.* at 15.

The same is true of the Act in this case. It puts in place not just a substantial—but a complete—obstacle in the path of Iowans seeking pre-viability abortions after all but the earliest stages of pregnancy. The Act provides an extremely narrow window for Iowans to confirm a pregnancy; decide whether to have an abortion; secure an appointment at one of the few available health centers in Iowa that provide abortions, which do not provide abortions every day of the week; take time off from work and arrange transportation, childcare, and care for other family members; obtain an ultrasound and state-mandated counseling materials; wait twenty-four hours; and have an abortion. The Act will prevent the vast majority of Iowans from having access to

abortion. There can be no doubt, therefore, that it imposes an undue burden. Indeed, at oral argument before the Iowa Supreme Court in April, the State *conceded* as much.[4]

Moreover, every single court that has considered a pre-viability abortion ban under an undue burden standard has concluded that the ban is unconstitutional. *See, e.g.*, *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 773 (8th Cir. 2015) (six-week ban); *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015) (twelve-week ban); *Isaacson v. Horne*, 716 F.3d 1213, 1227 (9th Cir. 2013) (twenty-week ban); *Jane L. v. Bangerter*, 102 F.3d 1112, 1117–18 (10th Cir. 1996) (twenty-week ban); *Sojourner T. v. Edwards*, 974 F.2d 27, 31 (5th Cir. 1992) (total ban); *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1368–69, 1371–72 (9th Cir. 1992) (total ban); *Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801, 810 (D.S.C. 2021) (6-week ban); *Memphis Ctr. for Reprod. Health v. Slatery*, No. 3:20-CV-00501, 2020 WL 4274198, at *15 (M.D. Tenn. July 24, 2020) (6-week ban); *SisterSong Women of Color Reprod. Justice Collective v. Kemp*, 472 F. Supp. 3d 1297, 1312 (N.D. Ga. 2020) (6-week ban); *Robinson v. Marshall*, No. 2:19-cv-365, 2019 WL 5556198, at *3 (M.D. Ala. Oct. 29, 2019) (total ban); *Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796, 800–04 (S.D. Ohio 2019) (6-week ban); *Bryant v. Woodall*, 363 F. Supp. 3d 611, 630–32 (M.D.N.C. 2019) (20-week ban).[5]

The burdens that the Act imposes on patients' access to abortions are not alleviated by the limited scope of its exceptions and the muddled, confusing language it uses to frame these exceptions, which impact some of the most vulnerable patients. For example, the Act's failure to define "rape" and "incest," its arbitrary requirements that rape be reported within 45 days and

[4] Oral Argument at 2:56, *PPH V*, available at https://www.youtube.com/watch?v=NvW74QAl2s; *see also PPH V*, slip op. at 13 (noting it is "clear and indeed conceded by the State at oral argument" that the 2018 Six-Week Ban does not satisfy the undue burden standard) (Waterman, J., non-precedential op.).

[5] Because these cases were decided under the federal undue burden standard, they were abrogated by *Dobbs*.

incest within 140 days, and its unclear requirement that the reporting be done to a "public or private health agency which may include a family physician," HF 732 § 1(3)(a)–(b), all put substantial obstacles in the way of survivors of rape and incest. The Act would thus cause confusion among survivors about whether they qualify for an abortion. The Act's incorporation of the definition of "medical emergency" from Iowa Code § 146A.1(6)(a), HF 732 § 1(4), which expressly excludes abortions provided because of the pregnant person's "psychological conditions, emotional conditions, familial conditions, or . . . age," would also prevent access to abortions for particularly vulnerable patients. Thus, the Act unduly burdens the right to abortion even for patients who may fall within the scope of the exceptions, and Petitioners are likely to succeed on the merits of their challenge under the Due Process Clause.

B. Petitioners are likely to succeed on their claims under the Iowa Constitution's Inalienable Rights Clause.

PPH I and *PPH IV* were decided under the Due Process Clause of article I, section 9. Substantive due process offers ample protection for abortion rights under the Iowa Constitution. *Cf. PPH IV*, 975 N.W.2d at 737 ("[S]tates relying on the due process clauses of their state constitutions typically have applied the undue burden test.") (alteration in original) (quoting *PPH II*, 915 N.W. 2d at 254 (Mansfield, J., dissenting). But this clause does not stand alone in protecting the right to abortion under the Iowa Constitution. *Accord Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 26 (Minn. 1995) (recognizing fundamental right to abortion under combination of several clauses of Minnesota Constitution). The right to abortion is also protected under article I, section, 1 of the Iowa Constitution, the Inalienable Rights Clause.

Article I, section 1 provides, "All men and women are, by nature, free and equal, and have certain inalienable rights—among which are those of enjoying and defending life and liberty,

acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness." Iowa Const. art. I, § 1. No "mere appendage," the section was "purposefully placed at the beginning of the Bill of Rights" and "makes the point of emphasizing 'inalienable rights,' which . . . include[] rights that cannot be abrogated by the legislature, or this court." *Baldwin v. City of Estherville*, 915 N.W.2d 259, 285 (Iowa 2018) (Appel, J., dissenting).[6] The clause's use of the word "among" shows that the list of inalienable rights is not exhaustive. *See Hodes & Nauser, MDs, P.A. v. Schmidt*, 440 P.3d 461, 473 (Kan. 2019) (interpreting the use of the word "among" in a similar clause of the Kansas Constitution to mean the list of rights "was not intended to be exhaustive"); Bruce Kempkes, *The Natural Rights Clause of the Iowa Constitution: When the Law Sits Too Tight*, 42 Drake L. Rev. 593, 636 (1993) ("[The] drafters [of the Inalienable Rights Clause] chose to use language more detailed and more encompassing than the grand endowment of rights set forth earlier in the Declaration of Independence and later in the Fourteenth Amendment.").

The sweeping language in article I, section 1, encompasses a broad right to bodily autonomy. Accordingly to a scholarly article on the provision, the clause "protects those preferred personal freedoms that include expression, associate, assembly, spirituality, and privacy," in other words "the right to personal autonomy, . . . the right of an individual to seek his or her own answers, or the right to self-ownership," and these freedoms "implicate, among other things, the right of a person to decide . . . whether to bear a child." *Id.* at 640–42 (internal quotation marks and citations

[6] Although Iowa courts typically use the rational basis test when applying article I, section 1, *see Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 83 (Iowa 2022) (collecting cases); *PPH IV*, 975 N.W.2d at 743 n.23, the Iowa Supreme Court has cited its protections to buttress guarantees found in other parts of the Iowa Constitution. *See, e.g.*, *McQuistion v. City of Clinton*, 872 N.W.2d 817, 830 n.6 (Iowa 2015) ("[E]qual protection law arises out of the confluence of article I, section 1 and article I, section 6. Article I, section 1 protects individuals' rights, while article I, section 6 prevents the government granting any citizen or class of citizens privileges or immunities not granted to all citizens on the same terms."); *Varnum v. Brien*, 763 N.W.2d 862, 878 (Iowa 2009) (citing art. I, § 1, as textual basis for equal protection under Iowa Constitution).

omitted). Courts in other states have recognized abortion protections under similar clauses of their constitutions. *See, e.g.*, *Hodes & Nauser*, 440 P.3d at 471 (per curiam) ("[S]ection 1 of the Kansas Constitution Bill of Rights acknowledges rights that are distinct from and broader than the United States Constitution and that our framers intended these rights to be judicially protected against governmental action that does not meet constitutional standards. Among the rights is the right of personal autonomy. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy."); *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620, 631 (N.J. 2000) ("Article I, paragraph 1, of the New Jersey Constitution . . . incorporates within its terms the right of privacy and its concomitant rights, including a woman's right to make certain fundamental choices.").

Further, in 1998, an overwhelming majority of the Iowa electorate voted to amend article I, section 1 to expressly include women. Iowa Const. amend. XLV.[7] As amended, the clause guarantees the inalienable rights of "[a]ll men *and women*," Iowa Const. art. I, § 1 (emphasis added). In interpreting the state constitution, Iowa courts' purpose "is to ascertain the intent of the framers," meaning they "look first at the words employed, giving them meaning in their natural sense and as commonly understood," then also "examine constitutional history." *Rants v. Vilsack*, 684 N.W.2d 193, 199 (Iowa 2004) (internal citations and quotation marks omitted); *see also Edge v. Brice*, 113 N.W.2d 755, 759 (Iowa 1962) ("It is proper in our determination to consider the intention of the framers of the provision as the language used, the object to be attained, or evil to be remedied, and *the circumstances at the time of adoption* indicate." (emphasis added)). The

[7] 83.6% of the electorate voted in favor of the amendment. *Iowa Equal Rights, Amendment 1 (1998)*, Ballotpedia, https://ballotpedia.org/Iowa_Equal_Rights,_Amendment_1_(1998) (last visited July 11, 2023); *see also 1998 Gen. Election Stat. Reps. by Cnty.*, Iowa Sec'y of State, https://sos.iowa.gov/elections/pdf/1998GEResultsByPCT.pdf.

express inclusion of "women" in article I, section 1 incorporates the conception of equality of the sexes and of women's rights in 1998, when abortion was unquestionably protected and the *Casey* undue burden standard was the law of the land. *Cf. PPH II*, 915 N.W.2d at 254 (Mansfield, J., dissenting) (finding significant the timing of adoption of constitutional guarantees, noting that among states with "explicit guarantees of privacy in their constitutions" that have adopted strict scrutiny, "for the most part, those privacy guarantees have been adopted only recently"). Notably, unlike the Iowa Constitution, neither the Kansas Constitution nor the New Jersey Constitution expressly includes women in their guarantees of inalienable rights, and yet both state supreme courts nevertheless recognized that a fundamental right to abortion exists under their constitutions. *See Hodes & Nauser*, 440 P.3d at 471 (interpreting Kan. Const. art. I, § 1 (guaranteeing inalienable rights to "[a]ll men")); *Planned Parenthood of Cent. N.J.*, 762 A.2d at 631 (interpreting N.J. Const. art. I, § 1 (guaranteeing "certain natural and unalienable rights" to "[a]ll persons")).[8]

In *PPH IV*, the Court took into account the historical context to determine the meaning of the Iowa Constitution, ultimately concluding that abortion was not a fundamental right subject to strict scrutiny because around the time of the Iowa Constitution's ratification in 1857, abortion was prohibited in many circumstances from 1843 to 1851 and from 1858 until *Roe v. Wade* was decided in 1973. 975 N.W.2d at 740–41. By that same reasoning, the historical context at the time of the 1998 amendment leads to the conclusion that the amendment encompasses the right to abortion and the undue burden standard. Further, in *Bechtel v. City of Des Moines*, 225 N.W.2d 326 (Iowa 1975), the Iowa Supreme Court ascertained the meaning of the home-rule amendment

[8] Much of the language of article 1, paragraph 1 of the New Jersey Constitution, is substantially identical to article 1, section 1 of the Iowa Constitution. *Compare* N.J. Const. art. I, § 1 ("All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.") *with* Iowa Const. art. I, § 1.

by turning to "[t]he individuals who were in the forefront of the struggle to obtain" the amendment, who were "in the best position to know the intent of the framers." *Id.* at 333. The individuals at the forefront of the fight to add "women" to article I, section 1 included elected officials publicly associated with the fight for abortion rights. For example, Representative Minnette Doderer, who according to contemporaneous reports, was a "driving force behind the effort," Associated Press, *Flap Erupts Over Rights Language*, Des Moines Register, June 10, 1998, at 1M, also publicly supported abortion rights. *See* Jonathan Roos, *Abortion Bill Survives Test in Legislature*, Des Moines Register, Feb. 19, 1998, at 4A (noting Rep. Doderer's opposition to an abortion restriction); Quote of the Day, Des Moines Register, Feb. 19, 1998, at 3A (quoting Rep. Doderer as urging lawmakers to vote against abortion restriction, saying, "You're not going to go to hell either way you vote"); Rekha Basu, *Doderer Wears Label Proudly*, Des Moines Register, Feb. 21, 1997, at 1T (reporting that Rep. Doderer wore the label of "feminist" proudly and that "the abortion issue . . . pushed her into 'conscious feminism.'"). Similarly, Senator Elise Szymoniak, who less than a month before the election was reported as having "been with the movement since the beginning," Pat Denato, *Women Would Belong Everywhere, Even in the Constitution*, Des Moines Register, Oct. 11, 1998, at 3E, also publicly supported abortion. *See* Thomas A. Fogarty, *Abortion Bill OK'd by State Senate*, Des Moines Register, Feb. 6, 1998, at 4A (front page story quoting Sen. Szymoniak as saying, "If you stop legal abortion, you won't stop abortion; you'll only make it more difficult"); *Quote of the Day*, Des Moines Register, Feb. 6, 1998, at 4M (quoting her as saying "[t]here will be women who die" as a result of an abortion ban). The public involvement of Rep. Doderer and Sen. Szymoniak in the campaign lends further support to the connection between the amendment and abortion rights.

In the words of a supporter of the amendment before the election, "[W]ith two words—'and women'—women will take their rightful place in the Iowa Constitution. And we, as Iowans will say that we believe people should be free to pursue their life goals—whatever their gender." Stephanie R. Pratt, *Fixing a 131-Year-Old Constitutional Omission*, Des Moines Register, Oct. 18, 1998, at 5AA. Article I, section 1's broad guarantees of inalienable rights, including a specific guarantee of these rights to women, protects Iowans' right to bodily autonomy, including the right to decide whether to terminate a pregnancy. Because the challenged Act would strip the rights of women to control their bodies and their lives, *see PPH IV*, 975 N.W.2d at 746 ("[A]utonomy and dominion over one's body go to the very heart of what it means to be free.") (quoting *PPH II*, 915 N.W.2d at 237), Petitioners are likely to succeed on the merits of their article I, section 1 claim.[9]

[9] Petitioners focus here on their claims under the Due Process and Inalienable Rights Clauses, but the Act also violates the Iowa Constitution's equal protection guarantee. For classifications based on pregnancy, Iowa courts apply intermediate scrutiny, not strict scrutiny. *See Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n*, 268 N.W.2d 862, 866–67 (Iowa 1978) ("[A]ny classification which relies on pregnancy as the determinative criterion is a distinction based on sex." (citation and internal quotation marks omitted)), *superseded on other grounds by* Iowa Code § 216.19 (2009); *accord N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 854 (N.M. 1998). The undue burden standard is an intermediate level of scrutiny that balances the unique interests at stake in the abortion context. *See PPH II*, 915 N.W.2d at 249 (noting balance of concerns that "underlies the 'undue burden' standard set forth in *Casey*) (Mansfield, J., dissenting); *see also* Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. Rev. 1267, 1299 (2007) (referring to the undue burden test as "a form of intermediate scrutiny").

Further, the undue burden test effectuates the understanding of equal protection in *PPH IV*. In *PPH IV*, the Court recognized that "being a parent is a life-altering obligation that falls unevenly on women in our society." 975 N.W.2d at 746 (quoting *PPH II*, 915 N.W.2d at 249 (Mansfield, J., dissenting)). Because abortion restrictions threaten the bodily autonomy of women, applying rational basis would be inappropriate. *See PPH V*, slip op. at 21 (declining to apply rational basis because "[i]t would be ironic and troubling for our court to become the first state supreme court in the nation to hold that trash set out in a garbage can for collection is entitled to more constitutional protection than a woman's interest in autonomy and dominion over her own body.") (Waterman, J., non-precedential op.).

II. THE ACT WILL IRREPARABLY HARM PETITIONERS AND THEIR PATIENTS

"Iowa Rule of Civil Procedure 1.1502(1) permits a temporary injunction to prevent irreparable harm to the movant." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023). In a determination of whether injunctive relief is warranted, "each case must rest on its own peculiar facts." *Johnson v. Pattison*, 185 N.W.2d 790, 798 (Iowa 1971). Here, the irreparable harm requirement is met because Petitioners have shown, *see supra*, that they are "likely to succeed in showing a constitutional violation," which itself constitutes irreparable harm. *LS Power Midcontinent*, 988 N.W.2d at 338. Additionally, their harms cannot be remedied by monetary damages. *IES Utilities Inc. v. Iowa Dep't of Revenue and Finance*, 545 N.W.2d 536, 541 (Iowa 1996) (stating that monetary loss is "insufficient under most circumstances to be considered irreparable injury").

If the Act goes into effect, it will be catastrophic for Iowans. It will force many people seeking abortions to carry their pregnancies to term against their will, with all of the physical, emotional, and financial costs that entails. *See* Traxler Aff. ¶¶ 43–58. Some will inevitably turn to self-managed abortions, which may in some cases be unsafe. *See id.* ¶ 60. And even Iowans who are ultimately able to get an abortion—either because they have been able to scrape together resources to travel out of state or if they are one of the very few who can satisfy one of the law's narrow exceptions—will suffer irreparable harm. *See id.* ¶ 43–70. Finally, Petitioners and their staff will also suffer harms that cannot possibly be compensated after judgment.

A. Petitioners and their patients will suffer irreparable harm from forced pregnancy.

The Act threatens severe, actual, and irreparable harm to Iowans' lives and livelihood—harms that are more than sufficient to justify a temporary injunction. If the Act takes effect, Petitioners will be forced to turn away the vast majority of patients seeking abortions. *See id.* ¶ 20;

Hardy-Fairbanks Aff. ¶ 16. Petitioners have 200 patients scheduled for abortion services for the weeks of July 10 and 17, and few, if any, will fall within the Act's narrow exceptions. *See* Traxler Aff. ¶ 20; Hardy-Fairbanks Aff. ¶ 13–15. Iowans will be forced to carry their pregnancies to term and give birth. *See* Traxler Aff. ¶ 43. For these patients, who will suffer a range of physical, mental, and economic consequences, there is no effective monetary remedy after judgment for the impact of forced pregnancy and loss of bodily autonomy. *See Curtis 1000, Inc. v. Youngblade*, 878 F. Supp. 1224, 1248 n.24 (N.D. Iowa 1995) (irreparable harm may be found in situations that "involve imminent health or safety risks").

Even an uncomplicated pregnancy challenges a person's entire physiology. *See* Traxler Aff. ¶ 44; Hardy-Fairbanks Aff. ¶ 10. And many pregnant people experience complications. *See* Traxler Aff. ¶ 49–52. Pregnancy can cause new and serious health conditions or aggravate pre-existing health conditions. *See id.* ¶ 46. It can also induce or exacerbate mental health conditions, which are explicitly excluded from the Act's "medical emergency" exception. *See id.* ¶¶ 47, 66; HF 732 § 1(4); Iowa Code § 146A.1(6)(a). Some pregnant patients also face an increased risk of intimate partner violence—including possible homicide, with the severity sometimes escalating during or after pregnancy. *See* Traxler Aff. ¶ 48. Indeed, homicide, most frequently caused by an intimate partner, is a leading cause of maternal mortality. *See id.*

Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. *See id.* ¶ 49; Hardy-Fairbanks Aff. ¶ 10. Maternal mortality has been rising in the United States, and the risk of mortality associated with childbirth is more than twelve times higher than that associated with abortion. *See* Hardy-Fairbanks ¶ 10; Traxler Aff. ¶ 22. The health risks of childbirth also go beyond mortality. Complications from labor and childbirth occur at a rate of over 500 per 1,000 delivery hospital stays. *See* Traxler Aff. ¶ 50. Even a normal pregnancy with

no comorbidities or complications can suddenly become life-threatening during labor and delivery. *See id.* Patients of color are even more at risk for negative pregnancy and childbirth-related health outcomes. In 2021, the maternal mortality rate for Black women was 2.6 times the maternal mortality rate for white women. *See id.* ¶ 49; Hardy-Fairbanks Aff. ¶ 10. The disparity is even higher in Iowa, with Black mothers six times more likely to die than white mothers. *See* Traxler Aff. ¶ 49. The Act will make it more difficult for all pregnant patients to receive quality health care. Iowa already has the fewest number of OB/GYN specialists per capita of any state in the country, and abortion bans cause OB/GYNs to move elsewhere and make it harder to recruit quality medical students. *See* Hardy-Fairbanks Aff. ¶ 11.

If the Act takes effect, it will also lead to long-term negative impacts for people forced to give birth and for their existing children. More than half of Petitioners' abortion patients already have one or more children. *See* Traxler Aff. ¶ 23; Hardy-Fairbanks Aff. ¶ 5. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to moderate their future goals, and less likely to be able to exit abusive relationships. *See* Traxler Aff. ¶ 58; Hardy-Fairbanks Aff. ¶ 12 Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. *See* Traxler Aff. ¶ 58. As compared to women who received an abortion, women denied an abortion are also less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs. *See id*.

The economic impact of forced pregnancy, childbirth, and parenting will also have potentially exponential, negative effects on Iowa families' financial stability. Some side effects of pregnancy render people entirely unable to work, or unable to work the same number of hours as

they otherwise would. *See id*. ¶ 53. Pregnancy-related discrimination can also result in lower earnings for women during pregnancy, and the impacts of discrimination during pregnancy continue over time. *See id.* ¶ 54 Further, Iowa does not require private employers to provide paid family leave, meaning that for many pregnant Iowans, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid. *See id.* On average, a person in Iowa who takes four weeks of unpaid leave could lose more than $3,000 in income. *See id*.

Pregnancy-related health care and childbirth are also some of the costliest hospital-based health services, particularly for complicated or at-risk pregnancies. *See id.* ¶ 55. While insurance may cover most of these expenses, many pregnant patients with insurance must still pay for significant labor and delivery costs out of pocket, impacting a patient's existing children and other dependents. *See id*. Beyond childbirth, raising a child is expensive in terms of direct costs and due to lost wages. *See id.* ¶ 56. In sum, pregnancy and parenting are hugely consequential in Iowans' lives, and being denied an abortion has long-term, negative effects on individuals' physical and mental health, economic stability, and the well-being of their families, including existing children.

In addition to these physical, mental, and economic injuries, the Act also imposes irreparable harm on Plaintiffs' patients by impinging on one of the most consequential decisions a person will make in a lifetime: whether to become or remain pregnant. *See PPH IV*, 975 N.W.2d at 746 ("[A]utonomy and dominion over one's body go to the very heart of what it means to be free.") (quoting *PPH II*, 915 N.W.2d at 237). In this way, the Act will have an impact on a person's existing family that cannot be compensated by future monetary damages. Many people decide that adding a child to their family is well worth the risks and consequences of pregnancy and childbirth. Conversely, together with their partners and with the support of other loved ones and trusted

individuals, thousands of Iowans each year determine that abortion is the right decision for them. Traxler Aff. ¶ 20.

B. The Act will irreparably harm patients forced to try to get abortions outside of Iowa.

Although some Iowans forced to remain pregnant may eventually be able to get abortions out of state, they will also suffer irreparable injury if the Act takes effect.

First, people will be forced to remain pregnant against their will, with all the attendant risks and medical consequences, until they can get out-of-state abortion care, likely later in pregnancy and at greater expense than if they had had abortion access in Iowa. *Id.* ¶ 42. Although abortion is extremely safe and is much safer than labor and childbirth, the medical risks associated with abortion increase with gestational age. *Id.*. Forcing people to remain pregnant while they save money or arrange logistics to travel out of state exposes them to entirely unnecessary medical risk. *Id.* It could also mean that a patient who would have been eligible for a medication abortion may have to undergo a procedural abortion by aspiration, or a patient who would have been eligible for aspiration abortion may have to have a more involved, longer dilation and evacuation procedure.

Second, these Iowans will suffer the additional burdens and costs associated with substantial travel. From Des Moines, for example, the nearest abortion providers outside of Iowa are in Omaha, Nebraska, around 140 miles away.[10] *Id.* ¶ 40. The closest clinics in Kansas and Minnesota are over 200 miles away from Des Moines. *Id.* The burdens associated with travel will have the greatest impact on Iowans who do not own a car, Iowans with disabilities for whom long-distance travel is especially onerous, and low-income Iowans for whom the cost of gas—and other expenses, such as for childcare—could be prohibitive.

[10] Nebraska has enacted a ban on abortion after twelve weeks LMP, meaning that patients past that point in pregnancy will have to travel even further. Neb. Rev. Stat. LB 574 § 4(2)(b).

Third, some patients may also be forced to compromise the confidentiality of their decision to have an abortion in order to arrange transportation or childcare for their travel to an appointment out of state. *Id.* ¶ 41 This could jeopardize the safety of patients whose families and social networks may strongly disapprove of their decision to get an abortion.

Each of these impacts constitutes irreparable harm. *See, e.g.*, *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018) ("A disruption or denial of . . . patients' health care cannot be undone after a trial on the merits." (internal quotations omitted)); *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (irreparable harm where individuals would experience complications and other adverse effects due to delayed medical treatment); *Banks v. Booth*, 468 F. Supp.3d 101, 123 (D.D.C. 2020) (same).

C. The Act's exceptions do not cure these irreparable harms.

Even patients who might meet the Act's limited exceptions will suffer irreparable harm in accessing abortions. Physicians caring for pregnant patients with rapidly worsening medical conditions—who, prior to the Act, could have gotten an abortion without explanation—may be forced to wait for care until their conditions become deadly or threaten substantial impairment of a major bodily function so as to meet the medical emergency exception. Traxler Aff. ¶ 65. Significantly, the medical emergency exception explicitly excludes psychological conditions including suicidal ideation, despite the fact that mental health conditions are the leading underlying cause of 23% of pregnancy-related deaths. HF 732 § 1(4); Iowa Code § 146A.1(6)(a); Traxler Aff. ¶ 66. This exclusion arguably makes the exception narrower than even Iowa's pre-*Roe v. Wade* ban, which had no such exclusion. *State v. Snyder*, 59 N.W.2d 223, 225 (Iowa 1953) (quoting Iowa Code § 701.1 (1950)[11] (banning abortion "unless such [abortion] shall be necessary to save her

[11] This pre-*Roe v. Wade* ban was repealed by 1976 Iowa Acts 774, § 526.

life")).

Patients facing devastating fetal diagnoses will only be able to have abortions if the diagnoses are "incompatible with life." HF 732 § 1(3)(d). For cases in which a fetal diagnosis guarantees that the fetus's life will be tragically short and painful, physicians may fear having their judgment second-guessed as to whether a fetus falls within the scope of the statutory exception. *See* Traxler Aff. ¶ 67; Hardy-Fairbanks Aff. ¶ 15.

The vast majority of survivors of rape and sexual assault choose not to report their abusers. *See* Traxler Aff. ¶ ¶ 64; Meek Aff. ¶ 23. These survivors will be faced with choosing between accessing abortion services and maintaining their privacy. HF 732 § 1(3)(a)–(b). Even the act of reporting an incident of rape or incest could be retraumatizing. *See* Meek Aff. ¶ 24. Moreover, rape survivors will only be able to access the exception if they make a report within 45 days of the incident, and incest survivors within 140 days. HF 732 § 1(3)(a)–(b). And as explained above, *supra* Part I.A, the lack of clarity in the rape and incest exceptions will cause confusion for survivors, who may be unsure whether they fall within the scope of the exceptions.

D. The Act will irreparably harm Petitioners and their staff.

Petitioners and their physicians and staff will also be irreparably injured by the Act, which eliminates their ability to offer abortion to many Iowans who need it. The Act interferes with Petitioners' ability to provide medical care consistent with their medical judgment and in support of patient well-being. *See Koelling v. Board of Trustees of Mary Frances Skiff Memorial Hospital*, 146 N.W.2d 284, 291 (Iowa 1966) (recognizing the "right to practice medicine").

Petitioners and staff will also face reputational harm and harm from the threat of severe civil penalties, including license revocation, posed by the Act. These harms too are irreparable. *Medicine Shoppe Intern., Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 805 (8th Cir. 2003) (loss of

reputation can constitute irreparable injury). The threat to Petitioners is particularly grave because of the risk that the Board of Medicine might disagree with decisions they make to provide care under the Act's exceptions. *See* Traxler Aff. ¶ 63; Hardy-Fairbanks Aff. ¶ 14.

III. The balancing of harms weighs in favor of a temporary injunction.

In determining whether to issue a temporary injunction, "courts consider the 'circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.'" *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001) (quoting *Kleman v. Charles City Police Dept.*, 373 N.W.2d 90, 96 (Iowa 1985)). Courts "carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding public relief." *Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995). This weighing may also be framed as a "balance of convenience." *Myers v. Caple*, 258 N.W.2d 301, 305 (Iowa 1977).

There is no question that the harms to Petitioners and their patients that will be prevented if this Court grants this motion are far greater than any harm to Respondents that could possibly result. All but a few Iowans who might seek abortions will be impacted by the Act, as evidenced by the fact that the vast majority of Petitioners' patients get an abortion after six weeks LMP. *See* Traxler Aff. ¶ 20; Hardy-Fairbanks Aff. ¶ 16. Due to the extreme limitations of the Act's exceptions, *see supra* Part II.C, few people will be able to qualify for them. Even those patients who are able to leave Iowa to receive care will be irreparably harmed. *Supra* Part II.B.

On the other side, Respondents will face little, if any, injury from issuance of a temporary injunction. A temporary injunction would merely preserve the status quo, under which pre-viability abortion has been legal in Iowa for over half a century. As discussed above, *see supra*, the Act blatantly violates the Iowa Constitution. Any interest the state has in being allowed to

enforce a duly enacted law "does not apply if the law in question is unconstitutional." *LS Power Midcontinent*, 988 N.W.2d at 339; *see also Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 807 (10th Cir. 2019) (It is "always in the public interest to prevent the violation of a party's constitutional rights.") (citation omitted). Additionally, granting a temporary injunction will impose no affirmative obligation, administrative burden, or cost upon Respondents. There is no question here that any "inconvenience the injunction imposes on [Respondents] does not outweigh the harm to [Petitioners] it seeks to prevent." *Matlock v. Weets*, 531 N.W.2d 118, 123 (Iowa 1995).

CONCLUSION

WHEREFORE, Petitioners pray that this Court GRANT their Emergency Motion for Temporary Injunctive Relief and issue an order enjoining Respondents and their agents, employees, appointees, and successors from enforcing House File 732 during the pendency of this case, to take effect upon Governor Kim Reynolds's signing House File 732.[12] Petitioners also request a hearing on their motion at the earliest possible date.

[12] In 2017, the General Assembly passed Senate File 471, a bill imposing a mandatory 72-hour delay requirement and an additional trip requirement on people seeking abortions, which also included an immediate effective date. *See* 2017 Senate File 471. Governor Terry Branstad announced he would sign the bill into law on May 5, 2017; because of its immediate effective date, PPH filed a motion for a temporary injunction to enjoin the law two days earlier, on May 3, 2017. *See* Pet. for Decl. J. and Injunctive Relief, ¶ 1, *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE81503 (Polk Cnty. Dist. Ct. May 3, 2017) (filed as *Planned Parenthood of the Heartland v. Branstad*). This Court set a hearing on the motion for the following day, May 4, before the law went into effect. *See* Order Setting Hearing on Mot., *id.* After the hearing, this Court issued a ruling that would "become effective immediately upon the governor signing the bill." Ruling on Pls.' Pet. For Temp. Inj. at 4, *id.* Similarly, Petitioners in this case request that the Court issue a temporary injunction, to take effect upon Governor Reynolds's signing the Act on July 14, 2023.

Respectfully submitted,

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*Application for admission *pro hac vice* forthcoming