IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., *et al.*, Petitioners, v. KIM REYNOLDS *ex rel.* STATE OF IOWA, *et al.*, Respondents.	Equity Case No. EQCV081855 **MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

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COME NOW Petitioners, Planned Parenthood of the Heartland, Inc. ("PPH") and Jill Meadows, M.D., and for their Motion for Summary Judgment pursuant to Iowa R. Civ. P. 1.981, state:

INTRODUCTION

Petitioners ask this Court to permanently enjoin Amendment H-8314 ("the Amendment") to House File ("H.F.") 594, 88th Gen. Assemb. (Iowa 2020),[1] codified at Iowa Code § 146A.1(1) (2020), a law that violates the single-subject rule, Due Process Clause, and Equal Protection Clauses of the Iowa Constitution. The Court temporarily enjoined the law in June 2020. Ruling, June 30, 2020 ("TI Order"). No genuine disputes of material fact exist, and summary judgment is appropriate.

One in four women, including thousands of Iowans each year, face an unintended pregnancy or medical complications during their pregnancy and decide to end that pregnancy.[2] Less than three years ago, in *PPH v. Reynolds ex rel. State*, 915 N.W.2d 206 (Iowa 2018) ("*PPH II*"), the Iowa Supreme Court invalidated a statute that would have required these individuals to make two separate trips to the health center and delay their abortion at least seventy-two hours after having an ultrasound on the first trip. In so doing, the Court affirmed that the Iowa Constitution guarantees Iowans a fundamental right to end a pregnancy free from governmental intrusion because "[a]utonomy and dominion over one's body go to the very heart of what it means to be free." *PPH II*, 915 N.W.2d at 237 (applying strict scrutiny to laws regulating the fundamental right to seek an abortion). On

[1] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=H8314 and at App. in Supp. of Petr's' Mot. for Summ. J. ("P. App.") 002.

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

de novo review of the voluminous factual record below, the Court also held that mandatory delay laws do not serve any compelling state interest because they do not enhance patient decision-making. *PPH II* reflects fundamental constitutional principles of autonomy and equality, as well as the medical and public health consensus that timely access to abortion care is critical to women's health.

Despite this binding precedent, supported by 35 pages of judicial fact-finding and overwhelming expert consensus, the legislature enacted another virtually identical mandatory delay requirement on June 14, 2020—this time as an amendment to an unrelated bill, introduced at 10:20 p.m. on the night before the legislative session ended and voted on in the early hours of the next morning (at approximately 5:40 a.m.). The legislative maneuvers involved in passing the bill deprived elected legislators of advance notice of the bill they were ultimately asked to vote on and deprived Iowans of the opportunity even to know what legislation their representatives were considering, let alone to make their voices heard. Pet'rs' Statement of Undisputed Facts ("SUF") ¶¶ 32–70.

The means by which the Amendment was enacted violates the Iowa Constitution's single-subject requirement. As such, this Court need not reach the issue of whether the Amendment is also invalid under *PPH II*, though it plainly is. On either basis, summary judgment is warranted.

PROCEDURAL HISTORY

Petitioners filed this action along with a motion for temporary injunction on June 23, 2020. Pet. for Declaratory J. and Injunctive Relief; Pet'rs' Emergency Mot. for Temporary Injunctive Relief. After a hearing on the motion, this Court granted a temporary injunction on June 30, 2020. TI Order. Respondents Answered on July 13, 2020, and a

Trial Schedule and Discovery Plan was entered on August 13, 2020, setting a non-jury trial for January 18, 2022. Answer; Order Setting Trial and Approving Plan.

BACKGROUND

The Amendment requires "[a] physician performing an abortion" to "obtain written certification from the pregnant woman . . . at least twenty-four hours prior to performing the abortion" that she has undergone an ultrasound, has been given the option to view and/or hear the ultrasound and/or listen to a description of the embryo or fetus based on the ultrasound image, and has been provided certain state-mandated information about abortion and abortion alternatives. P. App. 002; Iowa Code § 146A.1(1) (2020). The Amendment provides only extremely narrow exceptions for "an abortion performed in a medical emergency," defined as a "a situation in which an abortion is performed to preserve the life of the pregnant woman" or "when continuation of the pregnancy will create risk of substantial and irreversible impairment of a major bodily function." P. App. 002; Iowa Code §§ 146.A.1(2), (6)(a) (2020). Physicians who violate the Amendment are subject to license discipline by the Board of Medicine ("Board"). P. App. 002; Iowa Code §§ 146A.1(3), 148.6(2)(c) (2020).

In substance, the Amendment revives the provision recently struck down by *PPH II*, section 1 of Senate File 471 (2017), by replacing the phrase "seventy-two hours" with "twenty-four hours." *PPH II*, 915 N.W.2d at 213; P. App. 002; Sen. File 471, 87th Gen. Assemb. (Iowa 2017) ("S.F. 471"). Like that prior provision, the Amendment contains no exception for domestic violence or rape victims, nor for patients with psychiatric conditions (even if life-threatening) or non-emergent physical conditions, nor for those who live especially far from a health center for whom an extra trip would be a particular hardship. P. App. 002; S.F. 471.

The Amendment was neither introduced nor passed through the usual legislative means. SUF ¶¶ 32–70. Five other abortion-related bills were introduced in the 2019–2020 legislative session through the usual legislative process, none of which included any mandatory waiting period.[3] SUF ¶ 71. Where those other abortion-related bills survived long enough to be the subject of public hearings, the hearings were extremely well attended, with Iowa voters making their views known to the legislature. SUF ¶ 72. None of those bills made it into law. SUF ¶¶ 60, 71.

In contrast, the Amendment was not made available to the public until, at the very earliest, 8:17 p.m. the night before the end of the legislative session, mere hours before the Amendment was ultimately voted on, at around 5:40 a.m. TI Order at 14; SUF ¶ 55. Unlike the other abortion-related bills, the Amendment was not introduced as a stand-alone bill, but rather rode in as an amendment to an amendment to a different, unrelated, and uncontroversial bill. SUF ¶¶ 41–42, 54; P. App. 002; H.F. 594; *see also* TI Order at 14 (noting that the subject of H.F. 594 "is clearly a different subject than a 24 hour waiting period for an abortion").

Members of the legislature openly recognized that the Amendment's supporters were circumventing the deliberative process. SUF ¶¶ 40, 43–45, 47, 53. As soon as the Amendment was introduced, Rep. Brian Meyer challenged it as non-germane. SUF ¶ 43. House Speaker Patrick Grassley, who belongs to the same political party as the Representatives who sponsored the Amendment, immediately and without debate

[3] Representative Wessel-Kroeschell has stated in her affidavit that she believes the other abortion-related bills did not ultimately become law because they lacked sufficient support among the legislature and the public. P. App. 012–13.

sustained that challenge.[4] Then, rather than withdraw the Amendment and introduce it in the next session as a stand-alone bill (or even an amendment to another bill actually related to abortion), the House simply voted to suspend the procedural rules entirely to allow the Amendment to be voted on, despite that it was not germane. SUF ¶ 46.

Legislators objected that, had their constituents received sufficient notice that such a bill was being considered, they would have come to the Capitol and attended public hearings to make their voices heard. SUF ¶ 53. Policy advocates such as Connie Ryan, the Executive Director of the decades-old Interfaith Alliance of Iowa, were unable to engage in any of the advocacy that would be typical for highly consequential bills such as this, such as testifying at public hearings or lobbying elected officials directly. SUF ¶¶ 59–70. Instead, the Iowa legislature voted, in the middle of the night on the last night of the legislative session, on an onerous abortion restriction that the vast majority of Iowans had never heard of. SUF ¶¶ 38–70.

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT

"Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Amish Connection, Inc. v. State Farm Fire & Cas. Co.*, 861 N.W.2d 230, 235 (Iowa 2015) (citing *Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013)). Courts "can resolve a

[4] Rep. Shannon Lundgren reportedly later admitted that "Republicans had been looking for a bill to which to attach the waiting-period amendment"—further confirming the wholly arbitrary relationship between this amendment and the amendment to which it was ultimately attached. Stephen Gruber-Miller & Ian Richardson, *Iowa Legislature Passes Late-Night Bill Requiring 24-Hour Abortion Waiting Period, Sending It to Governor*, Des Moines Register (last updated June 14, 2020), https://www.desmoinesregister.com/story/news/politics/2020/06/13/24-hour-abortion-waiting-period-iowa-republicans-last-minute-amendment-legislature/3148169001/.

matter on summary judgment if the record reveals a conflict concerning only the legal consequences of undisputed facts." *Boelman*, 826 N.W.2d at 501 (citing *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 802 (Iowa 2003)).

II. PETITIONERS ARE ENTITLED TO SUMMARY JUDGMENT

The Amendment is invalid under several, independent provisions of the Iowa Constitution: the single-subject rule, the Due Process Clause and the Equal Protection Clause.

A. The Amendment Violates the Constitution's Single-Subject Rule

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

To pass constitutional muster under the single-subject rule, all matters contained in the act must be "germane." To be germane, "all matters treated [within the act] should fall under some one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of . . . one general subject." *State v. Mabry*, 460 N.W.2d 472, 474 (Iowa 1990) (quoting *Long v. Bd. of Supervisors*, 258 Iowa 1278, 1283 (Iowa 1966)). An act violates the single-subject rule when it "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection to or

relation to each other." *State v. Iowa Dist. Ct.*, 410 N.W.2d 684, 686 (Iowa 1987) (citing *Long*, 258 Iowa at 1282–83). An act that violates the single-subject rule is invalid and unenforceable.

There can be no dispute that the text of the Amendment and the underlying bill to which it was attached, H.F. 594, do not have a single subject. This Court has already found that this is "clearly" the case. TI Order at 14 (noting that the subject of H.F. 594 "is clearly a different subject than a 24-hour waiting period for an abortion"). As noted by this Court previously, the lack of a shared single subject between the Amendment and H.F. 594 was readily admitted by the Speaker of the House, Rep. Patrick Grassley, a member of the same political party as the representatives who introduced the Amendment.[5] SUF ¶ 45; TI Order at 15 (noting that the Amendment, once introduced, was immediately subjected to a challenge that it was not germane to the underlying bill, to which Rep. Grassley "immediately concurred, and on which there was no further debate"). The Amendment must fail as a matter of law on this basis alone.

Indeed, the Amendment violates not only the plain words of the Constitution's single-subject requirement but also its spirit.

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

[5] As further noted by this Court, the admission by the House Speaker that the Amendment is not germane to the underlying bill undercuts Respondents' argument that finding a single-subject violation might "embarrass the legislation" or "hamper the Iowa legislature." TI Order at 15 ("[I]t would be difficult for this Court to 'embarrass legislation' or 'hamper the Iowa Legislature' by finding it likely that Petitioners will succeed on the merits of the issue regarding germaneness, when the Speaker of the Iowa House apparently found that the Amendment was not germane to the underlying bill it was amending. The Court is giving deference to Speaker Grassley.").

> citizens of the state fairly informed of the subjects the legislature is considering.

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

The Amendment concerns a topic that, as this Court has noted, is highly polarizing. TI Order at 14. When bills restricting or regulating abortion are introduced through the normal legislative process, they are generally the subject of well-attended public hearings and vociferous opposition. SUF ¶¶ 53, 58, 72. The Amendment, however, was not subjected to the normal legislative process. SUF ¶¶ 32–70. Instead, it was tacked onto "what would likely be a non-controversial provision." TI Order at 14. This constitutes the very definition of logrolling.

Moreover, the "highly unusual circumstances" under which the Amendment was passed resulted in surprise to the legislature and the public. TI Order at 14; SUF ¶¶ 33–34, 61–70. Indeed, it is undisputed that at least one senior member of the House of Representatives and an experienced and knowledgeable legislative policy advocate were surprised by the Amendment's introduction. SUF ¶¶ 57, 64–70.

Had the Amendment been introduced as a stand-alone bill, it would have gone through the usual legislative committee and subcommittee processes, which would have given Iowa voters ample notice of the Amendment's proposed requirements as well as three separate opportunities to publicly communicate their opinions on the Amendment to their elected representatives through public hearings. SUF ¶¶ 31, 57–60. Indeed, five *other* bills related to abortion were introduced in the 2019–2020 legislative session through the usual legislative mechanisms and the related public hearings were extremely well-attended. SUF ¶¶ 60, 71–72. All five failed to become law. SUF ¶¶ 60, 71

By contrast, the Amendment was introduced the evening before the last day of the legislative session, only coming to a vote at a time when even Respondents admit that most voters would have been asleep. TI Order at 14; SUF ¶¶ 51–55. In fact, "[t]he initial title of the bill d[id] not contain any subject matter regarding abortion or waiting periods," and no reference to abortion was added to the title until, at the earliest, 8:17 pm on June 13, 2020, roughly eight hours before the bill came up for a vote in the wee hours of the morning on the final day of the legislative session. TI Order at 14.

Not only was the Amendment "log-rolled" through on the back of H.F. 594, *see* TI Order at 14, it was also "double-barreled," meaning that it was attached as an amendment to an amendment to H.F. 594, *see* SUF ¶ 35. This double-barreling prevented the Senate from having an opportunity to debate the merits of the 24-hour mandatory waiting period separately from the indisputably non-controversial subject of H.F. 594—*i.e.*, whether parents ought to have any say in whether their children are taken off life support. SUF ¶¶ 35–36, 54. Indeed, this procedural maneuvering was so obvious to senators at the time that it was explicitly called out on the Senate floor as a blatant attempt to ram an abortion restriction through without appropriate public notice or debate. SUF ¶¶ 40, 47, 53.

These calculated evasions of public accountability and the deliberative process are precisely what the Constitution's single-subject requirement exists to prevent. *Mabry*, 460 N.W.2d at 473.

B. The Amendment Also Violates the Due Process and Equal Protection Clauses of the Iowa Constitution

Because the Amendment egregiously violates the single-subject rule, this Court need not reach Petitioners' Due Process and Equal Protection claims. Should this Court

reach these claims, they constitute independent grounds for permanently enjoining the Amendment.

As *PPH II* recognized, restrictions on abortion implicate "fundamental . . . 'rights and liberties which are deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty.'" *PPH II*, 915 N.W.2d at 233 (quoting *State v. Steering*, 701 N.W.2d 655, 664 (Iowa 2005)). A person's ability to choose "whether to continue or terminate a pregnancy" goes to the "very heart of what it means to be free." *Id.* at 237. Because the abortion right is fundamental, it cannot be infringed "at all" unless the state satisfies strict scrutiny. *Id.* at 238 (quoting *Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682, 694 (Iowa 2002)). Thus, Respondents cannot restrict abortion unless they can prove that "the infringement is narrowly tailored to serve a compelling state interest." *Id.*[6]

The Court found in *PPH II* that a 72-hour forced delay served no compelling state interest because it failed to enhance patient decision-making. As the Court found, 1) Petitioners' patients already undergo an extensive patient education and informed consent process before having an abortion, as is already required by medical ethics and state law; 2) and the small percentage of patients who are not certain in their decision after this process already take whatever additional time they need. *PPH II*, 915 N.W.2d at 216–18 . Self-evidently, if—as the Court found—a state-mandated 72-hour mandatory delay does

[6] In finding that a strict scrutiny analysis is appropriate for cases involving abortion restrictions, the Iowa Supreme Court explicitly and specifically rejected the "downward" "deviat[ion]" from strict scrutiny found in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which held that an abortion restriction violates the federal constitution only if it presents an "undue burden" on the abortion right. *PPH II*, 915 N.W.2d at 238.

not change patients' minds, the shorter minimum period prescribed by the Amendment will not either, and the Amendment similarly fails strict scrutiny.[7]

Respondents are precluded from relitigating whether mandatory delay laws enhance patient decision-making, as well many other of the factual findings in *PPH II*, set forth in SUF ¶¶ 15–26, since Respondents were parties in that case.

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

Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981) (quoting Restatement (Second) of Judgments § 68 (Tentative Draft No. 4, 1977)) (footnote omitted), *quoted in Fischer v. City of Sioux City*, 654 N.W.2d 544, 546–47 (Iowa 2002). This doctrine "prevent[s] the anomalous situation, so damaging to public faith in the judicial system, of two authoritative but conflicting answers being given to the very same question." *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 178 (Iowa 2006), *quoted in Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W. 2d 17, 22 (Iowa 2012).

The Supreme Court of Iowa less than three years ago, in a lawsuit with parties identical to this one, made substantial findings of fact and legal holdings, on a full trial record, related to the effects of two-trip mandatory delay laws. *See PPH II*, 915 N.W.2d

[7] Under strict scrutiny, Petitioners need not show that a challenged restriction substantially burdens Iowans. *PPH II*, 915 N.W.2d at 240–41. However, under preclusive finding of fact in *PPH II*, mandatory delays such as the one challenged here *do* severely burden and harm Iowans, by delaying or preventing them from accessing abortion care, increasing their medical risk and reducing their medical options, straining them financially, and compromising their privacy in ways that expose them to harassment, coercion and/or violence. *See id.* at 229–31.

206. The Supreme Court found that "an objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period," *id.* at 241; that mandatory delays create substantial obstacles to abortion access and result in delays of far longer than the state-prescribed period, *id.* at 229; that mandatory delay laws "indiscriminately subject[] all women to an unjustified delay in care, regardless of the patient's decisional certainty, income, distance from the clinic, and status as a domestic violence or rape victim," *id.* at 243; that mandatory delay laws that require a prior ultrasound force patients to visit an abortion-providing health center twice, *id.* at 221–22; that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free," *id.* at 237; and that the Iowa Constitution's guarantees of due process of law and equal protection thus require that abortion restrictions be analyzed under a strict scrutiny framework, *id*. at 244–46.

H-8314 does no more than simply revive the stricken portions of the prior act and replace the words "seventy-two" with the words "twenty-four." P. App. 002. Nothing about changing the words "seventy-two" to "twenty-four" changes this legal analysis or these findings of fact. Thus, Respondents are precluded from seeking to relitigate these issues of law or fact less than three years after a final and full judgment on the merits.

Issue preclusion is proper here because, as this Court found, Respondents were afforded "a full and fair opportunity to litigate" the issues at stake, TI Order at 15, and because and there are no "other circumstances that would justify granting the party resisting issue preclusion occasion to relitigate the issue." *Fischer*, 654 N.W.2d at 546–47 (citing *Hunter*, 300 N.W.2d at 126); *see also Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 106–07 (Iowa 2011) (listing examples of "other circumstances" (citing Restatement (Second)

of Judgments § 28 (1982))). As the Iowa Supreme Court has noted, "the 'other circumstances' element . . . primarily protects defendants from the offensive use of issue preclusion when the prior proceeding is unreliable because of legal procedure or changed legal circumstances." *Soults Farms*, 797 N.W.2d at 106 (citing *Hunter*, 300 N.W.2d at 126). There is nothing about the legal procedure in *PPH II* that made its holdings or findings of fact unreliable. Nor have there been changed legal circumstances in the less than three years since *PPH II* was fully decided (or, for that matter, changed factual circumstances, *see* SUF ¶ 26).

In short, the Iowa Supreme Court has already held that mandatory delay laws cannot survive strict scrutiny, and there is no basis for relitigating this issue less than three years later.

CONCLUSION

WHEREFORE, Petitioners pray this Court grant their Motion for Summary Judgment and permanently enjoin Respondents from enforcing the Amendment.

Dated: January 22, 2021

Respectfully submitted,

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