

IN THE SUPREME COURT OF IOWA

No. 23-1145

PLANNED PARENTHOOD OF THE HEARTLAND, INC.;
EMMA GOLDMAN CLINIC; and SARAH TRAXLER, M.D.,

Petitioners-Appellees,

vs.

KIM REYNOLDS *ex rel.* STATE OF IOWA
and IOWA BOARD OF MEDICINE,

Respondents-Appellants.

Appeal from the Iowa District Court for Polk County
Joseph Seidlin, District Judge

**BRIEF OF AMICI CURIAE IOWA COALITION AGAINST
DOMESTIC VIOLENCE and IOWA COALITION AGAINST
SEXUAL ASSAULT IN SUPPORT OF PETITIONERS-APPELLEES**

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STATEMENT REQUIRED BY IOWA R.APP.P 6.906(4)(d)

Neither party nor their counsel participated in drafting this brief in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed *pro bono publico* by amici curiae.

INTEREST OF *AMICI CURIAE*

The **Iowa Coalition Against Domestic Violence (ICADV)** is a state-level non-profit organization representing 22 local programs providing direct services to survivors¹ of domestic violence. ICADV provides training and technical assistance to member programs and engages Iowans in changing social and institutional contexts that perpetuate relationship violence.

Reproductive coercion is an element of relationship violence that occurs when a person uses intimidation, threats, or violence to control their partner's reproductive autonomy. Victims of relationship violence have an acute need for access to reproductive health services, especially abortion

¹ Amici use “survivors,” “women,” and “victims” at various places in this brief as a shorthand for many of the people have experienced gender-based violence, who are or may become pregnant, or who are affected by this law. Amici recognize people of all gender identities, including transgender and gender non-conforming individuals, may become pregnant, seek abortion services, suffer the effects of gender-based violence, and be harmed by the Act.

care. Enacting barriers to accessing abortion services often subjects women to increasing levels of violence.

The **Iowa Coalition Against Sexual Assault (IowaCASA)** is a statewide organization comprising 22 agencies that serves as the collective voice for survivors of sexual violence in Iowa. IowaCASA focuses on improving the programs and services available to sexual assault survivors, and supporting communities to prevent sexual violence before it occurs. One source of trauma from sexual violence is the loss of power and control over one’s body—one’s most intimate self. Sexual violence can result in physical and mental health challenges, including injuries and disease related to the assault: shame, terror, depression, guilt, anxiety, addiction, and post-traumatic stress. Forcing survivors of sexual violence to report what happened in order to access abortion care can retraumatize them and exacerbate these challenges—and it may force survivors to forgo accessing abortion care altogether.

Amici curiae are organizations committed to ensuring that survivors are able to make their own decisions about their lives and bodies, including whether to obtain an abortion, without undue interference. Therefore, *amici* have an important interest in the outcome of this case. *Amici* write to highlight the dangerous consequences Iowa Code section 146E (“the Act”)

will have on Iowans—particularly survivors of sexual assault, incest, and human trafficking, and those in abusive relationships—for whom a six-week limit imposed by the Act would create an undue hardship—and maybe even make it impossible—to access abortion healthcare in Iowa, despite the proposed exceptions.”²

INTRODUCTION AND SUMMARY OF ARGUMENT

According to the National Intimate Partner and Sexual Violence Survey, 19% of women in Iowa—an estimated 225,000 women—have been raped.³ More than 554,000 Iowa women (35%) have experienced or will experience abuse, sexual violence, or stalking by an intimate partner during their lifetime.⁴ Women in small rural towns in Iowa are more likely than other women to experience intimate partner violence and the violence becomes more severe the more geographically isolated a woman is.⁵ Where you live should not determine your access to reproductive healthcare options.

² Iowa Code §146E.

³ SMITH, S.G. ET AL., NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT 33 (2017).

⁴ *See, Id.*

⁵ Corinne Peek-Asa et al., *Rural Disparity in Domestic Violence Prevalence and Access to Resources*, 20 J. Women's Health 1743, 1745 (2011).

The Act's restrictions do not provide sufficient time for women to discover they are pregnant, decide whether to terminate the pregnancy, and access safe healthcare. Likewise, a forty-five-day time limit for victims of rape or one hundred forty-day time limit for victims of incest is not sufficient time to report violence. These deadlines to access abortion care under the Act are arbitrary, retraumatizing, and place victims of violence at heightened risk for further criminal violence and mental and emotional distress. No other healthcare procedure requires crime reporting as a prerequisite to accessing care.

This Act undermines the decisions women make about what is best for their safety, their lives, and the wellbeing of their families. By imposing substantial collateral consequences on women, the Act undermines women's full and equal participation in society.

I. The Act infringes upon a woman's protected right to decide whether to terminate her pregnancy in violation of the Iowa Constitution, threatening the health and safety of women.

The Act's ban on abortion at six weeks since last menstrual period means that the narrow window in which a person must learn about a pregnancy, decide whether to terminate that pregnancy, and access healthcare services for an abortion negates the constitutionally protected right to decide whether

to terminate the pregnancy⁶. The barriers for each step are greatest for women who already face significant barriers to accessing healthcare and even more so for women with additional concerns of protecting their lives and safety.

Survivors of domestic violence and sexual assault make up a significant proportion of women nationally—one in three⁷ and one in five,⁸ respectively. In fiscal year 2022, crime victim services in Iowa served 25,188 adult female victims of domestic abuse and 5,940 adult female victims of sexual abuse.⁹ The Act, however, does not account for victims of sexual abuse as defined in Iowa Code Chapter 709, but rather provides an exception for pregnancies which “are the result of a rape.”¹⁰ Similarly, the Act fails to define “incest.”¹¹ Further, as a practical matter, advocates have observed the

⁶ See, *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710 (Iowa 2022).

⁷ BLACK, M.C. ET AL., NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010 SUMMARY REPORT 39 (2010).

⁸ SMITH, S. G. ET AL., NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF—UPDATED RELEASE 2 (2018).

⁹ 2022 IOWA ATT'Y GEN., CRIME VICTIM ASSISTANCE DIV. ANN. REP. STATE FISCAL YEAR 2022 AT 14.

¹⁰ Iowa Code § 709.

¹¹ Iowa Code § 726.2.

devastating consequences that arise when a survivor of sexual abuse or incest cannot determine whether a pregnancy is the result of abuse or consensual, non-incestuous sex that occurred in the same time frame.¹² Such definitional and practical issues make it difficult to ascertain when and to whom the exceptions to the Act would be afforded. As a result, the Act threatens Iowans' safety, equality, economic security, and ability to care for their families.

A. The Act will disproportionately harm victims of sexual assault.

Under this Act, victims of sexual assault will find themselves unable to access an abortion—no matter how critical it may be to their safety, mental or physical health—and revictimized by the consequences of the State's undue restrictions.

1. Sexual assault is prevalent and rape-related pregnancies occur with significant frequency.

¹² Aff. Of KellyMarie Z. Meek in Support of Pet'rs' Mot. For Temp. Inj. Relief at 8 ¶ 25.

Pregnancy that results from rape occurs with significant frequency.¹³ Although the likelihood that a rape will result in pregnancy is difficult to determine, it is estimated that among adult American women 32,101 pregnancies result from rape each year.¹⁴ A 1996 study found a national rape-related pregnancy rate of 5% per rape among victims between the ages of 12 and 45.¹⁵ Moreover, the majority of pregnancies that occurred from rape were among adolescents and resulted from assault by a known, often related, perpetrator.¹⁶

2. Victims of sexual assault who are forced to bear their perpetrator's child are retraumatized, causing significant mental and physical health consequences.

Those pregnant from sexual assault often need to terminate their pregnancy to preserve their mental and emotional wellbeing because of the traumatic circumstances which lead to and often continue after conception.

“The physical aspects of pregnancy, including the sense of losing control

¹³ Holmes, M.M. et al., *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 AM. J. OF OBSTETRICS & GYNECOLOGY 2, 320–25 (1996).

¹⁴ *Id.*

¹⁵ Health Research Funding, *18 Profound Statistics of Rape Victims Getting Pregnant*, <https://healthresearchfunding.org/18-profound-statistics-rape-victims-getting-pregnant/> (last visited Jan. 15, 2024).

¹⁶ *Id.*

over one's body, can be particularly traumatic to survivors who are otherwise not in control of their bodies or lives."¹⁷ "For women who have been raped, invasive medical procedures may trigger traumatic memories and emotions. Maternal attachment to a fetus and then to an infant conceived by rape is described as the "difficult task of differentiating the baby from the experience."¹⁸ Ambivalent maternal reactions to quickening and unsuccessful adaptation to pregnancy may lead to inappropriate parenting.¹⁹ Depression, unstable relationships, and self-destructive behavior are also potential long-term complications.²⁰ Many victims of abuse or sexual assault have health reasons for seeking an abortion. There is a strong association between intimate partner violence, incest, and mental health challenges such as complex PTSD, and survivors may feel they are not healthy enough to survive pregnancy or parent a child.²¹ Psychiatric medications can result in

¹⁷ Aff. Of KellyMarie Z. Meek in Support of Pet'rs' Mot. For Temp. Inj. Relief at 5 ¶ 13.

¹⁸ Anthony Lathrop, *Pregnancy Resulting From Rape*, J. OF OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING, vol. 27, iss. 1, Jan. 1998, at 27 (citing Raphael-Leff, J., *Psychotherapy and Pregnancy*, J. OF REPRODUCTIVE & INFANT PSYCHOLOGY, 8, 119–35 (1990)).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Aff. Of KellyMarie Z. Meek in Support of Pet'rs' Mot. For Temp. Inj. Relief at 5 ¶ 14.

fetal abnormalities and often must be suspended during the pregnancy.²²

Victims with these or similar concerns may not feel they are healthy enough to parent a child or manage a pregnancy.

Victims of sexual assault may be dating, married, or otherwise engaged in a consensual sexual relationship during the time in which they experience abuse. They may not know whether pregnancy is the result of rape or consensual sex. “This means that they are unsure whether a pregnancy is the result of consensual sex or rape until genetic testing could be done, at which point it would be too late to obtain an abortion.”²³

3. Victims of sexual assault have significant reasons for not reporting or for delaying the report of the crime.

The Act purports to create a time limit exception for victims of rape and incest, however the requirement that the victim report the crime stands in direct opposition to common reactions to trauma. Delay often occurs due to neurobiological and psychological reactions to the assault that the victim

²² *Use of Psychiatric Medications During Pregnancy and Lactation*, *A.C.O.G. Practice Bulletin*, No. 92, OBSTETRICS & GYNECOLOGY, vol. 111, no. 4, at 1001 (Apr. 2008)

²³ *Aff. Of KellyMarie Z. Meek in Support of Pet’rs’ Mot. For Temp. Inj. Relief* at 8 ¶ 25.

has little or no control over.²⁴ Inability to remember exact details during a traumatic event means that victims who report to law enforcement regularly face challenges to their report and in some cases are ultimately charged with false reporting when what they do remember differs from other evidence discovered by law enforcement.²⁵ Victims—especially minors—who experience abuse from a family member or other trusted adult may not report because they don't want to cause problems within the family or get someone in trouble.²⁶ Sexual assault is an experience of trauma, and “some of the most common ways that victims react to sexual assault are precisely what people often have difficulty understanding.”²⁷ Women who experience sexual violence may not report or delay in reporting their abuse and struggle with decision making.²⁸ A significant number of sexual assault victims experience post-traumatic stress disorder. Avoidance is one of the central hallmarks of post-traumatic stress disorder:²⁹ avoidance of thoughts and

²⁴ NAT'L SEXUAL VIOLENCE RES. CTR., FALSE REPORTING 1–2 (2012), https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf.

²⁵ *Id.*

²⁶ *Id.*

²⁷ LORI HASKELL & MELANIE RANDALL, THE IMPACT OF TRAUMA ON ADULT SEXUAL ASSAULT VICTIMS, REP SUBMITTED TO: JUSTICE CANADA 10 (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

²⁸ *Id.*

²⁹ Christopher H. Warner et al., *Identifying and Managing Posttraumatic Stress Disorder*, 88 AM. FAM. PHYSICIAN, no. 12, at 827–34 (2013).

feelings about the traumatic event, avoidance of the places, people, sounds, situations, etc. that serve as reminders of the assault.

Drug-facilitated sexual assault presents additional challenges to women seeking abortion after a rape. Perpetrators may use legal substances (such as alcohol) or substances that are illegal, controlled, or illicit (such as ketamine or Rohypnol).³⁰ The use of drugs to facilitate rape is common in the United States. In one study, sixty-one percent of sexual assault kits examined in hospital settings tested positive for substances used in drug-facilitated sexual assault.³¹ This study accounts for women who believed they had been raped and sought medical treatment, but many who have been drugged and assaulted are not aware of or are unsure about what happened.

Victims of incest may not report the abuse for a myriad of reasons. Some research suggests that up to 70 percent of incestual assaults are not reported.³² It is estimated that in families with a female child at least one out

³⁰ U.S. DEPT. OF JUSTICE, DRUG ENFORCEMENT ADMIN., OFF. OF CONG. & PUB. AFF., CMTY. OUTREACH & PREVENTION SUPPORT SECTION, VICTIM WITNESS ASSISTANCE PROGRAM, DRUG-FACILITATED SEXUAL ASSAULT 3 (2017), https://www.dea.gov/sites/default/files/2018-07/DFSA_0.PDF.

³¹ ADAM NEGRUSZ ET AL., ESTIMATE OF THE INCIDENCE OF DRUG-FACILITATED SEXUAL ASSAULT IN THE U.S., FINAL REPORT 16 (2005) <https://www.ojp.gov/pdffiles1/nij/grants/212000.pdf>.

³² David M. Lawson, *Understanding and Treating Survivors of Incest*, COUNSELING TODAY: KNOWLEDGE SHARE (March 6, 2018), <https://ct.counseling.org/2018/03/understanding-treating-survivors-incest/#>.

of 20 will experience father-daughter incest.³³ Further, one out seven blended families with a female child experience stepfather-stepdaughter incest.³⁴ Survivors of incest may fear their abuser will harm them further, feel guilt and shame about the abuse, fear they will not be believed (and often are not), experience family pressure to remain silent, or be afraid to break up their family.³⁵

B. The Act will disproportionately harm victims of domestic abuse.

The Act will have devastating impacts for pregnant survivors of intimate partner violence. Studies conducted among samples of low-income, unmarried women have noted prevalence rates of intimate partner violence of up to 50%.³⁶ Victims of domestic abuse face similar critical risks and experience similar trauma symptoms, such as avoidance, as survivors of sexual assault. These lead to not reporting to law enforcement or telling their physician about the violence. Research indicates that victims who manage to

³³ *Id.*

³⁴ *Id.*

³⁵ Maria Sauzier, *Disclosure of Child Sexual Abuse: For Better or For Worse*, 12 PSYCH. CLINICS OF N. AM. 455, 460 –61 (1989).

³⁶ J.L. Alhusen et al., *Intimate Partner Violence During Pregnancy: Maternal and Neonatal Outcomes*, 24 J. WOMEN’S HEALTH, no. 1, 2015, at 100–06.

terminate their pregnancy are more likely to escape their situation and less likely to suffer further physical violence than those victims who seek to terminate their pregnancy but are unable to do so.³⁷ People committing violence against their intimate partner also engage in many strategies including threats, denial of access to the outside world, and manipulation or deception to keep their victims from reporting the abuse to law enforcement or healthcare providers (who may be mandatory reporters). The State of Iowa should not create barriers to healthcare and safety that functionally force women to stay in abusive relationships.

1. Domestic abuse victims are at heightened risk of unintended pregnancy resulting from sexual violence by their abusive partner.

Women in abusive relationships are more likely to experience an unintended pregnancy than other women.³⁸ Approximately 10-14% of married women in the United States are raped by their husbands.³⁹

³⁷ Sarah Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MEDICINE, 12:144 (2014), <https://doi.org/10.1186/s12916-014-0144-z>.

³⁸ Elizabeth Miller et al., *Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy*, 81 CONTRACEPTION 457, 2010, at 457-58.

³⁹ Raquel Kennedy Bergen & Elizabeth Barnhill, *Marital Rape: New Research and Directions*, *Applied Research Forum*, NATIONAL ONLINE

Approximately one third of women report having “unwanted sex” with their partner.⁴⁰ Sexually violent perpetrators of domestic violence are at greater risk of murdering their victims.⁴¹ Victims of domestic violence who do not have the option of giving or refusing consent to sex are sometimes likewise deprived of choices about contraception. Women who report violence as a reason for abortion describe not wanting to expose children to violence and knowing that having a baby will likely tether them to an abusive partner.⁴²

2. Domestic abuse victims are at heightened risk of unintended pregnancy resulting from reproductive coercion by their abusive partner.

Reproductive coercion is behavior that interferes with the autonomous decision-making of a partner. It includes promoting an unwanted pregnancy through birth control sabotage. Birth control sabotage is so common as to have its own slang term: stealthing—the removal of a condom without the

RESOURCE CENTER ON VIOLENCE AGAINST WOMEN, (Feb. 2006)
https://vawnet.org/sites/default/files/materials/files/2016-09/AR_MaritalRapeRevised.pdf.

⁴⁰ *Id.*

⁴¹ *See*, DAVID ADAMS, WHY DO THEY KILL? MEN WHO MURDER THEIR INTIMATE PARTNERS (2007).

⁴² Sarah Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MEDICINE, 12:144 (2014), <https://doi.org/10.1186/s12916-014-0144-z>.

partner's knowledge. Over half of women in family planning clinics reported physical or sexual partner violence, 19% reported pregnancy coercion, and 15% reported birth control sabotage.⁴³ One-third of respondents reporting partner violence (35%) also reported reproductive control.⁴⁴ Both pregnancy coercion and birth control sabotage were associated with unintended pregnancy.⁴⁵ Reproductive coercion also includes pregnancy coercion, which involves threatening a woman if she wants to use contraception, threatening to leave her if she does not get pregnant, and the use of threats if she does not comply with the perpetrator's wishes to continue a pregnancy. Sexual violence and reproductive coercion are strategies sometimes used by perpetrators of intimate partner abuse. Perpetrators know that pregnancy, childbearing, and parenting are physically and emotionally taxing and will create financial and practical dependencies as well as legal ties that make it hard or impossible for the victim to sever the relationship.

3. Women are at increased risk of physical violence, including homicide, during and immediately after pregnancy.

⁴³ E. Miller et al., *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, 81 *CONTRACEPTION*, no. 4, 2010, at 316–22.

⁴⁴ *Id.*

⁴⁵ *Id.*

In the United States, homicide is the leading cause of death in pregnant women or those who recently gave birth.^{46,47} It is estimated that up to 20% of pregnant women experience violence during their pregnancy, making it more common than gestational diabetes or preeclampsia.⁴⁸ For women who were abused before their pregnancy, the risk is shockingly high, with 50%–75% being abused during pregnancy.⁴⁹ And, significantly, women whose pregnancies were unintended are two to four times more likely to experience physical violence than women with planned pregnancies.⁵⁰ Domestic violence is associated with significant negative impacts on maternal health such as delays in getting prenatal care, inconsistent or insufficient prenatal care, poor nutrition, inadequate weight gain, substance abuse, and increased prevalence of depression, not to mention increased incidence and severity of physical assaults.⁵¹ It is also associated with

⁴⁶ Rebecca B. Lawn & Karestan C. Koenen, *Homicide is a Leading Cause of Death for Pregnant Women*, 379 BRIT. MED. J., 2022, at 2499.

⁴⁷ Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018–2019*, Wolters Kluwer Health, Inc. Vol. 138, Issue 5, at 762–69 (2021).

⁴⁸ National Coalition Against Domestic Violence, *Domestic Violence and Pregnancy Fact Sheet*, <https://vawnet.org/sites/default/files/assets/files/2016-09/DVpregnancy.pdf> (accessed March 2, 2023).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ J.L. Alhusen et al., *Intimate Partner Violence During Pregnancy: Maternal and Neonatal Outcomes*, 24 J. WOMEN'S HEALTH, no. 1, 2015, at 100–06.

adverse neonatal outcomes such as preterm birth, low birth weight, infants who are small for gestational age, and neonatal death.⁵²

CONCLUSION

For the reasons set forth above, the Act violates the Iowa Constitution. In particular, the rights of survivors of domestic violence and sexual assault and women experiencing intimate partner violence would be severely and unnecessarily restricted by the Act. Laws restricting women's access to the full range of reproductive care place women at further risk, since control over a woman's reproductive choices often plays a major role in intimate partner violence. For some women, the choice to terminate a pregnancy can literally be a life-or-death decision. This Court should affirm the district court below.

Respectfully submitted,

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⁵² *Id.*

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Dated: January 15, 2024

CERTIFICATE OF COMPLIANCE

I, Joshua S. Opperman, hereby certify that:

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(e) and 6.903(1)(g)(1) because this brief has been prepared in a proportionately spaced typeface using Times New Roman in 14 point and contains 4,277 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2024, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will accomplish service on all counsel of record appeared in this matter.

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