IN THE SUPREME COURT OF IOWA
No. 22-2036
Polk County No. EQCE083074

PLANNED PARENTHOOD OF THE HEARTLAND, INC.; EMMA GOLDMAN CLINIC; and JILL MEADOWS, M.D.,
Petitioners-Appellees,

vs.

KIM REYNOLDS ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE
Respondents-Appellants.

On Appeal From The Iowa District Court For Polk County
The Honorable Celene Gogerty

Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The American College of Obstetricians and Gynecologists (ACOG) is the nation's leading group of physicians providing evidence-based obstetric and gynecologic care. As a private, voluntary nonprofit membership organization of more than 60,000 members, ACOG strongly advocates for equitable, exceptional, and respectful care for all women and people in need of obstetric and gynecologic care; maintains the highest standards of clinical practice and continuing education of its members; promotes patient education; and increases awareness among its members and the public of the changing issues facing patients and their families and communities.

ACOG's Iowa Section has over 369 members practicing in the state who, together with their patients, are directly affected by laws restricting access to abortion care and other reproductive health care. ACOG has appeared as *amicus curiae* in courts throughout the country. ACOG's briefs and medical practice guidelines have been cited by numerous authorities, including the U.S. Supreme

Court, which recognize ACOG as a leading provider of authoritative scientific data regarding childbirth and abortion.[1]

The American Medical Association (AMA) is the nation's largest professional association of physicians, residents, and medical students. Additionally, through state and specialty medical societies and other physician groups seated in the AMA's House of Delegates, substantially all U.S. physicians, residents, and medical students are represented in the AMA's policymaking process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in all fields of medical specialization and in every state. The AMA's publications and *amicus* briefs have been cited by many courts, including the U.S. Supreme Court.[2]

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[1] *See, e.g.*, *June Med. Servs. LLC v. Russo*, 140 S. Ct. 2103, 2132 (2020); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2312 (2016); *Stenberg v. Carhart*, 530 U.S. 914, 932-36 (2000); *Hodgson v. Minnesota*, 497 U.S. 417, 454 n.38 (1990); *Simopoulos v. Virginia*, 462 U.S. 506, 517 (1983).

[2] *See, e.g.*, *Ferguson v. City of Charleston*, 532 U.S. 67, 78, 81, 84 n.23 (2001); *Stenberg*, 530 U.S. at 934-36; *Vacco v. Quill*, 521 U.S. 793, 800 n.6 (1997); *Sullivan v. Zebley*, 493 U.S. 521, 534 n.13,

The Society for Maternal-Fetal Medicine (SMFM) is the medical professional society for maternal-fetal medicine subspecialists, who are obstetricians with additional training in high-risk pregnancies. SMFM was founded in 1977, and it represents more than 5,500 members, including 21 professionals who live and practice in Iowa, caring for high-risk pregnant people. SMFM provides education, promotes research, and engages in advocacy to advance optimal and equitable perinatal outcomes for all people who desire and experience pregnancy. SMFM and its members are dedicated to ensuring that all medically appropriate treatment options are available for individuals experiencing high-risk pregnancies. SMFM's *amicus* briefs also have been cited by multiple courts.[3]

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536 n.17, 541 n.22 (1990); *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997).

[3] *See, e.g.*, *Mayor of Baltimore v. Azar*, 973 F.3d 258, 285 & n.19 (4th Cir. 2020).

RULE 6.906(4) STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), the undersigned counsel certifies that no party's counsel authored this brief in whole or in part, and no party or party's counsel, or any other person other than *amici curiae*, contributed money that was intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Abortion is an essential part of comprehensive health care. When abortion is legal, it is safe. *Amici curiae* are leading medical societies whose policies represent the education, training, and experience of the vast majority of clinicians in this country. *Amici* believe that laws that criminalize and effectively ban abortion are not based on any medical or scientific rationale. Those laws also threaten the health of pregnant patients; disproportionately harm patients of color, patients in rural settings, and patients with low incomes; and profoundly interfere with the patient-physician relationship and undermine longstanding principles of medical ethics. As the AMA has recognized, "healthcare, including

reproductive health services, like contraception and abortion, is a human right."[4]

Iowa Code § 146C.2 bans abortions after embryonic cardiac activity becomes detectable, which generally occurs around six weeks of pregnancy as measured from the first day of the patient's last menstrual period. Section 146C.2 includes two limited exceptions. First, an abortion is permitted after six weeks when "a medical emergency exists" – meaning, the pregnant patient's "life is endangered" or the "continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman." Iowa Code §§ 146C.2(2)(a), 146A.1(6)(a). Second, an abortion after six weeks is also permitted if the abortion is "medically necessary," defined as limited to situations when (1) the "pregnancy is the result of a rape which is reported within forty-five days of the incident to a law enforcement agency or to a public or private health agency"; (2) the "pregnancy is the result of incest which is reported within one hundred forty

[4] AMA, *Preserving Access to Reproductive Health Service* (2022), https://bit.ly/3JPSd3y.

days of the incident to a law enforcement agency or to a public or private health agency"; (3) the patient has miscarried, or (4) "the fetus has a fetal abnormality that in the physician's reasonable medical judgment is incompatible with life." *Id.* §§ 146C.1(4), 146C.2(2)(a). In practice, these exceptions would be exceedingly narrow.

Amici oppose the abortion ban in Section 146C.2 because it jeopardizes the health and safety of pregnant people in Iowa and places extreme burdens and risks on providers of essential reproductive health care, without a valid medical justification.

ARGUMENT

I. Abortion Is A Safe, Common, And Essential Component Of Health Care

The medical community recognizes that abortion is a safe, common, and essential component of reproductive health care.[5] In

[5] *See, e.g.*, Eds. of the *New England Journal of Medicine*, ACOG, et al., *The Dangerous Threat to* Roe v. Wade, 381 New Eng. J. Med. 979 (2019) (stating the view of the Editors of the New England Journal of Medicine along with several key organizations in obstetrics, gynecology, and maternal-fetal medicine that "[a]ccess to legal and safe pregnancy termination . . . is essential to the public health of women everywhere"); ACOG, *Abortion Policy*

2020, over 930,000 abortions were performed nationwide.[6] More than 4,000 abortions were performed in Iowa.[7] Approximately one-quarter of American women have an abortion before age 45.[8]

The medical evidence conclusively demonstrates that abortion is very safe.[9] Complication rates are extremely low, averaging around 2%, and most complications are minor and easily treatable.[10] Major complications from abortion are exceptionally

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(revised and approved May 2022); SMFM, *Access to Abortion Services* (2020).

6 Rachel K. Jones et al., Guttmacher Inst., *Long-Term Decline in US Abortions Reverses, Showing Rising Need for Abortion as Supreme Court is Poised to Overturn* Roe v. Wade (June 15, 2022).

7 Iowa Bureau of Health Stat., *2020 Vital Statistics of Iowa*, 136 tbl 51 (Nov. 2021), https://bit.ly/3YNt6Ef (*Abortions in Iowa*).

8 Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 Am. J. Pub. Health 1904, 1908 (2017).

9 *See, e.g.*, Nat'l Acads. of Scis., Eng'g, Med., *The Safety and Quality of Abortion Care in the United States* 10 (2018) (*Safety and Quality of Abortion Care*) ("The clinical evidence clearly shows that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective. Serious complications are rare.").

10 *See, e.g.*, Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175, 181 (2015) (*Incidence of Visits)* (finding 2.1% abortion-related complication rate); *Safety and Quality of Abortion Care* 55, 60.

rare, occurring in just 0.23 to 0.50% of instances.[11] The risk of death is even rarer. Nationally, fewer than one in 100,000 patients die from an abortion-related complication.[12] By contrast, the "risk of death associated with childbirth [is] approximately 14 times higher."[13] Abortion is so safe that there is a greater risk of

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[11] Kari White et al., *Complications from First-Trimester Aspiration Abortion: A Systematic Review of the Literature*, 92 Contraception 422, 434 (2015). This is also true for medication abortions, which account for nearly 80% of all abortions in Iowa obtained by Iowans and about half of abortions nationwide. Elizabeth G. Raymond et al., *First-Trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review*, 87 Contraception 26, 30 (2013) (addressing rates at which major complication occur for medication abortion); *Abortions in Iowa* 136 tbl. 51 (data on Iowa medication abortions obtained by Iowans, category labeled "Medically Induced"); Rachel K. Jones et al., Guttmacher Inst., *Medication Abortion Now Accounts for More than Half of All US Abortions* (Mar. 2, 2022) (nationwide data).

[12] *See* Katherine Kortsmit et al., U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *Abortion Surveillance – United States, 2019*, 70 Morbidity & Mortality Weekly Rep. 1, 29 tbl. 15 (2021) (Kortsmit) (finding mortality rate from 0.00041% to 0.00078% for approximately five-year periods from 1978 to 2014); Suzanne Zane et al., *Abortion-Related Mortality in the United States*, *1998-2010*, 126 Obstetrics & Gynecology 258, 261 (2015) (noting an approximate 0.0007% mortality rate for abortion).

[13] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 216 (2012) (Raymond & Grimes).

complications or mortality for wisdom-tooth removal, cancer-screening colonoscopy, and plastic surgery.[14] The rate of abortion-related complications remains low even when the procedure is performed later in pregnancy. For example, starting at 14 weeks gestational age, the predominant method of abortion is dilation and evacuation, which is safe and routine.[15]

Abortion poses no significant risks to mental health or psychological well-being. People who obtain wanted abortions had "similar or better mental health outcomes than those who were

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[14] Advancing New Standards in Reproductive Health, *Safety of Abortion in the United States*, Issue Brief No. 6, at 2 (Dec. 2014) (2.1% of abortions result in minor or major complications – with 1.88% resulting in minor complications and 0.23% resulting in major complications – compared to 7% of wisdom-tooth extractions, 8 to 9% of tonsillectomies, and 29% of childbirths); Am. Soc'y for Gastrointestinal Endoscopy, *Complications of Colonoscopy*, 74 Gastrointestinal Endoscopy 745, 747 (2011) (33% of colonoscopies result in minor complications); Frederick M. Grazer & Rudolph H. de Jong, *Fatal Outcomes from Liposuction: Census Survey of Cosmetic Surgeons*, 105 Plastic & Reconstructive Surgery 436, 441 (2000) (mortality rate from liposuction in late 1990s was 20 per 100,000); Kortsmit 29 tbl. 15 (mortality rate from legal induced abortion was between 0.52 and 0.63 per 100,000 in late 1990s, dropping to 0.41 in the years 2013 to 2018).

[15] ACOG, Practice Bulletin No. 135, *Second Trimester Abortion*, 121 Obstetrics & Gynecology 1394, 1394 (2013, reaff'd 2021).

denied a wanted abortion," and receiving an abortion does not increase the likelihood of developing symptoms associated with depression, anxiety, post-traumatic stress, or suicidal ideation compared to those who were forced to continue a pregnancy.[16] One recent study noted that three years after the procedure, 95% of participants believed an abortion had been the "right decision for them."[17]

II. Despite The Safe And Routine Nature of Abortions, Iowa's Six-Week Ban Would Prohibit Nearly All Abortions with No Medical Justification

Section 146C.2 prohibits nearly all abortions. The law jeopardizes the health and safety of pregnant people in Iowa and places burdens and risks upon providers of essential reproductive health care, without any valid medical justification. The limited exceptions in Section 146C.2 – allowing an abortion only when "a

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16 M. Antonia Biggs et al., *Women's Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA Psychiatry 169, 177 (2017) (Biggs).

17 Corinne H. Rocca et al., *Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study*, 10 PLOS ONE 1, 7 (2015).

medical emergency exists" or when "medically necessary" in the judgment of the Legislature – is insufficient to protect the health of pregnant patients.

A. The Six-Week Ban Prohibits Providing Abortion Care Where There Is Detectable Cardiac Activity, Which Has the Effect of Prohibiting the Majority of Abortions

Section 146C.2 radically restricts access to abortion care. The law requires providers to determine whether a "fetal heartbeat" is present, and if it is "detectable," the law prohibits an abortion.[18] The law defines "fetal heartbeat" to mean "cardiac activity . . . of the fetal heart."[19] Section 146C.2 reflects a misunderstanding by the Legislature of key medical issues and terminology. The Legislature's position is that the definition of "fetal heartbeat" includes the embryonic cardiac activity that occurs as a result of electrical flickering of a portion of the embryonic tissue, which typically is detectable at approximately six weeks' gestation. However, as a matter of medical science, a fetal heartbeat exists

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18 Iowa Code § 146C.2(1)(b)(1)-(2).

19 *Id.* § 146C.1(2).

only after the chambers of the heart have developed and can be detected via ultrasound, which typically occurs around 17 to 20 weeks' gestation.[20]

Section 146C.2 will prevent many pregnant patients who want abortions from obtaining them. First, many people do not know they are pregnant by six weeks' gestational age, or only learn that they are pregnant shortly before that window closes. The gestational age of a pregnancy is measured in weeks from the first day of a person's last menstrual period. The average menstrual cycle is four weeks long, which means that at six weeks' gestation, a person would be only two weeks from a missed period. And for a variety of reasons – including stress, obesity, thyroid dysfunction, and premature ovarian failure – many people experience irregular menstrual cycles.[21] Also, adolescents may have cycles that are six

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[20] *See* ACOG, *ACOG Guide to Language and Abortion* 1 (Mar. 2022).

[21] *See* Jinju Bae et al., *Factors Associated with Menstrual Cycle Irregularity and Menopause*, 18 BMC Women's Health 1, 2 (2018).

weeks or longer in early menstrual life.[22] As a result of these variations in cycle length, a person might not even notice a missed period before six weeks have passed. Further, nearly half of the pregnancies in the United States are unplanned,[23] and many pregnant patients may not realize they are pregnant based on other symptoms (either because they do not associate symptoms such as nausea or vomiting with pregnancy, or because they do not experience these symptoms before six weeks).[24]

Even if people suspect that they may be pregnant before six weeks pass, many people are unable to see physicians to confirm their pregnancies, let alone make thoughtful, informed decisions about whether to continue their pregnancies before six weeks'

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[22] ACOG, Committee Opinion No. 651, *Menstruation in Girls and Adolescents: Using the Menstrual Cycle as a Vital Sign* 2 (Dec. 2015, reaff'd 2020).

[23] Guttmacher Inst., Fact Sheet, *Unintended Pregnancy in the United States* (Jan. 2019); Heather D. Boonstra et al., Guttmacher Inst., *Abortion in Women's Lives* 7, 20 (May 2006).

[24] Roger Gadsby et al., *A Prospective Study of Nausea and Vomiting During Pregnancy*, 43 Brit. J. of Gen. Prac. 245, 246 (June 1993).

gestation.[25] It often takes time before patients who have decided that they need to end their pregnancies can access abortion care, given the logistical and financial barriers many face, which include a state-mandated waiting period, health center wait times, and the need to organize funds, transportation, accommodation, childcare, and time off from work.[26] Moreover, before six weeks' gestation, physicians cannot always confirm an intrauterine pregnancy via ultrasound and therefore in some cases may not be able to offer an abortion.[27]

For all of these reasons, the majority of abortions provided nationwide are performed after six weeks' gestational age. Because of its penalties and limited exceptions, combined with the fact that many individuals do not know that they are pregnant and cannot

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[25] In addition, administering a home pregnancy test too early in a patient's menstrual cycle or too close to the time a patient became pregnant may result in a false negative result. FDA, *Pregnancy*, http://bit.ly/402wBIb (Apr. 29, 2019).

[26] *Cf.* Eleanor A. Drey et al., *Risk Factors Associated With Presenting for Abortion in the Second Trimester*, 107 Obstet. & Gynecol. 128, 130 (Jan. 2006).

[27] Rebecca Heller & Sharon Cameron, *Termination of Pregnancy at Very Early Gestation Without Visible Yolk Sac on Ultrasound*, 41 J. Fam. Plan. Reprod. Health Care 90, 90-91 (2015).

access reproductive health care before six weeks' gestation, Section 146C.2 functions as a near-absolute ban on abortion care.

B. The Six-Week Ban Endangers The Physical And Psychological Health Of Pregnant Patients

Banning abortions after six weeks' gestation will result in delays in obtaining abortions, increased use of unsafe self-managed abortion methods – that is, self-managed methods other than procuring appropriate medications through licensed providers – and an increased likelihood that patients will be forced to continue pregnancies to term. All of these consequences entail significant health risks.

Many delays in seeking an abortion are caused by a lack of information about where to find abortion care.[28] The need to travel out of state and consider various states' criminal and civil penalties likely will further increase confusion about where to find needed

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[28] Ushma D. Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104 Am. J. Pub. Health 1687, 1689 (Sept. 2014).

health care. In addition, almost one-third of delays are caused by travel and procedure costs.[29]

By imposing a near-total ban on abortion, Section 146C.2 will increase these costs. A 2021 analysis found that closing Iowa's abortion clinics would result in a 423% increase in the average required travel distance for Iowans seeking abortions.[30] Longer travel distances mean higher travel costs plus longer absences from work or school, which can cause a patient to delay a needed abortion until later in a pregnancy. Although the risk of complications from abortions overall remains exceedingly low – especially compared to the health risks of carrying a pregnancy to term – increasing gestational age increases the chance of a major complication.[31]

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29 *Id.*

30 Guttmacher Inst., *If* Roe v. Wade *Falls: Travel Distance for People Seeking Abortion* (June 23, 2022), http://bit.ly/3ZNS0VA (on average, Iowa abortion clinic closures would increase abortion-seeking Iowans' driving distance from 33 miles to 175 miles).

31 *Incidence of Visits* 181.

Abortions at later gestational ages also typically are more expensive.[32]

By removing access to safe, legal abortion after six weeks of gestation, Section 146C.2 also increases the possibility that a pregnant patient will attempt a self-managed abortion through a harmful or unsafe method.[33] Studies have found that people are more likely to self-manage abortions when they face barriers to reproductive services, and methods of self-management may rely on harmful tactics such as herbal or homeopathic remedies, intentional trauma to the abdomen, abusing alcohol or illicit drugs, or dangerously misusing hormonal pills, rather than using appropriate medications through licensed providers, which is a safe way to self-manage abortion.[34]

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[32] Bonnie Scott Jones & Tracy A. Weitz, *Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences,* 99 Am. J. Pub. Health 623, 624 (2009).

[33] *See, e.g.*, Rachel K. Jones et al., Guttmacher Inst., *Abortion Incidence and Service Availability in the United States, 2017*, 3, 8 (2019) (noting a rise in patients who had attempted to self-manage an abortion).

[34] David Grossman et al., Tex. Pol'y Eval. Proj. Res. Br., *Knowledge, Opinion and Experience Related to Abortion Self-Induction in Texas* 3 (2015).

Patients who do not, or cannot, obtain an abortion because of Section 146C.2 will be forced to continue a pregnancy to term – an outcome with significant health risks. The U.S. mortality rate associated with live births from 1998 to 2005 was 8.8 deaths per 100,000 live births,[35] and rates have sharply increased since then.[36] In contrast, the mortality rate associated with abortions performed from 1998 to 2005 was 0.6 deaths per 100,000 procedures, meaning that a pregnant patient's risk of death associated with childbirth is approximately 14 times higher than any risk of death from an abortion.[37]

Continued pregnancy and childbirth also entail other substantial health risks. Even an uncomplicated pregnancy causes significant stress on the body. Moreover, continuing a pregnancy to term can exacerbate underlying health conditions or lead to newly arising health issues. Sickle-cell disease can worsen during

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35 Raymond & Grimes 216.

36 Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues*, 128 Obstetrics & Gynecology 447 (2016) (finding a 26.6% increase in maternal mortality rates between 2000 and 2014).

37 Raymond & Grimes 216.

pregnancy, leading to severe anemia and vaso-occlusive crisis, a condition resulting in significant pain.[38] Pregnant patients with inherited thrombophilia, which can be undetected until a triggering event such as pregnancy, have a high risk of developing life-threatening blood clots.[39] Pregnancy can exacerbate asthma, making it a life-threatening condition.[40] Approximately 6 to 7% of pregnancies are complicated by gestational diabetes mellitus, which frequently leads to maternal and fetal complications, including developing diabetes later in life.[41] And preeclampsia, a relatively common complication, is a disorder associated with new-onset hypertension that occurs most often after 20 weeks of

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[38] ACOG, Practice Bulletin No. 78, *Hemoglobinopathies in Pregnancy* (Jan. 2007, reaff'd 2021).

[39] ACOG, Practice Bulletin No. 197, *Inherited Thrombophilias in Pregnancy* (July 2018, reaff'd 2022) (*Inherited Thrombophilias in Pregnancy*).

[40] ACOG, Practice Bulletin No. 90, *Asthma in Pregnancy* (Feb. 2008, reaff'd 2020).

[41] ACOG, Practice Bulletin No. 190, *Gestational Diabetes Mellitus* (Feb. 2018, reaff'd 2019).

gestation and can result in fluctuating blood pressure, heart disease, liver issues, seizures, and death.[42]

Labor and delivery likewise carry significant risks. These include hemorrhage, placenta accreta spectrum (a potentially life-threatening complication that occurs when the placenta is unable to detach at childbirth), hysterectomy, cervical laceration, and debilitating postpartum pain.[43] Approximately one in three people who give birth in the United States do so by cesarean delivery, a major surgical procedure that carries increased risk of complications.[44]

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[42] ACOG, Practice Bulletin No. 222, *Gestational Hypertension and Preeclampsia* (June 2020).

[43] ACOG, Practice Bulletin No. 183, *Postpartum Hemorrhage* (Oct. 2017, reaff'd 2019); ACOG, Obstetric Care Consensus No. 7, *Placenta Accreta Spectrum* 1-2 (July 2012, reaff'd 2021) (*Placenta Accreta Spectrum*); ACOG, Practice Bulletin No. 198, *Prevention and Management of Obstetric Lacerations at Vaginal Delivery* (Sept. 2018, reaff'd 2022); ACOG, Clinical Consensus No. 1, *Pharmacologic Stepwise Multimodal Approach for Postpartum Pain Management* 507 (Sept. 2021).

[44] CDC, *National Vital Statistics Reports Vol. 70, No. 2, Births: Final Data for 2019* (2021); ACOG, Obstetric Care Consensus No. 1, *Safe Prevention of the Primary Cesarean Delivery* 1-3 (Mar. 2014, reaff'd 2019).

Evidence also suggests that pregnant people denied abortions are more likely to experience negative psychological health outcomes – like anxiety, lower self-esteem, and lower life satisfaction – than those who obtained a needed abortion.[45]

C. The Ban's Limited Exceptions Will Not Adequately Protect Patients' Health

The exceptions in Section 146C.2 are insufficient to protect the health of the pregnant patient. Section 146C.2 allows for abortion after six weeks if it is a "medical emergency" or if the abortion is "medically necessary." The law says a "medical emergency" exists only when an abortion is necessary "to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury" or "when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman."[46] It does not include "psychological conditions, emotional conditions, familial conditions, or the

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45 Biggs 172.

46 Iowa Code § 146A.1(6)(a).

woman's age."[47] The law defines "medically necessary" to allow abortions after six weeks in cases of rape, incest, miscarriage, and fetal abnormalities that are "incompatible with life."[48]

Pregnancy can exacerbate existing health issues that do not necessarily lead to death or the "substantial and irreversible impairment of a major bodily function," but nevertheless pose serious health risks. Examples include Alport Syndrome (a form of kidney inflammation), valvular heart disease (abnormal leakage or partial closure of a heart valve), lupus (a connective tissue disease that may suddenly worsen during pregnancy and lead to blood clots and other serious complications), and pulmonary hypertension (increased pressure within the lung's circulation system that can escalate during pregnancy).[49] Maternal mental health issues also

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47 *Id.*

48 *Id.* § 146C.1(4).

49 *See* Koji Matsuo et al., *Alport Syndrome and Pregnancy*, 109 Obstetrics & Gynecology 531, 531 (Feb. 2007); Karen K. Stout & Catherine M. Otto, *Pregnancy in Women with Valvular Heart Disease*, 93 Heart Rev. 552, 552 (May 2007); J. Cortés-Hernández et al., *Clinical Predictors of Fetal and Maternal Outcome in Systemic Lupus Erythematosus: A Prospective Study of 103 Pregnancies*, 41 Rheumatology 643, 646-647 (2002); David G. Kiely et al., *Pregnancy and Pulmonary Hypertension: A Practical*

can put a pregnant patient's health and life at risk.[50] Additionally, sometimes patients seek abortion care because of significant medical issues that they experienced during prior pregnancies. If abortion care is unavailable, those prior conditions could progress or reoccur, endangering the health of the pregnant patient and directly affecting fetal development and survival. Examples include preeclampsia,[51] placental abruption (separation of the placenta from the uterine wall),[52] placenta accreta,[53] peripartum cardiomyopathy (enlargement of the heart in or after pregnancy),[54] and thrombophilia.[55]

Approach to Management, 6 Obstetric Med. 144, 153 (2013); Michael F. Greene & Jeffrey L. Ecker, *Abortion, Health and the Law*, 350 New Eng. J. Med. 184, 184 (2004).

50 *See, e.g.*, Kimberly Mangla et al., *Maternal Self-Harm Deaths: An Unrecognized and Preventable Outcome*, 221 Am. J. Obstetrics & Gynecology 295 (2019).

51 ACOG, Practice Bulletin No. 222, *Gestational Hypertension and Preeclampsia* (June 2020).

52 ACOG, Obstetric Care Consensus No. 10, *Management of Stillbirth* 7, 11 (March 2009, reaff'd 2021).

53 *Placenta Accreta Spectrum* 2.

54 ACOG, Practice Bulletin No. 212, *Pregnancy and Heart Disease* (May 2019, reaff'd 2021).

55 *See Inherited Thrombophilias in Pregnancy*.

Other elements of the exceptions also are problematic. For example, by limiting the exceptions to death and "substantial and irreversible impairment of a major bodily function," which expressly excludes "psychological conditions" and "emotional conditions,"[56] the law fails to consider maternal mental health issues that can put a pregnant patient's health and life at risk.[57] In addition, the law requires that physicians indefinitely retain records documenting the fetal heartbeat test and the pregnant patient's written acknowledgment that they received the information.[58] That requirement suggests that the state is willing to second-guess medical judgments in a way that exposes physicians to substantial risk and may interfere with the exercise of that medical judgment.

Physicians should not be put in the impossible position of either letting a patient deteriorate until death or "substantial and

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56 *See* Iowa Code § 146A.1(6)(a).

57 *See, e.g.*, Mangla et al., *Maternal Self-Harm Deaths: An Unrecognized and Preventable Outcome*, 221 Am. J. Obstetrics & Gynecology 295 (2019).

58 Iowa Code § 146C.2(3).

irreversible impairment of a major bodily function" is possible or facing punishment for providing needed care consistent with their medical judgment but still potentially in contravention of Section 146C.2. Indeed, that impossible choice could cause some physicians to second-guess the necessity of critical abortion care until it is too late to save the pregnant patient's life or protect the patient's health.

The many examples just provided of the potential health problems faced by pregnant patients demonstrate why decisions about whether to continue a pregnancy are properly left to clinicians and patients, rather than legislators. Legislators are not and should not be in the exam room, and do not have the training or experience to exercise medical judgment to evaluate complex or developing situations and recommend a course of treatment. Section 146C.2 indefensibly jeopardizes patients' health.

III. Laws That Ban Abortion Hurt Rural, Minority, And Poor Patients The Most

Section 146C.2 will disproportionately affect people of color, those living in rural areas, and those with limited economic

resources. *Amici* are opposed to policies that increase the inequities that already plague the nation's health care system.

In Iowa, 19% of the Iowans who obtained abortions in 2020 were Black.[59] According to 2021 data, 31.2% of Black Iowans live in poverty, while the poverty rate in Iowa is 11.1% overall.[60] In addition, 75% of abortion patients nationwide are living at or below 200% of the federal poverty level.[61] Patients with limited means and patients living in geographically remote areas will be disproportionately affected by Section 146C.2, which will require them to travel longer distances (and pay higher associated costs) to obtain safe, legal abortions.

The inequities continue after an abortion is denied. Forcing patients to continue pregnancies increases their risk of complications.[62] Nationwide, Black patients' pregnancy-related

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59 *See Abortions in Iowa* 137 tbl 55.

60 Kaiser Family Foundation, *Poverty Rate by Race/Ethnicity* (2021), https://bit.ly/3QbzDoA.

61 Jenna Jerman et al., Guttmacher Inst., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* 11 (2016).

62 Raymond & Grimes 216.

mortality rate is at least 3.2 times higher than that of white patients, with significant disparities persisting even in areas with low overall mortality rates and among patients with higher levels of education.[63] Section 146C.2 thus exacerbates health care inequities, disproportionately harming the most vulnerable Iowans.

IV. Statutes That Ban Abortion Force Clinicians To Make An Impossible Choice Between Upholding Their Ethical Obligations And Following The Law

Abortion bans violate long-established and widely accepted principles of medical ethics by (1) substituting legislators' opinions for a physician's individualized patient-centered counseling and creating an inherent conflict of interest between patients and medical professionals; (2) asking medical professionals to violate the age-old principles of beneficence and non-maleficence; and

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[63] Emily E. Petersen et al., U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007-2016*, 68 Morbidity & Mortality Weekly Report 762, 763 (Sept. 6, 2019) (Black patients' pregnancy-related mortality rate is 3.2 times that of white patients); *see* Marian F. MacDorman et al., *Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016-2017*, 11 Am. J. Pub. Health 1673, 1676-77 (Sept. 2021) (Black patients' pregnancy-related mortality rate is 3.55 times that of white patients).

(3) requiring medical professionals to ignore the ethical principle of respect for patient autonomy.

A. The Six-Week Ban Undermines The Patient-Physician Relationship

The patient-physician relationship is critical for the provision of safe, quality medical care.[64] At the core of this relationship is the ability to counsel frankly and confidentially about important issues and concerns based on patients' best medical interests with the best available scientific evidence.[65] ACOG's Code of Professional Ethics states that "the welfare of the patient must form the basis of all medical judgments," and that obstetrician-gynecologists should "exercise all reasonable means to ensure that the most appropriate care is provided to the patient."[66] The AMA Code of Medical Ethics

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64 ACOG, Statement of Policy, *Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship* (May 2013, reaff'd and amended Aug. 2021) (*Legis. Policy Statement*).

65 AMA, *Patient-Physician Relationships, Code of Medical Ethics Opinion 1.1.1* ("The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare.").

66 ACOG, *Code of Professional Ethics* 2 (Dec. 2018).

places on physicians the "ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others."[67]

Iowa's six-week ban forces physicians to supplant their own medical judgments – and their patients' judgments – regarding what is in the patients' best interests with the legislature's non-expert determination regarding whether and when physicians may provide abortions. As described above, abortions are safe, routine, and, for many patients, the best medical choice available for their specific health circumstances. Accordingly, there is no rational or legitimate basis for interfering with a physician's ability to provide an abortion where both the physician and patient conclude that it is the medically appropriate course.

Laws that ban abortion in a wide variety of circumstances – such as the law here, which bans abortion before many patients know they are pregnant and without exceptions for circumstances such as the mental health of the pregnant patient or health

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[67] AMA, *Patient-Physician Relationships, Code of Medical Ethics Opinion 1.1.1.*

problems that do not rise to the level of "substantial and irreversible impairment of a major bodily function" – are out of touch with the reality of contemporary medical practice and have no grounding in science or medicine.

Iowa's law also creates inherent conflicts of interest. Physicians need to be able to offer appropriate treatment options without regard for their own self-interest.[68] Here, Section 146C.2 profoundly intrudes upon the patient-physician relationship by prohibiting physicians from performing abortions in many circumstances. For example, even if a patient's health were compromised, the law would allow an abortion after detection of embryonic cardiac activity only in the face of death or substantial and irreversible impairment of a major bodily function, regardless of the overall medical advisability of the procedure or the desire of the patient. A physician and patient together may conclude that an abortion is in the patient's best medical interests even though the

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68 *See Legis. Policy Statement.*

risk posed by continuing the pregnancy does not yet rise to the standard set forth in the law's exceptions.

Iowa's six-week ban thus forces physicians to choose between the ethical practice of medicine – counseling and acting in their patients' best interest – and obeying the law.[69]

B. The Six-Week Ban Violates The Principles Of Beneficence And Non-Maleficence

Beneficence, the obligation to promote the wellbeing of others, and non-maleficence, the obligation to do no harm and cause no injury, have been the cornerstones of the medical profession since the Hippocratic traditions.[70] Both principles arise from the

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69 *Cf.* AMA, *Patient Rights, Code of Medical Ethics Opinion 1.1.3* ("Patients should be able to expect that their physicians will provide guidance about what they consider the optimal course of action for the patient based on the physician's objective professional judgment.").

70 AMA, *Principles of Medical Ethics* (rev. June 2001); ACOG, Committee Opinion No. 390, *Ethical Decision Making in Obstetrics and Gynecology*, 110 Obstetrics & Gynecology 1479, 1481-82 (Dec. 2007, reaff'd 2016).

foundation of medical ethics that requires patient welfare to form the basis of medical decision-making.

Physicians providing abortion care respect these ethical duties by engaging in patient-centered counseling, providing patients with information about risks, benefits, and pregnancy options, and ultimately empowering patients to make decisions informed by both medical science and their lived experiences.[71]

Iowa's six-week ban pits physicians' interests against those of their patients. If a physician concludes that an abortion is medically advisable, the principles of beneficence and non-maleficence require the physician to recommend that course of treatment. And if a patient decides that an abortion is the best course of action, those principles require the physician to provide, or refer the patient for, that care. But Section 146C.2, with its limited exceptions, prohibits physicians from providing that treatment and exposes physicians to significant penalties if they do. It therefore places physicians at the ethical impasse of choosing

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[71] ACOG, *Code of Professional Ethics* 1-2 (Dec. 2018).

between providing the best available medical care and risking substantial penalties or protecting themselves personally. This dilemma challenges the very core of the Hippocratic Oath: "Do no harm."

C. The Six-Week Ban Violates The Ethical Principle Of Respect For Patient Autonomy

Finally, a core principle of medical practice is patient autonomy – respect for patients' ultimate control over their bodies and right to a meaningful choice when making medical decisions.[72] Patient autonomy revolves around self-determination, which is safeguarded by the ethical concept of informed consent and its rigorous application to patients' medical decisions.[73] Iowa's six-week ban denies patients the right to make their own choices about health care if they decide they need to seek an abortion.

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[72] *Id.* at 1 (Dec. 2018) ("respect for the right of individual patients to make their own choices about their health care (autonomy) is fundamental").

[73] ACOG, Committee Opinion No. 819, *Informed Consent and Shared Decision Making in Obstetrics and Gynecology* (Feb. 2021); AMA, *Code of Medical Ethics Opinion 2.1.1.*

CONCLUSION

This Court should affirm the district court's denial of the State's motion to dissolve the permanent injunction.

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**Pro Hac Vice Application Pending*

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1)-(2) and 6.906(3) because this brief contains 5,966 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: March 20, 2023

/s/Paige Fiedler
Paige Fielder

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2023, I electronically filed this document with the Supreme Court Clerk using the EDMS system, which will serve it on the appropriate parties electronically.

Dated: March 20, 2023

/s/Paige Fiedler
Paige Fielder