

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

MIKA COVINGTON, AIDEN  
DELATHOWER, and ONE IOWA, INC.,

Petitioners,

v.

KIM REYNOLDS ex rel. STATE OF IOWA  
and IOWA DEPARTMENT OF HUMAN  
SERVICES,

Respondents.

Equity Case No. \_\_\_\_\_

**MOTION FOR  
TEMPORARY INJUNCTION**

**COME NOW** Petitioners Mika Covington, Aiden DeLathower (“Aiden Vasquez”), and One Iowa, Inc., by and through their undersigned attorneys, and pursuant to Iowa Rule of Civil Procedure 1.1502 respectfully seek temporary injunctive relief, and in support thereof, state as follows:

1. Division XX, Sections 93-94 (“the Division”) of House File 766, creates an exception to the Iowa’s Civil Rights Act protections against discrimination in public accommodations to specifically allow discrimination against transgender Iowans in the provision of publicly-funded healthcare such as Medicaid. *Id.* (to be codified at Iowa Code § 216.7(3) (2019)), available at <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf766>, at p. 87.
2. Respondent Governor Reynolds has signed into law the Division on May 3, 2019 making it immediately effective.
3. Both Petitioners have a serious medical need for gender affirming surgery, to occur in September 2019. Since the enactment of the Division, Petitioner Vasquez has already been prevented from accessing medically necessary care, and Petitioner Covington’s pre-approval of surgery will be denied following her July 2019 follow-up appointment. (Ex. 1: Vasquez Aff.

¶¶ 19-22; Ex. 6: Covington Aff. ¶¶ 29-30.) Absent immediate relief from this Court, all transgender Iowans on Medicaid, including Petitioners One Iowa's LGBTQ Leadership Institute and Transgender Advisory Council members, Ms. Covington, and Mr. Vasquez in particular, will continue to be prevented from obtaining medically necessary surgical care to treat their gender dysphoria.

4. In the absence of treatment, transgender individuals with gender dysphoria will experience serious medical problems, including clinically significant psychological distress and dysfunction, debilitating depression, and, for some people, suicidality and death. (Ex. 10: Ettner Aff. ¶ 15.)
5. The Iowa Supreme Court and this District Court have already recognized that gender affirming surgery is medically necessary for the treatment of gender dysphoria, and that it is discriminatory to deny transgender Iowans coverage for medically necessary gender affirming surgery under Iowa Medicaid. *Good v. Iowa Dep't of Human Servs.*, 924 N.W.2d 853, 857-58, 62 (Iowa 2019); *EerieAnna Good and Carol Beal*, Case No. CVCV054956 and CVCV055470 (consolidated), Ruling on Pets. for Judicial Review, at \*7-8, 33 (Iowa Dist. Ct. June 6, 2018), *available* at [https://www.aclu-ia.org/sites/default/files/6-7-18\\_transgender\\_medicaid\\_decision.pdf](https://www.aclu-ia.org/sites/default/files/6-7-18_transgender_medicaid_decision.pdf).
6. Following the Iowa Supreme Court's decision, Ms. Covington and Mr. Vasquez were finally able to begin the process to obtain pre-approval of their gender affirming surgery by Iowa Medicaid. (Ex. 6: Covington Aff. ¶ 20 ; Ex. 1: Vasquez Aff. ¶ 18.)
7. These surgeries are medically necessary for Petitioners Covington and Vasquez. (*See* Exhibit 2: Nisley/Vasquez Aff.; Exhibit 3: Daniels/Vasquez Letter; Exhibit 4: Eadeh/Vasquez Letter;

Exhibit 5: Waters/Vasquez Letter; Exhibit 7 Nisley/ Covington Aff.; Exhibit 8: Eadeh/Covington Letter; Exhibit 9: Waters/Covington Letter.)

8. Absent a temporary injunction, Ms. Covington and Mr. Vasquez will be deprived of the gender affirming surgery for which they have a serious medical need, and denied of their rights to equal protection under the Iowa Constitution.
9. The Division will also continue to violate their rights under the Single Subject Rule and Inalienable Rights of Persons clauses of the Iowa Constitution. Iowa Const. art. I, § 1; art. III, § 29.
10. Temporary injunctive relief per Iowa Rule of Civil Procedure 1.1502 is appropriate when necessary “to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation.” *Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985). Such relief is appropriate “when the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.” Iowa R. Civ. P. 1.1502(1). Temporary injunctive relief is appropriate when a plaintiff is likely to succeed on the merits of her claim and is at risk of irreparable harm absent immediate judicial intervention, *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001).
11. As explained more fully in Petitioners’ Brief in Support of this Motion for Temporary Injunctive Relief and attached Affidavits, filed herewith, Petitioners are likely to succeed in their claims that the Act violates their patients’ rights to equal protection under the Iowa Constitution, as well as their rights under Iowa’s Inalienable Rights Clause and Iowa’s Single-Subject Legislation Rule.

12. In particular, this Court has already determined that it violates the equal protection guarantee of the Iowa Constitution to discriminate in the provision of Iowa Medicaid on the basis of a person's status as transgender by denying them coverage for medically necessary surgery to treat gender dysphoria. *Good*, Case No. CVCV054956 and CVCV055470 (consolidated), at \*33.
13. In addition, for the same reason that the Iowa Supreme Court found that it violates the Iowa Civil Rights Act protection against nondiscrimination in public accommodations to deny transgender people coverage for medically necessary gender affirming surgery under Iowa Medicaid in *Good*, 924 N.W.2d at 861-863, and for the reasons set forth by the Iowa District Court under the Iowa Constitution, *Good*, Case No. CVCV054956 and CVCV055470 (consolidated), at \*33, the Iowa Supreme Court is likely to also find that this law violates equal protection.
14. The Division also violates the Iowa Constitution's "single-subject rule," which requires legislation to embrace a single subject expressed in the legislation's title. Here, the title of the legislation in which the Division is contained pertains only to appropriations for health and human services. The title provides no notice that the Division creates an exception to the substantive nondiscrimination protections under ICRA for transgender Iowans who rely on Medicaid to obtain their medically necessary healthcare.
15. Additionally, the Division violates the Iowa Constitution's inalienable-rights clause, which prohibits legislative action that impacts an inalienable right. The Division arbitrarily and unreasonably bars transgender Iowans who receive Medicaid coverage from obtaining medically necessary surgical care. The inalienable right to receive such care for Iowans who

receive Medicaid arises from its medical necessity and its connection to the expression of transgender Iowans' gender identity. The Division interferes with this right.

16. For the reasons set forth above, and incorporating all the arguments set forth in their concurrently filed Brief in Support of Motion for Temporary Injunctive Relief and attached Affidavits, Petitioners are entitled to the preliminary relief they seek as necessary to protect their immediate health and safety, in addition to their legal rights, while this case proceeds toward final resolution.

**WHEREFORE**, Petitioners pray this Court temporarily enjoin Respondents from enforcing the Act's exception to protection from discrimination in public accommodations for transgender Iowans who rely on publicly funded healthcare.

Respectfully submitted,

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\*Application for admission *pro hac vice* forthcoming