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.	Case No. _____ **PETITIONERS' EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

COMES NOW Petitioners, Planned Parenthood of the Heartland, Inc. ("PPH") and Jill Meadows, M.D., respectfully move this court for a grant of temporary injunctive relief pursuant to Iowa R. Civ. P. 1.1502, on an immediate and emergency basis, and state:

1. If Respondent Governor Reynolds signs House File 594 into law before July 1, 2020, it will take effect on July 1 absent relief from this Court. *See* House File ("H.F.") 594, 88th Gen. Assemb. (Iowa 2020),[1] to be codified at Iowa Code § 146A.1(1) (2020). Section 2 of H.F. 594 was added as a last-minute amendment, H-8314 ("the Amendment"). *See* Petition, Ex. A ("H-8314"). Absent immediate relief from this Court, women seeking abortion in the state of Iowa will be severely and unconstitutionally restricted in their ability to access abortion, a harm for which no adequate legal remedy exists.

2. The Amendment forces all women seeking an abortion, regardless of how certain they are in their decision or their medical circumstances, to make an additional, medically unnecessary trip to a health center. They must do this at least 24 hours before they can obtain an

[1] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=H8314.

abortion. During this visit, they must have an ultrasound. They must also be given certain state-mandated information regarding the abortion procedure. H-8314; Iowa Code § 146A.1(1) (2020).

3. As the Supreme Court recently found, these mandatory delay requirements can result in delays of far more than the statutory minimum, because it requires health centers to see every patient seeking an abortion twice. *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 915 N.W.2d 206, 242 (Iowa 2018) ("*PPH II*"). Indeed, this two-trip requirement has been found to result in backlogs of one to two weeks. *Id.* at 222.

4. These needless and extremely onerous requirements are imposed regardless of the distance a woman must travel to reach her provider, her ability to make an additional trip to the health center, her own medical needs, her judgment, her doctor's judgment, whether she is the victim or sexual assault or intimate partner violence, or her individual life circumstances.[2]

5. Women facing these injuries include those *currently* scheduled for medical appointments to obtain abortions in the coming days—who, because of the likely July 1, 2020 effective date of the Amendment, will be prevented from obtaining the abortions at their scheduled appointment times.

6. Temporary injunctive relief per Iowa R. of Civ. P. 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 if the movant demonstrates: (1) a likelihood of success on the merits; (2) a threat of irreparable injury; and (3) that the balance of harms favors relief. *See generally Opat v.*

[2] The Amendment contains an extremely narrow medical exception to the 24-hour delay requirement, explained in Petitioners' Brief in Support of this Motion for Temporary Injunction, at Statements of the Facts, Part A.

Ludeking, 666 N.W.2d 597, 603–04 (Iowa 2003); *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001).

7. As explained more fully in Petitioners' Brief in Support, filed herewith, Petitioners are likely to succeed in their claims that the Amendment was passed in violation of the Iowa Constitution's single-subject rule and that the 24-hour mandatory delay and additional trip requirements violate PPH's patients' rights to due process and to equal protection under the Iowa Constitution.

8. The Amendment was attached to a bill entirely unrelated to abortion care, violating the single-subject rule of article III, section 29.

9. The underlying bill was titled, until the Amendment was added, "an Act relating to limitations regarding withdrawal of a life-sustaining procedure from a minor child," and the bill itself defined those procedures with reference to section 144A.2 of the Iowa Code. *See* H.F. 594 (as introduced).[3]

10. Abortion plainly does not relate to any of the procedures which were the subject of H.F. 594 before it was amended by H-8314. At the time H-8314 was introduced to the House—on a Saturday night during the last evening of the legislative session—a House member objected that it was not germane to the underlying bill. Aff. of Beth Wessel-Kroeschell ("Wessel-Kroeschell Aff.") ¶ 17, attached hereto as Ex. 1. The Speaker of the House agreed without debate. *Id.* ¶ 19. Thus, it is undisputed that H-8314 was not germane to the bill to which it was amended.[4]

[3] *Available at* https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF%20594&v=i.

[4] The House thereafter voted to suspend its own procedural rules to allow the Amendment to be voted on, despite that it was not germane to the underlying bill. Wessel-Kroeschell Aff. ¶ 20. That the House suspended its rules does not cure the violation of the Iowa Constitution's single-

11. The addition of H-8314 thus violates the single-subject rule.

12. As discussed in greater detail in the Brief in Support, the passage of H-8314 resulted in the very effects the single-subject rule was intended to protect against. *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990). H-8314 was introduced and passed on a Saturday evening, at the very end of the legislative session, with no prior notice or opportunity for debate by legislators or the voting public. *See* Wessel-Kroeschell Aff. ¶¶ 4–5, 23–26; Aff. of Connie Ryan ("Ryan Aff.") ¶¶ 15–24, attached hereto as Ex. 2.

13. Even were the Amendment not unconstitutional under the single-subject rule, the Iowa Supreme Court, only two years ago, found a materially identical bill to be unconstitutional in *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State. PPH II*, 915 N.W.2d 206 (Iowa 2018).

14. There, the Iowa Supreme Court recognized that abortion is a fundamental right protected by the equal protection and due process clauses of the Iowa Constitution. *PPH II*, 915 N.W.2d at 237 ("We therefore hold, under the Iowa Constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy."); *see also Planned Parenthood of Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 263, 269 (Iowa 2015) ("*PPH I*"); *Sanchez v. State*, 692 N.W.2d 812, 820 (Iowa 2005). The Court held that abortion restrictions must satisfy strict scrutiny to survive a constitutional challenge. *PPH II*, 915 N.W.2d at 240–41. The Court held that the mandatory delay at issue in *PPH II* failed the demanding strict scrutiny standard. *Id.* at 243–44.

subject rule. *Cf. Des Moines Reg. & Trib. Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996) (holding that legislature has prerogative to enforce its own procedures "so long as constitutional questions are not implicated").

15. The Amendment at issue here, like the mandatory delay at issue in *PPH II*, does not advance a compelling state interest. *Id.* at 243. In *PPH II*, as here, the ostensible purpose of the mandatory delay was to provide women with time to think about their decision, in the hopes that some would change their minds, thus "promoting potential life." *Id.* at 241. Here, similarly, one of the Amendment's sponsors noted, when the Amendment was introduced, that she believed the mandatory delay would result in women changing their minds about having an abortion.[5] The Iowa Supreme Court was clear in *PPH II* that mandatory delay and two-trip requirements do not have this intended effect, noting "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. The Court found this to be the case with a 72-hour mandatory delay and there is no reason to believe a shorter delay would be any different. Thus, the Amendment does not advance a compelling state interest.

16. Even if the Act advanced this interest, it would fail the narrow tailoring requirement of the strict scrutiny test, *cf. id*. at 243. The Court in *PPH II* found that the mandatory delay at issue there indiscriminately applied to all abortion patients even though the vast majority of these patients are firm in their decision by the time they reach the health center, and the research reflects that ultrasound viewing and mandatory delay have no effect on that certainty. *Id.* at 241–43; Aff. of Jill Meadows, M.D. ("Meadows Aff.") ¶ 8, attached hereto as Ex. 3; Aff. of Daniel Grossman, M.D. ("Grossman Aff.") ¶¶ 26, 29–31, attached hereto as Ex. 4. The Amendment at issue here has the same sweep. Like the law invalidated in *PPH II*, the Amendment also applies in situations of fetal anomaly, rape, incest, and domestic violence, as well as (except in very narrowly defined

[5] Iowa Legislature, *House Video (2020-06-13)* at 10:19:30 p.m., https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20200613100758317&dt=2020-06-13&offset=598&bill=HF%20594&status=i.

circumstances) when a patient's health is in danger. *See generally* Aff. of Lenore Walker, Ed.D ("Walker Aff."), attached hereto as Ex. 5. And, as in *PPH II*, the Amendment will pose particular harms to women struggling with poverty, who comprise the majority of PPH's patients. *See* Aff. of Jane Collins, Ph.D. ("Collins Aff.") ¶ 10, attached hereto as Ex. 6.

17. The Amendment at issue here, like the mandatory delay at issue in *PPH II*, harms people seeking abortions and creates barriers to abortion acess. *Id.* at 221–22, 226–31, 242–43. In *PPH II*, the Court found that mandatory delay laws result in patients needing to make two trips to health centers. *Id.* at 221–22, 226–27. As a result, health centers must book two appointments on separate days for each patient, resulting in delays substantially longer than the statutory minimum. *Id.* at 222. The same is true of the Amendment at issue here. *See* Meadows Aff. ¶¶ 35–37. The Court further held that mandatory delay and two trip requirements, such as the Amendment, result in substantial harm to people seeking abortions: resulting in substantial delay (*PPH II*, 915 N.W.2d at 222, 242–43) and increased medical risks (*id.* at 230–31); jeopardizing their financial stability (*id.* at 227–29) and, in some cases, physical safety (*id.* at 231); and potentially preventing them from accessing safe, legal abortion care altogether (*id.* at 229–31). There is no reason to believe that a 24-hour statutory delay would avoid these harms given the fact, already fully litigated, that requiring PPH to schedule additional visits for every abortion patient would push patients out a minimum of one to two weeks. *Id.* at 229; *see also* Meadows Aff. ¶ 37.

18. Respondents are precluded from seeking to relitigate the legal holdings and relevant fact findings from *PPH II*. *See, e.g.*, *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981). These findings of fact and legal holdings are only two years old; the parties to *PPH II* are identical to the parties here, *PPH II* was fully litigated, and no intervening change in fact or law calls them into question. As a result, issue preclusion prevents Respondents from relitigating issues

fully resolved by the Supreme Court. *See Hunter*, 300 N.W.2d at 123 ("[T]he 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."); *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 107 (Iowa 2011) (noting that issue preclusion does not apply where "other circumstances" may warrant, such as when "the prior proceeding is unreliable because of legal procedure or changed legal circumstances."). Applying issue preclusion to prevent relitigating findings of fact and constitutional holdings from only two years ago "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 Empl'rs Mut. Ca. Co. v. Van Haaften*, 815 N.W. 2d 17, 22 (Iowa 2012).

19. Even if Respondents are not precluded from relitigating these issues, however, *PPH II* is nonetheless controlling.

20. Petitioners also meet the other factors necessary for obtaining temporary injunctive relief because, as set forth in above ¶¶ 16–17, the Amendment will harm patients, and these harms are irreparable. In two recent abortion rights cases, Iowa courts determined that temporary injunctive relief was appropriate. *See* Ruling on Motion to Stay Pending Judicial Review of Agency Action and Declaratory Judgment and Injunctive Relief, *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, No. CVCV046429 (Iowa Dist. Ct. Polk Cty. Nov. 5, 2013) (enjoining enforcement of challenged regulation); Order, *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, No. 17-1579 (Iowa Oct. 23, 2017) (staying enforcement of statute); *see also Emma Goldman Clinic v. Holman*, 728 N.W.2d 60 (Table), *6 (Iowa Ct. App. 2006) (injunction necessary "to protect the plaintiffs and the clinic's patients and staff from harm");

Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 640 (Iowa 1991) (injunction necessary to protect "Planned Parenthood's right and ability to conduct its business"); *Van Hollen*, 738 F.3d at 795; *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit. B Nov. 1981); *Roe v. Crawford*, 396 F. Supp. 2d 1041, 1044 (W.D. Mo. 2005) (delay in obtaining abortion procedure may cause substantial injury), *stay of injunction denied*, 546 U.S. 959 (2005).

21. Furthermore, while Petitioners and their patients will be severely harmed by the Amendment, Respondents will not suffer any harm from Petitioners' patients' continuing to receive care without mandatory delay, as they have for over forty years. In *PPH II*, the Supreme Court found that Petitioner PPH uses a comprehensive informed consent process, providing patients with all the information necessary for them to fully understand the risks and benefits of an abortion, as well as the alternatives to an abortion, including carrying the pregnancy to term. *PPH II*, 915 N.W.2d at 216–17. The Court further found that PPH gives its patients multiple opportunities to ask questions and discuss concerns, and that patients who are not certain about their decision are advised by PPH to take more time to deliberate. *Id.* at 217. These facts have not changed since *PPH II* was decided. *See* Meadows Aff. ¶¶ 8, 20–21. Thus, as abortion patients in Iowa already receive comprehensive and appropriate informed consent, the Amendment's requirements provide no benefit whatsoever and Respondents will not be harmed by being unable to temporarily enforce the Amendment.

22. Finally, there is no adequate legal remedy. *See Ney v. Ney*, 891 N.W.2d 446, 452 (Iowa 2017). The Amendment will cause each woman subject to its mandates grievous injuries, including being delayed or unable to obtain abortions due to the requirements. Such injuries cannot later be compensated by damages.

23. 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, Petitioners are entitled to the preliminary relief they seek as necessary to protect the legal rights of their patients, as well as their patients' immediate health and safety while this case proceeds toward final resolution.

WHEREFORE, Petitioners pray this Court temporarily enjoins Respondents from enforcing the Amendment's mandatory delay and additional trip requirements.

Respectfully submitted,

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***Application for admission *pro hac vice* pending**