

IN THE SUPREME COURT OF IOWA

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

Petitioners,

v.

KIMBERLY K. REYNOLDS *ex*
rel. STATE OF IOWA and IOWA
DEPARTMENT OF HUMAN
SERVICES,

Respondents.

Supreme Ct. No. 19-1197

Polk Co. Case No. EQCE084567

**MOTION TO EXPEDITE
APPEAL**

COME NOW Petitioners-Appellants, by and through their undersigned attorneys, respectfully move for immediate, expedited review on their Appeal from the Polk County District Court’s July 18, 2019 order dismissing their equitable petition and denying their Motion for Temporary Injunction, and in support thereof state as follows:

1. Absent expedited review and relief from this Court, Petitioners-Appellants, Iowa Medicaid recipients who are transgender and who have a serious medical need for gender affirming surgery to treat their gender dysphoria, will continue to be significantly harmed by Division XX, Sections 93-94 of House File 766 (hereinafter “The Division”).

2. Contemporaneously with this request, Petitioners-Appellants have filed an emergency motion before this Court for a temporary injunction.

3. The Division has the express purpose and effect of reviving Iowa Admin. Code r. 441-78.1(4) (hereinafter “the Regulation”), which this Court held violated the Iowa Civil Rights Act (ICRA) before the Division carved out a facially discriminatory exemption to ICRA. (*See* Defs.’ Resistance to Mot. for Injunctive Relief at 4) (conceding that “the administrative rule [barring Petitioners from receiving gender-affirming surgery is] currently in effect . . .”).

4. The Division thus poses immediate and potentially life-threatening medical risks to Petitioners-Appellants, in addition to immediate and serious harms to their rights under the Iowa Constitution.

5. The gender-affirming surgeries which Petitioners require are medically necessary, and postponing this treatment poses an imminent risk to Petitioners’-Appellants’ health and safety. *See Good v. Iowa Dep’t of Human Servs.*, 924 N.W2d 853, 859 (Iowa 2019) (citing expert testimony that state’s denial of gender-affirming surgery causes “anxiety, depression, suicidality, and other attendant mental health issues”); Ex. 1: Vasquez Aff. ¶ 26 (“My depression, as well as my thoughts of self-harm, have been even more heightened after the new law [the Division] passed and I was forced to postpone the [gender-affirming surgery] I need.”); Ex. 6: Covington Aff. ¶ 32 (“Knowing I will not be able to proceed with surgery in September has

caused my depression and anxiety to intensify, and triggered some of my previous suicidal ideations.”). Not only would forcing Petitioners to go through further administrative process increase the risk to their health and safety, but it would also be futile: the Regulation makes the denial of Medicaid claims for medically necessary surgery mandatory and inevitable. Expedited review of this appeal is necessary to prevent the imminent threat to Petitioners’ physical and mental health posed by the district court’s misapplication of well-established legal principles.

WHEREFORE Petitioners-Appellants request the Court expedite its consideration of their appeal. Given the emergency nature of this appeal, Petitioners-Appellants understand that oral argument may not be practical. However, to the extent it would be helpful to hear argument, counsel for Petitioners-Appellants is prepared to make such oral argument, and respectfully asks this Court, in that event, to set the matter for an emergency hearing.

Respectfully submitted,

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*Admitted *pro hac vice* in the Iowa District Court case; Motion for admission *pro hac vice* in the Iowa Supreme Court case forthcoming