

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

<p>MIKA COVINGTON, AIDEN DELATHOWER, and ONE IOWA, INC.,</p> <p>Petitioners,</p> <p>v.</p> <p>KIM REYNOLDS <i>ex rel.</i> STATE OF IOWA and IOWA DEPARTMENT OF HUMAN SERVICES,</p> <p>Respondents.</p>	<p>Equity Case No. EQCE084567</p> <p><b>PETITIONERS' RESISTANCE TO MOTION TO DISMISS</b></p>
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**COME NOW** Petitioners, and in Resistance to Respondents' Motion to Dismiss, state as follows:

**I. Introduction**

The State's three arguments in seeking to dismiss Petitioners' case fail. First, under the governing standard, One Iowa has standing to challenge the Division as a violation of equal protection, Iowa's Single-Subject and Title Rules under article III, § 29 of the Iowa Constitution, and Iowa's inalienable rights clause. Second and third, the State's procedural and ripeness arguments asking the Court to dismiss all claims and require Petitioners to instead proceed with various administrative remedies, which are the same as those argued in their Resistance to Petitioners' motion for a temporary injunction, fail for the same reasons as argued by Petitioners in their Reply.

**II. Argument**

**A. Legal Standard Governing Motions to Dismiss**

In Iowa, the filing or granting of motions to dismiss is disfavored. *Henry v. Shober*, 566 N.W.2d 190, 191 (Iowa 1997) (*overruled on other grounds by Dickens v. Assoc. Anesthesiologists, P.C.*, 709 N.W.2d 122, 127 (Iowa 2006)). Iowa applies a notice pleading standard to petitions, and

a petition will survive a motion to dismiss as long as the pleadings establish any possibility of valid recovery. *Cutler v. Klass, Whicher, & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991). “In determining whether to grant the motion to dismiss, a court views the well-pled facts of the petition in the light most favorable to the plaintiff, resolving any doubts in the plaintiff’s favor.” *Turner v. Iowa State Bank & Trust Co.*, 743 N.W.2d 1, 3 (Iowa 2007). (citing *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004)). A defendant carries a heavy burden to succeed on a motion to dismiss:

We recognize the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity. Experience has however taught us that vast judicial resources could be saved with the exercise of more professional patience. Under [our rule governing motions to dismiss] dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial. From a defendant’s standpoint, moreover, it is far from unknown for the flimsiest of cases to gain strength when its dismissal is reversed on appeal.

*Cutler*, 473 N.W.2d at 181. So long as the plaintiff’s petition alleges facts which, when accepted as true, establish the possibility of a valid recovery, the court must overrule the motion to dismiss. *Id.* Since the advent of notice pleading under the Iowa Rules of Civil Procedure, “it is a rare case which will not survive a [motion to dismiss].” *Am. Nat’l Bank v. Sivers*, 387 N.W.2d 138, 140 (Iowa 1986).

Thus, the burden is on State, as the movant, to establish that a sufficient basis exists to dismiss the suit against it based on facts alleged on the face of the Petition. As set forth below, it cannot meet this burden.

**B. Petitioner One Iowa Has Standing to Challenge the Division’s Violation of the Single-Subject Rules.**

The State argues that Petitioner One Iowa lacks standing on its Single-Subject claims, arguing that the organization has not asserted facts showing that the Division “cause[s] or

threaten[s] direct and concrete injury” to One Iowa, Inc. (Mot. to Dismiss at 2-3). It also argues that One Iowa’s Single-Subject claims should be dismissed because One Iowa’s interests are sufficiently represented by Petitioners Covington and Vazquez. (Id.).<sup>1</sup> The State’s arguments fail because One Iowa has standing in two ways, either of which is sufficient to challenge the Division. First, One Iowa has direct organizational standing, because the Division causes it direct injury. Second, One Iowa has representational standing because the Division causes its board members, staff members, and volunteer members injury; the interests at stake are germane to the organization’s purpose; and neither the claim nor relief requires participation of organization members.

*1. One Iowa has direct organizational standing.*

Standing, while prudential rather than jurisdictional under the Iowa Constitution, “essentially follows the federal doctrine on standing.” *Godfrey v. State*, 752 N.W.2d 413, 424 (Iowa 2008). Generally, standing doctrine requires a plaintiff to “(1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.” *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). In order to satisfy the first prong of this test, the Court “no longer require[s] the litigant to allege a violation of a private right and do[es] not require traditional damages to be suffered. Instead, we require the litigant to allege some type of injury different from the population in general.” *Godfrey v. State*, 752 N.W.2d at 420 (citing *Hurd v. Odgaard*, 297 N.W.2d 355, 358 (Iowa 1980), as “a good example of our approach.”).

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<sup>1</sup> The State does not include any argument as to Petitioner One Iowa’s other claims under state constitutional equal protection, the Title Rule, or inalienable rights clauses. (Mot. to Dismiss at 2-3). However, the analysis is the same with regard to One Iowa’s injuries as to all three constitutional claims under both applicable standing doctrines discussed in this section.

In *Hurd*, the Court explained, two lawyers who used a county courthouse who brought a mandamus action to compel the county to repair it had demonstrated standing, even though they did not have monetary or traditional damages, because their status as users of the building asserted sufficient identifiable injury. *Id.* The Court elucidated the principle it applied to distinguish their interest from the general population's interest, holding that "litigants who share intangible interests 'in common with all other citizens' must also identify some individual connection with the affected subject matter to satisfy the injury-in-fact requirement." *Id.*

In *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Supreme Court recognized that direct organizational injury is typically shown in one of two ways: (1) a diversion of organizational resources to identify or counteract the allegedly unlawful action, or (2) frustration of the organization's mission. *Id.* at 379. In this case, One Iowa easily succeeds under either method. One Iowa expends significant organizational resources to increase healthcare access for transgender Iowans, including keeping transgender people and healthcare professionals and agencies informed about how to help transgender Iowans who are transitioning, through its Transgender Advisory Council and its LGBTQ Leadership Institute. (Pet. at ¶ 53, 55, 57, 59). Because of the Division, it must now expend additional time and resources to provide this education and advocacy. In meeting its mission to advance, empower, and improve the lives of LGBTQ Iowans statewide, One Iowa diverted policy and advocacy resources to opposing the Division in the Iowa legislature and in seeking a veto from the Iowa Governor. (Pet. at ¶ 52; Crow Aff. at ¶ 13-15). Likewise, as a result of the Division, One Iowa's organizational mission has been frustrated. Where it seeks to expand access to healthcare for transgender Iowans (Pet. at ¶ 52, 53, 55), the Division has thwarted those efforts with regard to access to gender affirming surgery for

transgender Iowans on Medicaid. This includes members of One Iowa's Transgender Advisory Council and members of One Iowa's LGBTQ Leadership Institute. (Pet. at ¶ 60).

The interests that One Iowa asserts in its Single-Subject Rule claim, as in its other claims, are both concrete and distinct from the general population. The *Godfrey* case cited by the State, (Mot. to Dismiss at 2), is distinguishable from the case at bar on that basis. In *Godfrey*, the petitioner had brought a Single-Subject Rule claim based on her status as a citizen, taxpayer, and a potential workers' compensation claimant. *Godfrey*, 752 N.W.2d at 417. But *Godfrey*'s citizen and taxpayer-claim injuries were the same as the population in general, and her claims as a potential workers' compensation claimant was based "solely on her status as a worker with a prior work-related injury covered by the challenged workers' compensation statute." *Id.* at 423. It thus "d[id] nothing to establish the likelihood of an actual or immediate threat of another covered injury." *Id.* The Court analogized those types of injuries to the *Lyons* case, where the U.S. Supreme Court found that a plaintiff who had previously been placed in a police choke hold had not demonstrated sufficient "immediate or continuing injury" based on his prior injury. *Id.* (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)).

Here, by contrast, there is not lack of immediacy as to One Iowa's claims. Its claims are not based on speculation that a prior injury may lead in the future to another, but immediate and continuing injury distinct from that of the general population. It has *already* suffered and continues to suffer harm as a result of the Division, both in terms of the diversion of resources to oppose and counteract the Division, and the frustration of its organizational purpose, as explained above. Because One Iowa has direct organizational standing to challenge the Division, the State's motion to dismiss should be denied.

2. *One Iowa also has representational standing.*

One Iowa also has representational standing. Because Iowa's two-prong test parallels the federal rules governing standing, *Godfrey*, 752 N.W.2d at 422-424, federal law on the standing of organizations like One Iowa is persuasive to this Court's analysis of standing to bring the state constitutional challenges at bar. *See also Citizens for Washington Square v. Davenport*, 277 N.W.2d 882, 886 (Iowa 1979) (applying the organizational standing test set forth by the U.S. Supreme Court in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 433, 443 (1977)); *Homeowners Ass'n of Coves of Sundown Lake v. Appanoose County Bd. of Sup'rs*, 2014 WL 1234312, at \*2 (Iowa Ct. App. 2014) (unpublished decision) (same). Under this test, an organization has standing when (1) its members, or any one of them, would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt*, 432 U.S. at 343. Because One Iowa meets all three-prongs of the test for representational standing, as set forth below, the State's Motion to Dismiss should be denied.

Under the first prong of the *Hunt* test, the organization must show that its members, or at least one of them, qualify for standing. In this case, many of One Iowa's supporters, donors, board members, staff members, and volunteer members of One Iowa's Transgender Advisory Council and members of its LGBTQ Leadership Institute are transgender, are current Iowa Medicaid recipients, and have a medical need for gender affirming surgery.<sup>2</sup> (Pet. at ¶ 56-60). Among others,

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<sup>2</sup> One Iowa does not have dues-paying members; however, because it has a Board, Transgender Advisory Council, and LGBTQ Leadership Institute, including Petitioners Vazquez and Covington, all of which have volunteer members who collectively determine the organization's programming and direction regarding transgender rights advocacy, representational standing doctrine applies to those facets of its organization. *See Hunt*, 432 U.S. at 334, 344 (recognizing

Petitioners Covington and Vazquez are members of One Iowa’s Transgender Advisory Council. (Pet. at ¶ 58). The State does not challenge Petitioner Vazquez and Covington’s standing to sue in their own their right in their motion, (Mot. to Dismiss at 2-3), and thus concedes that this prong is met.

The second requirement of representational standing under *Hunt* is also easily met in this case. This prong requires that the interests that One Iowa seeks to protect in bringing this action are germane to the organization’s purpose. *Hunt*, 432 U.S. at 343; *Homeowners Ass’n of Coves of Sundown Lake*, 847 N.W.2d at \*2. Here, One Iowa’s purpose is to advance, empower, and improve the lives of LGBTQ Iowans statewide. (Pet. at ¶ 52). It has a major focus on increasing healthcare access for transgender Iowans. (Pet. at ¶ 55). Working with healthcare providers who specialize in issues related to transgender people, One Iowa helps to inform other healthcare professionals and agencies about how to address transgender people who might be transitioning, and what kind of resources exist to help them through the process of transitioning. (*Id.*) There is a clear nexus between the purpose of One Iowa as an organization, i.e., advocating for LGBTQ rights with a major focus on the rights of transgender people to access healthcare they need, and the right it seeks to protect in this litigation, i.e., the right to health care for transgender members. —

The final prong to show representational standing under *Hunt* requires that “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” The Court has focused on how particularized the harm is to each member asserted for standing, and whether individualized proof would be required to address the claims of the

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that representational standing is not limited to traditional membership organizations); *see also Friends of the Earth, Inc. v. Chevron Chem. Co.*, 128 F.3d 826, 827–29 (5th Cir. 1997) (organization without any formal membership requirements still had representational standing); *Concerned Citizens Around Murphy v. Murphy Oil USA, Inc.*, 686 F. Supp. 2d 663, 675–77 (E.D. La. 2010) (same).

individual members. Individual participation would be required if each member was uniquely situated so as to require the court to determine facts about each one.

In *United Automobile Workers v. Brock*, the U.S. Supreme Court found the third prong fulfilled when the suit “raise[d] a pure question of law,” and did not require the examination of facts unique to each member of the association. 477 U.S. 274, 287-88 (1986); *Homeowners Ass’n of Coves of Sundown Lake*, 847 N.W.2d at \*2. In addition, the U.S. Supreme Court has clearly stated that individual participation is likely to be required when an association is seeking damages for members of its group, but not necessarily for prospective relief. *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544 (1996).

In this case, Petitioners are not challenging individual coverage denials; rather, they challenge the Division itself. (Pet. at 96-102). As a result, no individual members’ are required to participate in the litigation. The Petitioners’ challenge to the Division is similar to *Brock*, because they challenge the law by seeking prospective relief and, unlike an individual coverage denial, the case does not require analysis of the individuals’ unique facts. Rather, Petitioners’ claims are purely legal—whether the Division violates equal protection on its face, whether the Division was motivated by animus against transgender people, whether the Division violates Iowa’s Single-Subject and Title Rules, and whether the Division facially violates Iowa’s inalienable rights clause. As in *Brock*, if Petitioner One Iowa is successful on its Single-Subject Rule argument in invalidating the Division, Medicaid can then determine any claims to coverage for gender affirming surgery, consistent with Medicaid procedures, on a case-by-case/patient-by-patient basis. Thus, One Iowa’s members share an interest in overturning the Division so that their individual claims under Medicaid can be determined according to medical necessity and member



eligibility on the same basis as all other Iowans, rather than on a discriminatory basis because they are transgender.

Because Petitioner One Iowa meets all three prongs to show representational standing, the State's motion to dismiss One Iowa's Single-Subject Claim must be denied.

3. *Leave to amend, rather than dismissal, is the appropriate remedy.*

Finally, in the event that the Court finds that Petitioner One Iowa has not sufficiently asserted facts showing its standing to bring its Single-Subject Rule claim, Petitioner One Iowa alternatively moves this Court for leave to amend its petition to reflect (1) One Iowa's active role in the Iowa legislature and before the Iowa Governor's Office in opposing the Division and seeking its veto and (2) the injuries One Iowa sustained to its organizational mission, as well as the injuries sustained by its board members, staff members, and volunteer members, as a result of the Division. (*See Crow Aff.* ¶¶ 10-18); Iowa R. Civ. Pro. 1.402(4) (providing that "Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires."); *Chao v. City of Waterloo*, 346 N.W.2d 822, 825 (Iowa 1984) (finding district court should have granted city's motion for leave to amend its cross-petition when proposed amendment would clarify its legal theory but cause no surprise as to issues before the court in the case); *Scott v. Grinnell Mut. Reinsurance Co.*, 653 N.W.2d 556, (Iowa 2002) ("The crucial question is whether the amendment [to the petition] substantially changed the issues before the court.") (citing *Allison-Kesley Ag Ctr., Inc. v. Hildebrand*, 485 N.W.2d 481, 485 (Iowa 1992)).

Here, should the Court determine an amended petition is necessary, it should permit One Iowa to file an amended petition. The facts asserted in the Crow Affidavit do not change the nature of One Iowa's claims, but rather provide clarifying detail as to the manner in which One Iowa was

injured. Furthermore, it serves the interest of justice to allow One Iowa to challenge the Division and seek a remedy for the significant constitutional injuries alleged.

**C. Petitioners Have Stated Claims for Injunctive Relief.**

The State makes the same argument in seeking to dismiss Petitioners' three constitutional claims to permanent injunctive relief as it does in resisting Petitioners' motion for temporary injunctive relief. (Resp. Resistance at 2-5; Mot. to Dismiss at 4-6).<sup>3</sup> In both its Motion and Resistance, the State argues that Petitioners' have an adequate remedy at law under the Iowa Administrative Procedures Act, and that to challenge the Division, Petitioners must pursue one or more of three separate administrative procedures: an appeal of an individual coverage denial, a petition to challenge the discriminatory and unconstitutional Regulation, or an exception to the State's policy of denying medically necessary gender affirming surgery. (Id.).

Noting the high burden on the State to win a motion to dismiss, (see II.A, above), and for the same reasons explained in detail in Petitioners' Reply, which Petitioners incorporate by reference herein, these arguments fail. (Reply at 2-5) (explaining that the State's ripeness argument fails under the Court's two-prong ripeness inquiry both because Petitioners' claims require no further factual development and because withholding adjudication would cause Petitioners significant harm.).

**D. Petitioners' Claims Are Ripe.**

In seeking to dismiss Petitioners' claims in their entirety, the State makes the same ripeness argument it did in resisting Petitioners' motion for a temporary injunction. (Resp. Resistance at 5-6; Mot. to Dismiss at 7-8). It argues that because Petitioners have not sought various administrative

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<sup>3</sup> Petitioners also seek declaratory relief on all three of its constitutional claims, (Pet. at 16), which the State does not seek to dismiss based on administrative remedies. (Mot. to Dismiss at 4-6).

remedies under the Iowa Administrative Procedures Act, they are barred from seeking invalidation of the Division, a state statute that violates Petitioners' constitutional rights under Iowa's Equal Protection guarantees, Single-Subject and Title Rules, and Inalienable Rights Clause. (Id.)

Noting the high burden on the State to win a motion to dismiss, (see II.A, above), and for the same reasons explained in detail in Petitioners' Reply, which Petitioners incorporate by reference herein, these arguments fail. (Reply at 5-10) (explaining that Petitioners are challenging an unconstitutional statute in this action, not an administrative decision or rule, and administrative law remedies cannot provide relief to Petitioners on their claims against the statute.).

### **III. Conclusion**

At this preliminary stage of proceedings, and viewing the facts in the light most favorable to the plaintiff, *Turner*, 743 N.W.2d at 3, the State cannot meet the high burden necessary to succeed on a motion to dismiss on any of the grounds asserted.

WHEREFORE, Petitioners pray this Court deny Respondents' Motion to Dismiss in its entirety.

Respectfully submitted:

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