IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Planned Parenthood of the Heartland, Inc., and Jill Meadows, M.D.,	)	
Petitioners,	)	**No. EQCV081855**
vs.	)	
	)	**RULING**
Kim Reynolds ex rel. State of Iowa, and Iowa Board of Medicine,	)	
Respondents.	)	

A telephonic hearing took place on June 29, 2020, on Petitioners' Emergency Motion for Temporary Injunctive Relief. Appearances were made by the following counsel: Attorney Rita Bettis Austen of the American Civil Liberties Union of Iowa Foundation, and Attorney Alice Clapman and Attorney Christine Clarke, both of the Planned Parenthood Federation of America, all for Petitioners, and Iowa Solicitor General Jeffrey S. Thompson and Assistant Iowa Attorney General Thomas J. Ogden for Respondents.

Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

In the early morning hours of Sunday, June 14, 2020, the Iowa Legislature passed Amendment H-8314 (hereinafter the Amendment) to House File (hereinafter HF) 594, 88th Gen. Assemb. (Iowa 2020), to be codified at Iowa Code § 146A.1(1) (2020), under the Iowa Constitution. Petitioners' Exhibit A, attached to the Petition. Text for the Amendment was released on the evening of Saturday, June 13, 2020. The Amendment was part of an existing bill related to the withdrawal of life-sustaining procedures from minors. Iowa Governor Kim Reynolds signed the Amendment into law on June 29, 2020. Absent injunctive relief, the Amendment will go into effect on July 1, 2020, and will require women seeking an abortion to first receive an ultrasound and certain state-mandated information, and then wait at least 24 hours before returning to the health center to have an abortion. Respondent Iowa Board of Medicine will be charged with administering the Amendment and disciplining individuals licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148, including licensees who violate a state statute.

Petitioners provide, among various other health care services, abortion procedures, including in Johnson County, Iowa. Petitioner Planned Parenthood of the Heartland, Inc. (hereinafter PPH) provides abortions up to 20 weeks and 6 days, as measured from the first day of a patient's last menstrual period (hereinafter "lmp"), which is, according to Petitioners, weeks before a fetus is potentially viable. Petitioner Dr. Jill Meadows is the medical director of PPH, and Dr. Meadows provides reproductive health care to PPH patients, including medication and procedural abortion.

Petitioners' Petition for Declaratory Judgment and Injunctive Relief

Petitioners filed a Petition for Declaratory Judgment and Injunctive Relief with this Court on June 23, 2020. Petitioners contend that the Amendment flagrantly defies clear and binding precedent recognizing that Iowans have a protected liberty interest in terminating an unwanted pregnancy, including based on the Iowa Supreme Court's 2018 decision to strike from Iowa Code § 146A.1(1) a 72 hour mandatory delay requirement. Petitioners also contend the Amendment at issue is identical to the 72 hour mandatory delay that has been struck down by the Iowa Supreme Court.

Petitioners assert that, in accordance with pre-existing Iowa law and PPH's medical practices, Petitioners already perform an ultrasound on patients prior to abortions; ensure that patients receive all the information necessary so that they may make a fully informed and voluntary decision; and confirm that they are firmly decided before beginning the procedure. Before the Amendment takes effect, Petitioners have been allowed to provide the ultrasound and obtain informed consent on the day of the abortion procedure. Petitioners claim the requirements of the Amendment offer women no benefit and will severely and abruptly burden their access to abortion. Petitioners contend the requirements will delay women from obtaining an abortion; are likely to prevent some women from obtaining an abortion altogether; will prevent some women from getting a medication abortion; and will make it impossible for some to have an abortion in Iowa at all if they are pushed past the gestational age at which Iowa's providers offer abortion. Petitioners also contend the requirements of the Amendment will be especially burdensome for women in vulnerable groups, such as those with low incomes; victims of intimate partner violence or sexual assault; women whose wanted pregnancies involve a severe fetal anomaly; and those with medical complications that do not fall under the extremely narrow medical emergency exceptions provided under the Amendment.

With respect to abortion generally, Petitioners offer the following "Operative Facts" (the Court is reciting these facts, as presented by Petitioners, in this section of this Ruling, but does not specifically adopt or confirm any of the following "a-f" facts at this time):

a. A full-term pregnancy has a duration of approximately 40 weeks "lmp," and in Iowa, abortion is almost entirely banned at 22 weeks "lmp," which is about halfway through pregnancy.

b. Iowans can obtain two types of abortions, medication abortion and procedural abortion. Medication abortion is a method of terminating an early pregnancy by taking medications that empty the uterus in a manner similar to an early miscarriage. PPH offers medication abortion up to 77 days (11 weeks) "lmp." Procedural abortion (sometimes referred to as surgical abortion) is a method of terminating pregnancy by using instruments to evacuate the contents of the uterus.

c. Legal abortion is one of the safest procedures in contemporary medical practice.

d. Both medication abortion and procedural abortion are substantially safer and require substantially fewer medical interventions than continuing a pregnancy through to childbirth. The risk of death associated with childbirth is approximately 14 times higher than that associated with abortion, and complications such as hemorrhage are far more likely to occur in childbirth than abortion. As many as 10% of women who carry to term are hospitalized for complications associated with pregnancy, leaving aside from hospitalization for delivery.

e. Women decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Some end a pregnancy because they conclude that it is not the right time in their lives to have a child or add to their families; some do so because they receive a diagnosis of a severe fetal anomaly; some do so because they have become pregnant as a result of rape; some do so because they choose not to have biological children; and some do so because continuing with a pregnancy could pose a greater risk to their health.

f. Approximately 1 in 4 women in the United States will have an abortion by age 45 years. 59% of women who seek abortions are mothers who have decided that they cannot parent another child at this time, and 66% plan to have children or add to their families at a later stage, such as when they are older, are more financially able to provide necessities for children, and/or are in a supportive relationship with a partner so that their children will have two parents.

Petitioners state that Iowa law requires physicians to obtain a patient's informed consent before performing any medical procedure, including disclosing information material to a patient's decision to consent to medical treatment and all material risks involved in the procedure. Petitioner also states that Iowa statutes already specifically mandate that patients seeking abortions be given an opportunity to view the pre-procedure ultrasound and be provided information on pregnancy options. Before the Amendment goes into effect, the ultrasound can be performed and the information can be provided on the same day as the procedure. Petitioners claim that PPH's informed consent process is consistent with these legal requirements and the standard of care, and PPH uses a comprehensive informed consent process for abortion, available on the day of the procedure, which provides patients with all information necessary for them to fully understand the risks and benefits of abortion and alternatives to abortion. Petitioners also claim this process ensures that after a patient thoroughly considers this information, the patient gives consent that is informed and voluntary, and can make the decision with confidence. Petitioners assert that PPH gives its patients multiple opportunities to ask questions and discuss any concerns with their physician prior to an abortion. Petitioners further assert that PPH screens abortion patients to ensure that they are firm in their decision before treatment is initiated. Petitioners contend that staff members who take patients through this process are trained to ask open-ended questions, draw out patients about their decision-making and state of mind, and identify red flags such as pressure from others. Petitioners also contend that the overwhelming majority of patients are sure of their decision by the time they come to PPH, and if they are not sure, PPH clinicians advise them to take more time to come to a clear decision before having an abortion.

Petitioners point out that in 2018, the Iowa Supreme Court decided the case of Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206 (Iowa 2018) (the Court will refer to this opinion as PPHI in later portions of this Ruling, and the opinion will be discussed at greater length later in this Ruling). PPHI was decided in light of the Iowa Legislature's 2017 passage of a law requiring physicians to wait at least 72 hours between obtaining written certification from a pregnant woman that she has completed a number of steps at least 72 hours prior to an abortion procedure, and performing an abortion. The Iowa Supreme Court found the law unconstitutional. Id. at 237-238. Petitioners contend that PPHI is controlling, and in light of the PPHI case, Respondents are precluded and collaterally estopped from re-litigating nearly identical issues already decided in PPHI.

Petitioners state the Amendment at issue in this case was added to a bill initially titled "An Act relating to limitations regarding the withdrawal of a life-sustaining procedure from a minor child." Petitioners further state the bill, as introduced, creates Iowa Code § 144F.1, which Petitioners claim deprives courts of law and equity from authorizing the withdrawal of life-sustaining care from a minor over the parent's or guardian's objection, unless there is conclusive medical evidence the minor has died. Petitioners state HF 594 defines "life sustaining procedure" with reference to Iowa Code § 144A.2, which provides:

> "Life-sustaining procedure" means any medical procedure, treatment, or intervention, including resuscitation, which meets both of the following requirements: (1) Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function. (2) When applied to a patient in a terminal condition, would serve only to prolong the dying process.

Iowa Code § 144A.2 (2019).

Petitioners assert that neither a continuing pregnancy nor an abortion fall under the definition of procedures which are the subject of HF 594, as defined in Iowa Code § 144A.2. Petitioners further assert that, despite taking no action on the bill since March, 2019, the Iowa Senate took up the measure on the afternoon of Saturday, June 13, 2020, at approximately 4:00 p.m., amending the measure by adding numbering to create subsections and defining "minor." Petitioners contend that, once amended, however superficially, HF 594 had to be sent back to the Iowa House for another vote. Petitioners also contend that lawmakers expressed concern that the purely superficial changes were being made for the sole purpose of sending the bill back to the Iowa House so that another last minute amendment could be introduced, and when HF 594 returned to the Iowa House, at approximately 10:18 p.m., the Amendment was immediately introduced. Petitioners claim that because the Amendment was introduced on the last evening of the legislative session, lawmakers only learned of its existence mere hours before being required to vote on it, which resulted in surprise for legislators.

Petitioners contend that the Amendment revives the exact language stricken by the Iowa Supreme Court in PPHI, and merely replaces the word "seventy-two" with "twenty-four," such that the following language would be added to Iowa Code § 146A.1(1):

> A physician performing an abortion shall obtain written certification from the pregnant woman of all of the following at least seventy-two hours prior to performing an abortion.

Petitioners state the Amendment revised the bill's title to "An Act relating to medical procedures including abortion and limitations regarding the withdrawal of a life-sustaining procedure from a minor child." Petitioners assert that one of the bill's sponsors stated she believed it was reasonable to expect that the mandatory delay would cause women seeking abortion to change their mind, and another sponsor stated that the Iowa Constitution protects an individual's right to continue or terminate a pregnancy and expressed hope that the bill "will provide an opportunity for the courts to rectify the terrible situation they've created." Petitioners further assert that a member of the Iowa House objected that the amendment was not germane, and another member successfully moved to suspend the Iowa House's rules to consider the Amendment despite the fact that it was not germane. The Iowa House passed the bill, as amended, just before 11:00 p.m. on Saturday, June 13, 2020, and the Iowa Senate passed HF 594, with the Amendment at approximately 5:30 a.m. on Sunday, June 14, 2020. Petitioners state that Iowa voters were unable to learn of the existence of the Amendment until Saturday evening, mere hours before it was voted on, and because the Amendment was attached to a prior Iowa Senate amendment, the Iowa Senate was not permitted to introduce or consider any alterations to the Amendment. Petitioners further state that five other bills seeking to restrict abortion access were introduced as bills during the 2020 legislative session, and all five went through the normal legislative process, including public hearings, and none were enacted into law.

Petitioners claim the minimum 24 hour delay and additional trip requirements in the Amendment provide no additional benefit to women in seeking an abortion, and burden them in the following multiple ways:

1. The Amendment is an unwarranted intrusion into a woman's personal privacy and autonomy; interferes with the physician-patient relationship; conveys judgment and moral disapproval from the State; and will cause anxiety associated with delaying an abortion that an individual has decided to have.

2. The Amendment will impose tangible costs on all women seeking this care.

3. The Amendment will threaten the confidentiality of women.

4. The Amendment will likely result in delays of greater than 24 hours.

5. The delays that the Amendment will cause will threaten patient's health.

6. The additional trip requirement exposes patients to further stigmatization and anxiety caused by unwanted interactions with anti-abortion activists who protest outside of PPH health centers by targeting their messages at pregnant women seeking abortions.

7. The mandatory delay and additional trip requirements will make it far harder for patients to have a medication abortion, which is currently available at 6 PPH health centers in Iowa, but is available only early in pregnancy.

8. The mandatory delay requirement will result in some being prevented from obtaining an abortion in Iowa altogether, because the delay will push them past the gestational age at which procedural abortions are available.

Petitioners also express concerns regarding the impact of the Amendment on vulnerable populations, as well as harm that may be caused during the ongoing COVID-19 public health emergency, e.g., reducing visits to health care facilities. Petitioners contend the State has no compelling or important interest in imposing the mandatory delay and additional trip requirements on women who have made the decision to terminate their pregnancies, and even if the interest was compelling, the Amendment is not narrowly tailored to the achievement of that interest, nor is it substantially related to the achievement of an important governmental objective.

Count I of the Petition is for Single Subject Violation. Count II of the Petition is for Right to Due Process. Count III of the Petition is for Right to Equal Protection. Count IV of the Petition is for Inalienable Rights of Persons. Petitioners seek a declaration that Section 2 of HF 594 violates the Iowa Constitution, and seek an injunction enjoining Respondents from enforcing Section 2 of HF 594. Petitioners also seek an award of costs.

Petitioners' Emergency Motion for Temporary Injunctive Relief

Petitioners filed their Emergency Motion for Temporary Injunctive Relief on June 23, 2020. In support of the Emergency Motion, Petitioners have submitted affidavits from Representative Beth Wessel-Kroeschell of the Iowa House of Representatives (Exhibit 1); Connie Ryan, the Executive Director of the Interfaith Alliance of Iowa and the Interfaith Alliance of Iowa Action Fund (Exhibit 2); Dr. Meadows, who is an obstetrician and gynecologist licensed to practice in Iowa (Exhibit 3); Daniel Grossman, M.D., a professor in the Department of Obstetrics, Gynecology, and Reproductive Sciences at the University of California, San Francisco (Exhibit 4); Lenore Walker, Ed.D., a clinical psychologist licensed to practice psychology in Florida, New Jersey, and Colorado (Exhibit 5); Jane Collins, PhD, a professor emeritus (pending) at the University of Wisconsin, Madison (Exhibit 6); and Jason Burkhiser Reynolds, the Regional Director of Health Services at Planned Parenthood of the Heartland (Exhibit 7).

Petitioners state that if Governor Reynolds signs HF 594 into law before July 1, 2020, it will take effect on July 1, 2020, absent relief from this Court. Petitioners assert that women seeking abortions in Iowa then will be severely and unconstitutionally restricted in their ability to access abortion, a harm for which no adequate legal remedy exists. Petitioners further assert that the Amendment forces all women seeking an abortion, regardless of how certain they are in their decision or medical circumstances, to make an additional, medically unnecessary trip to a health center, 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 of sexual assault or intimate partner violence; or her

individual life circumstances. Petitioners contend 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.

Much of the background and procedural information set forth in Petitioners' Brief in support of the Emergency Motion is substantially the same as that presented in the Petition, as discussed by the Court earlier in this Ruling, although Petitioners have included citations to the affidavits submitted in support of the Emergency Motion. While the Court has reviewed each of the affidavits and the citations to them that Petitioners now have provided, the Court does not find it necessary to again set forth all of this background and procedural information. The Court focuses primarily on the legal arguments made by Petitioners in their Brief.

Petitioners argue that they have established a likelihood of success on their claims. First, Petitioners contend they are likely to show that the Amendment was passed in violation of the Iowa Constitution's single subject rule, which is that "Every act shall embrace but one subject, and matters properly connected therewith." See Iowa Const. art. III, § 29. Petitioners assert the single subject rule is mandatory, and an act that violates the single subject rule is invalid and unenforceable. Petitioners further assert the Amendment was passed in plain violation of the single subject rule, as it was attached to a bill regarding life-sustaining procedures for a minor child. Petitioners claim the Amendment was admitted without debate by the Speaker of the Iowa House, and the rule suspension to allow the Amendment to be voted on in no way cures the constitutional defect. Petitioners argue the process was "log-rolling," in that it attached a controversial abortion restriction to a non-controversial bill concerning a parent's right to control medical care provided to a dying child. Petitioners further argue the single subject violation resulted in total surprise among legislators, and afforded them no time to consider or debate its substance. Finally, argue Petitioners, the single subject violation prevented Iowa citizens from being fairly informed of the subjects the legislature is considering. Petitioners also describe the process as "double-barreling," as the Amendment was attached to an entirely unrelated bill, as well as amended to an entirely unrelated amendment, which resulted in no further amendments being permitted.

Petitioners' next argument is that they are likely to show that the amendment violates the Due Process and Equal Protection clauses of the Iowa Constitution. Petitioners argue Respondents are precluded from seeking to re-litigate the factual findings and legal conclusions concerning the unconstitutionality of mandatory delay requirements, since those issues were already fully litigated in decided in PPHI, to which Respondents were parties. Petitioners further argue that even if Respondents were not precluded from re-litigating the constitutionality of, or underlying factual issues related to, mandatory delay laws such as the Amendment, Petitioners are more than likely to succeed in showing that the Amendment fails the standard set forth in PPHI.

Next, Petitioners argue that they and their patients will be substantially injured if this Court does not enjoin Respondents from enforcing the Amendment, and the balance of hardships warrants injunctive relief. Petitioners contend the Amendment's requirements will irreparably harm Petitioners' patients by violating their constitutional rights, and by delaying women access

to care. Petitioners also contend that weighing the relative harms of the parties further supports a grant of temporary injunctive relief, as Respondents will not suffer any harm from Petitioners' patients continuing to receive care without mandatory delay.

Finally, Petitioners argue that there is no adequate legal remedy available. Petitioners assert that the Amendment will cause women subject to its mandate grievous injuries, including delaying or preventing them from terminating an unwanted pregnancy, and such injuries cannot later be compensated by damages.

Respondents have resisted the Emergency Motion for Temporary Injunctive Relief. Respondents argue that PPH cannot show that it will be irreparably harmed absent an injunction. Respondents assert PPH has not proven that it meets the third-party standing requirements to assert the rights of abortion patients. Respondents point out that no PPH patients are parties to this action, and while abortion providers suing to enjoin laws and regulations affecting abortion patients on their behalf is commonplace, the PPHI line of cases in Iowa has not considered the question of whether PPH has standing to sue on behalf of Iowa women. Respondents do not contest that Petitioners have a sufficient "injury in fact" to sue on their own behalf, since the law regulates abortion providers, but they have not shown that they have a close relationship with the third parties who they represent, nor have they shown that abortion patients are hindered from asserting their own rights. Respondents contend that PPH is a business that cannot enjoy a doctor-patient relationship with Iowa women, and Dr. Meadows has not set forth sufficient assertions to show she possesses a sufficiently close doctor-patient relationship with abortion patients in Iowa. Respondents also contend that even if a doctor-patient relationship exists, PPH has not proven the existence of a hindrance faced by Iowa women to assert their own rights. Respondents assert PPH has not presented any testimony from a past or prospective patient, and has provided no explanation for the absence of any patient from this case. Respondents claim PPH's only evidence of harm relates to "financial burdens," and the need to "add staff, revisit scheduling templates, or extend hours." Respondent argues this is not sufficient to carry PPH's burden to show irreparable harm absent an injunction.

Respondents' next argument is that PPH has not shown that it is likely to succeed on the merits. With respect to the single subject rule, Respondents argue that the rule must be liberally construed, and not be used to embarrass legislation or hamper the Iowa Legislature. Respondents contend there is a very low success rate in single subject challenge analysis, and the subject of the bill, which is "An Act Relating to Medical Procedures Including Abortion and Limitations Regarding the Withdrawal of a Life-Sustaining Procedure from a Minor Child" is not clearly, plainly, and palpably unconstitutional, nor is this the kind of case where unconstitutionality appears beyond a reasonable doubt.

Respondents' next argument concerns due process and equal protection. Respondents assert that PPH's standing to bring due process and equal protection claims on behalf of its patients was not litigated or decided in PPHI, and Respondents reiterate their argument that PPH has not met its burden of proving that it has third-party standing to bring those claims. Respondents further argue that neither the United States Supreme Court nor the Iowa Supreme Court has recognized a due process right to perform abortions. With respect to issue preclusion, Respondents argue that HF 594 is not identical to the law struck down in PPHI, and while this

Court is not at liberty to overrule a decision of the Iowa Supreme Court, this Court need not reach the merits of PPH's due process and equal protection claims on behalf of Iowa women.

Petitioners reply (supported by a supplemental affidavit from Dr. Meadows) that all recent abortion rights cases in Iowa were successfully brought by Petitioners on their patients' behalf, and Respondents have not disputed that Petitioners' patients will be harmed absent temporary injunctive relief. Petitioners contend abortion providers may sue to challenge abortion restrictions that operate directly on the providers in a manner that burdens their patients' constitutional rights, and Petitioners clearly have a sufficiently close relationship with their patients to assert these rights on their behalf. Petitioners also contend abortion patients are hindered from bringing claims, including with respect to their privacy rights and timeliness issues surrounding the procedure they seek.

As to the single subject rule issue, Petitioners argue that Respondents have not shown how the germaneness of the Amendment is fairly debatable, and in this case, the Iowa House did not engage in any debate before the Speaker of the Iowa House ruled the Amendment not germane. With respect to the low success rate of single subject challenges, Petitioners assert that many of the causes of failures of such challenges are due to failure to timely file the challenge, and due to a lack of such a blatant single subject violation as is present here. Petitioners further assert that the single subject violation in this case is not cured by the Iowa Legislature amending the title of the bill to mention abortion, and the title change involved the same logrolling and surprise for both legislators and the voting public. Petitioners point to the allegedly rushed process, which includes the Iowa Senate Journal recording the actual Iowa Senate vote referred to by the bill's original title, as does the Iowa House Journal the following day.

CONCLUSIONS OF LAW

Iowa Rule of Civil Procedure 1.1502 allows temporary injunctions "under any of the following circumstances:

> 1.1502(1) 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.
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> 1.1502(2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's rights respecting the subject of the action and tending to make the judgment ineffectual.
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> 1.1502(3) In any case especially authorized by statute."

I.R.Civ.P. 1.1502. "A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when." I.R.Civ.P. 1.1504.

"'A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to the final judgment and to protect the subject of the litigation.'" Lewis Investments, Inc.

v. City of Iowa City, 703 N.W.2d 180, 184 (Iowa 2005) (citing Kleman v. Charles City Police Dep't, 373 N.W.2d 90, 95 (Iowa 1985)). "'The issuance or refusal of temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case.'" Id. (citing Kent Prods. v. Hoegh, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953)). "One requirement for the issuance of a temporary injunction is a showing of the likelihood or probability of success on the merits of the underlying claim." Id.

The Iowa Supreme Court has "often noted that '[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.'" Sear v. Clayton County Zoning Board of Adjustment, 590 N.W.2d 512, 515 (Iowa 1999). "The party seeking the injunction must establish: (1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available." Id. "When considering the appropriateness of an injunction 'the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief." Id. Another factor to be considered is the public interest in granting injunctive relief. Mid-America Real Estate Co. v. Iowa Realty Co., Inc., 406 F.3d 969, 972 (8th Cir. 2005). A party is not entitled to injunctive relief when it has an adequate remedy at law. Lewis, 703 N.W.2d at 185.

The United States Supreme Court has "adhered to the rule that a party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" Kowalski v. Tesmer, 543 U.S. 125, 129, 125 S.Ct. 564, 567, 160 L.Ed.2d 519 (2004) (citing Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)). Third party rights may be asserted in cases where enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights. Id., 543 U.S. at 130. The United States Supreme Court also has recognized that there may be circumstances where it is necessary to grant a third party standing to assert the rights of another, and has limited this exception by requiring that a party seeking third-party standing make two additional showings: 1) the Court has asked whether the party asserting the right has a close relationship with the person who possessed the right, and 2) the Court has considered whether there is a hindrance to the possessor's ability to protect his own interests. Id., 543 U.S. at 129-130, 125 S.Ct. at 567. The United States Supreme Court also has recognized the ability of a party to assert concomitant rights of third parties that would be diluted or adversely affected if a constitutional challenge fails and statutes remain in force, due to the mutually interdependent interests of such litigants and third parties. Craig v. Boren, 429 U.S. 190, 195, 97 S.Ct. 451, 455-56, 50 L.Ed.2d 397 (1976). Citing Craig, the Iowa Supreme Court has noted that while "[n]ormally, a party may only assert his own rights," a "direct economic injury through constriction of [a rental market] and imposition of sanctions is a sufficient injury to satisfy standing." Ames Rental Property Ass'n v. City of Ames, 736 N.W.2d 255, 259 fn.3 (Iowa 2007).

"Most state constitutions require that 'no [legislative] act shall contain more than one subject, which shall be expressed in its title….'" State v. Mabry, 460 N.W.2d 472, 473 (Iowa 1990) (citing 1A Sutherland, Statutory Construction § 22.08, at 187 (1985)). "This constitutional mandate is known as the 'single-subject' rule." Id. "The purpose of the single-subject rule is three-fold." Id. "First, it prevents logrolling." Id. "Logrolling occurs when unfavorable

legislation rides in with more favorable legislation." Id. "Second, it facilitates the legislative process by preventing surprise when legislators are not informed." Id. "Finally, it keeps the citizens of the state fairly informed of the subjects the legislature is considering." Id.

The Mabry Court went on to hold:

Article III, section 29 of the Iowa Constitution states:

Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

This provision has four requirements. First, the act may have only one subject together with matters germane to it. Western Int'l v. Kirkpatrick, 396 N.W.2d 359, 364 (Iowa 1986). Second, the title of the act must contain the subject matter of the act. Id. at 365. Third, any subject not mentioned in the title is invalid. See Constitutional Form, 8 Drake L.Rev. at 67. Last, an invalid subject in the act does not invalidate the remaining portions that are expressed in the title. Id.

There are longstanding rules for determining whether an act meets the constitutional mandate of article III, section 29. First and foremost, we construe "the [act] liberally in favor of its constitutionality." State v. Iowa Dist. Court, 410 N.W.2d 684, 686 (Iowa 1987). Before we can say the act is invalid we must find that the act "encompass[es] two or more dissimilar or discordant subjects that have no reasonable connection or relation to each other." Id.; see also Western Int'l, 396 N.W.2d at 364. Even if the "matters grouped as a single subject might more reasonably be classified as separate subjects, no violation occurs if these matters are nonetheless relevant to some single more broadly stated subject." Id.

So to pass constitutional muster the matters contained in the act must be germane. To be germane, "all matters treated [within the act] should fall under some one general idea and be so connected with or related to each other, either logically or in popular understanding, as to be part of ... one general subject." Long v. Board of Supervisors, 258 Iowa 1278, 1283, 142 N.W.2d 378, 381 (1966).

In addition to these rules, we use a "fairly debatable test" to determine whether the enactment of a statute complies with the constitution. Under this test "[l]egislation will not be held unconstitutional unless clearly, plainly and palpably so." Long, 258 Iowa at 1283, 142 N.W.2d at 381. And "[i]f the constitutionality of an act is merely doubtful or fairly debatable, the courts will not interfere." Id., see also Burlington & Summit Apartments v. Manolato, 233 Iowa 15, 17, 7 N.W.2d 26, 28 (1942). So "[i]t is only in extreme cases, where unconstitutionality appears beyond a reasonable doubt, that this court can or should act...." Long, 258 Iowa at 1284, 142 N.W.2d at 381–82.

Id. at 473-474.

In 2018, the Iowa Supreme Court issued the PPHI opinion. The Court considered the following procedural background:

> On April 18, 2017, the Iowa legislature passed Senate File 471. Division I of Senate File 471 creates new prerequisites for physicians performing an abortion, including a mandatory 72-hour waiting period between informational and procedure appointments. *See* 2017 Iowa Acts ch. 108, § 1 (codified at Iowa Code ch. 146A (2018)). Division II prohibits performing an abortion upon the twentieth week of pregnancy. Id. § 2 (codified at Iowa Code ch. 146B (2018)).
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> On May 3, anticipating Governor Branstad would sign the bill into law, Planned Parenthood of the Heartland (PPH) moved for a temporary injunction to prevent Division I (the Act) from going into effect. PPH alleged the Act violated the rights to due process and equal protection of the law under the Iowa Constitution. The district court denied the injunction, and PPH sought a stay from this court. On May 5, Governor Branstad signed the law into effect. A few hours later, we stayed the enforcement of the Act per a single-justice order. On May 9, we granted PPH's interlocutory appeal and stayed enforcement of the Act pending a trial on the merits.
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> The district court subsequently held a two-day trial. At trial, PPH produced five witnesses and an affidavit of a domestic violence expert. The State did not call any witnesses but, instead, offered two sworn statements. Mark Bowden, Executive Director of the Iowa Board of Medicine, indicated the Board would promulgate rules to implement the Act. Melissa Bird, Bureau Chief of Health Statistics at the Iowa Department of Public Health, presented vital statistics on where abortion patients resided in 2014 and 2015. The district court held the Act did not violate the Iowa Constitution.
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> PPH appealed. We retained the case and stayed enforcement of the Act pending resolution of the appeal. On our review, we will first consider the entire factual record, as developed at the trial court, to determine how the Act will impact the ability of women to obtain an abortion in Iowa. Following that determination, we will consider whether the Act runs afoul of the due process clause and right to equal protection under the Iowa Constitution.

Id. at 213-14.

The Iowa Supreme Court held that, "under the Iowa constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy." Id. at 237. However, the Court did "not today hold, that a woman's right to terminate a pregnancy is unlimited." Id. at 239. "Like all fundamental rights, it is subject to reasonable regulation." Id. The Court applied the strict scrutiny standard to conclude that the Act "does not, in fact, further any compelling state interest and cannot satisfy strict scrutiny," and even if the Act did not confer some benefit to the State's identified interest, "it sweeps with an impermissibly broad brush." Id. at 243. "The Act's mandatory delay indiscriminately subjects all women to an unjustified delay in care, regardless of the patient's decisional certainty, income,

distance from the clinic, and status as a domestic violence or rape victim." Id. "The Act takes no care to target patients who are uncertain when they present for their procedures but, instead, imposes blanket hardships upon all women." Id.

"Reasonable minds unquestionably diverge as to the morality of terminating a pregnancy." Id. "We do not, and could not, endeavor to discern the precise moment when a human being comes into existence." Id. "We have great respect for the sincerity of those with deeply held beliefs on either side of the issue." Id. at 243-44. "Nevertheless, the state's capacity to legislate pursuant to its own moral scruples is necessarily curbed by the constitution." Id. at 244. "The state may pick a side, but in doing so, it may not trespass upon the fundamental rights of the people." Id. The Iowa Supreme Court concluded that the Act violated due process and equal protection rights. Id. at 244-246.

In the context of equal protection claims, the Iowa Supreme Court has held, with respect to strict scrutiny, that "[t]his highest level of review is applied only when the challenged statute classifies persons in terms of their ability to exercise a fundamental right or when it classifies or distinguishes persons by race or national origin." In re Detention of Williams, 628 N.W.2d 447, 452 (Iowa 2001). In an unpublished opinion, the United States District Court for the Northern District of Iowa also has described strict scrutiny as the "highest level of scrutiny." U.S. v. Bena, No. 10-CR-07-LRR, 2010 WL 1418389, *3 (N.D. Iowa Apr. 6, 2010).

"Issue preclusion, sometimes referred to as collateral estoppel, is a form of res judicata." Employers Mut. Cas. Co. v. Van Haaften, 815 N.W.2d 17, 22 (Iowa 2012). Under issue preclusion, parties are prevented from relitigating in a subsequent action issues raised and resolved in a previous action. Id. There are four elements to be established for issue preclusion to apply: (1) the issue in the present case must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior case; and (4) the determination of the issue in the prior action must have been essential to the resulting judgment. Id.

With the above-cited authorities in mind, the Court first considers whether Petitioners have third-party standing to pursue the claims stated in this case. As Respondents acknowledge, abortion providers frequently sue to enjoin laws and regulations affecting abortion patients, including in the very recent PPHI case in Iowa. There also is authority from the United States Supreme Court in which abortion providers have prosecuted or defended the rights of third parties. See e.g. City of Akron v. Akron Ctr. For Reprod. Health, Inc., 462 U.S. 416, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983) (overruled on other grounds by Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976). In an opinion issued June 29, 2020, June Medical Services L.L.C. v. Russo (for which citations are not yet available), the United States Supreme Court cited with approval to the Kowalski and Craig (to which the Iowa Supreme Court cited favorably in Ames Rental) cases (cited earlier in this Ruling), as well as to City of Akron and Danforth, for the conclusion that abortion providers have long been permitted "to invoke the rights of their actual or potential patients in challenges to abortion-related regulations." The Russo Court upheld the standing of the health care provider to bring the claim, although the facts of that case differ slightly from this

one, including that the Court construed the government as conceding standing. However, the Russo opinion is instructive with regard to the longstanding ability of health care providers to bring litigation on behalf of patients in abortion related cases.

The Amendment in this case directly affects the ability of abortion providers to provide care to patients, with whom they have a mutually interdependent relationship, and the rights of third parties would be diluted or adversely affected if the Amendment remains in force. See Craig, 429 U.S. at 195. Further, the Court concludes that the doctor-patient relationship between Dr. Meadows, who works on behalf of PPH and has described her relationship with her patients in her affidavits filed in this case, and her clients is sufficiently close to provide standing to pursue the relief sought in this case. Finally, Petitioners' patients would be hindered from bringing their claims directly, including that they have privacy concerns that would be put on display if they were entitled to state claims individually and on their own behalf, and the length of time necessary for the legal process to be completed, which could prevent an individually named party from obtaining an abortion at all. Petitioners are permitted to assert their patients' rights in this case, and have third-party standing to pursue the claims stated in this case.

Having determined that Petitioners have appropriate third-party standing to pursue the claims stated in this case, the Court next applies the factors necessary for obtaining a temporary injunction to Petitioners' claims in this case.

First, the Court concludes that Petitioners have established a likelihood of success on their claim that the Amendment was passed in violation of the single subject rule. Respondents point out that cases involving a successful challenge to the single subject rule are rare. However, the circumstances surrounding the passage of the Amendment in this case, as set forth in the limited record available to the Court at this stage of litigation, appear to show that the Amendment was passed under highly unusual circumstances, including the speed at which the Amendment was passed. Abortion is, under any analysis, a polarizing and highly controversial topic, yet the Amendment was passed with limited to no debate, and without Iowans being given a chance to respond to the Amendment. As Respondents acknowledged, most Iowans would have been asleep by the time the Amendment was passed in its final form. The Amendment addresses a 24 hour waiting period for a woman to obtain an abortion, but was initially attached to a bill titled "an Act relating to the limitations regarding the withdrawal of a life-sustaining procedure from a minor child." At hearing, Respondents acknowledged that the title of the bill, as of 8:17 p.m. on Saturday, June 13, 2020, did not include the word "abortion" at all. While the title of the bill later was changed, there certainly some evidence in the limited record before the Court that ultimately may support a finding of "logrolling," since the Amendment was attached to what would likely be a non-controversial provision regarding withdrawal of life-sustaining procedures from a minor child, and there is no doubt that, at a minimum, the legislator who has provided an affidavit on behalf of Petitioners was surprised by the Amendment. As the Court previously has found, the bill addresses circumstances in which a court may require withdrawal of life-sustaining procedures from a minor child over the objection of the parent or guardian. This is clearly a different subject than a 24 hour waiting period for an abortion. The initial title of the bill does not contain any subject matter regarding abortion or waiting periods, and it is likely that Petitioners will be able to show that the 24 hour waiting period for abortions is invalid, and is not germane to the "one general idea" of the bill.

Respondents have argued that this Court should not rely on the single subject rule to embarrass legislation or hamper the Iowa Legislature. However, according to the affidavit from Representative Wessel-Kroeschell, when the Amendment was introduced to the Iowa House, it was immediately subjected to a challenge from Representative Brian Meyer that the Amendment was not germane to the underlying bill it was amending, a fact to which the Speaker of the House (who does not appear to be identified by name in the record, but, upon the Court's information and belief, is Patrick Grassley, who is a member of the same political party as the representatives who introduced the Amendment) immediately concurred, and on which there was no further debate. Thus, it would be difficult for this Court to "embarrass legislation" or "hamper the Iowa Legislature" by finding it likely that Petitioners will succeed on the merits of the issue regarding germaneness, when the Speaker of the Iowa House apparently found that the Amendment was not germane to the underlying bill it was amending. The Court is giving deference to Speaker Grassley.

Even if Petitioners are not ultimately successful in their single subject rule argument, Petitioners have established an invasion or threatened invasion of a right, on which they are likely to be successful when the merits of the action are addressed. This Court is bound by Iowa precedent, including the standards clearly set forth by the PPHI Court. Respondents acknowledged at hearing that this Court cannot overturn PPHI. As a matter of res judicata, issue preclusion likely would bar Respondents from re-litigating certain matters within PPHI, including identical issues that were raised and litigated in, and were material and relevant to, the determination of issues by the Iowa Supreme Court that were essential to its ultimate opinion. The Iowa Supreme Court already has made several determinations regarding mandatory delay laws and the obstacles they present to individuals seeking abortions, and these same parties had a full and fair opportunity to litigate those issues in PPHI.

With respect to the constitutional issues presented by Petitioners in this case, it is undisputed that the Iowa Supreme Court, in 2018, specifically recognized abortion as a fundamental right, and applied strict scrutiny to review of the Act at issue in PPHI. As this case proceeds through the Johnson County District Court, strict scrutiny likely would, as in PPHI, also be applied in this Court's review of the Amendment. Respondents are not permitted to restrict surgical abortion procedures unless they can prove that the "infringement is narrowly tailored to serve a compelling state interest." Id. at 238. As they were with the 72 hour waiting period at issue in PPHI, Petitioners are likely to be able to show substantially the same burden and harm to patients subject to a 24 hour waiting period, such as was shown in PPHI. This is particularly true in light of the ongoing COVID-19 public health emergency, considering the 24 hour waiting period requirement would necessitate multiple trips to Petitioners' health care centers.

Petitioners meet the first factor necessary for providing a basis for the Court to grant temporary injunctive relief.

Second, the Court concludes that Petitioners and their patients will be substantially injured if the Court does not enjoin Respondents from enforcing the Amendment, and the balance of hardships warrants injunctive relief. The Court concludes that the time sensitive

nature of abortion procedures supports a determination that substantial injury will result to Petitioners' patients if temporary injunctive relief is not granted. In cases where a patient is at or nearing the twenty-two week mark of a pregnancy, the patient may be deprived entirely of the fundamental right to an abortion. Petitioners also have offered evidence of the psychological and physical harm that can result to a patient who is deprived of this fundamental right, including that the abortion may become less safe due to the progression of the pregnancy; that a woman may face increased travel distances, costs, and stress; and that the vulnerable population may suffer. When these interests are balanced against the harm to be suffered by Respondents if the abortion procedures take place without a 24 hour waiting period, the harm to Petitioners clearly outweighs the potential for harm to Respondents, which, at most, would be a continuance of the status quo law in Iowa regarding abortion, as set forth by the PPHI Court. While Respondents argued at hearing that the Court would not be upholding the status quo, since the Iowa Legislature has passed a new law since PPHI was decided, Respondents acknowledged that the law with respect to the 24 hour waiting period has not changed yet, as it had not gone into effect at the time of the hearing and would only be set to go into effect on July 1, 2020. Thus, the law in Iowa remains as stated in PPHI.

Petitioners meet the second factor necessary for providing a basis for the Court to grant temporary injunctive relief.

The Court next considers whether Petitioners have an adequate legal remedy. They clearly do not. If the Amendment is permitted to take effect, Petitioners will be delayed, or in some cases, entirely deprived of a fundamental right under the Constitution, and there is no legal remedy available to Petitioners under such circumstances.

Petitioners meet the final factor necessary for providing a basis for the Court to grant temporary injunctive relief.

Finally, there is the question of bond. Iowa Rule of Civil Procedure 1.1508 provides:

> The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be 125 percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for dissolution of marriage, separate maintenance, annulment of marriage, or domestic abuse, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable.

I.R.Civ.P. 1.1508. The Court construes the language of Rule 1.1508 as requiring a bond of 125% of the probable liability to be incurred. The Court finds that this amount should be nominal, as the "probable liability" to be incurred in this case seems essentially to be the costs of the action, i.e., court costs and filing fees. The Court concludes that a bond amount of $500.00 is sufficient to cover these amounts and meet the requirements of Rule 1.1508. While Respondents made mention at the time of hearing of a bond being of a sufficient amount to cover costs including attorney fees, Respondents offered no authority for the proposition that a salaried State of Iowa attorney could make a claim for hourly attorney fees in this type of case; thus, the Court

does not believe the bond needs to be increased to make provision for payment of attorney fees, if Petitioners are not successful in their claims.

RULING

IT IS THEREFORE ORDERED that Petitioners' Emergency Motion for Temporary Injunctive Relief is **GRANTED**. While this action is pending, Respondents are temporarily enjoined from enforcing Section 2 of HF 594, regarding the requirement that women seeking an abortion first receive an ultrasound and certain state-mandated information, and then wait at least 24 hours before returning to a health center to have an abortion. Petitioners shall immediately post a cash or surety bond in the amount of $500.00. The Petitioners shall contact the Clerk of Court to determine the most appropriate method for effectuating this process. Once bond has been approved, the Clerk of Court shall issue notice of receipt.

Clerk to notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV081855	PLANNED PARENTHOOD OF THE HEARTLAND V. REYNOLDS

So Ordered

Mitchell E. Turner, District Court Judge,
Sixth Judicial District of Iowa