

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE
HEARTLAND, INC., EMMA GOLDMAN
CLINIC, and JILL MEADOWS, M.D.,

Petitioners,

v.

KIM REYNOLDS *ex rel.* STATE OF
IOWA and IOWA BOARD OF
MEDICINE,

Respondents.

Equity Case No. _____

**PETITION FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

COME NOW Petitioners Planned Parenthood of the Heartland, Inc. (“PPH”), Jill Meadows, M.D., and Emma Goldman Clinic (“EGC”), by and through their attorneys, Rita Bettis of the American Civil Liberties Union of Iowa Foundation, Alice Clapman, of Planned Parenthood Federation of America, and Caitlin Slessor and Samuel E. Jones of Shuttleworth & Ingersoll, PLLC, pray for emergency temporary injunctive relief, as well as permanent injunctive relief, restraining Respondents Kim Reynolds *ex rel.* State of Iowa and Iowa Board of Medicine from enforcing Section 4 of Senate File 359 (“the Act”), which would effectively ban abortion in Iowa, as well as a declaratory judgment that the Act violates the Iowa Constitution, and in support thereof state the following:

STATEMENT OF THE CASE

1. This action challenges the validity of Section 4 of Senate File 359 (“the Act”), to be codified at Iowa Code § 146C.2 (2018), under the Iowa Constitution. Governor Reynolds signed the Act into law on May 4, 2018.

2. In flagrant defiance of clear and binding constitutional precedent recognizing that women have a protected liberty interest in terminating an unwanted pregnancy, the Act would ban abortion as soon as embryonic or fetal cardiac tones can be detected by ultrasound, which occurs as early as six weeks from a woman's last menstrual period (lmp) (or in some cases earlier), before many women even know they are pregnant. No such law has been upheld since the U.S. Supreme Court recognized in 1973 in Roe v. Wade, 410 U.S. 113 (1973), that women have a protected right to end an unwanted pregnancy. To the contrary, decades of unanimous precedent is clear that it is unconstitutional to ban abortion prior to viability.

3. Moreover, because the ban takes effect so early in pregnancy—at a stage at which many women do not yet realize they are pregnant and others have not yet made a decision to terminate the pregnancy, researched their options, contacted a health center, and made the necessary logistical and financial arrangements to travel to the health center—as a practical matter the Act is a ban on virtually all abortions.

4. Prior to the Act, abortion was legal in Iowa through the first 20 weeks of pregnancy post-fertilization which is understood as corresponding to approximately 22 weeks lmp.

5. By effectively banning virtually all abortion in Iowa, the Act unlawfully violates the rights of Petitioners' patients and all Iowa women under the Iowa Constitution and would severely jeopardize their health, safety and welfare. Accordingly, Petitioners seek judicial relief declaring the Act unconstitutional and enjoining its enforcement.

PARTIES

6. Petitioner PPH is a non-profit corporation headquartered in Des Moines, Iowa. At its eight Iowa health centers, PPH provides a wide range of health care, including well-woman exams, cancer screenings, sexually-transmitted infection (“STI”) testing and treatment,

a range of birth control options including long-acting reversible contraception (“LARC”), transgender health care, and medication and surgical abortion.

7. PPH provides medication and surgical abortion at two health centers in Iowa, in Des Moines and Iowa City, and medication abortion at three additional Iowa health centers, in Ames, Cedar Falls, and Council Bluffs. In 2017, PPH provided over 2300 abortions in Iowa. PPH provides abortions up to 20.6 lmp, which is several weeks before a fetus is potentially viable.

8. PPH sues on its own behalf, on behalf of its staff, and on behalf of its patients who will be adversely affected by Respondents’ actions.

9. Petitioner Dr. Jill Meadows is the medical director of PPH. Dr. Meadows provides reproductive health care to PPH patients, including medication and surgical abortion. Dr. Meadows sues on her own behalf and on behalf of her patients who will be adversely affected by Respondents’ actions.

10. Petitioner EGC is a not-for-profit independent organization with one clinic location in Iowa City, Iowa. EGC provides reproductive health care to men and women through all stages of life. Its services include gynecology services, well-woman exams, cancer screenings, STI testing and treatment, a range of birth control options including LARCs, transgender health care, and medication and surgical abortion, safer sex promotion, and active education.

11. EGC provides medication and surgical abortion at its clinic in Iowa City. In 2017, EGC provided over 600 abortions in Iowa, approximately 2% of which occurred prior to six weeks. EGC provides abortions up to 19.6 lmp, which is several weeks before a fetus is potentially viable.

12. EGC sues on its own behalf, on behalf of its staff, and on behalf of its patients

who will be adversely affected by Respondents' actions.

13. Respondent Kim Reynolds is the Governor of Iowa, and as such is the chief executive for the state, responsible for ensuring the enforcement of the state's statutes. See Iowa Const. art. IV, §§ 1, 9. The Governor is sued in her official capacity.

14. Respondent Iowa Board of Medicine is a state agency as defined in the Iowa Administrative Procedures Act, Iowa Code § 17A.2(1) (2018). Respondent is charged with administering the Act, S.F. 359, § 4(5) (2018) (to be codified at Iowa Code § 146C.2(5)), as well as with disciplining individuals licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code § 148.1–14, including licensees who violate a state statute. See Iowa Code § 148.6(c) (2018).

JURISDICTION AND VENUE

15. This action seeks a declaratory judgment and injunctive relief pursuant to Iowa Rule of Civil Procedure 1.1101–1.1109 (2018), 1.1501–1.1511 (2018), and the common law. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.6101 (2018).

16. Venue is proper in this district pursuant to Iowa Code § 616.3(2) (2018) because part of the cause arose in Polk County and Respondent Iowa Board of Medicine's primary office is located in Polk County, as is Respondent Governor Reynolds's.

OPERATIVE FACTS

I. Abortion Background

17. Legal abortion is one of the safest procedures in contemporary medical practice, and is far safer than childbirth.

18. Women decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Some women end a pregnancy because they conclude that it is not the right time in their lives to have a child or to add to their families; some do so to

preserve their life, health or safety; 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; and some do so because they choose not to have biological children.

19. Approximately one in four women in this country will have an abortion by age forty-five. Fifty-nine percent 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 (for example, when they are older, financially able to provide necessities for them, and/or in a supportive relationship with a partner so that their children will have two parents).

20. Access to abortion is critical to women's health and welfare. Childbirth poses far greater health risks than abortion, and these risks are even greater for women with certain medical conditions. Women forced to carry an unwanted pregnancy to term are at increased risk of preterm birth (which can have serious adverse health effects for the baby) and failure to bond with the baby; and are less likely to escape poverty, less likely to be employed, less likely to escape domestic violence, and less likely to formulate and achieve educational, professional and other life goals. Additionally, when women lack access to safe, legal abortion some will attempt to self-induce an abortion, including in ways that can further jeopardize their health or life.

21. Most women are at least six weeks lmp into their pregnancy by the time they present at a clinic seeking an abortion. Many do not even know they are pregnant before this very early point. (The lmp method of dating a pregnancy counts from the first day of the last menstrual period, which occurs approximately two weeks before implantation. Thus, by the time a woman misses her period and has reason to suspect she is pregnant, she is almost always more than four weeks pregnant as calculated by lmp, and in many cases already at or near six weeks of pregnancy lmp.) Even for women who realize they are pregnant sooner than 6 weeks

Imp, it can often take at least several weeks to decide to terminate, research their options, contact a clinic, arrange an appointment, and put together the financial resources they need for travel and care.

22. When a woman presents at Plaintiffs' health centers, Plaintiffs confirm that they are pregnant and perform an ultrasound in order to date the pregnancy (i.e., to determine gestational age). In a typical pregnancy, embryonic or fetal cardiac tones are detectable by ultrasound as early as six weeks Imp.

23. For patients who are five to six weeks pregnant Imp, the gestational sac may be visible but embryonic cardiac tones may not be detectable. In this case, miscarriage cannot be ruled out. (15–20% of recognized pregnancies end in miscarriage.) In that situation, women generally are presented with the option of initiating a termination procedure or waiting to determine whether they are miscarrying. Some women strongly prefer to wait because, if miscarriage is confirmed, their insurance will cover their medical costs. This is a particularly important consideration for lower-income patients, who otherwise may have to choose between paying for a procedure and paying basic living expenses.

II. The Act

24. The Act requires providers to perform an ultrasound to determine whether embryonic or fetal cardiac tones are detectable, and if they are detectable, prohibits that abortion. S.F. 359, § 4(1) (2018) (to be codified at Iowa Code § 146C.2(1)). Embryonic cardiac tones generally are detectable as early as six weeks Imp or even earlier.

25. The Act contains a few limited exceptions for certain medical emergencies and certain cases of rape, incest, lethal fetal anomaly. Specifically, the Act's prohibition does not apply when: 1) "an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-

endangering physical condition caused by or arising from the pregnancy not including psychological conditions, emotional conditions, familial conditions, or the woman's age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman," S.F. 359, § 2(6) (2018) (to be codified at Iowa Code § 146A.1(6)); 2) "[t]he pregnancy is the result of a rape which is reported within forty-five days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician," S.F. 359, § 3(4)(a) (2018) (to be codified at Iowa Code § 146C.1(4)(a)); 3) "[t]he pregnancy is the result of incest which is reported within one hundred forty days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician," S.F. 359, § 3(4)(b) (2018) (to be codified at Iowa Code § 146C.1(4)(b)); or 4) [t]he attending physician certifies that the fetus has a fetal abnormality that in the physician's reasonable medical judgment is incompatible with life." S.F. 359, § 3(4)(d) (2018) (to be codified at Iowa Code § 146C.1(4)(d)).

III. Impact of the Act

26. The Act will prevent virtually all Iowa women from obtaining an abortion in Iowa, since many women do not know they are pregnant by this point, and even those who do may not yet have decided to terminate their pregnancy and been able to make the necessary financial, travel, and other arrangements to have an abortion before the cardiac tones can be detected. Only 2% of Petitioners' abortion patients terminate their pregnancy before six weeks.

27. This would be further exacerbated if Senate File 471's 72-hour mandatory delay law, to be codified at Iowa Code § 146A.1, which is currently temporarily enjoined, were allowed to go into effect. Even if a woman became aware of her pregnancy at the earliest possible moment, as a practical matter it would be virtually impossible for women to come to

the clinic, have an ultrasound, and then return home, wait at least 72 hours, and return to the clinic in time to have an abortion before the point in their pregnancy when cardiac tones can be detected.

28. The Act's limited exceptions would not cover women in many desperate circumstances: e.g., women who have a risky health condition that does not clearly fit within the Act's medical emergency exception; women who have a severely compromised pregnancy and learn that their fetus is unlikely to survive to birth or likely to suffer devastating medical complications (unless the physician certifies that the fetus has a condition that is "incompatible with life"); women who were raped but did not report that rape or who are uncertain whether their pregnancy is the result of the rape they reported; women who suffered incest but did not report that incest or who are uncertain whether their pregnancy is the result of the incest; or women who reported forms of sexual abuse that may not clearly fit any Iowa legal definitions of "rape" or "incest." (Iowa law does not contain a crime termed "rape," and defines "incest" narrowly to exclude step-relatives.)

29. Moreover, the Act places physicians in the untenable position of having to decide whether an exception applies while knowing that they could lose their license if the Board of Medicine disagrees with their conclusion. S.F. 359, § 4(5) (2018) (to be codified at Iowa Code § 146C.2(5)); Iowa Code § 148.6(2)(c).

30. Under the Act, virtually all Iowa women who choose to terminate a pregnancy will either have to travel out of state (which will delay them and expose them to increased medical risk and other harms), or, if they do not have the resources to do so, carry an unwanted pregnancy to term.

31. Those who are forced to carry to term will be exposed to increased risk of death and major complications from childbirth, and they and their newborns will be at risk of negative

health consequences, including reduced use of prenatal care, lower breastfeeding rates, and poor maternal and neonatal outcomes. They will also be less likely to escape poverty and domestic violence and formulate and achieve life goals.

32. Women who are victims of intimate partner violence, if forced to carry to term, face increased difficulty escaping their abusive relationship because of new financial, emotional and legal ties with that partner.

33. For a woman who has survived rape or incest, it can be particularly traumatic to be forced to carry the pregnancy to term. Many sexual assault survivors are particularly anxious to terminate their pregnancy because it is a constant, invasive reminder of the traumatic experience they have suffered.

34. Additionally, when legal abortion is unavailable or difficult to access, some women turn to medically unsupervised, and in some cases unsafe, methods to terminate unwanted pregnancies.

35. The State has no compelling interest in imposing such a restriction.

36. Additionally, by banning abortion at the earliest stage of pregnancy, long before viability, the Act violates decades of judicial precedent prohibiting states from imposing an undue burden on women seeking an abortion.

CLAIMS FOR RELIEF

COUNT I – RIGHT TO DUE PROCESS

37. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

38. The Act violates the due process rights of women seeking and obtaining abortions in the state of Iowa, as guaranteed by article I, section 9 of the Iowa Constitution.

COUNT II – INALIENABLE RIGHTS OF PERSONS

39. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

40. The Act violates the inalienable rights of persons to liberty, safety and happiness, as guaranteed by article I, section 1 of the Iowa Constitution.

COUNT III – RIGHT TO EQUAL PROTECTION

41. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

42. The Act violates Petitioners' and their patients' rights to equal protection of the laws in the state of Iowa, as guaranteed by article I, sections 1 and 6 of the Iowa Constitution, by:

- (a) singling out abortion from all other medical procedures; and
- (b) discriminating against women on the basis of their sex and on the basis of gender stereotypes.

PRAYER FOR RELIEF:

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

43. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

44. This matter is appropriate for declaratory relief pursuant to Iowa Rules of Civil Procedure 1.1101–1.1109. and granting such relief, in conjunction with the supplemental injunctive relief Petitioners pray for, would terminate the legal dispute that gave rise to this Petition.

45. This matter is also appropriate for temporary and permanent injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501–1.1511. Absent injunctive relief,

Petitioners and their patients will continue to suffer irreparable injury for which there is no adequate remedy at law.

WHEREFORE, Petitioners respectfully urge this Court to enter judgment as follows.

(1) Declaring that:

The Act violates the Iowa Constitution;

(2) Enjoining Respondents from:

Enforcing the Act;

(3) For Petitioners' costs incurred herein; and,

(4) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Rita Bettis

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*Application for admission *pro hac vice* forthcoming