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IN THE SUPREME COURT OF IOWA

PLANNED PARENTHOOD OF THE HEARTLAND, INC.; EMMA GOLDMAN CLINIC; and SARAH TRAXLER, M.D., Petitioners, v. KIM REYNOLDS, ex rel. STATE OF IOWA, and IOWA BOARD OF MEDICINE Respondents.	Sup. Ct. No. ___________ Polk County No. EQCE089066 **Respondents' Application for Interlocutory Appeal**

Defendants Kim Reynolds, ex rel. State of Iowa, and Iowa Board of Medicine ("State") submit this application for interlocutory appeal under Iowa Rule of Appellate Procedure 6.104.

TABLE OF CONTENTS

INTRODUCTION 2
BACKGROUND 5
I. LEGAL CONTEXT 5
II. PROCEDURAL CONTEXT 7
ARGUMENT 8
I. The District Court's Ruling Meets Each of the Requirements to Justify Interlocutory review. 8
II. The State's Substantial Rights and the Public Interest Suffer Whenever a Duly Enacted Statute is Enjoined and Thousands of Lives Will be Lost During this Injunction. 11

III. This Court's Decision on Interlocutory Appeal will Materially affect the District Court's final decision............... 15
IV. Plaintiffs Lack Third-Party Standing to Pursue Their Claims. 20
CONCLUSION.. 25
CERTIFICATE OF FILING AND SERVICE................................ 26

INTRODUCTION

Responding to this Court's recent equally divided opinions on a nearly identical statute, the Iowa Legislature entered special session and passed, and the Governor signed, a law intended to protect unborn life. *See* Act of July 14, 2023 (House File 732) (to be codified at Iowa Code § 146E) ("Fetal Heartbeat Statute"). The Plaintiff Abortion Providers allege their clinics had 200 patients scheduled to receive abortions in the two weeks of July 10 and July 17. Both Plaintiffs and the State agree: the Fetal Heartbeat Statute will affect whether many of those hundreds of abortions, and the thousands that will follow, can proceed in Iowa.

But the district court enjoined the Fetal Heartbeat Statute. That ruling impedes the State's substantial rights to enforce duly enacted legislation and to protect unborn life. And it was based on an error of law. It deserves appellate review now.

Indeed, this interlocutory appeal is the opportunity for the Parties to provide the adversarial briefing regarding the proper standard of review for laws protecting unborn life that *PPH 2022* invited. This Court should clarify the proper standard of review for all parties. The acute need for clarity is shown here. The district court felt bound to a standard that this Court has never embraced. Nor has this Court provided any analysis explaining why the *Casey* undue burden standard should be adopted under the Iowa Constitution.

The resolution of this appeal will also materially affect the district court's final decision. The district court decided this case largely based on its belief that it was bound to apply *Casey* undue burden review and that Plaintiffs were thus likely to succeed. The court rejected the State's argument that the proper standard is rational basis. Yet those competing standards impose dramatically different burdens on the parties. This Court's selection of the standard could be dispositive. Finally, the standard this Court adopts will dramatically affect the record and litigation approach of both Parties and the district court.

Further, clarifying the proper standard of review before trial will maximize judicial efficiency. This Court will eventually need to determine the proper standard of review. And because the district court contends it is bound by precedent, further development in that court is unlikely.

If this Court does not clarify the standard before summary judgment, the Parties, and the district court, are then bound to the inefficient path of litigating under uncertainty. They will potentially waste significant time and resources developing a factual record that is irrelevant—until the inevitable appeal after a ruling on the merits. Only after a ruling by this Court will the Parties—and the district court—know the applicable standard for reviewing regulations protecting unborn life under Iowa law.

And as the proper standard under the Iowa Constitution is a pure matter of law, merits briefing after granting interlocutory review will give this Court ample adversarial reasoning on which to base its decision.

Finally, if the Court declines to provide interlocutory review to establish a standard of review, this case will necessarily return.

Eventually, this Court will have the final answer on what standard of review the Iowa Constitution applies to statutes that protect unborn life. The district court's ruling impedes the State's substantial rights and this Court's ruling will likely be dispositive on remand. It is in no Party's interest to litigate under uncertainty while this important societal issue remains undetermined. Each factor for interlocutory review is met.

This Court should grant interlocutory review and recognize that rational basis review applies to abortion restrictions, find that the Fetal Heartbeat Statute survives rational basis review, dissolve the temporary injunction, and render for the State.

BACKGROUND

I. LEGAL CONTEXT

Against a shifting backdrop of federal law, this Court has wrestled with the Iowa Constitution's treatment of laws and regulations intending to protect unborn life.

In 2018, this Court found for the first time that obtaining an abortion was a fundamental right protected by the Iowa Constitution and thus subject to strict scrutiny. *Planned Parenthood of the*

Heartland v. Reynolds ("*PPH 2018*"), 915 N.W.2d 206, 220–21 (Iowa 2018). But this Court's creation of a fundamental right to abortion in the Iowa Constitution was short-lived. Recognizing that the text, structure, and tradition of the Iowa Constitution did not create a fundamental right in abortion, and satisfied that tracked Iowa's history, the Iowa Supreme Court reversed its 2018 decision. *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State* ("*PPH 2022"*), 975 N.W.2d 710, 739–41 (Iowa 2022), *reh'g denied* (July 5, 2022).

Courts and litigants remain confused as to whether *PPH 2022* imposed a standard of review for abortion restrictions. *Compare*, *e.g.*, Dkt. 22 at 9 (finding *PPH 2022* "bound" application of undue burden) *and* Dkt. 2 at 2 (same) *with* Dkt. 22 at 9 (finding the State's contention that "the Iowa Supreme Court has not independently adopted the undue burden standard . . . may be a valid argument") *and* Dkt. 19 at 20 (contending this Court has not independently adopted the *Casey* undue burden standard).

At its first opportunity to determine the standard of review after *PPH 2022* and *Dobbs*, this Court evenly divided and left in

place the district court's permanent injunction against Iowa Code § 146C. *Accord Planned Parenthood of the Heartland, Inc. v. Reynolds* ("*PPH 2023*"), No. 22-2036 (June 16, 2023).

As the district court recognized, this Court "invited" further litigation of the standard of review. Dkt. 22 at 14. For now, the district court finds itself "bound" by its interpretation of *PPH 2022*. *Id.* at 9. That ruling substantially impedes the State's rights to enforce its statutes and it precludes the State from protecting unborn life. Only this Court can settle whether the standard of review for regulations protecting unborn life is rational basis.

II. PROCEDURAL CONTEXT

The State seeks interlocutory review from the district court's order granting a temporary injunction against enforcement of the Fetal Heartbeat Statute. Dkt. 22.[1] The Fetal Heartbeat Statute passed both houses of the Legislature in special session on July 11,

[1] The district court left unencumbered the Fetal Heartbeat Statute's instruction to the Iowa Board of Medicine to continue with its rulemaking process. Dkt. 22 at 14.

2023.[2] Plaintiffs sued the State seeking a temporary injunction the next day. Dkt. 1. And the district court set a hearing on the temporary injunction on July 14, 2023—shortly before the Governor signed the Fetal Heartbeat Statute into law. Dkt. 4.

The district court granted Plaintiffs' motion for a temporary injunction on July 17. Dkt. 22. The State now seeks interlocutory review of that injunction because the injunction undermines the State's substantial rights, the temporary injunction was incorrectly issued, and the district court requires guidance prior to final judgment.

ARGUMENT

I. The District Court's Ruling Meets Each of the Requirements to Justify Interlocutory review.

Every day that the temporary injunction precluding enforcement of the Fetal Heartbeat Statute remains in force, it substantially injures the State's rights. The Iowa Legislature enacted, and the Governor signed the Fetal Heartbeat Statute to protect the

[2] The Fetal Heartbeat Statute is attached as an exhibit to the petition. It is almost identical to the permanently enjoined Iowa Code § 146C. See Dkt. 22 at 3.

State's vital interest in unborn life. Plaintiffs sought and received an injunction against enforcing the law in Polk County District Court. But they are not entitled to injunctive relief.

The *Casey* undue burden standard was "created outside the ordinary course of litigation, is and always has been completely unreasoned." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2312 (2022) (Roberts, C.J., concurring in judgment). The standard "threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin." *Id.* at 2242 (majority op.). The *Casey* undue burden test included a *total prohibition* on previability abortions. *Id.* at 2245. Today, that is around twenty weeks—although Plaintiff Abortion Providers may assert that it is later.

This Court has "an independent duty to interpret the Iowa Constitution." *PPH 2023*, *20 (Waterman, J.) (citing *PPH 2022*, 975 N.W.2d at 716 (Mansfield, J.)). The United States Supreme Court has said the *Casey* undue burden test is unreasoned and of uncertain origin. If this Court wishes to adopt that test as the standard

of review for laws protecting unborn life under the Iowa Constitution, then it should explain its rationale clearly to the Legislature, Governor, and People of Iowa.

Such a rule prohibiting legislation protecting unborn life before twenty weeks conflicts with the divided opinion issued last month that "recognized the State's vital interest in protecting unborn life." *PPH 2023*, at *21 (Waterman, J.) (citing *PPH 2022*, 975 N.W.2d at 746 (Mansfield, J.)). That is especially so as "[h]istorically, there is no support for abortion as a fundamental constitutional right in Iowa." *PPH 2022*, 975 N.W.2d at 740.

In the most direct read of the opinions in *PPH 2022*, five justices agreed that the Iowa Constitution does not include a fundamental right to an abortion. Given that, standard application of Iowa law explains the proper standard for reviewing the Fetal Heartbeat Statute's constitutionality is rational basis.

Plaintiffs instead misinterpret this Court's precedent to claim *Casey*'s undue burden test as the proper standard. The State disagrees. But even if Plaintiffs are right, that this Court's deference to *Casey* before *Dobbs* requires applying undue burden "[f]or now," 975

N.W.2d at 716 (Mansfield, J.), "stare decisis is not an 'inexorable command.'" *Id.* (citation omitted).

Moreover, Iowa law does not give these Plaintiffs standing to sue for the relief that they seek. This Court's precedents on third-party standing in the abortion context state that without a protected fundamental right there is no standing for Plaintiff Abortion Providers to assert derivative claims. Without standing, Plaintiffs claims also must fail.

II. The State's Substantial Rights and the Public Interest Suffer Whenever a Duly Enacted Statute is Enjoined and Thousands of Lives Will be Lost During this Injunction.

This Court needs to grant the State's interlocutory appeal to expeditiously resolve the wrongfully issued injunction preventing enforcement of the Fetal Heartbeat Statute. Iowa's previous Fetal Heartbeat bill remains enjoined by the Polk County District Court without a final resolution from this Court. Now, again, the Fetal Heartbeat Statute is enjoined by the Polk County District Court. And now, that court finds itself bound by *PPH 2022* and unable to apply any standard other than the plurality's undue burden review. Dkt. 22 at 8.

Meanwhile, the State's law remains enjoined. The Governor saw enactment of that law as important enough to convene a legislative special session that subsequently passed it by substantial majorities of both democratically elected chambers. And the district court that enjoined the statute did so because this Court's decision "bound" it. *Id.* at 8, 10. Despite the elected branches' clear demonstration of their view of the importance of the Fetal Heartbeat Statute, it remains enjoined.

That imposes irreparable harm against the State. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *see also Planned Parenthood Minn., N.D. v. Rounds*, 530 F.3d 724, 732–33 (8th Cir. 2008) (en banc).

The district court did not properly weigh the presumption of constitutionality in exercising its extraordinary power to issue a temporary injunction. *See State ex rel. Att'y Gen. of Iowa v. Autor*, 991 N.W.2d 159, 163 (Iowa 2023). A party challenging a statute

"carries a heavy burden of rebutting the presumption of constitutionality with which statutes are cloaked." *Id.* (quoting *O'Hara v. State*, 942 N.W.2d 303, 314 (Iowa 2002)). And that means that "no court is authorized to declare an act of the legislature invalid unless it is plainly, palpably, and beyond doubt repugnant to some provision of the constitution." *Id.* (quoting *Littleton v. Fritz*, 22 N.W. 641, 646 (Iowa 1885)).

Unlike in 2018, neither *Casey* nor *PPH 2018* loom as impediments to finding that the Fetal Heartbeat Statute is constitutional. Even the district court agreed the State's argument that this Court has not independently adopted the undue burden standard "may be a valid argument." Dkt. 22 at 9. Despite acknowledging the question about the applicable standard of review, that court felt bound by its interpretation that undue burden must apply. *Id.*

And of course, there is the irreparable harm to any unborn child who loses her life due to a prohibited abortion during a temporary injunction. The State seeks to protect hundreds of unborn lives in the weeks to come, thousands over the next year, and thousands more over the years to come. Plaintiffs continue to reject the

PPH 2022 plurality's recognition "that future human lives are at stake—and we must disagree with the views of today's dissent that the state has no legitimate interest in this area." 975 N.W.2d at 746 (Mansfield, J.). In 2022, this Court rejected the fallacy that life only has value, and rights, after birth. But it should explain that rejection and the State's right to enact protections by granting interlocutory review.

The Legislature carefully balanced the considerations respecting the autonomy of women, the judgment of their physicians, and the value of unborn life in crafting the Fetal Heartbeat Statute. Disagreeing with that judgment does not mean that women or abortion providers are irreparably harmed. *See Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 6 (Iowa 2020). Indeed, even if Plaintiffs ask this Court to debate the political or policy merits of those determinations, "that is not a sufficient reason for the judicial branch to substitute" its own judgment as law. *Id.*

While the district court recognized "that there are harms either way the court rules on this request for a temporary injunction" it weighed "the balance of the harms in light of its finding today

that the Plaintiffs are likely to succeed on the merits of their claim." Dkt. 22 at 13. As the law survives rational basis review, that weighing of the equities should be found staunchly against imposition of an injunction.

While the Statute restricts access to abortion, it does so to protect human life. The State has vital interests in protecting prenatal life. *See PPH 2023*, at *21 (Waterman, J.). Despite that, Plaintiffs disregard the lives of the unborn in their balancing of the equities. And the status quo maintained from before the Fetal Heartbeat Statute includes no protection for that life until much later in pregnancy.

Moreover, the State has an interest in enforcement of its statutes. The equities here are balancing Plaintiffs' claimed hardships against certain death, and therefore weigh strongly against an injunction.

III. This Court's Decision on Interlocutory Appeal will Materially affect the District Court's final decision.

The district court explained that it's interpretation of *PPH 2022* rendered it "required" by this Court to apply the "*Casey* undue

burden standard." Dkt. 22 at 11. Applying that standard led the court to find it "readily apparent that the Plaintiffs are likely to succeed on their claim that [the Fetal Heartbeat Statute] violates the Due Process Clause" of the Iowa Constitution. *Id.* Only clarity from this Court can allow the district court to review and adjudicate the Fetal Heartbeat Statute's constitutionality.

In Iowa, Courts review a statute's constitutionality for a rational basis unless that law implicates a fundamental right. *Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005). *PPH 2022* held that the Iowa Constitution does not create a fundamental right to an abortion. *See PPH 2022*, 975 N.W.2d at 740. For a statute to be found constitutional under rational basis review, it must be "rationally related to a legitimate state interest." *Sanchez*, 692 N.W.2d at 817. The district court here did not follow that binding precedent in its order.

The Fetal Heartbeat Statute protects unborn life, a legitimate state interest. *See PPH 2023*, at *21 ("And *PPH [2022]* recognized the State's vital interest in protecting unborn life.") (Waterman, J.)

(citing *PPH 2022*, 975 N.W.2d at 746 (Mansfield, J.)). *Dobbs* recognized even more legitimate reasons for regulating abortions: respect for prenatal life, protection of maternal health and safety, elimination of gruesome medical procedures, preservation of the integrity of the medical protection, mitigation of fetal pain, and prevention of invidious discrimination. 142 S. Ct. at 2284.

As there is a clear rational basis for the 2023 Fetal Heartbeat Statute, the district court should have found no likelihood of success on the merits. After all, Plaintiffs' request for a temporary injunction at no point argues that the Fetal Heartbeat Statute should be enjoined under the rational basis standard. Nor could they.

There are ample grounds recognized by both the Iowa and United States Supreme Courts justifying abortion restrictions. *See*, *e.g.*, *Dobbs*, 142 S. Ct. at 2284 (listing justifications). The Fetal Heartbeat Statute defends unborn life and protects vital and recognized State interests. The district court's error can be corrected only after this Court clarifies that rational basis is the proper standard of review. *See* Dkt. 22 at 11.

The State's legitimate interest in protecting unborn life provides a rational basis to uphold the Fetal Heartbeat Statute's constitutionality. *See PPH 2023*, at *21 (Waterman, J.). "Under rational-basis review, the statute need only be rationally related to a legitimate state interest." *Sanchez*, 692 N.W.2d 817–18. And that only requires "a reasonable fit between the government interest and the means utilized to advance that interest." *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005), *superseded by statute on other grounds*, 2009 Iowa Acts ch. 119 § 3 (cleaned up).

PPH 2022 established that the Iowa Constitution does not protect a fundamental right to an abortion while leaving open the question about the proper standard of review. *PPH 2022*, 975 N.W.2d at 745–46. The district court reads *PPH 2022* differently, finding that this Court held that the Iowa Constitution includes a fundamental right to abortion. *See* Dkt. 22 at 10 (quoting *PPH 2022*, 975 N.W.2d at 716). But this Court acknowledged rationality review was an option after it overruled *PPH 2018*. *PPH 2022*, 975

N.W.2d at 744–46 (Mansfield, J.). And rational basis review is unavailable if the right to have an abortion is a fundamental right. *See Sanchez*, 692 N.W.2d at 817.

Moreover, *Casey*'s undue burden standard as applied by the plurality in *PPH 2022* is not workable. If the district court is correct, then the State is left trying to pass laws and regulations with the following seemingly conflicting, yet binding, precepts. First, five Justices agree that there is no fundamental right to an abortion under Iowa's due process clause. *PPH 2022*, 975 N.W.2d at 716 n.2. Second, many cases establish that when there is no fundamental right implicated rational basis applies. *See Sanchez*, 692 N.W.2d at 817. Third, regulations protecting unborn life are reviewed under the *Casey* undue burden standard. *PPH 2022*, 975 N.W.2d at 716 n.2. Propositions two and three cannot be reconciled. Thus, the district court's opinion inevitably founders on the shoals between that Scylla and Charybdis. Only this Court can harmonize Iowa law.

This Court's assuming, without deciding, that *Casey*'s undue burden test applies "[f]or now" leaves the state of laws protecting

unborn life indeterminate until this Court's final disposition. *Id.* This Court should grant interlocutory review and clarify that issue.

IV. Plaintiffs Lack Third-Party Standing to Pursue Their Claims.

If this Court finds that Plaintiffs lack standing to bring their claims, then the temporary injunction is improperly issued. That means this Court should promptly reverse to allow the Fetal Heartbeat Statute to go into effect. Following *PPH 2022* and *Planned Parenthood of the Heartland, Inc. v. Reynolds ("PPH 2021")*, Plaintiff Abortion Providers lack standing for this case. *See* 962 N.W.2d 37, 46 (Iowa 2021). Abortion providers do not have a freestanding right to provide an abortion and they can no longer bring third-party suits on behalf of women seeking abortions. *See id.* at 56.

Here, Plaintiffs include Planned Parenthood of the Heartlands, Inc., a nonprofit corporation that provides abortions in Iowa, Dr. Sarah Traxler, the medical director for PPH and an abortion provider, and the Emma Goldman Clinic, an abortion clinic in Iowa City. *See* Dkt. 1 ¶¶ 10–16. Each Plaintiff sues on its own behalf and on behalf of patients, and the two organizations sue on behalf of their "medical providers and other staff." Dkt. 1 ¶¶ 12–13, 16.

Generally, standing requires that Plaintiffs must "(1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023). In the third-party standing context, a plaintiff must "establish the parties not before the court, who have a direct stake in the litigation, are either unlikely or unable to assert their rights." *Godfrey v. State*, 752 N.W.2d 413, 424 (Iowa 2008) (citing *Powers v. Ohio*, 499 U.S. 400, 410 (1991)). This Court relied on *Powers v. Ohio*, which articulated its approach as requiring a plaintiff seeking third-party standing to prove (1) that it has suffered an injury of its own, (2) that it has a sufficiently close relationship to the third party, and (3) that there is some hindrance to the third party's ability to protect her own interests. *Powers*, 499 U.S. at 411.

That explains *PPH 2021*'s admonition that "allowing an abortion provider to claim standing to vindicate the constitutional rights of a third party 'should not be applied where its underlying justifications are absent.'" *Id.* (quoting *Singleton v. Wulff*, 428 U.S. 106, 114 (1976)). And that is reinforced by several Justices' questioning the foundations of abortion-provider standing in federal courts. *See*,

e.g., *June Med. Services LLC v. Russo*, 140 S. Ct. 2103, 2167–69 (2020) (Alito, J., dissenting); *id.* at 2173–74 (Gorsuch, J., dissenting); *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 629–33 (Thomas, J., dissenting).

Indeed, the justification for third-party standing generally is a poor fit in the context of abortion providers. First, abortion providers cannot show a "close relationship" with the women whose rights they seek to assert. Often, those women are unknown or have no relationship with the abortion provider at the time of the suit. *See June Medical*, 140 S. Ct. at 2168 (Alito, J., dissenting). And it is not clear that, like in a parent-child relationship, the abortion-provider's interest is aligned with the woman seeking an abortion. Moreover, abortion providers have financial motives that may not align with a women's interests. *Cf. id. at 2174* (Gorsuch, J., dissenting) (finding third-party standing is generally rejected when "the plaintiff has a potential conflict of interest with the person whose rights are at issue").

To "assert a derivative claim, the plaintiff must first show that a state's regulation of the plaintiff's activities adversely affects

the rights of another." *Id.* at 56–57. After *PPH 2022*, there is no right to an abortion protected by the Iowa Constitution. Thus, abortion providers may not bring a claim on behalf of women seeking abortions because they cannot assert a derivative right where the ultimate right does not exist. *Cf. id.* at 57.

Abortion providers here cannot satisfy standing because they are not asserting their own constitutional rights or their own injury. Indeed, while Plaintiffs contend they sue on their own behalf, Dkt. 1 ¶¶ 12–13, 16, they cannot be asserting their own protected rights because the Iowa Supreme Court has explicitly held that there is no right to provide an abortion. *PPH 2021*, 962 N.W.2d at 44. Plaintiffs are also suing on behalf of women that they contend will have their rights affected by the Fetal Heartbeat Statute. Dkt. 1, ¶¶ 12–13, 16. But after *PPH 2022*, it is unclear what derivative rights Plaintiffs contend they are asserting.

Nor are women hindered from asserting the rights claimed here. Across the country, women seeking to vindicate their right to have an abortion sue on their own behalf. *See Whole Woman's*

Health, 579 U.S. at 631–32 & n.1 (Thomas, J., dissenting) (collecting examples). A woman seeking an abortion brought *Roe v. Wade*. 410 U.S. 113 (1973), *overruled on other grounds by Dobbs*, 142 S. Ct. 2228. To the extent Plaintiffs are concerned with timing and whether a future plaintiff could vindicate her claims in court, *Roe* itself held that a woman litigating abortion rights on her own behalf can avoid mootness. *Roe*, 410 U.S. at 124–25.

The Plaintiff Abortion Providers assert that having to turn away patients will affect their livelihoods. Dkt. 2, Brief in Support at *19–20. That evidence cannot carry Plaintiffs' burden to show irreparable harm. An injunction is an extraordinary remedy to be granted only if the "requesting party . . . will incur irreparable damage." *Nelson v. Agro Globe Eng'g, Inc.*, 578 N.W.2d 659, 662 (Iowa 1998). Because Planned Parenthood has not shown that it—the requesting party—will be irreparably harmed absent an injunction, its request should be denied.

Without standing, this Court should grant interlocutory review and dissolve the temporary injunction. This Court has not squarely addressed third-party standing for abortion providers as a

contested issue. After *PPH 2021*, *PPH 2022*, and the transformed federal landscape on this jurisprudence, third-party standing for abortion providers is on questionable ground. This case presents the first opportunity for this court to clarify and determine this important threshold issue. The State raised its concerns with third-party standing and the district court rejected those concerns. *See* Dkt. 22 at 5–6. There is no likelihood of success on the merits when a case is improperly brought.

CONCLUSION

This case raises issues of fundamental constitutional importance with thousands of lives at stake during the temporary injunction. The State respectfully asks the Court to grant its application for interlocutory appeal.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on July 21, 2023, this application was electronically filed with the Clerk of the Supreme Court and served on counsel of record for all parties to this appeal using EDMS.

/s/ *Eric H. Wessan*
Solicitor General