

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. _____

BRIEF IN SUPPORT OF
PETITIONERS' MOTION FOR
TEMPORARY INJUNCTIVE RELIEF

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COME NOW Petitioners, Planned Parenthood of the Heartland, Inc. (“PPH”), the Emma Goldman Clinic (“EGC”), and Jill Meadows, M.D., and for their Motion for Temporary Injunctive Relief, pursuant to Iowa R. Civ. P. 1.1502, state:

INTRODUCTION

Thousands of Iowa women each year, and one in four women nationally, have been faced with an unintended pregnancy, or medical complications during their pregnancy, and have decided to end that pregnancy. Their right to make that decision is supported by decades of unbroken constitutional precedent prohibiting a state from banning abortion prior to viability, as well as by core principles of bodily integrity, decisional autonomy, and women’s equality. This right is also critical to women’s health, which is why numerous medical and health organizations, such as the American College of Obstetricians and Gynecologists, the American Medical Association, the American Academy of Family Physicians, the American Osteopathic Association, the American Academy of Pediatrics, and the American Psychiatric Association, have affirmed that safe and legal abortion is a public health imperative.

In plain defiance of this unanimous judicial precedent and public health consensus, including the Iowa Supreme Court’s decision in Planned Parenthood of the Heartland, Inc. v Iowa Bd. of Med. (“PPH I”), 865 N.W.2d 252 (Iowa 2015), Section 4 of Senate File 359 (“the Act”) grossly violates that right. The Act bans abortion from the moment embryonic cardiac tones are detectable by ultrasound, which occurs in the earliest weeks of pregnancy before many women even know that they are pregnant. In practical effect, the Act would ban virtually all abortions in the state. In the 45 years since Roe v. Wade, 410 U.S. 113 (1973) was decided, no court, federal or state, has upheld

such a draconian and inhumane law.

The Act undoubtedly violates the Iowa Constitution. It would cause immediate and unconscionable harm if allowed to take effect as scheduled on July 1, 2018. To protect Petitioners' patients while this case proceeds, Petitioners request that the Act be temporarily enjoined pending resolution of Petitioners' legal claims.

FACTUAL BACKGROUND

A. Abortion Services Prior to the Act, and their Importance to Women's Health

Petitioner PPH provides a wide range of healthcare at its Iowa health centers, including well-women exams, cancer screenings, testing and treatment for sexually transmitted infections ("STIs"), a range of birth control options including long-acting reversible contraception or LARC, transgender healthcare, and medication and surgical abortion. Aff. of Jill Meadows, M.D. ("Meadows Aff.") ¶ 3, attached to Mot. for Temporary Inj. Relief as Ex. 2. PPH provided over 2300 abortions in 2017. Id. ¶ 5. PPH provides abortion through 20.6 weeks measured from the first day of a woman's last menstrual period ("LMP"), which is several weeks before a fetus is potentially viable. Id. ¶ 3.

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 LARC, transgender health care, and medication and surgical abortion, safer sex promotion, and active education. Aff. of Abbey Hardy-Fairbanks, M.D. ("Hardy-Fairbanks Aff.") ¶ 3, attached to Mot. for Temp. Inj. as Ex. 4. EGC provides medication and surgical abortion at its clinic in Iowa City. Id. In 2017, EGC provided over 600 abortions in Iowa. Id. ¶ 4. EGC

provides abortions up to 19.6 weeks Imp. Id. ¶ 3.

Women seek abortions for a variety of medical, familial, economic, and personal reasons. 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 when they are older (and, for example, financially able to provide necessities for them, and/or in a supportive relationship with a partner so their children will have two parents). Meadows Aff. ¶ 14; see also Hardy-Fairbanks Aff. ¶ 9. The vast majority of abortion patients are poor or low-income (75% as of 2014). Meadows Aff. ¶ 14. Some women have medical conditions that make their pregnancy especially risky, and terminate that pregnancy to protect their own health. Id. ¶ 16; Hardy-Fairbanks Aff. ¶ 9. Others receive a diagnosis of a lethal or severe fetal anomaly, and make the painful decision to terminate their wanted pregnancy. Meadows Aff. ¶ 16; Hardy-Fairbanks Aff. ¶ 9. Still others are facing a traumatic unwanted pregnancy as a result of rape or incest, or are in an abusive domestic situation in which it is unsafe for them to bear a child. Meadows Aff. ¶ 16; Hardy-Fairbanks Aff. ¶ 9; Aff. of Kerri True-Funk (“True-Funk Aff.”) ¶¶ 9–13, attached to Mot. for Temporary Inj. Relief as Ex. 3.

B. The Act and its Impact on Petitioners’ Patients

The Act requires physicians to perform an ultrasound on a woman seeking an abortion. S.F. 359, § 4(1) (2018) (to be codified at Iowa Code § 146C.2(1)). If that ultrasound detects embryonic or fetal cardiac tones, which it generally would starting at about six weeks Imp, the Act prohibits the abortion, with certain narrow exceptions discussed below. S.F. 359, § 2 (2018) (to be codified at Iowa Code §146A.1(6)(a)); S.F. 359, § 3(4)(a–b) (2018) (to be codified at Iowa Code §146C.1(4)(a–b)). Thus, the Act

bans abortion starting in the earliest weeks of pregnancy, before many women even *know* they are pregnant, let alone have time to make their decision, schedule an appointment, and travel to the health center.

Any physician who violates the Act is subject to discipline by the Board of Medicine, including loss of licensure. See S.F. 359, § 4(5) (2018) (to be codified at Iowa Code § 146C.2(5)); Iowa Code § 148.6(2)(c). In practical effect, the Act would make it impossible for virtually all women to access abortion in Iowa. And this would be further exacerbated if Iowa's currently enjoined 72-hour mandatory delay law (which requires every patient seeking an abortion to go to the health center twice, at least 72 hours apart) were allowed to go into effect. *Meadows Aff.* ¶ 12.¹

In addition to denying women control over their own bodies and lives in a way *no state* has been permitted to do since Roe, the Act would impose other serious harms on them. Women forced to carry an unwanted pregnancy to term face increased risks of death and major complications from childbirth, such as hemorrhage, infection, preeclampsia and eclampsia, embolism, trauma to the genital tract or pelvic area, cervical laceration, anemia, and hypertensive disorder. *Meadows Aff.* ¶ 17. Cesarean delivery, which is common in childbirth, is a major invasive surgical operation and associated risks include injury to surrounding organs (particularly bladder and bowel), hemorrhage, and infection. Id. ¶ 18. The risks associated with pregnancy and childbirth are far higher than those associated with abortion, and are even higher for women living in poverty, as most

¹ Even if some women were in theory able to race to the clinic before six weeks, it is puzzling that the Iowa legislature would enact a law forcing them to do so and leaving them no time to deliberate, when just one legislature session ago it enacted a 72-hour mandatory delay period on the justification that women would make better decisions if forced to take *more* time before proceeding with an abortion.

abortion patients are, as well as for women living in rural areas where there are fewer medical providers. Id. ¶¶ 18–19; see also Hardy-Fairbanks Aff. ¶ 13.

Women forced to carry to term, and their newborns, also are at risk of other negative health consequences, including lower breastfeeding rates, and poor maternal and neonatal outcomes. Meadows Aff. ¶ 19. These women, and their families, also are significantly less likely to be able to overcome poverty. Id. ¶ 20. And women who are victims of partner violence will, in many cases, face increased difficulty escaping that relationship (because of new financial, emotional, and legal ties with that partner). Id.; True-Funk Aff. ¶¶ 11–12.

Additionally, in places where abortion is banned or heavily restricted, women desperate to end an unwanted pregnancy attempt to self-induce outside the medical system, sometimes by dangerous means. Meadows Aff. ¶ 27; True-Funk Aff. ¶ 18; Hardy-Fairbanks Aff. ¶ 15. Already, some Iowa women, faced with current barriers to care, consider or even attempt self-induction. Meadows Aff. ¶ 27. If the Act takes effect, it is likely that many more women would do so. Id. Restrictions on abortion are closely associated with maternal mortality, based on both historic U.S. data and on data from other countries where abortion is still banned or heavily restricted. Id. ¶ 27 n.19.

Although the Act contains certain narrow exceptions where abortion would be permitted, these exceptions do nothing to alter the fact the Act bans almost all abortions in the state. Moreover, they fail to cover even many situations in which the Act's harms would be especially egregious in ways they appear intended (inadequately) to prevent.²

² In practical effect, the Act is highly likely to eliminate or drastically reduce abortion access even for those women whose dire circumstances clearly do fall under the Act's exceptions, by making it impossible for some health centers to maintain the staffing,

While the Act includes a “medical emergency” exception, that exception is narrowly drafted to include only “physical” conditions that are either life-threatening or pose “a serious risk of substantial and irreversible impairment of a major bodily function.” S.F. 359, § 2 (2018) (to be codified at Iowa Code §146A.1(6)(a)). This exception forces physicians to determine, quickly and on pain of losing their license, whether real risks to women from conditions such as hypertension or cardiac conditions are sufficiently “serious” and sufficiently related to “substantial and irreversible” to “major” bodily functions to satisfy the Act. *Meadows Aff.* ¶¶ 21–22; *Hardy-Fairbanks Aff.* ¶ 10. They must do so knowing that their judgment can be second-guessed after the fact by the Board of Medicine (“Board”), a body that in the past has singled abortion out for medically unnecessary and harmful restrictions, see PPH I, 865 N.W.2d 252.

The Act expressly does *not* allow a woman to access an abortion she needs because of “psychological conditions, emotional conditions, familial conditions, or the woman’s age,” S.F. 359, § 2 (2018) (to be codified at Iowa Code §146A.1(6)(a)), even though these are real reasons why, for some women, continued pregnancy is particularly harmful or dangerous, *True-Funk Aff.* ¶¶ 11–15, 18; *Meadows Aff.* ¶ 21. And while the Act allows abortions where a physician certifies that the fetus suffers from a “fetal abnormality that in the physician’s reasonable medical judgment is incompatible with life,” the provision too requires that the physician certify this knowing that she may lose her license if the Board disagrees with her interpretation of this vague language or her medical assessment. *Hardy-Fairbanks Aff.* ¶ 11. Moreover, it does not allow abortions for other severe anomalies, no matter how poor the prognosis is for the fetus. S.F. 359, §

equipment, supplies and skills necessary to continue providing abortion services. *Meadows Aff.* ¶ 26.

4(3)(d) (2018) (to be codified at Iowa Code §146C.1(4)(d)); Meadows Aff. ¶ 25.

The Act also includes narrow exceptions for rape or incest, but only if the pregnancy resulted from a rape or incest that was reported to certain entities within a prescribed window of time. S.F. 359, § 3(4)(a–b) (2018) (to be codified at Iowa Code §146C.1(4)(a–b)). These exceptions will not cover many victims of abuse for whom continued pregnancy and childbirth would be emotionally painful, potentially traumatic, or otherwise dangerous, specifically: victims abused in circumstances that do not clearly constitute incest or rape under Iowa law (indeed “rape” is not defined under the Code, and incest is defined to exclude step-relatives); victims who were too ashamed, traumatized, fearful, or under their abuser’s control to report their abuse within the prescribed time-period; and victims who are unsure whether their pregnancy is the result of the abuse they reported. True-Funk Aff. ¶¶ 14, 20–29; Meadows Aff. ¶ 23.

Thus, notwithstanding its narrow exceptions, the Act will gravely harm women’s health, and welfare, in addition to depriving them of control over their bodies and their lives.

ARGUMENT

A. Standard for Temporary Injunctive Relief

The Iowa Rules of Civil Procedure establish that the Court may grant a temporary injunction “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.” Iowa R. Civ. P. 1.1502(1). “A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation,” Kleman v. Charles City Police

Dep't, 373 N.W.2d 90, 95 (Iowa 1985), specifically in situations where a plaintiff is likely to succeed on the merits of her claim and is at risk of irreparable harm absent immediate judicial intervention, Max 100 L.C. v. Iowa Realty Co., 621 N.W.2d 178, 181 (Iowa 2001).

In the two most recent abortion rights cases before it, involving abortion restrictions far less extreme than the one at issue here (though still unconstitutional), the Iowa Supreme Court determined that a temporary injunction was appropriate. See Order, PPH I, 865 N.W.2d 252 (Iowa 2015) (No. 14-1415) (granting temporary injunction to stay enforcement of challenged statute); Order, Planned Parenthood of the Heartland, Inc. v. Reynolds (“PPH II”), No. 17-1579 (Iowa Oct. 23, 2017) (same). Petitioners easily meet the standard for this relief here too.

B. Petitioners have established a likelihood of succeeding on their claim that the Act violates a protected constitutional right.

A temporary injunction is warranted in this case because Petitioners are likely to succeed on their claims that the Act violates PPH’s patients’ rights to due process under the Iowa Constitution.³

The Iowa Supreme Court has recognized that abortion is a right protected under the Iowa Constitution, and that it warrants protection *at least* to the same degree as under the Federal Constitution. PPH I, 865 N.W.2d at 263, 269 (Iowa 2015) (striking down under the Iowa Constitution an agency rule restricting the use of telemedicine to provide medication abortion). Federal precedent, in turn, could not be more clear or unanimous that, before viability, the state may not prevent a woman from ending an unwanted

³ The Act also violates other provisions of the Iowa Constitution, see Petition for Declaratory Judgment and Injunctive Relief ¶¶ 36–39. But given that the Act so obviously violates their patients’ due process rights and the short period of time before the Act takes effect, Petitioners focus here on that claim.

pregnancy. This straightforward rule was announced in Roe v. Wade, 410 U.S. at 113, and has been reaffirmed repeatedly and consistently in the more than four decades since. See, e.g., Whole Woman’s Health v. Hellerstedt (“WWH”), 136 S. Ct. 2292, 2300 (2016) (reaffirming that state may not enact a law where the “purpose or effect” of the provision “is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability” (quoting Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 872 (1992)); Casey, 505 U.S. at 871 (“The woman’s right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty that we cannot renounce.”); MKB Mgmt. Corp. v. Stenehjem, 795 F.3d 768 (8th Cir. 2015), cert denied, 136 S. Ct. 981 (2016) (striking down 6 week ban); Edwards v. Beck, 786 F.3d 1113 (8th Cir. 2015), cert. denied, 136 S. Ct. 895 (2016) (striking down 12 week ban); Isaacson v Horne, 716 F.3d 1213 (9th Cir. 2013), cert. denied, 134 S. Ct. 905 (2014) (striking down 20 week ban); Jane L. v. Bangerter, 102 F.3d 1112 (10th Cir. 1996), cert denied, 117 S. Ct. 2453 (1997) (striking down 20-week ban); TRO, Jackson Women’s Health Org. v. Currier, No. 3:18-cv-00171-CWR-FKB, 2018 WL 1567867 (S.D. Miss. Mar. 20, 2018) (granting temporary restraining order against 15 week ban).

The Act effectively bans abortion outright, and is even harsher than virtually all of the laws invalidated in the precedent cited above. Thus, there is no question that the Act violates Iowa precedent as well as decades of federal abortion-rights precedent that the Iowa Supreme Court cited as the establishing a minimum level of protection for claims brought under the Iowa Constitution, PPH I, 865 N.W.2d at 269 (Iowa 2015). For that reason, Petitioners are likely to succeed on the merits of their petition.

C. Petitioners and their patients will be substantially injured if this Court does not enjoin Respondents from enforcing the Act, and the balance of hardships warrants injunctive relief.

In addition to being likely to succeed on the merits of their petition, Petitioners and their patients will be substantially injured if the Act is enforced. See Ney v. Ney, 891 N.W.2d 446, 451 (Iowa Mar. 10, 2017) (district court may issue an injunction when “substantial injury will result from the invasion of the right or if substantial injury is to be reasonably apprehended to result from a threatened invasion of the right”).

As an initial matter, the Act will irreparably harm Petitioners’ patients by violating their constitutional rights: “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)); Ezell v. City of Chicago, 651 F.3d 684, 699 (7th Cir. 2011) (infringement of constitutional rights by facially invalid law causes irreparable harm) (citing 11A Charles Wright et al., Practice & Procedure § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). As outlined in more detail above, the Act will also irreparably harm women by preventing them from accessing *time-sensitive* medical care that is critical to their health, safety and welfare. See Factual Background Part A.

It is well established that these harms are more than sufficient to meet the standard for temporary injunctive relief. See MKB Management Corp. v. Burdick, 954 F. Supp. 2d 900 (D. N.D. 2013) (enjoining 6-week ban); Edwards v. Beck 946 F. Supp. 2d 843 (E.D. Ark. 2013) (enjoining 12-week ban); see also, e.g., Emma Goldman Clinic v. Holman, 728 N.W.2d 60, 2006 WL 3436221, at *6 (Iowa Ct. App. 2006) (unpublished table decision) (injunction necessary “to protect the plaintiffs and the clinic’s patients and

staff from harm”); Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 640 (Iowa 1991) (injunction necessary to protect “Planned Parenthood’s right and ability to conduct its business”); Planned Parenthood of Wis., Inc. v Van Hollen, 738 F.3d 786, 795 (7th Cir. 2013), cert denied, 134 S. Ct. 2841 (2014) ; Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. Unit. B 1981) (an infringement on a woman’s constitutional right to have an abortion “mandates” a finding of irreparable injury because “once an infringement has occurred it cannot be undone by monetary relief”); Roe v. Crawford, 396 F. Supp. 2d 1041, 1044 (W.D. Mo. 2005) (delay in obtaining abortion procedure “may cause Plaintiff substantial injury, exposing her to increased medical, financial, and psychological risks”), stay of injunction denied, 546 U.S. 959 (2005).

The balance of harms between the parties further supports a grant of temporary injunctive relief. While Petitioners and their patients will be severely harmed by the Act’s requirements, Respondents will not suffer any harm from Petitioners’ patients’ continuing to receive the constitutionally-protected medical care they have received for over 40 years, as have women throughout the country. See Am. Civil Liberties Union v. Johnson, 194 F.3d 1149, 1163 (10th Cir. 1999) (“[T]hreatened injury to [constitutional rights] outweighs whatever damage the preliminary injunction may cause Defendants’ inability to enforce what appears to be an unconstitutional statute.”) (citation omitted); Saint v. Neb. Sch. Activities Ass’n, 684 F.Supp. 626, 628 (D. Neb. 1988) (no harm to defendant in losing the ability to enforce unconstitutional regulations).

D. There is no adequate legal remedy available.

Finally, Petitioners are entitled to an injunction because their patients have no

adequate legal remedy for the Acts' gross violation of their bodily integrity and decisional autonomy. See Ney, 891 N.W.2d at 452 (there is no adequate legal remedy "if the character of the injury is such that it cannot be adequately compensated by damages at law") (internal quotation marks omitted). The Act will cause women subject to its mandates—who are denied the ability to exercise their constitutional rights—grievous injuries that cannot later be compensated by damages.

CONCLUSION

WHEREFORE, Petitioners pray this Court grant their Motion for Temporary Injunctive Relief and enjoin Respondents from enforcing the Act during the pendency of this case.

Respectfully submitted,

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