

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

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

Petitioners,

v.

KIM REYNOLDS, ex rel. STATE OF IOWA;
IOWA DEPARTMENT OF PUBLIC
HEALTH; GERD CLABAUGH, in his
official capacity as Director of the Iowa
Department of Public Health; IOWA
DEPARTMENT OF PUBLIC SAFETY;
STEPHAN BAYENS, in his official capacity
as Commissioner of the Iowa Department of
Public Safety; IOWA BOARD OF
MEDICINE; and THOMAS MILLER, in his
official capacity as Attorney General of Iowa,

Respondents.

Equity Case No. _____

**PETITION FOR DECLARATORY 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, Alice Clapman, Mai Ratakonda and Susan Lambiase, of Planned Parenthood Federation of America, Rita Bettis Austen of the American Civil Liberties Union of Iowa Foundation, 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, Iowa Department of Public Health, Gerd Clabaugh in his official capacity as Director of the Iowa Department of Health, Iowa Department of Public Safety, Stephan Bayens in his official capacity as Commissioner of the Iowa Department of Public Safety, Iowa Board of Medicine, and Thomas Miller in his official capacity as Attorney General of Iowa from enforcing Section One of

Governor Kim Reynolds' March 26, 2020 Proclamation of Disaster Emergency as interpreted by the office of the Governor (the "Proclamation"), which would effectively ban abortion by procedure in Iowa, as well as a declaratory judgment that, as interpreted by the Governor to ban abortion by procedure, the Proclamation violates the Iowa Constitution, and in support thereof state the following:

STATEMENT OF THE CASE

1. This action is brought under the Iowa Constitution to challenge the validity of Section One of Governor Kim Reynolds' March 26, 2020, Proclamation of Disaster Emergency, which took effect on March 27, 2020, and which Governor Reynolds appears to interpret as banning "all surgical abortion" procedures.

2. Citing the ongoing coronavirus disease 2019 ("COVID-19") pandemic and the need to preserve hospital capacity and personal protective equipment ("PPE"), the Proclamation prohibits "nonessential or elective surgeries and procedures that utilize personal protective equipment." The Proclamation defines a "nonessential surgery or procedure" as

one that can be delayed without undue risk to the current or future health of a patient, considering all appropriate factors including, but not limited to any: (1) threat to the patient's life if the surgery or procedure is not performed; (2) threat of permanent dysfunction of an extremity or organ system; (3) risk of metastasis or progression of staging; and (4) risk of rapidly worsening to severe symptoms.

Proclamation at Section One (attached to Pet'rs' Mot. Temporary Injunctive Relief as Ex.

A).

3. As the American College of Obstetricians and Gynecologists ("ACOG"), the American Board of Obstetrics & Gynecology, the American Association of Gynecologic Laparoscopists, the American Gynecological & Obstetrical Society, the American Society for Reproductive Medicine, the Society for Academic Specialists in General Obstetrics and Gynecology, the Society of Family Planning, and the Society for Maternal-Fetal Medicine have

recognized, abortion care is essential care because it cannot be delayed without risking the health and safety of the patient. Accordingly, providing this care is entirely consistent with the Governor's Proclamation. As responsible healthcare providers, prior to the Governor's statement, Petitioners had already taken numerous steps to conserve PPE, including by reducing patient volume and suspending certain non-essential procedures.

4. However, on March 27 the Iowa Governor's office released a statement to reporters that the Proclamation's suspension of non-essential medical procedures includes "all surgical abortions."¹ The Governor—who also recently signed a six-week abortion ban into law that was invalidated in *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE83074, 2019 WL 312072 (Iowa Dist. Ct. Polk Cty. Jan. 22, 2019)—has not singled out any other non-dental medical procedure and labeled it non-essential.

5. As a result of the Governor's statement, Petitioners have already been forced to turn away patients in need of time-sensitive abortion care scheduled for this week.

6. The Proclamation, as interpreted by the Governor's office to ban all abortion by procedure ("abortion procedures"), flagrantly defies clear and binding constitutional precedent recognizing that patients have a protected liberty interest in terminating an unwanted pregnancy, most recently confirmed by the Iowa Supreme Court in *Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206 (Iowa 2018), and applied in *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 2019 WL 312072. No such law banning previability abortion care has been upheld, either federally or in Iowa, 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.

¹ A true and correct copy of the article in the *Des Moines Register* that reports this statement is attached to Petitioners' Motion for Temporary Injunctive Relief as Ex. B.

7. Without temporary and permanent injunctive relief, Plaintiffs will be forced to continue turning away patients seeking time-sensitive abortion care. At a minimum, those patients will not be able to obtain an abortion for weeks or even months, given that the COVID-19 pandemic is likely to last far beyond the Proclamation's stated expiration date. Some will not be able to access abortion at all and will be forced to carry pregnancies to term.

8. By effectively banning virtually all abortion by procedure in Iowa, the Proclamation unlawfully violates the rights of Petitioners' patients and all Iowa women under the Iowa Constitution and severely jeopardizes their health, safety and welfare.

9. What is worse, the Proclamation violates fundamental rights without in fact assisting the state in mitigating the effects of the pandemic. Abortion is a straightforward outpatient procedure requiring little PPE. By contrast, forcing women to continue their pregnancies will only force them to have *more* encounters with an already overtaxed medical system, including encounters with a hospital system that is in crisis. All of these encounters could require *more* PPE, not less, than an abortion would have required.

10. Accordingly, Petitioners seek immediate judicial relief declaring the Proclamation unconstitutional and enjoining its enforcement.

PARTIES

11. 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.

12. 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 2019, PPH performed 3,170 abortions in the state of Iowa. PPH provides abortions up to 20 weeks and 6 days LMP, which is weeks before a fetus is potentially viable.

13. 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.

14. 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.

15. Petitioner EGC is a not-for-profit independent organization with one clinic location in Iowa City, Iowa. EGC provides reproductive health care to individuals 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, safer sex promotion and active education, and medication and surgical abortion.

16. EGC provides medication and surgical abortion at its clinic in Iowa City. In 2017, EGC provided over 600 abortions in Iowa. EGC provides abortions up to 19.6 LMP, which is weeks before a fetus is potentially viable.

17. 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.

18. Respondent Kim Reynolds is the Governor of Iowa and the author of the Proclamation, which she issued pursuant to her emergency authority, citing Iowa Code § 135.144(3). The Governor is sued in her official capacity.

19. Respondent Iowa Department of Public Health (“DPH”) is a state agency as defined in the Iowa Administrative Procedures Act, Iowa Code § 17A.2(1). Pursuant to section thirty-three of the Proclamation, DPH is authorized to enforce violations of the Proclamation. *See* Iowa Code §§ 135.38, 135.144.

20. Respondent Gerd Clabaugh is the Director of DPH. As Director of DPH, Mr. Clabaugh is charged with heading the Department, supervising public health, and enforcing laws related to public health. Iowa Code § 135.11(1). He is sued in his official capacity.

21. Respondent Iowa Department of Public Safety is a state agency as defined in the Iowa Administrative Procedures Act, Iowa Code § 17A.2(1). Pursuant to section thirty-three of the Proclamation, the Department is authorized to enforce violations of the Proclamation. The Department includes all peace officers employed by the State, Iowa Code § 80.5, who have the authority to enforce the Proclamation, including by making arrests, pursuant to Iowa Code § 29C.18(2).

22. Respondent Stephan Bayens is the Commissioner of the Iowa Department of Public Safety. He is responsible for authorizing and overseeing all peace officers employed by the State, Iowa Code § 80.9A, who have the authority to enforce the Proclamation, including by making arrests, pursuant to Iowa Code § 29C.18(2). He is sued in his official capacity.

23. Respondent Iowa Board of Medicine is a state agency as defined in the Iowa Administrative Procedures Act, Iowa Code § 17A.2(1). Respondent is charged with disciplining individuals licensed to practice medicine and surgery or osteopathic medicine and surgery. *Id.* §§ 147.55; 148.6–7.

24. Respondent Thomas Miller is the Attorney General of Iowa. He is charged with prosecuting cases in which the State has an interest, Iowa Code § 13.2(1)(b), and with supervising

county and district attorneys in the prosecution of criminal offenses, including criminal violations of the Proclamation. *Id.* § 13.2(1)(g). He is sued in his official capacity

JURISDICTION AND VENUE

25. This action seeks a declaratory judgment and injunctive relief pursuant to Iowa Rule of Civil Procedure 1.1101–1.1109 (2020), 1.1501–1.1511 (2020), and the common law. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.6101 (2020).

26. Venue is proper in this district pursuant to Iowa Code § 616.3(2) (2020) because part of the cause arose in Johnson County, where both PPH and EGC provide abortion services.

OPERATIVE FACTS

I. Abortion Generally and As Provided in Iowa

27. Pregnancy is commonly measured from the first day of the pregnant person’s last menstrual period (“LMP”). A full-term pregnancy has a duration of approximately forty weeks LMP. In Iowa, abortion is almost entirely banned about halfway through pregnancy, at twenty-two weeks LMP.

28. Up to eleven weeks LMP, patients wishing to terminate their pregnancy can choose between medication abortion (where the patient takes medications to end and expel the pregnancy) and abortion by procedure as it is commonly called (where a clinician uses gentle suction, sometimes along with instruments, to empty the patient’s uterus). After eleven weeks LMP, only abortion by procedure is available in Iowa.

29. Medication abortion involves the patient ingesting a combination of two medications: mifepristone and misoprostol. The patient takes the first medication in the health center and then, typically twenty-four to forty-eight hours later, takes the second medication at a location of their choosing, most often at their home, after which they expel the contents of the pregnancy in a manner similar to a miscarriage. Medication abortion is not a “procedure.”

30. While sometimes referred to as “surgical abortion,” an abortion procedure is not what is commonly understood to be “surgery”; it is a straightforward outpatient procedure involving no incision, no need for general anesthesia, and no requirement of a sterile field. Up to approximately fifteen weeks LMP, physicians use the aspiration abortion technique, which involves dilating the natural opening of the cervix using medications and/or small, expandable rods, inserting a narrow tube into the uterus, and emptying the uterus through suction. This procedure typically takes five to ten minutes.

31. To perform abortions after that gestational point in pregnancy, physicians must dilate the cervix further and use instruments to empty the uterus, which is called the dilation and evacuation (“D&E”) technique. Later in the second trimester, the physician may begin cervical dilation the day before the procedure itself.

32. Legal abortion is one of the safest procedures in contemporary medical practice.² The vast majority of abortions in the United States are provided in an outpatient setting. In comparison, more than ninety-eight percent of births in the United States take place in a hospital.³ Complications from both medication and procedural abortion are rare, and when they occur, they can usually be managed in an outpatient clinic setting, either at the time of the abortion or during a follow-up visit. Major complications—defined as complications requiring hospital admission, surgery, or blood transfusion—occur in less than one-quarter of one percent (0.23%) of abortion cases: specifically, such complications arise in just 0.31% of medication abortion cases, 0.16% of first-trimester procedural abortion cases, and 0.41% of procedural cases in the second trimester or

² Nat’l Acads. of Scis. Eng’g & Med., *The Safety & Quality of Abortion Care in the United States* 77–78, 162–63 (2018).

³ Marian F. MacDorman et al., Nat’l Ctr. for Health Statistics, NCHS Data Brief No. 144: *Trends in Out-of-Hospital Births in the United States, 1990-2012* (2014), <https://www.cdc.gov/nchs/products/databriefs/db144.htm>.

later.⁴ Abortion-related emergency room visits constitute just 0.01% of all emergency room visits in the United States.⁵ By comparison, as many as ten percent of women who carry to term are hospitalized for complications associated with pregnancy aside from hospitalization for delivery.⁶

33. Indeed, 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 fourteen times higher than that associated with abortion,⁷ and complications such as hemorrhage are far more likely to occur with childbirth than following an abortion.

34. Even with an uncomplicated pregnancy in an otherwise healthy individual, carrying a pregnancy to term and giving birth poses serious medical risks, often requiring substantial medical care, and can have long-term medical and physical consequences. For a person with a medical condition caused or exacerbated by pregnancy or for a person who receives a diagnosis of a severe or lethal fetal anomaly, these risks are increased.

35. People decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Some people 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 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.

⁴ Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *Obstetrics & Gynecology* 175 (2015).

⁵ Ushma D. Upadhyay et al., *Abortion-related Emergency Room Visits in the United States: An Analysis of a National Emergency Room Sample*, 16 *BMC Med.* 1, 1 (2018).

⁶ Anne Elixhauser & Lauren M. Wier, Agency for Healthcare Research & Quality, *Complicating Conditions of Pregnancy and Childbirth*, 2008 (Statistical Brief #113) (2011).

⁷ Nat'l Acads., *supra* note 2 at 11, 74–75.

36. Approximately one in four women in this country will have an abortion by age forty-five. Fifty-nine percent of patients who seek abortions are parents who have decided that they cannot parent another child at this time.⁸

37. Petitioners provide medication abortion and abortion procedures. Petitioners provide abortion procedures to varying gestational points in pregnancy within the bounds of Iowa law, which prohibits abortion care except in narrow circumstances when “the probable post-fertilization age of the unborn child is 20 or more weeks.” Iowa Code § 146B.2(2)(a).⁹

II. The COVID-19 Pandemic

38. Since it was first identified in December 2019,¹⁰ COVID-19 has grown to a worldwide pandemic. The disease has spread to 203 countries, infecting hundreds of thousands of people and killing more than 30,000.¹¹ In the United States, the virus has reached every state, including over 300 confirmed cases and four deaths in Iowa as of the time of filing.¹²

39. Federal and state officials and medical professionals expect a surge of infections—which may last for a year or eighteen months¹³—to test the limits of the healthcare system.¹⁴

⁸ Guttmacher Inst., Fact Sheet: Induced Abortion in the United States (Sept. 2019), available at <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>

⁹ “Post-fertilization age” means “the age of the unborn child as calculated from fertilization,” and fertilization is in turn defined as “the fusion of a human spermatozoon with a human ovum,” Iowa Code § 146B.1, which occurs approximately two weeks after the first day of a patient’s last menstrual period. Thus, twenty weeks post-fertilization is twenty-two weeks LMP.

¹⁰ Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. Times, Mar. 24, 2020, <https://www.nytimes.com/article/coronavirus-timeline.html>.

¹¹ World Health Org., *Coronavirus Disease (COVID-19) Pandemic*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (last viewed Mar. 29, 2020).

¹² Ctrs. for Disease Control & Prevention, *Cases in U.S.* (last updated Mar. 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>; *COVID-19 in Iowa, Current Status*, <https://coronavirus.iowa.gov/> (last viewed Mar. 29, 2020).

¹³ Denise Grady, *Not His First Epidemic: Dr. Anthony Fauci Sticks to the Facts*, N.Y. Times, Mar. 8, 2020, <https://www.nytimes.com/2020/03/08/health/fauci-coronavirus.html>.

¹⁴ Ctrs. for Disease Control & Prevention, *Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States*, (last updated Feb. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/guidance-hcf.html>.

Healthcare workers are facing a shortage of certain types of PPE, particularly N95 masks.¹⁵ This shortage is projected to last for another three to four months.¹⁶

40. On March 13, 2020, the White House issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency. Several days later, on March 17, Governor Reynolds issued a Proclamation of Disaster Emergency certifying that COVID-19 constitutes a public health disaster emergency for the entirety of the State of Iowa.

41. On March 18, 2020, a group of preeminent national medical organizations issued a joint statement on “Abortion Access During the COVID-19 Outbreak.” That guidance instructs that “[t]o the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure” because it “is an essential component of comprehensive health care” and “a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible.”

42. The COVID-19 pandemic has compounded the difficulties patients face in seeking abortion care, forcing them to seek care while coping with job insecurity, pressure not to travel, limited childcare assistance due to school and business closures, limits on gatherings of more than ten people, mandatory social-distancing, and work-from-home requirements.¹⁷

¹⁵ Andrew Jacobs, Matt Richtel & Mike Baker, ‘At War With No Ammo’: Doctors Say Shortage of Protective Gear Is Dire, N.Y. Times, Mar. 19, 2020, <https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html>.

¹⁶ Ctrs. for Disease Control & Prevention, *Healthcare Supply of Personal Protective Equipment*, (last updated Mar. 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/healthcare-supply-ppe.html>.

¹⁷ Press Release, Office of the Governor of Iowa, Gov. Reynolds Recommends Iowa Schools Close for Four Weeks, Will Hold a Press Conference Tomorrow (Mar. 15, 2020), <https://governor.iowa.gov/press-release/gov-reynolds-recommends-iowa-schools-close-for-four-weeks-will-hold-a-press-0>; Iowa Proclamation of Disaster Emergency dated March 17, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.17.pdf> (ordering closures of restaurants and bars, senior citizen centers, and any

43. The COVID-19 pandemic and its fallout do not reduce patients’ needs for abortion; if anything, they make timely access to abortion even more urgent, while raising additional obstacles for patients seeking that care. The social-distancing policies that have been put in place to combat the pandemic have isolated many victims of intimate partner violence from social support organizations or friends or family who may otherwise provide support and protection from violence. As family members spend more time in close contact and cope with the stress of the pandemic and its attendant effects, the likelihood that individuals in an abusive relationship will be exposed to violence is “dramatically increased.”¹⁸

44. While much is unknown about COVID-19, including whether it can complicate pregnancy, some pregnant people who are delayed in accessing abortion may be exposed to additional health risks from the disease. ACOG has warned that “pregnant women are known to be at greater risk of severe morbidity and mortality from other respiratory infections such as influenza and SARS-CoV. As such, pregnant women should be considered an at-risk population

gatherings of ten or more people); Iowa Proclamation of Disaster Emergency dated March 22, 2020, <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.22.pdf> (additionally closing salons and similar service establishments); Iowa Proclamation of Disaster Emergency dated March 26, 2020 (extending pre-existing closures to 11:59 p.m. on April 16, 2020); *see also* White House, The President’s Coronavirus Guidelines for America (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf; Rebecca Shabad, *Fauci Predicts Americans Will Likely Need to Stay Home for at Least Several More Weeks*, NBC News, Mar. 20, 2020, <https://www.nbcnews.com/politics/donald-trump/fauci-predicts-americans-will-likely-need-stay-home-least-several-n1164701>.

¹⁸ World Health Org., COVID-19 and Violence Against Women: What the Health Sector/System Can Do (Mar. 26, 2020), <https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf>. Such an increase has already been recorded in China. *Id.*; *see also* Tanya Selvaratnam, *Where Can Domestic Violence Victims Turn During COVID-19?*, N.Y. Times, Mar. 23, 2020, <https://www.nytimes.com/2020/03/23/opinion/covid-domestic-violence.html>.

for COVID-19.”¹⁹ Additionally, new studies suggest the virus might be able to cross through the placenta to a fetus during pregnancy.²⁰

45. In addition to all other harms, the pandemic has caused layoffs and other work disruptions, and has shuttered schools and childcare facilities. Unemployment claims are soaring.²¹ People who receive health insurance through their employers are being laid off and left without insurance coverage for themselves and their families. Other workers are remaining on the job despite symptoms and increasingly dire public health warnings, fearing the loss of work even more than the disease.

46. Petitioners are committed to responding to the current public health crisis, including by preserving much-needed medical resources that are in short supply during the pandemic. Since the onset of the COVID-19 outbreak Plaintiffs have taken precautions to maximize the safety of their patients and staff and to conserve PPE. For example, Petitioners have limited the number of individuals present for any procedure who would require PPE and have curtailed other non-abortion services that their health teams have decided can safely be delayed.

47. Petitioners do not provide inpatient care and are not equipped to do so.

¹⁹ ACOG, *Practice Advisory - Novel Coronavirus 2019 (COVID-19)* (March 13, 2020), <https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019>; see also Ctrs. for Disease Control & Prevention, *Information for Healthcare Providers: COVID-19 and Pregnant Women* (Mar. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pregnant-women-faq.html>.

²⁰ Apoorva Mandavilli, *Shielding the Fetus From the Coronavirus*, N.Y. Times, Mar. 27, 2020, <https://www.nytimes.com/2020/03/27/health/shielding-the-fetus-from-the-coronavirus.html>.

²¹ Tyler Jett, *As Businesses Shut Down to Stunt Coronavirus' Spread, Iowa Sees Record Weekly Unemployment Claims, Mirroring U.S. Increase*, Des Moines Register, Mar. 26, 2020, <https://www.desmoinesregister.com/story/money/business/2020/03/26/covid-19-coronavirus-iowa-record-weekly-jobless-claims-unemployment/2896324001/> (noting 41,890 applications for unemployment benefits last week, almost three times as many as the previous state record for unemployment claims filed in a single week in the nearly thirty years the U.S. Department of Labor has been tracking such statistics).

48. Abortion procedures do not require extensive use of PPE. While physicians use some PPE for abortion procedures—such as non-sterile gloves for each procedure, one face shield per shift, and a washable, cloth lab jacket—only a small number of health care staff are physically present for these procedures or their preparation/recovery and therefore in need of PPE. Petitioners do not use N95 respirators, the PPE in shortest supply during the COVID-19 pandemic.

III. The Governor’s Threat to Abortion Access

49. On March 26, 2020, Iowa Governor Kim Reynolds issued a Proclamation of Disaster Emergency, relating to hospital capacity, among other things, during the COVID-19 pandemic. That order went into effect as of 5:00 p.m. on March 27, 2020 and is in effect until 11:59 p.m. on April 16, 2020, although by its terms it may be extended. It directs that “[a]ll nonessential or elective surgeries and procedures that utilize personal protective equipment (PPE) must not be conducted by any hospital, outpatient surgery provider, or outpatient procedure provider, whether public, private, or nonprofit.” Proclamation at § One. The Proclamation defines a nonessential surgery or procedure as

one that can be delayed without undue risk to the current or future health of a patient, considering all appropriate factors including, but not limited to any: (1) threat to the patient’s life if the surgery or procedure is not performed; (2) threat of permanent dysfunction of an extremity or organ system; (3) risk of metastasis or progression of staging; and (4) risk of rapidly worsening to severe symptoms.

Id. § One(B).

50. Although the order does not define “personal protective equipment,” Petitioners understand that term to refer to, for example, surgical masks, sterile and non-sterile gloves, disposable protective eyewear, disposable gowns, and disposable shoe covers. Petitioners also understand that term to refer to N95 respirators.

51. The Proclamation further states that “[e]ach hospital, outpatient surgery provider, and outpatient procedure provider shall limit all nonessential individuals in surgery and procedure

suites and patient care areas where PPE is required. Only individuals essential to conducting the surgery or procedure shall be present in such areas,” *Id.* § One(C), and that “[e]ach hospital, outpatient surgery provider, and outpatient procedure provider shall establish an internal governance structure to ensure that the principles outlined above are followed.” *Id.* § One(D).

52. Even before the March 26 Proclamation, Petitioners had instituted practices to ensure that, consistent with earlier Emergency Proclamations regarding the COVID-19 pandemic, they were taking steps to minimize their use of PPE.

53. Despite that abortion cannot be delayed without a risk to a patient’s health, on March 27, 2020, the Governor’s office released the following statement to the press, indicating that abortion procedures are banned for the duration of the Proclamation: “Proclamation suspends all nonessential or elective surgeries and procedures until April 16. That includes surgical abortion procedures.”

54. Given the severe civil and criminal penalties Petitioners and their physicians face if they were to violate the Proclamation, the Governor’s statement that she considers the Proclamation to ban all abortion procedures has forced Petitioners to cancel scheduled appointments and turn away patients. Thus, Respondents have effectively banned abortion procedures in Iowa until April 16, 2020, and in all likelihood longer given projections of a PPE shortage for three to four months. Because medication abortion is not available after eleven weeks LMP, this is effectively a ban on all abortions after that time, as well as for patients with earlier pregnancies for whom medication abortion is not appropriate.

55. The Proclamation will deprive Petitioners’ patients of the freedom to make a very personal decision in consultation with their medical providers, which is all the weightier given the increased health risks to pregnant persons during the COVID-19 pandemic. It will harm patients’

physical, emotional, and financial wellbeing and the wellbeing of their families. Patients' abortions will be delayed, and in some cases, denied altogether. As a result, Iowa patients will be forced to carry pregnancies to term, resulting in a deprivation of their fundamental right to determine when and whether to have a child or to add to their existing families.

56. If a person is forced to continue a pregnancy against their will, particularly during a global pandemic, it can pose a risk to their physical, mental, and emotional health, as well as to the stability and wellbeing of their family, including their existing children. Pregnancy, childbirth, and an additional child may exacerbate an already difficult situation for those who have suffered trauma, such as sexual assault or domestic violence.²²

57. Patients generally seek abortion as soon as they are able, but many face financial and logistical obstacles that can delay their access to abortion. For example, low-wage workers often have no paid time off or sick leave, so even if a pregnant worker is able to get time off work for an abortion appointment, they will likely have to forgo part of a paycheck. Patients facing long travel distances typically must arrange and pay for transportation and arrange to take time off work. Many patients must also arrange and pay for childcare while they travel to their abortion appointment.

58. These barriers routinely delay abortion access for people with low incomes, including delay past the point in pregnancy when medication abortion is no longer available, and for some, to the point that a more complex, two-day procedure is required. Although abortion is safe throughout pregnancy, the risk, complexity, duration, and thus cost increase as pregnancy progresses. As a result, patients who are delayed in obtaining care as they save money for the

²² Sarah C.M. Roberts et al., *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC Med. 144 (2014).

procedure may find that even more money is needed for the delayed procedure, necessitating even more delay.

59. Without access to abortion services in Iowa after eleven weeks, some patients will be forced to travel hundreds of miles across state lines to try to access abortion care and result in use of PPE in any event. Given the logistical hurdles of traveling out-of-state, particularly during the COVID-19 pandemic, these patients are likely to obtain abortions later than they would have had they accessed care from PPH, which necessarily entails greater risks (and likely more PPE) than an earlier procedure.²³

60. Efforts to travel are also likely to expose both patients and other people to additional risk of contagion, at a time when states have given urgent directives to their citizens to stay home as much as possible to avoid inadvertently spreading COVID-19.

61. For other patients, travel to another state will simply not be possible, even if travel remains legal during the pandemic. As a result, these patients will be forced to carry unwanted pregnancies to term, resulting in a deprivation of their fundamental rights, as well as greater health and other risks to them and their children. Individuals forced to carry an unwanted pregnancy to term, and their newborns, are at risk of negative health consequences such as reduced use of prenatal care, lower breastfeeding rates, and poor maternal and neonatal outcomes.²⁴

²³ County officials have asked the governor to issue a stay-at-home order, Travis Breese, *Johnson County to Urge Governor for an Order Keeping People Home*, *KWWL*, Mar. 27, 2020, <https://kwwl.com/2020/03/27/johnson-county-to-urge-governor-for-a-stay-at-home-order/>, and the Governor has recommended that schools close, Press Release, Office of the Governor of Iowa, *supra* note 17.

²⁴ A.P. Mohllajee et al., *Pregnancy Intention and Its Relationship to Birth and Maternal Outcomes*, 109 *Obstetrics & Gynecology* 678 (2007); Jessica D. Gipson, Michael A. Koenig & Michelle J. Hindin, *The Effects of Unintended Pregnancy on Infant, Child, and Parental Health: A Review of the Literature*, 39 *Stud. Fam. Plan.* 18 (2008).

62. By forcing patients to carry unwanted pregnancies to term, the Proclamation will only further burden Iowa's already limited and over-taxed resources. Iowa in particular has extremely depleted obstetrical resources.²⁵

63. The Proclamation will remain in force until April 16, 2020, at the earliest. It is subject to extension for the duration of the coronavirus pandemic, which experts believe will last at least one year to eighteen months, if not more. The current shortage of PPE is expected to continue for months. As a result, the Governor office's interpretation of the Proclamation bans abortion procedures for all Iowans who are currently pregnant or who will become pregnant in the coming months.

CLAIMS FOR RELIEF

COUNT I – RIGHT TO DUE PROCESS

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

65. The Proclamation violates the due process rights of Petitioners' patients seeking and obtaining abortions in the state of Iowa, as guaranteed by article I, section 9 of the Iowa Constitution. *Planned Parenthood of the Heartland*, 915 N.W.2d 206.

²⁵ Ass'n of Am. Med. Colls., 2019 Iowa Physician Workforce Profile, *available at* <https://www.aamc.org/system/files/2019-12/state-physician-iowa-2019%5B1%5D.pdf> (In 2019, Iowa had only one OB/GYN per 11,272 people); *see also* Marygrace Elson, Iowa Med. Soc'y, Maternity Workforce in Iowa (2019), *available at* https://idph.iowa.gov/Portals/1/userfiles/38/OB%20Summit/Elson_Maternity%20Workforce%20IDPH%20mge.pdf (Iowa Medical Society analysis of AAMC data found that Iowa ranked 52nd for OB/GYNs per 100,000 people, behind forty-eight states, Washington, D.C., and Puerto Rico); News Release, Iowa Senate Democrats, Healthy Moms and Babies Act Will Address Growing Maternal Health Concerns (Feb. 19, 2020), <https://www.senate.iowa.gov/democrats/2020/02/healthy-moms-and-babies-act-will-address-growing-maternal-health-concerns/>.

COUNT III – RIGHT TO EQUAL PROTECTION

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

67. The Proclamation 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 time-sensitive medical procedures; and
- (b) discriminating against women on the basis of their sex and on the basis of gender stereotypes.

Planned Parenthood of the Heartland, 915 N.W.2d 206, 245–46.

COUNT II – INALIENABLE RIGHTS OF PERSONS

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

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

PRAYER FOR RELIEF:

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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

71. 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.

72. 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 Proclamation, Section One, as interpreted to ban abortion procedures, violates the Iowa Constitution;

(2) Enjoining Respondents from:

Enforcing the Proclamation, as interpreted to ban abortion procedures;

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

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

Respectfully submitted,

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***Application for admission *pro hac vice*
forthcoming**