

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

PLANNED PARENTHOOD OF THE
HEARTLAND, INC., *et al.*,

Petitioners,

v.

KIM REYNOLDS, ex rel. STATE OF IOWA,
et al.,

Respondents.

Equity Case No. _____

**PETITIONERS' MOTION FOR
TEMPORARY INJUNCTIVE RELIEF**

COMES NOW Petitioners, by and through their undersigned attorneys, and respectfully move this Court for a grant of temporary injunctive relief pursuant to Iowa R. Civ. P. 1.1502, on an immediate and emergency basis, and state:

1. Citing the ongoing COVID-19 pandemic and the need to preserve hospital capacity and personal protective equipment (“PPE”), on March 26, 2020, Governor Kim Reynolds issued a Proclamation of Disaster Emergency (“Proclamation”), attached hereto as Exhibit A, which prohibits “nonessential or elective surgeries and procedures that utilize personal protective equipment,” effective at 5:00 p.m. March 27, 2020. Subsequent statements by Governor Reynolds make clear that she interprets the Proclamation to ban “surgical abortion” procedures.¹

2. As a result of the Governor’s interpretation of the Proclamation, Petitioners have been forced to cancel abortion procedures and turn away patients in need of time-sensitive abortion

¹ A true and correct copy of the article in the *Des Moines Register* that reports this statement is attached hereto as Exhibit B.

care scheduled for this week.² They will be forced to continuing canceling abortion procedures absent immediate relief from this Court. Aff. of Abbey Hardy-Fairbanks, M.D. ¶ 11 (“Hardy-Fairbanks Aff.”), attached hereto as Ex. D; Aff. of Jill Meadows, M.D. in Supp. of Pet’rs’ Mot. for Temporary Injunctive Relief (“Meadows Aff.”) ¶¶ 37–39, attached hereto as Exhibit E.

3. Pursuant to the Proclamation as interpreted by the Governor, Petitioners’ patients will not be able to obtain an abortion for weeks while the Proclamation remains in place. Hardy-Fairbanks Aff. ¶¶ 11–13, 20. Meadows Aff. ¶ 39–42. As a result, some will not be able to access abortion at all and will be forced to carry pregnancies to term. Hardy-Fairbanks Aff. ¶ 13. Meadows Aff. ¶ 42. Even after this Proclamation is set to terminate, patients are likely to continue to face the abortion procedures ban, potentially for months or longer, given that the COVID-19 pandemic and attendant PPE shortage are likely to last far beyond the Proclamation’s stated expiration date. Meadows Aff. ¶ 49.

4. If patients are forced to continue pregnancies against their will, particularly during a global pandemic, this 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. Aff. of Abigail C. Drucker, M.D., FACOG in Supp. of Pet’rs’ Mot. for Temporary Injunctive Relief (“Drucker Aff.”) ¶¶ 10–11, attached hereto as Exhibit C; Hardy-Fairbanks Aff. ¶¶ 16, 17, 21, 23; Meadows Aff. ¶¶ 42, 44. 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. Hardy-Fairbanks Aff. ¶ 22; Meadows Aff. ¶ 43; Aff. of Laurie Schipper in Supp. of Pet’rs’ Mot. for Temporary Injunctive Relief (“Schipper Aff.”) ¶¶ 14–17, 19, 23, attached hereto as Exhibit F.

² The Iowa Section of the American College of Obstetricians & Gynecologists has issued a public statement responding to the Proclamation, recognizing abortion as a legal and time-sensitive service, attached hereto as Exhibit. G.

5. What is worse, the Proclamation will delay or prevent patients from having an abortion without in fact assisting the state in mitigating the effects of the pandemic. Abortion is a straightforward outpatient procedure requiring little PPE. *Drucker Aff.* ¶ 13; *Hardy-Fairbanks Aff.* ¶¶ 8–9; *Meadows Aff.* ¶ 32–33. 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. *Drucker Aff.* ¶ 13–14; *Hardy-Fairbanks Aff.* ¶ 14; *Meadows Aff.* ¶¶ 34, 45. All of these encounters could require *more* PPE, not less, than an abortion would have required.

6. “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 petitioner 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., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001). Petitioners meet the standard for temporary injunctive relief.

7. As explained more fully in Petitioners’ Brief in Support of this Motion for Temporary Injunctive Relief, filed herewith, Petitioners are likely to succeed in their claims that the Proclamation’s ban on abortion procedures, effectively banning abortion in the state after eleven weeks LMP, violates Petitioners’ patients’ rights to due process under the Iowa Constitution.

8. The Iowa Supreme Court has recognized that abortion is a fundamental right protected under the Iowa Constitution, and cannot be infringed unless the state satisfies the strict scrutiny standard. *Planned Parenthood of the Heartland v. Reynolds* (“PPH II”), 915 N.W.2d 206, 238 (Iowa 2018).

9. The Proclamation’s previability abortion ban plainly fails the demanding strict scrutiny standard. *See Planned Parenthood of the Heartland, Inc. v. Reynolds* (“PPH III”), No. EQCE83074, 2019 WL 312072 (Iowa Dist. Ct. Polk Cty. Jan. 22, 2019). Even under the less demanding standard under the federal Constitution, courts have consistently struck down previability abortion bans. *See Roe v. Wade*, 410 U.S. 113, 163–65 (1973) (holding that prior to viability, a state has *no interest* sufficient to justify a ban on abortion); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846, 871 (1992) (reaffirming *Roe*’s “central principle” that “[b]efore viability, the State’s interests are not strong enough to support a prohibition of abortion.”).

10. And even if this Court were to examine the state interests behind the Proclamation’s ban of abortion procedures under the strict scrutiny analysis, Petitioners would certainly succeed on the merits. Under this standard, Respondents must demonstrate that the restriction at issue is narrowly tailored to serve a compelling state interest. *See, e.g., In re Marriage of Howard*, 661 N.W.2d 183, 190 (Iowa 2003); *Santi v. Santi*, 633 N.W.2d 312, 317 (Iowa 2001).

11. Here, the Proclamation as interpreted to ban abortion procedures fails the strict scrutiny standard. While the Proclamation is intended to preserve hospital capacity and PPE, banning abortion procedures will not achieve this goal and will in fact exacerbate the strain on the health care system. And the Proclamation’s blanket ban on abortion procedures is not narrowly tailored.

12. Petitioners also meet the other factors necessary for obtaining temporary injunctive relief because the Proclamation as interpreted will harm Petitioners’ patients, and these harms are irreparable. Forcing patients to forgo abortion care and remain pregnant against their will inflicts serious physical, emotional, and psychological consequences that alone constitute substantial and irreparable harm. *See e.g., Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *Planned Parenthood of*

Ariz., Inc. v. Humble, 753 F.3d 905, 911 (9th Cir. 2014); *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 796 (7th Cir. 2013). Likewise, a delay in obtaining abortion care causes substantial harm by “result[ing] in the progression of a pregnancy to a stage at which an abortion would be less safe, and eventually illegal.” *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 896 F.3d 809, 832 (7th Cir. 2018) (alteration in original) (quoting *Van Hollen*, 738 F.3d at 796), *petition for cert. filed*, No. 18-1019 (Feb. 4, 2019).

13. The balance of harms between the parties further supports a grant of temporary injunctive relief. The benefits of a limited potential reduction in the use of some PPE by abortion providers is outweighed by the harm of eliminating access to abortion procedures in the midst of a pandemic that increases the risks of continuing an unwanted pregnancy, as well as the risks of traveling to other states in search of time-sensitive medical care.

14. Finally, Petitioners are entitled to an injunction because their patients have no adequate legal remedy for the Proclamation’s gross violation of their bodily integrity and decisional autonomy. *See Ney v. Ney*, 891 N.W.2d 446, 452 (Iowa 2017) (there is no adequate legal remedy “if the character of the injury is such ‘that it cannot be adequately compensated by damages at law’”).

15. For the reasons set forth above, and incorporating all the arguments set forth in their concurrently filed Brief in Support of Motion for Temporary Injunctive Relief, Petitioners are entitled to the preliminary relief they seek as necessary to protect the legal rights of their patients, as well as their patients’ immediate health and safety, while this case proceeds toward final resolution.

WHEREFORE, Petitioners pray this Court temporarily enjoin Respondents from

enforcing the Proclamation to ban abortion procedures.

Respectfully submitted,

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