IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC and SARAH TRAXLER, M.D., **Petitioners,** **vs.** **KIM REYNOLDS ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE,** **Respondents.**	**Case No. EQCE089066** **RULING ON PETITIONERS' EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

The above-captioned matter came before the court for argument on July 14, 2023 on the Petitioners' Emergency Motion for Temporary Injunction filed July 12, 2023. Arguing on behalf of the Petitioners, Planned Parenthood of the Heartland, Inc., Emma Goldman Clinic and Sarah Traxler, M.D., was Peter Im of the Planned Parenthood Federation of America. Arguing on behalf of the Respondents, Kim Reynolds, State of Iowa and Iowa Board of Medicine, was Assistant Attorney General Daniel Johnston. After reviewing the court file and considering the arguments of counsel, the court now enters the following ruling.

I. BACKGROUND.

In May 2018, Governor Reynolds signed S.F. 359 into law. That bill created a new chapter of the Iowa Code, 146C, which would generally prohibit an abortion[1] once a "fetal heartbeat"[2] is detected. There were specific exceptions, including medical emergencies,[3] miscarriages, fetal

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[1] The statute defines "abortion" as "termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus." Iowa Code § 146C.1(1).

[2] The statute defines a "fetal heartbeat" as "cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac." Iowa Code § 146C.1(2).

[3] The statute uses the same definition of "medical emergency" that is used in Iowa Code § 146A.1. Iowa Code § 146C.1(3). That section defines it as "a situation in which an abortion is performed to preserve the life of the

abnormalities, and pregnancies that are the result of rape or incest that has been reported to authorities. Iowa Code § 146C.1(4). The law would have changed the amount of time that women have to seek an abortion from twenty weeks post-fertilization to as little as six weeks. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE083074, 2019 WL 312072, at *1 (Polk Cnty. Dist. Ct., Jan. 22, 2019). Planned Parenthood of the Heartland (PPH) (with other Petitioners joining) challenged the constitutionality of this law and asked the district court to enjoin enforcement of it. *Id*. Ultimately the court granted PPH's Motion for Summary Judgment and granted their request for a permanent injunction. *Id*.

Following changes to federal and state law—discussed more in-depth below—in 2022 the State petitioned the district court to dissolve the permanent injunction from 2019. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE083074, Ruling Mot. Dissolve Perm. Inj., 2022 WL 17885890, at *2 (Polk Cnty. Dist. Ct., Dec. 12, 2022). The district court denied the State's motion, leaving the injunction in place. *Id*. at *7. The denial was appealed to the Iowa Supreme Court, where the Justices deadlocked on a decision.[4] *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE083074, No. 22-2036, slip op. at 1 (Iowa June 16, 2023). Because the decision was evenly split, the lower court's decision denying the dissolution stayed in place. *Id*. (citing *State v. Effler*, 769 N.W.2d 880, 884 (Iowa 2009)).

Shortly after the Iowa Supreme Court's split, Governor Reynolds signed a proclamation to convene a Special Session of the Iowa Legislature for the purpose of passing a law regarding abortion access. Governor Kim Reynolds, PROCLAMATION OF SPECIAL SESSION (July 5, 2023). The

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pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman's age; or when continuation of the pregnancy will create a serious risk of substantial or irreversible impairment of a major bodily function of the pregnant women." Iowa Code § 146A.1(6)(a).

[4] Justice Oxley took no part in the decision, allowing for a 3-3 split.

Iowa Legislature convened for one day on July 11, 2023 and passed H.F. 732, a bill which is virtually identical to the bill that was passed in 2018.[5] H.F. 732 also provided that it would take effect upon enactment. Governor Reynolds informed the public that she would be signing the bill on July 14, 2023.

On July 12, 2023, Petitioners filed this lawsuit, arguing that H.F. 732 violates the Iowa Constitution's protections for due process, equal protection, and the inalienable rights of persons. Pet. ¶¶ 77-82. Petitioners also filed the instant motion for a temporary injunction, asking that this court temporarily enjoin the enforcement of the law pending a final judgment on the merits of their case.

Governor Reynolds signed H.F. 732 on July 14, 2023.

II. LEGAL STANDARD.

There are three circumstances in which a court may grant a temporary injunction under *Iowa Rule of Civil Procedure* 1.1502: (1) when it "pertains to an act causing great or irreparable harm," (2) when it "pertains to a violation of a right tending to make the judgment ineffectual," or (3) when the court is statutorily authorized. *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001) (internal citations and quotations omitted). "Generally, the issuance of an injunction invokes the equitable powers of a court and courts apply equitable principles." *Id*. To prove that it is entitled to a temporary injunction, Petitioners must show that (1) they are likely to succeed on the merits; (2) in the absence of the injunction they will suffer irreparable harm; and (3) injunctive relief is warranted considering the circumstances confronting the parties and "balance[ing] the harm that a temporary injunction may prevent against the harm that may result from its issuance." *Id*.

[5] The only difference in the two bills is that the term "medically necessary" in the 2018 bill was replaced by "fetal heartbeat exception" in the 2023 bill. The definition of the two terms and their use within the bills is the same.

"[T]emporary injunctions require a showing of the *likelihood* of success on the merits whereas permanent injunctions require *actual* success." *PIC USA v. North Carolina Farm Partnership*, 672 N.W.2d 718, 723 (Iowa 2003) (*citing Max 100 L.C.*, 621 N.W.2d at 181) (emphasis in original). "Rules of evidence are applied more strictly on final hearing of a cause than on an application for temporary injunction, when evidence that would not be competent to support a perpetual injunction may properly be considered." *Id*. (*quoting Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 95 (Iowa 1985)). Ultimately, "the decision to issue or refuse 'a temporary injunction rests largely [within] the sound judgment of the trial court.'" *Max 100 L.C.*, 621 N.W.2d at 181.

III. ANALYSIS.

A. <u>STANDING</u>.

First, the Respondents ask this court to dismiss the Petitioners' action due to a lack of standing, stating that their claim is not ripe, and that they lack third-party standing.

i. *Ripeness*.

The Respondents propose that the Petitioners' claims are not ripe because at the time they filed their action, H.F. 732 had not yet been enacted by the Governor's signature. In order to be ripe, the Petitioner's claimed injury '"cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.' "' *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 330 (Iowa 2023), reh'g denied (Apr. 26, 2023) (quoting *DuTrac Cmty. Credit Union v. Hefel,* 893 N.W.2d 282, 289 (Iowa 2017) (quoting *Hawkeye Foodservice Distrib. Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 606 (Iowa 2012))). "To demonstrate sufficient imminence, '[o]nly a likelihood or possibility of injury need be shown'; '[a] party need not demonstrate injury will accrue with certainty, or already has accrued."' *Id*. (quoting *Iowa Bankers Ass'n v. Iowa Credit*

Union Dep't, 335 N.W.2d 439, 445 (Iowa 1983)).

H.F. 732 was passed on July 11, 2023. That same evening, Governor Reynolds' office issued a statement which included: "Gov. Reynolds plans to sign the bill on Friday, July 14, 2023." Pet. Ex. C. The passage of the bill and the Governor's stated intent to sign the bill on a specific date provided sufficient imminence to make the Petitioners' claim ripe when it was filed.

ii. *Third-Party Standing*.

The Respondents' assertion that the Petitioners do not have standing is twofold. First, they claim that because abortion providers do not have a freestanding right to provide abortions, they lack third-party standing to bring this action on behalf of women seeking abortions. Second, they argue that the Petitioners' standing to assert a derivative claim fails because, after the Iowa Supreme Court's holding in *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710 (Iowa 2022) (*PPH 2022*)[6], there is no right to an abortion protected by the Iowa Constitution. For the first proposition, the Respondents cite *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 962 N.W.2d 37, 56 (Iowa 2021) (*PPH 2021*). There, however, the Plaintiffs' brought an "unconstitutional conditions" claim, and the standing issue was decided based upon the "unconstitutional conditions doctrine." *Id*. at 55-56. The Court specifically stated, "[o]ur holding under the unconstitutional conditions doctrine does not implicate PPH's ability to bring a derivative constitutional challenge asserting a woman's rights, a claim PPH did not make." *Id.* at 56. Here, the Petitioners bring, at least in part, such a derivative constitutional challenge.

As to the second proposition that the Petitioners' derivative claim fails because women no longer have a right to an abortion protected by the Iowa Constitution, the dispositive holding in

[6] The parties and the court refer to several Iowa Supreme Court cases involving Planned Parenthood of the Heartland ("PPH"). The Petitioners refer to the cases by numbers (I, II, III, etc.), where the Respondents refer to them by the year they were decided. The court prefers the latter, finding that to be a little less confusing.

PPH 2022 was actually that, "the Iowa Constitution is not the source of a fundamental right to an abortion *necessitating a strict scrutiny standard of review for regulations affecting that right*." *PPH 2022*, 975 N.W.2d at 716 (emphasis added). As discussed in detail below, the court finds that the distinction means something, and that the current state of the law in Iowa remains, at least for the time being, that some level of constitutional protection applies to women seeking abortion in Iowa, requiring an undue burden standard for analysis. Therefore, there also remains an underlying justification for the Petitioners' standing to assert the constitutional rights of women seeking abortions in Iowa. *See PPH 2021*, 962 N.W.2d at 56 ("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.'" (quoting *Singleton v. Wulff*, 428 U.S. 106, 114 (1976)).

The Petitioners' claims are ripe, and they have standing to pursue them.

B. TEMPORARY INJUNCTION.

i. *Likelihood of Success on the Merits*.

The Petitioners seek to permanently enjoin the enforcement of H.F. 732, claiming the bill is unconstitutional because it violates the Due Process and Inalienable Rights Clauses of the Iowa Constitution.[7] Addressing the Due Process argument first, the likelihood of the Petitioners' success on the merits comes down to which standard of scrutiny the court will use.

The standards Iowa courts have been instructed to apply to laws governing abortion have vacillated within the last decade. In *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med*. (*PPH 2015*), the Iowa Supreme Court struck down a promulgated rule that would have restricted access to medication abortions to in-person appointments. 865 N.W.2d 252, 260-61 (Iowa 2015). The Court applied the undue burden test used by federal courts at the time. *Id*. at 263. "[U]nder

[7] Although the Petitioners' Petition states a claim under the Equal Protection Clause of the Iowa Constitution (Pet. ¶¶ 81-82), they do not argue that claim as part of their Motion here.

the undue burden test for a state regulation to place an undue burden on a woman's right to terminate a pregnancy, the state regulation must have 'the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.'" *Id*. (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878–79 (1992) (plurality opinion)). A law that meets this test is an unconstitutional restriction on individual rights. *Id*.

In 2018, the Iowa Supreme Court again spoke on this issue in *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med*., 915 N.W.2d 206 (Iowa 2018) (*PPH 2018*). There the Court held that the right to terminate a pregnancy before viability was a fundamental right under the Iowa Constitution. Therefore, laws that would restrict that right were subject to strict scrutiny. *Id*. at 240-41. "Strict scrutiny requires state actions be narrowly tailored to further a compelling state interest." *Id.* at 243. Applying this standard, the Court found that a mandatory 72-hour waiting period did not further a compelling state interest and therefore was unconstitutional. *Id*.

In 2022, there were two major shifts in the jurisprudence surrounding this topic, one at the federal level and one at the state level. In the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022), the Court held that abortion was not a constitutionally protected right, thus overruling *Roe v. Wade*, 410 U.S. 113 (1973), and subsequent decisions such as *Casey* that had relied on the reasoning of *Roe*.

The most recent Iowa Supreme Court pronouncement on the topic came one week prior to the *Dobbs* decision, when the Iowa Supreme Court published its decision in *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710 (Iowa 2022) (*PPH 2022*). This narrow decision overturned *PPH 2018*'s standard of strict scrutiny.

> Hence, all we hold today is that the Iowa Constitution is not the source of a fundamental right to an abortion necessitating a strict scrutiny standard of review for regulations affecting that right. For now, this means that the *Casey* undue burden test we applied in [*PPH 2015*] remains the governing standard. On remand, the

> parties should marshal and present evidence under that test, although the legal standard may also be litigated further.

PPH 2022, 975 N.W.2d at 715–16.

The Respondents assert "a majority of *PPH 2022* Justices agreed that the Iowa Constitution does not protect a fundamental right to an abortion. That means that this Court should apply rational basis review to determine the Fetal Heartbeat Statute's constitutionality." Resp'ts' Resistance, 20. That is precisely the argument that Justice McDermott made in his *dissent* in *PPH 2022*:

> But I dissent from my colleagues' remand directing the district court to apply an "undue burden" standard, subject (apparently) to the standard being "litigated further" by the parties. In my view, we should emphatically reject—not recycle—*Casey's* moribund undue burden test and instead direct the district court to apply the rational basis test to the plaintiffs' constitutional challenge.

PPH 2022, 975 N.W.2d at 746 (McDermott, J., concurring in part and dissenting in part). Nevertheless, Justice Mansfield's plurality decision setting forth the controlling disposition of the case under the "narrowest grounds doctrine," specifically held that "the *Casey* undue burden test we applied in [*PPH 2015*] *remains the governing standard.*" *Id*. at 716 (emphasis added). This is the controlling precedent that this court is to follow.[8] This court is not at liberty to overturn precedent of our Supreme Court. "[I]t is the role of the supreme court to decide if case precedent should no longer be followed." *State v. Miller*, 841 N.W.2d 583, 584 n.1 (Iowa 2014) (citing *Kersten Co. v. Dep't of Soc. Servs.*, 207 N.W.2d 117, 121–22 (Iowa 1973) ("If trial courts

[8] The Respondents imply that the plurality opinion in *PPH 2022* is not a precedential disposition. It is. "[I]n *Godfrey v. State*, where three justices joined the lead opinion to reverse the district court, and three justices dissented and would have affirmed the district court, the dispositive opinion was that of the Chief Justice, whose opinion reversed the district court but did so on a narrower basis than the lead opinion. *See* 898 N.W.2d 844, 880–81 (Iowa 2017) (Cady, C.J., concurring in part and dissenting in part); *see also Wagner v. State*, 952 N.W.2d 843, 858 (Iowa 2020) (describing the Chief Justice's opinion in *Godfrey* as "dispositive")." *PPH 2022*, 975 N.W.2d at 716, n. 2. Then, in May of this year, the Iowa Supreme Court overruled *Godfrey* in *Burnett v. Smith*, stating "we have decided to overrule *Godfrey* and to restore the law as it existed in this state before 2017." *See* 990 N.W.2d 289, 291 (Iowa 2023), reh'g denied (May 23, 2023). If *Godfrey* had no precedential effect, there would have been no need to overrule it, or to declare the law that existed prior to *Godfrey* restored.

venture into the business of predicting when this court will reverse its previous holdings … they are engaged in a high-risk adventure which we strongly recommend against.”)).

The Respondents also argue that the controlling finding in *PPH 2022* that undue burden remains the governing standard was in error because “the Iowa Supreme Court has not independently adopted the undue burden standard under the Iowa Constitution to evaluate state abortion laws.” Resp’ts’ Resistance 20. That may be a valid argument. *See Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE083074, No. 22-2036, slip op. at 45-49 (Iowa June 16, 2023) (“My colleagues repeatedly state that *PPH 2015* adopted the undue burden standard for claims arising under the Iowa Constitution. That is an untrue statement.” (McDonald, J., non-precedential op.)). Regardless, this court does not get to declare that our Supreme Court got it wrong and then impose a different standard. Such would be an alarming exercise of judicial activism. This court is bound to decide this matter pursuant to the instruction of our Supreme Court.

The Respondents also argue that because *PPH 2015* applied (but did not adopt) the federal *Casey* undue burden standard, and because the U.S. Supreme Court overruled *Casey* in *Dobbs*, the *Casey* standard no longer exists, leaving the court to apply the rational basis test. The Respondents maintain that the Iowa Supreme Court in *PPH 2022* held as much by deferring to the then upcoming *Dobbs* decision. That is not the holding of the controlling *PPH 2022* opinion:

> [T]he United States Supreme Court is expected to decide an important abortion case this term. *See Dobbs*, ––– U.S. ––––, 141 S. Ct. 2619, 209 L.Ed.2d 748. That case could decide whether the undue burden test continues to govern federal constitutional analysis of abortion rights. We expect the opinions in that case will impart a great deal of wisdom we do not have today. Although we take pride in our independent interpretation of the Iowa Constitution, often our independent interpretations draw on and contain exhaustive discussions of both majority and dissenting opinions of the United States Supreme Court.
>
> *We do not prejudge the position our court will take.* We agree with the [*PPH 2018*]

> majority that "[a]utonomy and dominion over one's body go to the very heart of what it means to be free." 915 N.W.2d at 237 (majority opinion). We also agree that "being a parent is a life-altering obligation that falls unevenly on women in our society." *Id*. at 249 (Mansfield, J., dissenting). Yet, we must disapprove of [*PPH 2018*]'s legal formulation that insufficiently recognizes 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.

PPH 2022, 975 N.W.2d at 745–46 (emphasis added). Once again, the controlling opinion in *PPH 2022*, which this court is bound to follow, is that *Casey* undue burden test applied in *PPH 2015* remains the governing standard, and there is not yet any Iowa Supreme Court decision changing that after *Dobbs*.

The Respondents further cite *State v. Middlekauff*, 974 N.W.2d 781 (Iowa 2022), reh'g denied (June 10, 2022), and *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013), for the proposition that when no fundamental Constitutional right is implicated, the court is to apply the rational basis test. *See Middlekauff*, 974 N.W.2d at 803 ("Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test."; *see also Horsfield Materials* 834 N.W.2d at 458 ("Because no suspect class or fundamental right is at issue, we apply the rational basis test."). The controlling opinion in *PPH 2022*, however, did not find that there was no fundamental right to an abortion protected under Iowa's Constitution. Rather, the Court only held that "the Iowa Constitution is not the source of a fundamental right to an abortion *necessitating a strict scrutiny standard of review for regulations affecting that right.*" PPH 2022, 975 N.W.2d at 716 (emphasis added). That a distinction was intended is apparent from the Respondents' reasoning itself. If the court simply found that there was no fundamental right to an abortion, there would have been no reason to direct that undue burden remained the governing standard; the standard would have defaulted to the rational basis test under the same rationale as *Middlekauff* and *Horsfield*. That did not happen, prompting

Justice McDermott's dissent as quoted, *infra* p. 8.

Undue burden is where our Supreme Court's jurisprudence on the issue has left off, with an invitation to litigate the issue further. This, perhaps, is the litigation that accepts the invitation, and the jurisprudence will pick up again and presumably further refine or define the governing standard. In the meantime, this court will be required to apply the *Casey* undue burden standard when deciding the merits of the Petitioners' claim. The Respondents, of course, can argue for and provide proof pursuant to the rational basis test. But any decision to apply that test in this case will have to come from our Supreme Court. *See State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) (stating that "a state supreme court cannot delegate to any other court the power to engage in authoritative constitutional interpretation under the state constitution").

When the undue burden standard is applied, it is readily apparent that the Petitioners are likely to succeed on their claim that H.F.732 violates the Due Process clause, article I, section 9 of the Iowa Constitution. Last December, this court (Judge Gogerty presiding), applying the undue burden standard to the virtually identical 2018 version of H.F.732 (Iowa Code chapter 146C), found:

> The ban on nearly all abortions under Iowa Code chapter 146C would be an undue burden and, therefore, the statute would still be unconstitutional and void. *See Casey*, 550 U.S. at 878-79 ("an undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability"); Iowa Const., Art. XII, § 1 ("This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void")… Therefore, under the undue burden test … the State has failed to show a change in the law that would warrant dissolving the permanent injunction issued on January 22, 2019.

Planned Parenthood of the Heartland, Inc. v. Reynolds, No. EQCE083074, Ruling Mot. Dissolve Perm. Inj., 2022 WL 17885890, at *7 (Polk Cnty. Dist. Ct., Dec. 12, 2022). In their appeal of that ruling, the Respondents conceded that the 2018 law did not satisfy the undue burden standard. *See*

Planned Parenthood of the Heartland, Inc. v. Reynolds, No. EQCE083074, No. 22-2036, slip op. at 13 (Iowa June 16, 2023) (noting it is "clear and indeed conceded by the State at oral argument" the 2018 statute is unconstitutional under undue burden standard). (Waterman, J., non-precedential op.). Counsel for the Respondents made the same concession during his oral argument on Petitioners' Motion here.

Clearly, then, the Petitioners are likely to prevail on their Due Process claim based upon the undue burden standard that the district court must apply at the trial stage of this litigation. That being the case, the court need not address the Petitioners' Inalienable Rights Clause argument in determining likelihood of success for the purposes of a temporary injunction.

ii. *Irreparable Harm to Movants*.

The Petitioners charge that enforcement of H.F. 732 will result in harm that is irreparable by any monetary remedy. They set forth a wide range of physical, mental and economic consequences for patients who would otherwise seek abortions in Iowa. They also note the economic burdens and potential health risks of patients having to seek abortions in other states. Finally, they address the interference that enforcement of the act would cause to Petitioners' ability to provide abortion services and medical care consistent with their medical judgment and in support of patient well-being, noting also the threat of reputational harm through civil penalties.

The court generally acknowledges the existence of harms without endorsing each and every one of the harms the Petitioners claim. They are the types of harms that result from the irreparable loss of isolated and unique opportunities (individual patients seeking abortion services from Iowa providers) should the temporary injunction not be granted. *See LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 338 (Iowa 2023), reh'g denied (Apr. 26, 2023) ("These sorts of injuries, i.e., deprivations of temporally isolated opportunities, are exactly what preliminary injunctions are

intended to relieve.")(quoting *Bao Xiong ex rel. D.M. v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019)). Further, the Iowa Supreme Court has recognized that the "irreparable harm" requirement is met when the movant shows it is likely to succeed in showing a constitutional violation. *See id.* ("Federal courts have held that the "irreparable harm" requirement is met when the movant shows it is likely to succeed in showing a constitutional violation. *Am. C.L. Union of Ky. v. McCreary County*, 354 F.3d 438, 445 (6th Cir. 2003), *aff'd sub nom. McCreary County v. Am. C.L. Union of Ky*., 545 U.S. 844, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005). We reach the same conclusion here."). The Petitioners are able to show irreparable harm.

iii. *The Balance of the Harms*.

There should be no ignoring that there are harms either way the court rules on this request for a temporary injunction. *See PPH 2022*, 975 N.W.2d at 745–46 ("We agree … that '[a]utonomy and dominion over one's body go to the very heart of what it means to be free.' We also agree that 'being a parent is a life-altering obligation that falls unevenly on women in our society.' Yet, we must disapprove of [the] legal formulation that insufficiently recognizes that future human lives are at stake—and we must disagree with the views … that the state has no legitimate interest in this area.") (internal citations omitted). Ultimately, however, the court must consider the balance of the harms in light of its finding today that the Petitioners are likely to succeed on the merits of their claim that H.F. 732 is unconstitutional. The interests of the Respondents "have no right to protection from an unconstitutional statute." *LS Power Midcontinent, LLC v. State*, 988 N.W.2d at 339. The balance of the harms, then, favors the Petitioners.

C. CONCLUSION.

The court will grant the temporary injunction requested here. In doing so, it recognizes that there are good, honorable and intelligent people - morally, politically and legally - on both sides

of this upsetting societal and constitutional dilemma. Patience and perseverance are also hallmark traits on both sides, traits that continue to deserve respect. The court believes it must follow current Iowa Supreme Court precedent and preserve the *status quo ante* while this litigation and adversarial presentation which our Supreme Court has invited[9] moves forward.

However, as the Governor has now signed H.F. 732 into law, the court should except from that status quo, section 2, paragraph 5 of H.F. 732, directing the Iowa Board of Medicine to adopt rules pursuant to Chapter 17A. Should the injunction entered today ultimately be dissolved, it would only benefit all involved, patients and providers alike, to have rules in place to administer the law.

IV. DISPOSITION.

For the reasons stated above,

IT IS THEREFORE ORDERED that the Respondents are temporarily enjoined from enforcing H.F. 732, to be codified as Iowa Code chapter 146E (2023); with the sole exception of section 2, paragraph 5 thereof pertaining to the adoption of rules by the Iowa Board of Medicine pursuant to Iowa Code chapter 17A, which provision is not enjoined by this Order.

IT IS FURTHER ORDERED that this temporary injunction shall remain in place until the court's final adjudication on the merits in this matter.

[9] *See PPH 2022*, 975 N.W.2d at 716, 745 ("the parties should marshal and present evidence under that [undue burden] test, although the legal standard may also be litigated further…. we should not engage in 'freelancing under the Iowa Constitution without the benefit of an adversarial presentation.'")

State of Iowa Courts

Case Number	**Case Title**
EQCE089066	PLANNED PARENTHOOD OF HEARTLAND ET AL VS KIM REYNOLDS ET AL
Type:	OTHER ORDER

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-07-17 14:33:24