

IN THE SUPREME COURT OF IOWA

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Supreme Ct. No. 17-1579

Polk Co. District Ct. No. EQCE081503

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PLANNED PARENTHOOD OF THE HEARTLAND, INC. and JILL  
MEADOWS, M.D.,

Petitioners-Appellants,

v.

KIMBERLY K. REYNOLDS ex rel. STATE OF IOWA and IOWA  
BOARD OF MEDICINE,

Respondents-Appellees.

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**BRIEF OF *AMICI CURIAE* BIOMEDICAL ETHICISTS  
IN SUPPORT OF PETITIONERS-APPELLANTS**

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## I. STATEMENT OF INTEREST

*Amici curiae* are a preeminent group of physicians and professors in various fields—including medicine, public health, philosophy, and law—from nationally and internationally renowned universities across the United States who teach and/or write about biomedical ethics. Collectively, *amici* hold JDs, MDs, PhDs, and MPHs, and have decades of experience in the field of biomedical ethics. Among *amici* are experts who have researched, published, and taught about the intersection of biomedical ethics and women’s health, human rights, technology, and the law, as well as one transnational NGO founded by bioethicists and working for health and human rights. Several *amici* serve on national biomedical ethics committees and/or direct university centers and institutes devoted to this subject. All *amici* have made important contributions to the scholarship and practice of biomedical ethics.

*Amici* offer this brief in support of Petitioners to explain and describe the application of medical ethics principles to the 72-hour waiting period of Section 1 of Senate File 471, which amended Iowa Code § 146A.1 (the “Act”). Specifically, *amici* seek to advise the court on whether the requirements of the Act are consistent and congruent with the foundational principles of medical ethics.

*Amici* unite in this brief as friends of the court to share their insights based on their experience, knowledge, and teachings, in the hope that they may assist this Court in its decision making. *Amici* include the following:

**Alexander Morgan Capron, LL.B., M.A. (hon.)**

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**Global lawyers and Physicians (GLP)**

Transnational NGO working for Health and Human Rights; Founded by acting co-directors are Bioethicists George J. Annas, J.D., M.P.H and Michael A. Grodin, M.D.; Professors, Boston University Schools of Medicine and Public Health.

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Professor of Law in Bioethics and Law; Professor and Director, Ethics Institute, Capital University Law School; Former Fellow, Law, Science & Medicine Program, Yale Law School.

**II. SUMMARY OF THE ARGUMENT**

In this brief, *amici* will demonstrate that the Act, which amends Iowa Code § 146A.1 by creating a 72-hour waiting period between the informational visit and an abortion procedure, undercuts three long-established and widely accepted principles of medical ethics: autonomy, non-maleficence, and justice. In so doing, the Act also threatens grave harm



to the patient-physician relationship. In each of these areas, the violations imposed by the Act are foundational, clear, and uncontroversial for bioethicists. Because these principles of medical ethics inform the law of informed consent, their disruption by the Act is relevant to the Court's consideration of the soundness of this legal change.

*Autonomy.* First, the Act violates the moral foundation of informed consent by diminishing basic respect for individuals and their right to make their own voluntary and informed medical decisions. By mandating a 72-hour waiting period, the Act interferes with individuals' autonomous rights to make their own healthcare choices within the timeframe that they deem appropriate.

*Non-Maleficence.* Second, once a woman has made an informed decision about her health care and consulted with her physician, forcing a 72-hour waiting period (which, in practical effect, will be longer) will cause unnecessary medical risk and other hardships with no medical justification.

*Justice.* Third, justice demands that patients be treated equitably and that benefits and burdens be fairly distributed. The Act particularly burdens low-income patients, rural patients, and victims of domestic violence, thus offending this principle.

*Patient-Physician Relationship.* Finally, by undermining the principles of autonomy, non-maleficence and justice, the Act threatens the physician's ability to carry out his or her obligations to the patient, and therefore threatens the patient-physician relationship itself. There is no justification from a bioethical perspective for adding an arbitrary 72-hour delay to a treatment or procedure that was agreed upon through the patient-physician informed consent process.

### **III. ARGUMENT**

By requiring a patient in a doctor's office to receive information regarding the termination of a pregnancy and then wait at least 72 hours to return to the office for the actual procedure, the Act undercuts three well-established and widely accepted principles of medical ethics: autonomy, non-maleficence, and justice. In doing so, it does grave harm to the patient-physician relationship.

#### **A. The Act Subverts Individual Autonomy**

As an ethical doctrine rooted in individual autonomy, informed consent enables a patient, in conversation with a physician, to make an informed and voluntary decision affecting his or her medical care. Informed consent is a foundational concept in clinical practice and integral to contemporary medical ethics. *See* American College of Obstetricians and

Gynecologists, *Informed Consent*, ACOG Committee Opinion No. 439, OBSTET GYNECOL (Aug. 2009), at 114:401–8 (“ACOG Opinion”); Tom L. Beauchamp and James F. Childress, *PRINCIPLES OF BIOMEDICAL ETHICS* 120–27 (7th ed. 2013).

The ethical concept of informed consent includes the following elements: voluntariness (absence of coercion), capacity, information, comprehension, and autonomous authorization. These elements constitute an important aspect of a patient’s self-determination, *i.e.*, “the taking hold of her own life and action, determining the meaning and the possibility of what she undergoes as well as what she does.” ACOG Opinion at 114:401–08. Importantly, informed consent “includes *freedom from external coercion, manipulation*, or infringement of bodily integrity” and “freedom from being acted on by others when they have not taken account of and respected the individual’s own preferences and choice.” *Id.* (emphasis added). The role of the physician in the process of informed consent is to counsel, advise, and assist the patient so that the patient, through comprehension, is enabled to express a decision that best reflects the balance of her life choices. *Id.*

The foundation of our informed consent laws and norms resides in a basic respect for autonomous individuals and for their rights and capabilities to make their own important life choices. *Id.*; *see also* The Nat’l Comm’n

for the Protection of Human Subjects of Biomedical and Behavioral Research, “The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research,” C.1. (Apr. 18, 1979), *available at* <http://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/>. In some cases of difficult or weighty decisions, physicians and patients together may decide that it is appropriate to have a discussion, have some waiting period to reflect, and then meet again to make a final decision. But that is for the patient and physician to decide. The decision to wait or not must itself be made with autonomy. Indeed, principles of medical ethics require a physician to regard responsibility to the patient as “paramount.” *See* American Medical Association Principles of Medical Ethics, *available at* <https://www.ama-assn.org/sites/default/files/media-browser/principles-of-medical-ethics.pdf>. By injecting a mandatory waiting period into the informed consent process, without regard to the patient’s wishes, health, safety, and experience, the Act undermines the basic principles of respect for autonomy.

**B. The Act Subverts the Principle of Non-Maleficence**

Non-maleficence means to “do no harm” and is interpreted to require physicians to inflict the least harm possible to reach a beneficial outcome. *See* Beauchamp and Childress at 150-54; L. Snyder, American College of

Physicians Ethics Manual, 156 (Pt. 2) Ann. Intern. Med. 73, 74-75 (6th ed. 2012). In other words, physicians must not do anything that would purposely harm patients, unless the action is balanced by a proportional benefit.

The 72-hour mandatory delay that the Act imposes on physicians and patients offers no meaningful benefit to the patient. The informed consent process already allows women to make informed decisions. And, even assuming that the pre-abortion ultrasound is relevant to that process, separate provisions of the Act, which plaintiffs have not challenged and are in effect, already require that women be given the “option of hearing a description of the unborn child . . . and hearing the heartbeat,” and information regarding other options. Senate File 471, § 1.

The additional mandatory waiting period creates only burden. One of these burdens is additional medical risk as the abortion procedure becomes more complex and higher-risk, which flatly contradicts a physician’s ethical obligation to provide care as safely as possible. In addition to this risk, the Act makes abortion harder to access which, as set forth below, will particularly burden women of lower socioeconomic status, women who live in medically underserved areas, and victims of intimate partner violence. In the case of intimate partner violence, the additional wait times and other

related burdens that the Act imposes place domestic violence victims at particular risk of harm. The District Court agreed that the 72-hour waiting period “may have an impact on all women who are trying to conceal their pregnancy and decision to abort, but is particularly a concern with victims of domestic abuse due to the risk of re-victimization.” *See* Ruling on Petitioners’ Petition for Declaratory and Injunctive Relief dated Sept. 28, 2017 at 19 (“Lower Court Ruling”); *see generally* Audrey F. Saftlas et al., Prevalence of Intimate Partner Violence Among an Abortion Clinic Population, 100(8) Am. J. Public Health 1412, 1412-15 (Aug. 2010). As a result, the Act disproportionately harms women who face domestic violence by increasing risks to their physical safety and well-being, and forces physicians to impose such risks on their patients. These risks are not outweighed by any counterbalancing medical benefit and cannot be justified from a biomedical ethics perspective.

### **C. The Act Subverts Justice**

The Act subverts justice, which requires equitable treatment and a fair distribution of the benefits and burdens of any policy. *See* Beauchamp and Childress at 250-52. Relatedly, physicians are ethically required to support access to medical care for all people. *See* American Medical Association Principles of Medical Ethics. The Act undermines these principles.

The Act undermines ethical obligations of justice by effectively blocking low-income and poor patients from accessing the same type of medical care as wealthier patients, particularly if they live farther from a medical clinic offering abortion services. The District Court acknowledged that more than half of PPH’s patients are at or below 110 percent of the federal poverty guideline, with approximately 75 percent of PPH patients within 200 percent of the federal poverty guideline. Lower Court Ruling at 10. One doctor testified before the District Court that she regularly “sees patients who are referred from their family physicians as far as 100 miles away.” *Id.* at 7. This and other testimony led the District Court to conclude “that women in rural counties do not have the opportunity to get an ob/gyn ultrasound in their home county.” *Id.*

The court also found “that most women seeking an abortion will need to make two trips to a [Planned Parenthood of the Heartland (“PPH”)] center, as opposed to using a different provider for the informational visit.” *Id.* at 9. The court agreed that “travel by bus or other public means was not feasible.” *Id.* These and other potential costs, such as lost wages and child care, are magnified for low-income patients and create a significant burden. *See generally* Deborah Karasek, Sarah C.M. Roberts & Tracy A. Weitz, “Abortion Patients’ Experience and Perceptions of Waiting Periods: Survey

Evidence Before Arizona's Two-Visit 24-Hour Mandatory Waiting Period Law," 26:1 Women's Health Issues 63-65 (Jan - Feb. 2016).

**D. The Act Interferes with the Patient-Physician Relationship**

The Act also undermines the patient-physician relationship, the value of which is central to contemporary medical ethics. See American Medical Association, *Opinion 10.015 - The Patient-Physician Relationship*, AMA Code of Medical Ethics (issued June 2001), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion10015.page>. Included among the elements of such a relationship are open and honest communication between the physician and patient; commitment of the physician to advocate for the patient and to act in the patient's best interest; provision by the physician of that care which is necessary and appropriate for the health of the patient; and respect for the autonomy, privacy and dignity of the patient. American Medical Association, *Opinion 10.01 - Fundamental Elements of the Patient-Physician Relationship*, AMA Code of Medical Ethics (issued June 1990), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion1001.page>.

The Act encroaches upon the patient-physician relationship because it interferes with the process by which the doctor counsels, advises, and assists



the patient. Ethical standards dictate that a physician must use professional judgment with individualized consideration that allows each specific patient to achieve an ideal level of comprehension, thereby enabling the patient to make a decision that best serves his or her best interests. American Medical Association, *Opinion 8.08 - Informed Consent*, AMA Code of Medical Ethics (issued Mar. 1981), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion808.page>. From a bioethical perspective, there is no benefit to adding a 72-hour delay to a treatment or procedure that was agreed upon through the patient-physician informed consent process. By dictating and manipulating the timeframe for this communication, the Act prevents the patient from receiving the care that best serves her interests and that respects her as an autonomous human being.

#### **IV. CONCLUSION**

*Amici* respectfully urge this Court to consider these well-established principles, which are central to ethical medical care. Rather than advancing any justifiable interest, the Act violates the basic and widely accepted principles of medical ethics and threatens the physician-patient relationship that forms the foundation for ethical medical care.

Date: November 7, 2017

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE  
WITH TYPEFACT REQUIREMENTS AND TYPE-VOLUME  
LIMITATION**

I, Melissa C. Hasso, hereby certify that:

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

this brief has been prepared in a proportionately spaced typeface using Times New Roman in 14 point and contains 1,832 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Melissa C. Hasso

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