

IN THE SUPREME COURT OF IOWA

No. 22-2036

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

Petitioners-Appellees,

v.

*KIM REYNOLDS ex rel. STATE OF IOWA and
IOWA BOARD OF MEDICINE,*

Respondents-Appellants.

On Appeal from the Iowa District Court for Polk County

Case No. EQCE083074

The Honorable Celene Gogerty

BRIEF OF *AMICUS CURIAE* ON BEHALF OF IOWA COALITION
AGAINST DOMESTIC VIOLENCE and IOWA COALITION AGAINST
SEXUAL ASSAULT, in support of *Petitioners-Appellees*

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STATEMENT REQUIRED BY IOWA R.APP.P 6.906(4)(d)

Neither party nor their counsel participated in drafting this brief in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed *pro bono publico* by amicus curiae.

INTEREST OF *AMICI CURIAE*

The **Iowa Coalition Against Domestic Violence (ICADV)** is a state-level non-profit organization representing 22 local programs providing direct services to survivors of domestic violence. ICADV provides training and technical assistance to member programs and engages Iowans in changing social and institutional contexts that perpetuate relationship violence. Reproductive coercion is an element of relationship violence that occurs when a partner uses intimidation, threats, or violence to impose their intentions upon a woman's¹ reproductive autonomy. Victims of relationship violence have an acute need for access to reproductive health services, especially abortion care. Enacting barriers to accessing abortion services often subjects women to increasing levels of violence.

¹ *Amici* use “women” as a shorthand for many of the people who are or may become pregnant, but people of all gender identities, including transgender and gender non-conforming individuals, may become pregnant, seek abortion services, and be equally harmed by the Act.

The **Iowa Coalition Against Sexual Assault (IowaCASA)** is a statewide organization comprising 22 agencies that provides assistance to survivors of sexual violence. IowaCASA focuses on improving the programs and services available to sexual assault survivors, and supporting communities to prevent sexual violence before it occurs. The trauma of sexual violence is caused by the loss of power and control over one’s body—one’s most intimate self. Sexual assault can result in physical and mental health challenges, including injuries and disease related to the assault, shame, terror, depression, guilt, anxiety, addiction, and post-traumatic stress. These impacts are exacerbated when a victim becomes pregnant and faces additional barriers in making decisions about their health and safety.

Amici curiae are organizations committed to ensuring that women are able to make their own decisions about their lives and bodies, including whether to obtain an abortion, without undue interference. Therefore, *amici* have an important interest in the outcome of this case. *Amici* write to highlight the dangerous consequences Iowa Code section 146C (“the Act”) will have on Iowa women—particularly survivors of sexual assault, incest, human trafficking, and women in abusive relationships—for whom a six-week limit imposed by the Act would make it harder, if not impossible, to access abortion healthcare, despite the exception made for pregnancies that

are “the result of rape which is reported within forty-five days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician” or “the result of incest which is reported within one hundred forty days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician.”²

INTRODUCTION AND SUMMARY OF ARGUMENT

According to the National Intimate Partner and Sexual Violence Survey, 19% of women in Iowa—an estimated 225,000 women—have been raped.³ More than 554,000 Iowa women (35%) have experienced or will experience abuse, sexual violence, or stalking by an intimate partner during their lifetime.⁴ Women in small rural towns in Iowa are more likely than other women to experience intimate partner violence and the violence becomes more severe the more geographically isolated a woman is.⁵ Where

² Iowa Code §146C.

³ National Center for Injury Prevention, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report 33* (2017).

⁴ National Center for Injury Prevention and Control *The national intimate partner and sexual violence survey: 2010-2012 State Report*. Centers for Disease Control and Prevention (2019).

⁵ Corinne Peek-Asa et al., Rural Disparity in Domestic Violence Prevalence and Access to Resources, 20 *J. Women's Health* 1743, 1745 (2011).

you live, and more importantly, your status as a victim of violence, should not prohibit you from accessing reproductive healthcare options.

The Act's restrictions do not provide sufficient time for women to discover they are pregnant, decide whether to terminate the pregnancy, and access safe healthcare. Likewise, a forty-five-day time limit for victims of rape or one hundred forty-day time limit for victims of incest is not sufficient time to report violence. These deadlines to access abortion care under the Act are arbitrary, retraumatizing, and place victims of violence at heightened risk for further criminal violence and mental and emotional distress. No other healthcare procedure requires crime reporting as a prerequisite to accessing care.

This Act undermines the decisions women make about what is best for their safety, their lives, and the wellbeing of their children. By imposing substantial collateral consequences on women, the Act undermines women's full and equal participation in society.

I. The Act infringes upon a woman's protected right to decide whether to terminate her pregnancy in violation of the Iowa Constitution, threatening the health and safety of women.

The Act's ban on abortion at six weeks since last menstrual period (LMP) means that the narrow window in which a person must learn about a

pregnancy, decide whether to terminate that pregnancy, and access healthcare services for an abortion negates a woman’s constitutionally protected right to decide whether to terminate her pregnancy. The barriers for each step are greatest for women who already face significant barriers to accessing healthcare and even more so for women with additional concerns of protecting their lives and safety.

Survivors of domestic violence and sexual assault make up a significant proportion of women nationally—one in three⁶ and one in five,⁷ respectively. In fiscal year 2022, crime victim services in Iowa served 25,188 adult female victims of domestic abuse and 5,940 adult female victims of sexual abuse.⁸ The Act, however, does not account for victims of sexual abuse as defined in Iowa Code Chapter 709, but rather provides an exception for pregnancies which “are the result of a rape.”⁹ Similarly, the Act fails to

⁶ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report, Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2010).

⁷ Smith, S. G., Zhang, X., Basile, K. C., Merrick, M. T., Wang, J., Kresnow, M., & Chen, J. The National Intimate Partner and Sexual Violence Survey: 2015 data brief – updated release, Centers for Disease Control and Prevention (2018).

⁸ Iowa Attorney General’s Office, Crime Victim Assistance Division, Annual Report State Fiscal Year 2022 (2022).

⁹ Iowa Code §§ 146C, 709.

define “incest.” While Iowa Code defines “incest” as sex acts between blood relatives, it is unclear whether the Act’s incest exceptions provide protection to women who become pregnant from incest perpetrated by a stepsibling.¹⁰ Further, as a practical matter, advocates have observed the devastating consequences that arise when a survivor of sexual abuse or incest cannot determine whether a pregnancy is the result of abuse or consensual, non-incestuous sex that occurred in the same time frame.¹¹ Such definitional and practical issues make it difficult to ascertain when and to whom the exceptions to the Act would be afforded. As a result, the Act threatens Iowa women’s safety, equality, economic security, and ability to care for their families.

A. The Act will disproportionately harm victims of sexual assault.

Under this Act, victims of sexual assault will find themselves unable to access an abortion—no matter how critical it may be to their safety, mental or physical health—and revictimized by the consequences of the State’s undue restrictions.

¹⁰ Iowa Code § 726.2.

¹¹ Aff. Of Kerri True-Funk in Support of Pet’rs’ Mot. For Temp. Inj. Relief (“True-Funk Aff.”) at 5 ¶ 14.

1. Sexual assault is prevalent and rape-related pregnancies occur with significant frequency.

Pregnancy that results from rape occurs with significant frequency.¹² Although the likelihood that a rape will result in pregnancy is difficult to determine, it is estimated that among adult American women 32,101 pregnancies result from rape each year.¹³ A 1996 study found a national rape-related pregnancy rate of 5% per rape among victims between the ages of 12 and 45.¹⁴ Moreover, the majority of pregnancies that occurred from rape were among adolescents and resulted from assault by a known, often related, perpetrator.¹⁵

2. Victims of sexual assault who are forced to bear their perpetrator's child are retraumatized, causing significant mental and physical health consequences.

¹² Holmes Resnick Kilpatrick & Best, Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women, 175 Am. J. of Obstetrics & Gynecology 2, 320-25 (August 1996).

¹³ *Id.*

¹⁴ Health Research Funding, 18 Profound Statistics of Rape Victims Getting Pregnant, <<https://healthresearchfunding.org/18-profound-statistics-rape-victims-getting-pregnant/>> (accessed March 3, 2023).

¹⁵ *Id.*

Victims pregnant from sexual assault are often desperate to terminate their pregnancy because of the traumatic circumstances which lead to and often continue after conception. The physical aspects of pregnancy, including the sense of losing control over one's body, publicly visible evidence of their assault, the pain and physical exposure of childbirth, are all retraumatizing.¹⁶ “For women who have been raped, invasive medical procedures may trigger traumatic memories and emotions. Maternal attachment to a fetus and then to an infant conceived by rape is described as the ‘difficult task of differentiating the baby from the experience.’”¹⁷ Ambivalent maternal reactions to quickening and unsuccessful adaptation to pregnancy may lead to inappropriate parenting.¹⁸ Depression, unstable relationships, and self-destructive behavior are also potential long-term complications.¹⁹

Victims of sexual assault have health concerns for seeking an abortion. There is a strong association between sexual assault, domestic abuse, incest, human trafficking, and mental health concerns, especially

¹⁶ True-Funk Aff. at 4 ¶ 13.

¹⁷ Anthony Lathrop, Pregnancy Resulting From Rape, Association of Women's Health, Obstetric and Neonatal Nurses, Elsevier Inc. (1998).

¹⁸ *Id.*

¹⁹ *Id.*

post-traumatic stress disorder, depression, and anxiety.²⁰ Psychiatric medications can result in fetal abnormalities and often must be suspended during the pregnancy.²¹ Victims with these concerns may not feel they are healthy enough to parent a child or manage a pregnancy.

Victims of sexual assault may be dating, married, or otherwise engaged in a consensual sexual relationship during the time in which they experience abuse. They may not know whether pregnancy is the result of rape or consensual sex. “In that situation, is it not uncommon for that woman to experience that pregnancy as traumatic because of the possibility that it stems from the rape, and to seek terminate that pregnancy. . . .”²²

3. Victims of sexual assault have significant reasons for not reporting or for delaying the report of the crime.

The Act purports to create a time limit exception for victims of rape and incest, however the requirement that the victim report the crime stands in direct opposition to normal trauma reactions to violence and is in fact retraumatizing. Despite the desperation victims may feel to terminate a

²⁰ True-Funk Aff. at 5 ¶ 15.

²¹ American College of Obstetricians and Gynecologists, Use of Psychiatric Medications During Pregnancy and Lactation, Practice Bulletin, Number 92, April (2008).

²² True-Funk Aff. at 5 ¶ 14.

violence-induced pregnancy, victims are also faced with extraordinarily difficult task of disclosing their abuse. Sexual assault is an experience of trauma, and “some of the most common ways that victims react to sexual assault are precisely what people often have difficulty understanding.”²³

Women who experience sexual violence may not report or delay in reporting their abuse and struggle with decision making.²⁴ A significant number of sexual assault victims experience post-traumatic stress disorder. Avoidance is one of the central hallmarks of post-traumatic stress disorder:²⁵ avoidance of thoughts and feelings about the traumatic event, avoidance of the places, people, sounds, situations, etc. that serve as reminders of the assault.

Most victims of incest do not report the abuse for a myriad of reasons. They fear their abuser will harm them further, they feel guilt and shame about the abuse, they fear they will not be believed (and often are not), they

²³ Lori Haskell and Melanie Randall, The Impact of Trauma on Adult Sexual Assault Victims, (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

²⁴ *Id.*

²⁵ Warner, Warner, Appenzeller, Hoge, Identifying and Managing Posttraumatic Stress Disorder, 88 Am. Fam. Physician, no. 12, 2013, at 827-34.

experience family pressure to remain silent, or they are afraid to break up their family.²⁶

The use of rohypnol and other drugs to facilitate rape is common in the United States, thus the term “date-rape drugs.” In some cases, substances may be taken voluntarily by the victim—drinking alcohol, for example—and in others the victim is “roofied,” or drugged without their knowledge. Sixty-one percent of sexual assault kits examined in hospital settings tested positive for substances used in drug-facilitated sexual assault.²⁷ This study accounts for women who believed they had been raped and sought medical treatment, but for many who have been drugged and assaulted, they are not aware of or are unsure about what happened.

B. The Act will disproportionately harm victims of domestic abuse, including victims of dating violence.

²⁶ Maria Sauzier, Disclosure of Child Sexual Abuse: For Better or For Worse, 12 Psychol. Clinics of N. Am. 455, 460 -61 (1989); Goodman-Brown, et al., Why Children Tell: A Model of Children’s Disclosure of Sexual Abuse, 27 Child Abuse & Neglect 525, 535-37 (2003).

²⁷ Adam Negrusz, Matthew Juhascik, and R.E. Gaensslen, Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S., Forensic Sciences, Department of Biopharmaceutical Sciences, College of Pharmacy, University of Illinois, Chicago, (2005).

Domestic violence during pregnancy is a serious public health issue with significant negative health consequences for women and children. Studies conducted among samples of low-income, unmarried women have noted prevalence rates up to 50%.²⁸ Victims of domestic abuse face similar critical risks and experience similar trauma symptoms, such as avoidance, as survivors of sexual assault that lead to not reporting to law enforcement or telling their physician about the violence. Research indicates that victims who manage to terminate their pregnancy are more likely to escape their situation and less likely to suffer further physical violence than those victims who seek to terminate their pregnancy but are unable to do so.²⁹ The State of Iowa should not create additional barriers to healthcare and safety that functionally force women to stay in abusive relationships.

1. Domestic abuse victims are at heightened risk of unintended pregnancy resulting from sexual violence by their abusive partner.

²⁸ J.L. Alhusen, Ray E. Sharps P, Bullock, L. Intimate partner violence during pregnancy: maternal and neonatal outcomes. 24 J. Women's Health, no. 1, 2015, at 100 -6.

²⁹ Sarah Roberts et al., Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion (London: BMC Medicine, 2014), <https://doi.org/10.1186/s12916-014-0144-z>.

Women in abusive relationships are more likely to experience an unintended pregnancy than other women.³⁰ Approximately 10-14% of married women are raped by their husbands in the United States.³¹ Approximately one third of women report having “unwanted sex” with their partner.³² Sexually violent perpetrators of domestic violence are at greater risk of murdering their victims.³³ Victims of domestic violence who do not have the option of giving or refusing consent to sex are likewise deprived of choices about contraception. Women who report violence as a reason for abortion describe not wanting to expose children to violence and believing that having a baby will tether them to an abusive partner.³⁴

2. Domestic abuse victims are at heightened risk of unintended pregnancy resulting from reproductive coercion by their abusive partner.

³⁰ Elizabeth Miller et al., Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy, 81 *Contraception* 457, 2010, at 457–58.

³¹ Raquel Kennedy Bergen (Elizabeth Barnhill, contributor) Marital Rape: New Research and Directions, *Applied Research Forum*, National Online Resource Center on Violence Against Women, (Feb 2006).

³² *Id.*

³³ David Adams, Why Do They Kill? Men Who Murder Their Intimate Partners, Vanderbilt University Press, Nashville (2007).

³⁴ Roberts et al., Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion (London: BMC Medicine, 2014), <https://doi.org/10.1186/s12916-014-0144-z>.

Reproductive coercion is behavior that interferes with the autonomous decision-making of a woman. It includes promoting an unwanted pregnancy through birth control sabotage. Birth control sabotage is so common as to have its own slang term: stealthing, the removal of a condom without the partner's knowledge. Reproductive coercion also includes pregnancy coercion which involves threatening a woman if she wants to use contraception, threatening to leave her if she does not get pregnant, and the use of threats if she does not comply with the perpetrator's wishes to continue a pregnancy. Sexual violence and reproductive coercion are fundamental strategies used by perpetrators of intimate partner abuse. Perpetrators know that pregnancy, childbearing, and parenting are physically and emotionally taxing and will create financial and practical dependencies as well as legal ties that make it hard or impossible for the victim to sever the relationship.

3. Women are at increased risk of physical violence, including homicide, during and immediately after pregnancy.

Over half of women in family planning clinics reported physical or sexual partner violence, 19% reported pregnancy coercion, and 15%

reported birth control sabotage.³⁵ One-third of respondents reporting partner violence (35%) also reported reproductive control.³⁶ Both pregnancy coercion and birth control sabotage were associated with unintended pregnancy.³⁷

Domestic violence is associated with significant negative impacts on maternal health such as delays in getting prenatal care, inconsistent or insufficient prenatal care, poor nutrition, inadequate weight gain, substance abuse, and increased prevalence of depression,³⁸ not to mention increased incidence and severity of physical assaults. It is also associated with adverse neonatal outcomes such as preterm birth, low birth weight, infants who are small for gestational age, and neonatal death.³⁹

It is estimated that up to 20% of pregnant women experience violence during their pregnancy, making it more common than gestational diabetes or

³⁵ E. Miller, Decker, M.R., McCauley, H.L., Tancredi, D.J., Levenson, R.R., Waldman, J., Schoenwald, P., Silverman, J.G., Pregnancy coercion, intimate partner violence and unintended pregnancy, 81 *Contraception*, no. 4, 2010, at 316–22.

³⁶ *Id.*

³⁷ *Id.*

³⁸ J.L. Alhusen, Ray E. Sharps P, Bullock, L., Intimate partner violence during pregnancy: maternal and neonatal outcomes, 24 *J. Women's Health*, no. 1, 2015, at 100–6.

³⁹ *Id.*

preeclampsia.⁴⁰ For women who were abused before their pregnancy, the risk is shockingly high, with 50% – 75% being abused during pregnancy.⁴¹ And, significantly, women whose pregnancies were unintended are two to four times more likely to experience physical violence than women with planned pregnancies.⁴² In the United States, homicide is the leading cause of death in pregnant women or those who recently gave birth.^{43,44}

4. Preventing access to healthcare and law enforcement is a common tactic of abuse.

People committing violence against their intimate partner engage in many strategies to keep their victims from reporting the abuse to law enforcement or healthcare providers (who may be mandatory reporters). Those strategies include threats up to and including homicide of the victim or someone the victim cares about; preventing access to phones, computers, and mail; preventing the victim from leaving the home; monitoring the

⁴⁰ National Coalition Against Domestic Violence, Domestic Violence and Pregnancy Fact Sheet, <https://vawnet.org/sites/default/files/assets/files/2016-09/DVpregnancy.pdf> (accessed March 2, 2023).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Rebecca B. Lawn and Karestan C. Koenen, Homicide is a leading cause of death for pregnant women, 379 *British Medical Journal*, 2022, at 2499.

⁴⁴ Wallace et al., Homicide During Pregnancy and the Postpartum Period in the United States, 2018–2019 Wolters Kluwer Health, Inc. Vol. 138, Issue 5, pp 762–69 (2021).

victim's whereabouts—including using GPS devices; using others to surveil the victim; interfering with transportation; telling the victim they will not be believed; telling the victim they will be arrested; attending healthcare visits as a form of coercive control; telling the victim the perpetrator is friends with law enforcement or people connected to the judicial system; and keeping the victim so busy with trivial demands they must meet that they have no time or energy to access help, leave, or otherwise change their situation.

CONCLUSION

For the reasons set forth above, the Act violates the Iowa Constitution. The six-weeks since LMP time limit to abortion access violates the substantive due process rights of Iowa women because it is not narrowly tailored to serve a compelling state interest. In particular, the rights of survivors of domestic violence and sexual assault and women experiencing intimate partner violence would be severely and unnecessarily restricted by the Act. Laws restricting women's access to the full range of reproductive care place women at further risk, since control over a woman's reproductive choices often plays a major role in intimate partner violence. For some women, the choice to terminate a pregnancy can literally be a life-or-death

decision— it is not frivolous or easily-made. This Court should affirm the district court below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

We, Jessica Johnson and Joshua Opperman, hereby certify that:

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(e) 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 3,376 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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