

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINC, and JILL MEADOWS, M.D.,</p> <p>Petitioners,</p> <p>vs.</p> <p>KIM REYNOLDS ex rel., STATE OF IOWA, and IOWA BOARD OF MEDICINE.</p> <p>Respondents.</p>	<p>Equity Case No. EQCE083074</p> <p>MOTION FOR SAVE THE 1 TO INTERVENE AS PETITIONER AND MEMORANDUM OF LAW IN SUPPORT</p>
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MOTION OF SAVE THE 1 TO INTERVENE

COMES NOW Save the 1, pursuant to Iowa Rule of Civil Procedure 1.407 and hereby moves the Court to allow intervention as a Petitioner in the above captioned matter. In support thereof, Save the 1 states to the Court as follows:

1. The above captioned matter is before the Court pursuant to the Petition for Declaratory Judgment filed by Planned Parenthood of the Heartland, Inc., Emma Goldman Clinic, and Jill Meadows, M.D. (“Petitioners”) on May 15, 2018.

2. Petitioners bring three claims under the Iowa Constitution challenging the constitutionality of Iowa Code § 146C.2(1), a law that protects the life of children once a heartbeat is detected.

3. Petitioners argue that the law is unconstitutional, in part, because the exceptions within the law for cases of rape and fetal abnormality are too limited. Pet. at ¶ 25 (citing Iowa Code § 146A.1(4)).

4. Save the 1 is a global pro-life organization of over six-hundred members who were conceived in rape, incest or sex trafficking, and mothers who became pregnant

by rape, incest or sex trafficking who are either raising their children, birth mothers, miscarried, or post-abortive and mourn the loss of their children. Additionally, Save the 1 includes hundreds of members who were told by physicians to abort due to a pre-natal diagnosis, along with their children who were targeted by doctors. Save the 1 is a 501(c)(3) non-profit organization located in the State of Michigan. Save the 1's members reside internationally and in the United States, with members in the State of Iowa.

5. Save the 1 challenges that the exceptions within Iowa Code § 146A.1(4) are unconstitutional, not because the exceptions are too limited, but to the contrary—because, as people conceived in rape and diagnosed with fetal abnormalities, the exceptions target their very lives.

6. The exceptions contained within Iowa Code § 146A.1(4) violate the Equal Protection of the law and due process, enshrined in the United States Constitution and the Iowa Constitution. Thus, the exceptions should be severed from the law.

7. Intervention is necessary to protect the aforementioned interest.

8. Save the 1 is entitled to intervene as a matter of right, under Rule 1.407(1) of the Iowa R. Civ. P. because Save the 1 and its members are directly impacted by this Court's decision. If this Court were to determine that intervention should not be granted as of right, the Court should grant permissive intervention pursuant to Rule 1.407(2)(b) of the Iowa R. Civ. P. Save the 1's claims arise from same facts and question of law as the Petition filed on May 15, 2018.

WHEREFORE Save the 1 respectfully requests that this Court grant this motion allowing Save the 1 to intervene and fully participate in this case to protect their right to the equal protection of the laws and due process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date I served the foregoing document on all the Parties in this case through electronic means, via email, and by edms transmission:

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Dated: June 19,2018

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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**MEMORANDUM IN SUPPORT OF THE MOTION OF
SAVE THE 1 TO INTERVENE**

Planned Parenthood of the Heartland, Inc., Emma Goldman Clinic, and Jill Meadows, M.D., on behalf of themselves and all others similarly situated, (collectively, “Petitioners”) have sued Kim Reynolds, the State of Iowa, and the Iowa Board of Medicine claiming that Iowa Code § 146C.2(1) violates the Due Process, the Inalienable Rights of Persons, and Equal the Protection clauses of the Iowa Constitution. Iowa const., art. I §§ 1, 6, 9. *See* Pet. at ¶¶ 37-42. While Petitioners’ claims should be denied and most of the law should be upheld, Save the 1 files this motion to intervene on similar grounds to Petitioners. Save the 1 argues that the exceptions within the law, challenged by Petitioners, violate equal protection, due process, and provisions of the Iowa Constitution. Thus, the exceptions to the law should be severed from Iowa Code § 146C.2 and declared unconstitutional.

FACTUAL BACKGROUND

Save The 1 is a global pro-life organization of over 600 who were conceived in rape, incest or sex trafficking and mothers who became pregnant by rape, incest or sex trafficking who are either raising their children, birthmothers, miscarried, or post-abortive and mourn the loss of their

children. Additionally, Save the 1 has hundreds of members who were told by physicians to abort due to a pre-natal diagnosis. Save the 1 specializes in defending the so-called “hard cases” in the abortion debate through sharing our personal stories, and additionally is a support network for these people groups. Save the 1 seeks for the Court to grant its motion to intervene as a necessary third party since the current Petitioners will not argue on behalf of their interests.

Iowa Code § 146C.2(1) can be found at <https://www.legis.iowa.gov/docs/publications/LGE/87/SF359.pdf> (last visited June 18, 2018).

The law includes a section banning the buying and selling of fetal parts, without a rape or fetal abnormality exception. The pertinent part of the bill, allowing the exceptions, states,

Sec. 4. NEW SECTION. 146C.2 Abortion prohibited — detectable fetal heartbeat.

1. Except in the case of a medical emergency or when the abortion is medically necessary, a physician shall not perform an abortion unless the physician has first complied with the prerequisites of chapter 146A and has tested the pregnant woman as specified in this subsection, to determine if a fetal heartbeat is detectable.

2. a. A physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician’s reasonable medical judgment, a medical emergency exists, or when the abortion is medically necessary.

b. Notwithstanding paragraph “a”, if a physician determines that the probable post fertilization age, as defined in section 146B.1, of the unborn child is twenty or more weeks, the physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless in the physician’s reasonable medical judgment the pregnant woman has a condition which the physician deems a medical emergency, as defined in section 146B.1, or the abortion is necessary to preserve the life of an unborn child.

* * *

3 Sec. 3. NEW SECTION. 146C.1 Definitions.

4. “Medically necessary” means any of the following:

a. The pregnancy is the result of a 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.

b. The pregnancy is 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.

c. Any spontaneous abortion, commonly known as a miscarriage, if not all of the products of conception are expelled.

d. The attending physician certifies that the fetus has a fetal abnormality that in the physician's reasonable medical judgment is incompatible with life.

Iowa Code § 146C.2(3)-(4).

Interestingly, amongst the bill's definitions, rape, incest, fetal abnormality and incompatible with life are not included or even cross-referenced with other sections of the Iowa code, as other definitions are cross-referenced.

The rape, incest and fetal abnormality exceptions are based upon a fabrication that aborting these unborn children is "medically necessary." Not one witness testified in the Senate hearing as to such a medical necessity. This language was added to appease House Republicans who said they would not approve the bill without language that excludes these children from protection. In other words, the legislative intent was that they believed it was politically necessary—not medically necessary. The language not only excludes innocent children from protection, doing so under a faulty premise, but really was intended merely to protect certain politicians and nothing to do with protecting pregnant mothers.

Additionally, and equally as troubling, the report of the rape and/or incest merely needs to be made to the "public or private health agency" —in other words, to the abortion clinic. So, the abortion clinic becomes the sole arbiter of whether a woman was raped and whether her child is to suffer the death penalty for the alleged crimes of his or her biological father, with no guidelines provided within the legislation.

Physicians' predictions are not medical certainty and denying the right to life and equal protection to entire groups of disabled children based on an abortion doctor's best guess is not medical science. Bias and arrogance of those who wish to promote biological superiority through the destruction of disabled children in the womb brings new meaning to the words biological warfare. A child's God-given right to life, liberty, and the pursuit of happiness should never be denied because of his or her disability or circumstances of conception. His or her value is not based on what he or she is able to do or the behavior of his or her parents; rather, it is based on his or her humanity and that the child has been endowed by his or her Creator with these inalienable rights.

While some states like Michigan, Georgia and Nebraska do not have a single rape exception within the law, there are other jurisdictions where the child conceived in rape is singled-out and systematically targeted for extermination. This lack of equal protection undeniably feeds into the discrimination within the culture. It codifies hatred, fear, and prejudice against an innocent child.

Accordingly, Save the 1 seeks to intervene as of right in this case under Rule 1.407(1) of the Iowa R. Civ. P. because it has a significant interest in the infringement of the equal protection imposed by the exceptions to the law that is not fully represented or protected by the existing parties and that interest will be impaired if intervention is denied. Alternatively, Save the 1 requests permission to intervene under Rule 1.407(2)(b) of the Iowa R. Civ. P. because its claims against Respondents have questions of law and fact in common with the above-captioned case. Notably, formal discovery has not yet begun in the above-captioned case and intervention by Save the 1 will therefore not interfere with its efficient litigation.

I. DISCUSSION

A. Save the 1 Should Be Allowed To Intervene As of Right

Rule 1.407(1) provides that upon timely application anyone shall be permitted to intervene in an action who: (1) has an interest relating to the property or transaction that is the subject of the action, (2) is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, and (3) said interest cannot be adequately represented by the existing parties. *See Iowa R. Civ. P. 1.407(1)(b).*

Rule 1.407 and Federal Rule of Civil Procedure 24 are substantively similar; therefore, federal interpretations are persuasive. *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295 (Iowa 1996). In the federal court, the First Circuit has explained that the “inherent imprecision of Rule 24(a)(2)'s individual elements dictates that the rule should be applied with an eye toward the commonsense view of the overall litigation.” Here, Save the 1’s Motion to Intervene satisfies each of Rule 1.407(1)’s criteria for intervention as of right and commonsense supports intervention.

1. Save the 1’s Motion to Intervene is Timely

As the docket reflects, this case is in the earliest stages. Petitioners filed the case on May 15, 2018. *See Pet.* Following, this Court granted a stipulated temporary injunction. Based on information and a review of the docket, it appears that the parties have not yet begun to engage in formal discovery.

Timeliness should be determined by the totality of the circumstances. *NAACP v. New York*, 413 U.S. 345, 366 (1973). The importance of timeliness derives meaning from assessment of prejudice in the context of the particular litigation, and may be considered timely any time prior to trial. *See Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973).

Save the 1’s intervention at this stage would not prejudice the Plaintiffs or Block. Accordingly, the United States' intervention would be timely.

2. Save the 1 Has a Significant Interest in the Pending Litigation

“One is ‘interested’ under rule [1.407] if one has a *legal right* that the proceeding will *directly affect*.” *In Interest of A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). Save the 1, and its members, have the legal right to equal protection under the law.

In enacting the Iowa law, Respondents sought to protect the lives of children with embryonic or fetal cardiac tones (a.k.a. a heartbeat). Pet at ¶ 24. The law, however, excludes from its protection whole classes of persons with heartbeats, including children conceived in rape and suspected to have a physical disability. Save the 1 exists to protect and promote the lives of individual conceived in rape and individuals diagnosed with fetal abnormalities. Save the 1 has a significant interest in the pending litigation because it will help define whether individuals, such as the members of Save the 1, are entitled to the same protection of the law as people conceived under different circumstances or with no known risk of disability. Save the 1 has a strong interest in advocating for an end to disability discrimination and in advocating for the right of their members’ lives to be viewed as equal under the law. The law’s exceptions undermine their inalienable right to life, Iowa Const. art. I, § 1, and deny legal protection based upon immutable characteristics and physical disability. This litigation thus reaches core principles of equal protection, and Save the 1, and its members, are directly implicated.

3. The Existing Parties Do Not Fully Represent the Interest of the United States

The interest of Save the 1 extends to individuals with all types of abnormal fetal diagnosis and individual conceived in rape. Indeed, Rebecca Kiessling, the founder and president of Save the 1, was conceived in rape and only lives today due to legal protections that guarded her right to life. No other parties in this litigation will protect the rights of Save the 1 and its members. Indeed, Petitioners support the existence of the exceptions and argue that the exceptions are too limited in scope. Petitioners are seeking to expand the meaning of the state constitution to add a right to

abortion. See also *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 262 (Iowa 2015) (where Petitioner also sought to expand state constitution to include right to abortion). Petitioners have shown no interest or ability to protect the rights of pre-born children, to protect children conceived by rape, or to protect children diagnosed with fetal abnormalities.

B. Permissive Intervention By the Save the 1 Should Be Granted

Were the Court to find that Save the 1 was not entitled to intervene as of right, permissive intervention should still be granted. Rule 1.407(b)(2) permits intervention by anyone who has “a claim or defense that shares with the main action a common question of law or fact.” Iowa R. Civ. P. 1.407(2)(b). The same substantial interests that give Save the 1 a right to intervene in this case under Rule 1.407(1), support permissive intervention.

First, for the reasons detailed in Section I.A.1, *supra*, Save the 1’s Motion to Intervene is timely. Second, if required to file a separate action to protect the interests not otherwise fully represented in this case, *see* discussion in Section I.A, at 2-4, *supra*, Save the 1 would assert that Respondents’ discriminatory law violated equal protection. These assertions would require the Court to resolve both questions of fact (the exceptions to Respondent’s law) and law (the application of the equal protection under the U.S. and Iowa Constitutions) in common with the Respondents here.

II. CONCLUSION

For all of the foregoing reasons, Save the 1 respectfully requests that the Court grant its Motion to Intervene. Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date I served the foregoing document on all the Parties in this case through electronic means, via email, and by edms transmission:

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