

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC and JILL MEADOWS, M.D., Petitioners, vs. KIM REYNOLDS, ex rel., State of Iowa and IOWA BOARD OF MEDICINE, Respondents.	CASE NO. EQCE 83074 RULING ON MOTION TO INTERVENE
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A contested hearing on the motion to intervene filed by Save the 1 was held before the undersigned on August 17, 2018 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

The present motion has been filed by Save the 1 to be allowed to intervene into the current litigation. The proposed intervenor seeks intervention both as a matter of right and permissively as allowed pursuant to Iowa Rule of Civil Procedure 1.407:

- (1) Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:
 - a.
 - b. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(2) Upon timely application, anyone may be permitted to intervene in an action under any of the following circumstances:

a.

b. When an applicant's claim or defense and the main action have a question of law or fact in common.

c.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

IowaR.Civ.P. 1.407(1), (2).

The proposed intervenor describes itself within its motion to intervene as follows:

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.

Specifically, the proposed intervenor seeks to become a party to the present litigation in order to argue that the exceptions for rape, incest and fetal abnormality within the legislation in question (Iowa Code §146C.2) are violative of the equal protection and due process provisions of both the United States and Iowa Constitutions, as well as the inalienable rights clause of the Iowa Constitution. It seeks the severance of these exceptions from the legislation in question and injunctive relief prohibiting the respondents from enforcing the exceptions.

Intervention as a matter of right. As noted above, in order for the proposed intervenor to be able to intervene as a matter of right, it must establish that it has an

interest in the subject of the present action that would be impaired or impeded if intervention were not allowed. Id. One is interested for purposes of seeking intervention if it has a legal right that the proceeding will directly affect. In re J.C., 857 N.W.2d 495, 508 (Iowa 2014) (citation omitted). In determining whether an applicant has a legal interest, the court must examine the source of the right claimed; an indirect, speculative, or remote interest will not provide one a right to intervene. In re H.N.B., 619 N.W.2d 340, 343 (Iowa 2000). A mere general interest in the subject matter of the litigation is inadequate to afford someone the ability to intervene as a matter of right. Id. (citation omitted) (mere interest or desire to adopt a child is inadequate to allow for intervention).

As applied to the present request, the court cannot identify what interest Save the 1 and its members have that would allow them to qualify as an intervenor as a matter of right. As best as the court can discern, Save the 1 is comprised of members who have either become pregnant or have been the result of a pregnancy arising from rape, incest or trafficking, and who would prefer that there be no rape, incest or fetal abnormality exceptions in any abortion-related legislation. Although heartfelt, such a goal rises no higher than the “mere interest or desire” in the subject matter of pending litigation that has been found to be lacking as grounds for intervention as a matter of right.

It is not enough to claim that one’s interest in becoming involved in pending litigation is to see to it that laws do not violate the public’s constitutional rights. This conclusion is analogous to the analysis undertaken by the court in determining whether a party making a claim in an original proceeding has standing to do so:

[W]hen the asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. Thus, a plaintiff raising only a

generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not provide a basis for standing. The claimed nonobservance of the law, standing alone, affects only the generalized interest of all citizens, and such an injury is abstract in nature, which is not sufficient for standing.

Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 598, 868-69 (Iowa 2005)

(internal citations, quotation marks and brackets omitted). As the petitioners point out in their resistance, the proposed intervenor has identified no connection between its members and any legal right to challenge language in abortion-related legislation in a prospective manner. Absent such a connection, the proposed intervenor does not have the ability to intervene in the current litigation as a matter of right.

Permissive intervention. In the alternative, Save the 1 seeks to join this litigation permissively. Such a request requires a commonality of law or fact with the original litigation, which can be accommodated without undue delay or prejudice to the existing litigants. IowaR.Civ.P. 1.407(2); Eischeid v. Dover Constr., Inc., 217 F.R.D. 448, 468 (N.D. Iowa 2003) (interpreting Fed.R.Civ.P. 24(b)).¹ A court may deny intervention in cases presenting common factual or legal issues if collateral or extrinsic issues are apt to be injected by the intervenor. Nat'l Amer. Corp. v Fed. Republic of Nigeria, 425 F.Supp. 1365, 1372 (S.D.N.Y. 1972).

There is obviously some legal overlap between the issues raised in the main action and the claims urged by the proposed intervenor, to the degree that each relates to whether the legislative language in question passes muster under the Iowa Constitution.

¹ As federal rule 24 is similarly worded to Iowa rule 1.407, interpretations of it are persuasive. City of Davenport v. Newcomb, 820 N.W.2d 882, 890 (Iowa Ct.App. 2012).

See Planned Parenthood of the Heartland v. Reynolds, ex rel. State, 915 N.W.2d 206, 237, 241 (woman's right to decide whether to terminate pregnancy is a fundamental right under the Iowa Constitution; any governmental limits on that right are to be analyzed using strict scrutiny test). Beyond that, the proposed intervenor's claims go far beyond the legal and factual constructs currently in place within the present litigation. They contemplate legal claims under the federal constitution that would likely require additional analysis beyond the state constitutional claims currently in place. See id. at 238-241 (discussion and rejection of "undue burden" standard developed under federal constitution). Further, while the precise parameters of the factual bases for the proposed intervenor's claims have not been completely laid out in its filings, it appears that they extend far beyond what would be necessary to adjudicate the claims in the main action, to include issues of disability discrimination, the adverse consequences faced by victims of rape who elect to terminate their pregnancy and the validity of medical diagnoses of fetal abnormalities. The depth and breadth of the proposed intervenor's claims in comparison to the issues raised in the main action weigh heavily against permissive intervention.

In addition, the inclusion of the proposed intervenor would almost necessarily delay the pending litigation and prejudice the rights of the existing parties, especially the respondents. The delay would come not only from the need to fully develop the collateral and extrinsic issues raised by the proposed intervenor, but also from what would almost certainly be the need for the respondents to obtain new counsel. It is undisputed that current counsel for the respondents in the main action (Thomas More Society) have previously represented Save the 1, creating a conflict of interest should they remain in the case in a position adverse to the proposed intervenor. See Iowa R. of

Prof'l Conduct 32:1.7. While Save the 1 is willing to waive any such conflict, the respondents have not shown an interest in doing so. Id. at 32:1.7(b)(4) (each affected client is required to give informed consent, confirmed in writing). The attorney general's office has already declined to defend the respondents in the main action (resulting in the involvement of the Thomas More Society), and could not commit on its future involvement should intervention be allowed.² Retention of new counsel for the respondents will take time away from the already involved claims pending between the parties to the main action. For these reasons, the court concludes that it would be the better exercise of its discretion to deny Save the 1's request to be permitted to join this litigation as an intervenor.

IT IS THEREFORE ORDERED that the motion to intervene filed by Save the 1 is denied.

² The attorney general's office participated in the present hearing by way of a limited appearance.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
EQCE083074	PLANNED PARENTHOOD ET AL VS GOVERNOR KIMBERLY REYNOLDS ET AL

So Ordered

A handwritten signature in black ink, reading "Michael D. Huppert", is written over a horizontal line.

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa