

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC 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>CASE NO. EQCE 83074</p> <p>RULING ON MOTION FOR SUMMARY JUDGMENT</p>
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A contested hearing on the petitioners’ motion for summary judgment was held before the undersigned on December 7, 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:

This is an action brought by the petitioners challenging the constitutionality of recent legislation passed by the Iowa legislature (Iowa Code chapter 146C) which would prohibit an abortion¹ upon the detection of a fetal heartbeat² by means of an abdominal ultrasound, in cases that do not involve a medical emergency³ or when the abortion is medically necessary (defined generally within the statute as involving rape, incest,

¹ “Abortion” is defined within the statute as “the 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) (2019).

² “Fetal heartbeat” is defined as “cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” Iowa Code §146C.1(2) (2019).

³ “Medical emergency” is defined as “a situation in which an abortion is performed to preserve the life of the 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 the 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 and irreversible impairment of a major bodily function of the pregnant woman.” Iowa Code §146A.1(6)(a) (2019); see also Iowa Code §146C.1(3) (2019).

miscarriage or fetal abnormality⁴). Iowa Code §146C.2 (2019). The petitioners take the position that this legislation violates the due process and equal protection provisions of the Iowa constitution; specifically, they argue within the present motion that such a determination can be made in advance of trial as a matter of law. The respondents resist, primarily on the basis that genuine issues of material fact remain that must await a trial on the merits. For the reasons noted within this ruling, the court agrees with the petitioners and grants the motion for summary judgment.

The standards for considering a motion for summary judgment are well settled under Iowa law:

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. An issue is genuine if the evidence in the record is such that a reasonable jury could return a verdict for the nonmoving party. We view the record in the light most favorable to the nonmoving party and will grant that party all reasonable inferences that can be drawn from the record. Summary judgment is appropriate if the only conflict concerns the legal consequences of undisputed facts.

Honomichi v. Valley View Swine, L.L.C., 914 N.W.2d 223, 230 (Iowa 2018) (internal citations, parentheticals, quotation marks and ellipses omitted).

The focus of the respondents' factual challenge to the motion revolves around at what stage of a pregnancy is a fetal heartbeat detectable. While conceding that a fetal heartbeat can be detected as early as six weeks into a pregnancy, the respondents contend that such detection is ordinarily not detected until later, especially when using an abdominal ultrasound as mandated by the statute.⁵ The affidavit of the respondents'

⁴ Iowa Code §146C.1(4) (2019).

⁵ The petitioners' reliance on a six-week period for detection of a fetal heartbeat appears to be premised on the use of a transvaginal ultrasound.

expert, Dr. Kathi Aultman, states that the earliest a fetal heartbeat can be detected abdominally is 7 weeks, with most detected by 8 to 9 weeks and some not until 12 weeks into the pregnancy.⁶ Aultman Affidavit, p. 2, ¶3.

Regardless of when precisely when a fetal heartbeat may be detected in a given pregnancy, it is undisputed that such cardiac activity is detectable well in advance of the fetus becoming viable.⁷ Within Dr. Meadows' affidavit is the statement that the current 20-week postfertilization statutory limit for abortions under Iowa law, see Iowa Code §146B.2 (2019) "is a minimum of several weeks before any fetus would be viable." Meadows Affidavit, p. 2, ¶3. This contention is not challenged within the respondent's resistance; to the contrary, the respondents contend that "viability...[is not] material to this case." Respondents' Brief in Resistance to Motion for Summary Judgment, p. 4. To the contrary, viability is not only material to this case, it is dispositive on the present record.

In coming to this conclusion, this court has the benefit of the recent decision by the Iowa Supreme Court in Planned Parenthood of the Heartland v. Reynolds, ex rel. State, 915 N.W.2d 206 (Iowa 2018) (PPH II). In PPH II, the Iowa Supreme Court held that a woman's right to decide whether to terminate a pregnancy is a fundamental right under the Iowa Constitution, and that any governmental limits on that right are to be

⁶ Dr. Aultman and the petitioners' experts (Dr. Jill Meadows and Dr. Abbey Hardy-Fairbanks) agree that the progression of any pregnancy should be measured from the first day of the last menstrual period (LMP or Imp).

⁷ "Viability" is defined within the Iowa Criminal Code as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life support systems." Iowa Code §702.20 (2019); see also Roe v. Wade, 410 U.S. 113, 160, 93 S.Ct. 705, 160 (1973) (definition of "viable" as "the interim point at which the fetus becomes...potentially able to live outside the mother's womb, albeit with artificial aid") (citations omitted).

analyzed using strict scrutiny. Id. at 237, 241.⁸ A strict scrutiny analysis requires any legislative infringement upon a fundamental right to be narrowly tailored to serve a compelling state interest. Id. at 241, 243. In the court's analysis of restrictions upon the decision to terminate a pregnancy, it identified two state interests: 1) an interest in protecting the woman's own health and safety and ensuring that abortions are performed safely; and 2) an interest in promoting potential life. Id. at 239 (citations omitted). It is undisputed in the present case that it is the second state interest (the promotion of potential life) that is at issue in analyzing the constitutionality of Iowa Code chapter 146C.

The application of a strict scrutiny test in the context of the state's compelling state interest in promoting potential life versus a woman's fundamental right to decide to terminate a pregnancy was first taken up in Roe v. Wade. In analyzing the state's interest, the United States Supreme Court focused on the viability of the fetus:

With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

Roe, 410 U.S. at 163-64, 93 S.Ct. at 732. As a result, the court held that the state's interest in promoting potential life may only be used to regulate (even to the point of proscription) postviability abortions, except where it is necessary, in appropriate medical

⁸ The supreme court analyzed the fundamental nature of this right under both the due process and equal protection provisions of the Iowa Constitution. Id. at 244, 245-46.

judgment, for the preservation of the life or health of the mother. Id. at 164-65, 93 S.Ct. at 732.

While the framework first announced in Roe has been modified over the years, the threshold of viability as a check on the state's compelling state interest in promoting potential life has remained intact. In Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 112 S.Ct. 2791 (1992), the United States Supreme Court established an "undue burden" standard in analyzing state restrictions on previability abortions. Id. at 878, 112 S.Ct. at 2821 ("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"). However, in doing so, the court went out of its way to make it clear that the "adoption of the undue burden analysis does not disturb the central holding of Roe v. Wade... [that] a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." Id. at 879, 112 S.Ct. at 2821. Finally, in its most recent discussion of the issue, the United States Supreme Court restated ("assume[d]") this part of the holding in Roe as reaffirmed by Casey. Gonzales v. Carhart, 550 U.S. 124, 146, 127 S.Ct. 1610, 1626 (2007) ("Before viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy'" (quoting Casey, 550 U.S. at 879, 112 S.Ct. at 2821)).

The Iowa Supreme Court expressly rejected the undue burden standard fashioned in Casey and held that any legislative restrictions on a woman's fundamental right to decide to terminate a pregnancy should be measured solely by a strict scrutiny analysis:

Ultimately, adopting the undue burden standard would relegate the individual rights of Iowa women to something

less than fundamental. It would allow the legislature to intrude upon the profoundly personal realms of family and reproductive autonomy, virtually unchecked, so long as it stopped just short of requiring women to move heaven and earth. By applying the narrow tailoring framework, however, we fulfill our obligation to act as a check on the powers of the legislature and ensure state actions are targeted specifically and narrowly to achieve their compelling ends. The guarantee of substantive due process requires nothing less. Accordingly, we conclude strict scrutiny is the appropriate standard to apply.

PPH II, 915 N.W.2d at 240-41. While the court in PPH II did not expressly address the previability versus postviability dichotomy from Roe and its progeny,⁹ this court is satisfied that such an analysis is inherent in the Iowa Supreme Court's adoption of a strict scrutiny test when determining whether a legislative restriction on a woman's fundamental right to decide to terminate a pregnancy passes constitutional muster. See id. at 239 (reference to state's compelling interest in promoting potential life and citation to Roe in reference to postviability).¹⁰ This court is equally satisfied that Iowa Code chapter 146C fails in this regard as a prohibition of previability abortions.

This conclusion is buttressed by a number of decisions from a number of intermediate federal courts that have invalidated abortion restrictions based either upon arbitrary timelines or, as in the case of Iowa Code chapter 146C, the detection of a fetal heartbeat. See, e.g., MKB Management Corp. v. Stenehjem, 795 F.3d 768, 773 (8th Cir. 2015), cert. denied, 136 S.Ct. 981 (2016) (fetal heartbeat law ruled unconstitutional as an improper prohibition of previability abortions; summary judgment in favor of plaintiffs

⁹ PPH II dealt with the constitutionality of a procedural obstacle to obtaining an abortion (a mandatory 72-hour delay between informational and procedural appointments) rather than an obstacle tied to the development of the pregnancy. Id. at 213.

¹⁰ Even the dissenting opinion in PPH II appears to acknowledge that the state's interest in promoting potential life does not extend to a restriction imposed previability. See id. at 246 (Mansfield, J., dissenting) ("Though the woman has a right to choose to terminate or continue her pregnancy before viability,...") (quoting Casey, 505 U.S. at 872, 112 S.Ct. at 2818).

affirmed); Edwards v. Beck, 786 F.3d 1113, 1117 (8th Cir. 2015), cert. denied, 136 S.Ct. 895 (2016) (legislation prohibiting abortions where fetal heartbeat detected and gestational period was twelve weeks or greater held unconstitutional; summary judgment affirmed); Isaacson v. Horne, 716 F.3d 1213, 1227 (9th Cir. 2013), cert. denied 571 U.S. 1127, 134 S.Ct. 905 (2014) (statute prohibiting abortion after gestational age of twenty weeks invalid; judgment in favor of state reversed).

Faced with the uphill battle created by this body of authority, the respondents argue in the alternative that Iowa Code chapter 146C does not impose a ban on abortions, but merely creates a window of opportunity for women to be vigilant in the exercise of their right to terminate a pregnancy; in other words, if women are to be able to exercise this right, they must also exercise the concomitant responsibility to monitor the potential of a pregnancy and terminate that pregnancy prior to the detection of a fetal heartbeat. This argument is nothing more than an attempt to repackage the undue burden standard rejected by the Iowa Supreme Court in PPH II, 915 N.W.2d at 240 (“[T]he undue burden standard solely measures the impact the regulation has on women’s ability to receive the procedure”). The respondents’ argument, by acknowledging the admittedly narrow amount of time afforded women under the statute, “would relegate the individual rights of Iowa women to something less than fundamental.” Id. In actuality, the argument would probably require women to engage in a level of diligence resembling something along the lines of “mov[ing] heaven and earth,” a type of restriction the Iowa Supreme Court found to be antithetical to the notion of a fundamental right. Id.

In summary, it is undisputed that the threshold for the restriction upon a woman’s fundamental right to terminate a pregnancy (the detection of a fetal heartbeat) contained

within Iowa Code chapter 146C constitutes a prohibition of previability abortions. As such, it is violative of both the due process and equal protection provisions of the Iowa Constitution as not being narrowly tailored to serve the compelling state interest of promoting potential life. Accordingly, this court grants the petitioners' motion for summary judgment and declares Iowa Code chapter 146C unconstitutional and therefore void. Iowa Const., Art. XII, §1 ("This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void"); PPH II, 915 N.W.2d at 213 ("No law that is contrary to the constitution may stand"). The petitioners' request for injunctive relief will also be granted.

IT IS THEREFORE ORDERED that the petitioners' motion for summary judgment is granted. Iowa Code chapter 146C is declared unconstitutional as violative of article I, sections 6 and 9 of the Iowa Constitution. The respondents are permanently enjoined from implementing, effectuating or enforcing the provisions of Iowa Code chapter 146C. The costs of this proceeding are assessed to the respondents.



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, appearing to read "Michael D. Huppert". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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