

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>MIKA COVINGTON, AIDEN DELATHOWER, and ONE IOWA, INC.,</p> <p>Petitioners,</p> <p>v.</p> <p>KIM REYNOLDS ex rel. STATE OF IOWA and IOWA DEPARTMENT OF HUMAN SERVICES,</p> <p>Respondents.</p>	<p>Equity Case No. _____</p> <p>PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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COME NOW Petitioners Mika Covington, Aiden DeLathower (“Aiden Vasquez”), and One Iowa, Inc., by and through their undersigned attorneys, and pray for temporary injunctive relief, as well as permanent injunctive relief, restraining Respondents, Kim Reynolds ex rel. State of Iowa and Iowa Department of Human Services, from enforcing Division XX, Sections 93-94 of House File 766, which facially discriminates by creating an exception to the Iowa’s Civil Rights Act protections against discrimination in public accommodations to specifically allow discrimination against transgender Iowans in the provision of publicly-funded healthcare such as Medicaid, as well as a declaratory judgment that the Division violates the Iowa Constitution, and in support thereof state the following:

STATEMENT OF THE CASE

1. This action challenges the validity of Division XX of House File 766 (“the Division”), to be codified at Iowa Code § 216.7(3) (2019), under the Iowa Constitution. The Division, entitled “Provision of Certain Surgeries or Procedures--Exemption from Required Accommodations or Services,” was passed by the Iowa Legislature on April 27, 2019, “deemed of immediate importance,” and thus given an immediate effective date upon the Governor’s signature.

2. The Governor signed the Division on May 3, 2019. *See* 2019 Iowa Acts, House File 766, Div. XX, <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf766>, at p. 87.
3. The Division facially discriminates against transgender people in Iowa by creating an exception to the Iowa Civil Rights Act's protections against discrimination in public accommodations to specifically allow discrimination against transgender people in the provision of publicly funded, medically necessary healthcare.
4. Petitioners Covington and Vasquez are transgender people, which means that their gender identity differs from their birth-assigned sex.
5. On March 8, 2019, the Iowa Supreme Court decided a challenge to Section 441-78.1(4) of the Iowa Administrative Code (the "Regulation"), a provision barring transgender individuals from obtaining Medicaid coverage for medically necessary surgery to treat gender dysphoria, a condition that only affects transgender people. *Good v. Iowa Dep't of Human Servs.*, 924 N.W.2d 853 (Iowa 2019).
6. In a unanimous decision, the Iowa Supreme Court found that the Regulation violated the Iowa Civil Rights Act protections against discrimination on the basis of gender identity in public accommodations, because the Regulation excluded transgender Iowans from coverage under Iowa Medicaid for medically necessary gender affirming surgery to treat gender dysphoria--a serious medical condition which only transgender people have--while otherwise providing coverage for medically necessary surgery. *Good*, 924 N.W.2d at 862-863.
7. The Iowa Supreme Court recognized that the history of the Regulation revealed its discriminatory intent to "expressly exclude[] Iowa Medicaid coverage for gender-affirming surgery specifically because this surgery treats gender dysphoria of transgender individuals." *Id.* at 862.

8. While the Iowa Supreme Court decided that it did not need to reach the constitutional equal protection challenge that Petitioners *Beal* and *Good* had also raised to the Regulation, Chief Judge Gamble found in his district court ruling below that the Regulation also violated the Iowa Constitutional guarantee to equal protection, *EerieAnna Good and Carol Beal*, Case No. CVCV054956 and CVCV055470 (consolidated), Ruling on Pets. for Judicial Review, at *33 (Iowa Dist. Ct. June 6, 2018), available at https://www.aclu-ia.org/sites/default/files/6-7-18_transgender_medicaid_decision.pdf.
9. Thus, while the Iowa Supreme Court affirmed this District Court's invalidation of the Regulation based on the Iowa Civil Rights Act, this District Court's invalidation of the Regulation based on the equal protection guarantee of the Iowa Constitution also stands, and is controlling in this challenge to the Division on the same constitutional grounds.
10. The discriminatory Regulation remains in place, and Respondents have not removed it from the Iowa Administrative Code following the Iowa Supreme Court's decision in the *Good* case, or taken any steps to do so. See Iowa Admin. R. 441-78.1(4), available at <https://www.legis.iowa.gov/docs/iac/chapter/05-22-2019.441.78.pdf> (current as of May 22, 2019).
11. On numerous occasions, Iowa legislators and the Iowa Governor have publically stated their intent to revert to the state's long-standing policy and practice of denying transgender Iowans on Medicaid coverage for medically necessary gender affirming surgery. See, e.g., Caroline Cummings, *Gov. Reynolds stands by signing bill with Medicaid coverage ban for transgender surgery*, CBS 2/Fox 28 (May 7, 2019), available at <https://cbs2iowa.com/news/local/gov-kim-reynolds-stands-by-decision-to-sign-budget-bill-with-transgender-surgery-ban> ("This [the legislation] takes it back to the way it's always been. This has been the state's position for

decades.”); Tony Leys and Barbara Rodriguez, *Iowa Republican lawmakers ban use of Medicaid dollars on transgender surgery*, Des Moines Register (Apr. 27, 2019), <https://www.desmoinesregister.com/story/news/politics/2019/04/26/iowa-legislature-senate-republicans-propose-ban-medicaid-money-transgender-surgery-lawsuit-courts/3578920002/> (“Sen. Mark Costello said the intent of the bill was ‘to change the administrative code back to the way it was for years before the lawsuit.’”).

12. Thus, if the Division is allowed to stand, Iowa Medicaid may continue to enforce the discriminatory Regulation, preventing Petitioners and their members from accessing life-saving, medically necessary surgery to treat their gender dysphoria, or otherwise discriminate against transgender Iowans who receive Medicaid coverage by denying them coverage for gender affirming surgery pursuant to the Division.
13. By singling out transgender Iowans for discriminatory treatment in this way, the Division unlawfully violates the rights of Petitioners and their members to equal protection under the Iowa Constitution, in addition to the constitutional rights they have under Iowa’s inalienable rights guarantee and single subject rule. Accordingly, Petitioners seek judicial relief declaring the Division unconstitutional and enjoining its enforcement.

PARTIES

Aiden DeLathower (“Aiden Vasquez”)

22. Petitioner Aiden Vasquez is a fifty-one-year-old man who is transgender and has known that he is male since the age of two.¹

¹ Mr. Vasquez and his wife, Tammi, have not been able to save up enough money yet to legally change both of their last names from DeLathower to Vasquez, a family name on Mr. Vasquez’s side. Mr. Vasquez associates the name DeLathower with his former name before he began living full time as himself, a man, and experiences discomfort when he is referred to using that name. He and his wife intend to change their last names together as soon as possible, and they identify

23. He was diagnosed with gender dysphoria in January 2016.
24. As part of his treatment for gender dysphoria, Mr. Vasquez has lived full time as a man in every aspect of his life for several years. *See* Standards of Care at 9–10, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf.
25. In February 2016, Mr. Vasquez began hormone therapy.
26. In May 2016, he legally changed his name, and amended his driver’s license and Social Security Card to reflect his legal name.
27. In September 2016, he underwent a medically necessary double mastectomy as part of his treatment for gender dysphoria.
28. In October 2016, Mr. Vasquez amended his birth certificate and changed the gender markers on his identification documents to reflect the fact that he is a man.
29. Mr. Vasquez’s gender dysphoria exacerbates his depression and anxiety. He is distressed and very uncomfortable with his genitalia, which does not align with his male gender identity.
30. Mr. Vasquez’s health-care providers have also uniformly concluded that surgery is necessary to treat his gender dysphoria.
31. Mr. Vasquez’s primary care physician, Dr. Nicole Nisly, concluded that “[g]ender affirming bottom surgery is medically necessary to treat Aiden’s gender dysphoria...”
32. He has also been approved for gender affirming surgery to treat his gender dysphoria by three psychologists.
33. Following the Iowa Supreme Court’s decision in *Good*, Mr. Vasquez began the process of obtaining preapproval for his gender affirming surgery. He had scheduled a pre-operative

with the name Vasquez. Mr. Vasquez would prefer to be referred to either by his first name, “Aiden”, or “Mr. Vasquez” when possible.

consultation with his surgeon, Dr. Gast, for May 30, 2019 in Wisconsin in preparation for his gender affirming surgery, which he expected to be able to schedule for September 2019.

34. However, as a result of the new law, Dr. Gast's office told Mr. Vasquez that it was unable to confirm that Mr. Vasquez's pre-operational appointment would be covered under Medicaid, and also informed him that they also could not assure preapproval for his surgery. As a result, Mr. Vasquez was forced to cancel his consultation.

35. As a result of the Division, Mr. Vasquez has been forced to indefinitely postpone his medically necessary procedure.

36. If the Division is not enjoined, Mr. Vasquez will continue to be deprived of the gender affirming surgery for which he has a serious medical need.

Mika Covington

37. Petitioner Mika Covington is a twenty-eight-year-old woman who is transgender and has known that she is female from the age of six.

38. She has expressed her female identity in various ways since high school, and realized she is transgender in 2008.

39. In 2009, she decided to come out, and began the process of social transition to living full time as herself, a woman.

40. In 2014, Ms. Covington legally changed her name to reflect the fact that she is a woman.

41. In 2015, Ms. Covington was diagnosed with gender dysphoria and began hormone therapy.

42. In 2019 she amended the gender markers on her passport and social-security card to reflect her female identity.

43. Ms. Covington's gender dysphoria causes her to experience severe depression and anxiety.

44. She is distressed and very uncomfortable with her genitalia, which does not align with her gender identity and intensifies her depression and anxiety.

45. Following the Iowa Supreme Court's decision in *Good*, Ms. Covington began the process to obtain preapproval for her gender affirming surgery.

46. Ms. Covington's health-care providers have uniformly concluded that surgery is necessary to treat her gender dysphoria.

47. For example, Ms. Covington's primary care physician, Dr. Nicole Nisly, has referred her for surgery, and determined that "[g]ender affirming surgery is medically necessary to treat Mika's gender dysphoria" in accord with the standards and guideline set forth by the World Professional Association for Transgender Health ("WPATH").

48. Ms. Covington has also been evaluated by Elizabeth Watters and Hana-May Eadeh, two psychologists at the University of Iowa Hospitals and Clinics, who approved her for gender affirming surgery to treat her gender dysphoria under the WPATH standards.

49. According to her care plan with Dr. Nisley, she intended to schedule her surgery to occur at the University of Iowa Hospitals and Clinics in September 2019.

50. However, because of the Division, her request for preapproval of coverage for surgery to treat her gender dysphoria will be denied by Iowa Medicaid, and her treatment plan will be seriously disrupted.

51. If the Division is not enjoined, Ms. Covington will be deprived of the gender affirming surgery for which she has a serious medical need.

One Iowa

52. Petitioner One Iowa is a nonpartisan, nonprofit organization. It advances, empowers, and improves the lives of LGBTQ Iowans statewide.

53. Its work includes educating Iowans about the LGBTQ community, training healthcare providers, law enforcement, business leaders, and others to ensure LGBTQ Iowans are respected in every facet and stage of their lives, promoting policies within state and local government that protect the civil rights, health, and safety of LGBTQ Iowans, empowering tomorrow's LGBTQ leaders through training and mentorship, and connecting LGBTQ Iowans with vital resources.

54. Many aspects of One Iowa's work intersect with the lives of transgender Iowans. One Iowa has helped provide support for transgender groups to organize around Transgender Day of Remembrance. It provides training to law enforcement and corrections officers at all levels to help them understand the unique challenges the transgender community faces in the criminal justice system.

55. One Iowa has a major focus on increasing healthcare access for transgender Iowans. Working with healthcare providers who specialize in issues related to transgender individuals, they help to inform other healthcare professionals and agencies about how to address transgender people who might be transitioning, and what kind of resources exist to help them through this process.

56. In addition to serving the needs of the transgender community, many of One Iowa's supporters, donors, board members, and staff are transgender.

57. The organization has also recently developed a Transgender Advisory Council to guide their work for transgender Iowans.

58. Petitioners Covington and Vasquez are members of One Iowa's Transgender Advisory Council.

59. In addition, One Iowa maintains a program called the LGBTQ Leadership Institute, which actively recruits transgender Iowans to develop skills and enter community leadership roles.

60. Some of One Iowa's Transgender Advisory Council and LGBTQ Leadership Institute members are on Iowa Medicaid, and gender affirming surgery is medically necessary to treat their gender dysphoria.

Governor Kim Reynolds

61. Respondent Kim Reynolds is the Governor of Iowa and as such, is the chief executive for the state, responsible for ensuring the enforcement of the state's statutes. *See* Iowa Const. art. IV, §§ 1, 9. The Governor is sued in her official capacity.

Iowa Department of Human Services

62. Respondent Iowa Department of Human Services is a state agency as defined in the Iowa Administrative Procedures Act, Iowa Code § 17A.2(1) (2017). Respondent is charged with administering the Iowa Medicaid Program, *see* Iowa Code § 249A.2(1), and specifically the Iowa Medicaid regulation coverage exclusion of gender affirming surgery that was found to be discriminatory in *Good*. Iowa Admin. Code r. 441-78.1(4)(b)(2) (2017); Iowa Admin. Code r. 441-78.1(4) (2017).

JURISDICTION AND VENUE

63. This action seeks a declaratory judgment and injunctive relief pursuant to Iowa Rule of Civil Procedure 1.1101 et seq. (2017), 1.1501 et seq. (2017), and the common law. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.6101 (2017).

64. Venue is proper in this district pursuant to Iowa Code § 616.3(2) (2018) because part of the cause arose in Polk County and Respondent Iowa Department of Human Services' primary office is located in Polk County, as is Respondent Governor Reynold's.

FACTS

65. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

66. “Gender identity” is a well-established medical concept referring to a person’s internal sense of gender. All human beings develop this basic understanding of belonging to a gender. Gender identity is an innate and immutable aspect of personality.

67. Typically, people who are designated male at birth based on their external anatomy identify as boys or men, and people designated female at birth identify as girls or women. For transgender people, gender identity differs from the sex assigned at birth. Women who are transgender, for example, are women who were assigned the “male” gender at birth but have a female gender identity.

68. The medical diagnosis for the feeling of incongruence between one’s gender identity and one’s birth-assigned sex is “gender dysphoria” (previously known as “gender-identity disorder” or “transsexualism”).

69. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-V”), and the International Statistical Classification of Diseases and Related Health Problems, Tenth Edition. The criteria for diagnosing gender dysphoria are set forth in Section 302.85 of DSM-V.

70. Gender dysphoria, if left untreated, can lead to serious medical problems, including clinically significant psychological distress and dysfunction, debilitating depression, and, for some people without access to appropriate medical care and treatment, suicidality and death.

71. The standards of care for treating gender dysphoria (“Standards of Care” or “Standards”) are set forth in the World Professional Association of Transgender Health (“WPATH”) Standards

of Care for the Health of Transsexual, Transgender, and Nonconforming People. *See* The World Professional Association of Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Nonconforming People*, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf.

72. The Standards of Care are widely accepted evidence-based medical protocols that articulate professional consensus to guide health-care providers in medically managing gender dysphoria. (*Id.*) They are recognized as authoritative by the American Medical Association, the American Psychiatric Association, and the American Psychological Association, among others. (*Id.*) They are, in fact, so well established that federal courts have declared that a prison’s failure to provide health care in accordance with the Standards may constitute cruel and unusual punishment under the Eighth Amendment of the US Constitution. *Rosati v. Igbinoso*, 791 F.3d 1037, 1039–40 (9th Cir. 2015); *De’lonta v. Johnson*, 708 F.3d 520, 522–26 (4th Cir. 2013); *Fields v. Smith*, 653 F.3d 550, 553–59 (7th Cir. 2011); *Keohane v. Jones*, No. 4:16CV511a– MW/CAS, 2018 WL 4006798, at *3 (N.D. Fla. Aug. 22, 2018).

73. For many transgender people, necessary treatment for gender dysphoria may require medical interventions to affirm their gender identity and help them transition from living in one gender to another.

74. This transition-related care may include hormone therapy, gender-affirming surgery—sometimes called “gender confirmation surgery” or “sex reassignment surgery”—and other medical services to align a transgender person’s body with the person’s gender identity.

75. The treatment for each transgender person is individualized to fulfill that person’s particular needs.

76. The WPATH Standards of Care for treating gender dysphoria address all these forms of medical treatment, including surgery.

77. By the mid-1990s, there was consensus within the medical community that surgery was the only effective treatment for many individuals with severe gender dysphoria.

78. More than three decades of research confirms that surgery to modify primary and secondary sex characteristics and anatomy to align with a person's gender identity is therapeutic, and therefore effective treatment for gender dysphoria.

79. For severely gender-dysphoric patients, surgery is, in fact, the only effective treatment.

80. Gender-affirming surgery, previously called "sex reassignment" surgery, is not cosmetic, experimental, or elective.

81. Indeed, all major medical associations—including the American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and WPATH—agree that gender dysphoria is a serious medical condition and that treatment for gender dysphoria is medically necessary for many transgender people.

82. The purpose of the surgery is to alter or reconstruct a person's "primary and/or secondary sex characteristics" in order to "create body congruence and eliminate anatomical dysphoria."

83. Gender-affirming surgery addresses the ways in which a person's body fails to conform with his or her gender identity to lessen or cure the dysfunction, pain, and even death that can result from untreated gender dysphoria.

84. "The idea that gender dysphoric patients [are simply] 'demonstrating psychotic mechanisms'" has been "discredited by the weight of research," and the notion that gender dysphoria can be "cured" through "psychoanalysis" has been thoroughly "debunked."

85. Indeed, current research indicates that a person’s gender identity “has a strong biological basis.”

86. Gender dysphoria “is based on a realistic perception that one’s body habitus does not align with one’s gender identity.”

87. Unlike elective cosmetic surgery that a person undergoes for aesthetic reasons, medically necessary gender-affirming surgery is intended to alter a person’s body to conform to the person’s gender identity in order to address the life-altering—and, at times, life-threatening—consequences of gender dysphoria.

88. Gender-affirming surgical treatment may prevent social dysfunction, physical pain, and even death.

89. If left untreated, gender dysphoria often causes acute distress and isolation, impedes healthy personality development and interpersonal relationships, and destroys a person’s ability to function effectively in daily life.

90. Suicidality and death are common among persons who are unable to access gender-dysphoria treatment, with an attempted-suicide rate of 41% to 43% for those individuals, as compared to a baseline rate of 4.6% in North America for the overall population.

91. The only class of medically necessary surgery exempted from the requirement of nondiscrimination in Medicaid by the Division is “sex reassignment surgery or any other cosmetic, reconstructive, or plastic surgery procedure related to transsexualism, hermaphroditism, gender identity disorder, or body dysmorphic disorder.”

92. Only transgender individuals have gender dysphoria.

93. Only transgender individuals require gender affirming surgery.

94. As already determined by the Iowa District Court and Iowa Supreme Court in *Good*, the Division would allow Medicaid coverage to be excluded for transgender individuals for the treatment of gender dysphoria even though the same or similar surgical care is available to non-transgender individuals for conditions other than gender dysphoria. *Good*, 924 N.W.2d at 856.; *Good*, No. CVCV054956, at *17-18, 27. These surgeries include treatment for testicular cancer, pain, and torsion; postoncologic reconstruction; posttraumatic reconstruction; postinfection reconstruction; reconstruction of congenital defects or anomalies; and scar removal. *See, e.g.*, Iowa Admin. Code r. 441-78.1(249A) (2017) (approving reimbursement for surgeries to correct “congenital anomal[ies],” for “restoration after injury,” and for “[r]evision of disfiguring and extensive scars resulting from neoplastic surgery.”).

95. The Supreme Court, and this District Court, have already recognized that gender confirmation surgery is medically necessary for some transgender people. *Good*, 924 N.W.2d at 857-58, 62; *Good*, No. CVCV054956, at *7-8.

CLAIMS FOR RELIEF

COUNT I – RIGHT TO EQUAL PROTECTION

96. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

97. The Act violates Petitioners’ and their members’ rights to equal protection of the laws in the state of Iowa, as guaranteed by article I, sections 1 and 6 of the Iowa Constitution, by:

a. Intentionally singling out transgender Iowans as a class for discrimination in public accommodations through the provision of publicly funded healthcare under the Iowa Civil Rights Act;

b. Intentionally discriminating against transgender Iowans who rely on Medicaid or other publicly-funded healthcare coverage on the basis of their status as transgender and on the basis of their sex for whom gender affirming surgery is medically necessary.

COUNT II - SINGLE SUBJECT RULE

98. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

99. The Act violates the Iowa’s “single subject rule” that all legislation passed by the Iowa General Assembly “shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.” Iowa Const. Art. III, § 29.

100. The Act is void under article III, section 29, because the title of the legislation the Division contained in pertains only to appropriations for health and human services, and contains no notice of creating an exception to the Iowa Civil Rights Act for transgender Iowans.

COUNT III – INALIENABLE RIGHTS OF PERSONS

101. Petitioners hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

102. The Act violates the inalienable rights of persons to liberty, safety and happiness, as guaranteed by article I, section 1 of the Iowa Constitution.

PRAYER FOR RELIEF:

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

103. Petitioner hereby incorporates the allegations of all previous paragraphs as though those allegations were fully set forth herein.

104. This matter is appropriate for declaratory relief pursuant to Iowa Rules of Civil Procedure 1.1101 et seq. and granting such relief, in conjunction with the supplemental injunctive relief Petitioners pray for, would terminate the legal dispute that gave rise to this Petition.

105. This matter is also appropriate for temporary and permanent injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501 et seq. Both Petitioners have a serious medical need for gender affirming surgery, to occur later this summer. Since the enactment of the Division, Petitioner Vasquez has already been prevented from accessing medically necessary care, and Petitioner Covington's pre-approval of surgery will be denied following her July 2019 follow-up appointment. Absent injunctive relief, Petitioners and their members will continue to suffer irreparable injury for which there is no adequate remedy at law.

WHEREFORE, Petitioners respectfully urge this Court to enter judgment as follows.

(1) Declaring that:

The Division is invalid and unconstitutional on its face because it violates the Iowa Constitution;

(2) Enjoining Respondents from:

Enforcing the Division or otherwise giving it any effect, by allowing Iowa Medicaid or any other public accommodation to deny coverage or medically necessary gender affirming surgery to transgender Iowans, either pursuant to the Discriminatory Regulation invalidated under ICRA in *Good*, or otherwise pursuant to the Division;

(3) For Petitioners' costs incurred herein; and,

(4) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Rita Bettis Austen

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*Application for admission *pro hac vice* forthcoming

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