IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EERIEANNA GOOD, **Petitioner,** v. IOWA DEPARTMENT OF HUMAN SERVICES, **Respondent.**	**NO: CVCV053547** **RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS**

Respondent, the Iowa Department of Human Services ("DHS"), hereby submits the following Reply Brief in Support of its Motion for Dismiss for Failure to State a Claim and states as follows:

I. INTRODUCTION

Although Petitioner's resistance urges this Court to look away from reigning precedent, federal guidance, and the very language of the statute upon which Petitioner now seeks relief, a dispassionate look at the governing law indicates that dismissal of the Petition, *in toto*, is appropriate. The Eighth Circuit's reigning precedent on the administrative rule Petitioner now challenges makes clear that Claim Three (Equal Protection) and Claim Five (Unreasonable, Arbitrary, and Capricious Decision) have been litigated and ruled upon, finding that the Department's ban on Medicaid cover-

age for "sex reassignment surgery"[1] is reasonable. Furthermore, Petitioner's reading of the Iowa Civil Rights Act (the "ICRA") results in an inconsistent and unharmonious reading of the statute, incongruent both internally and in light of external guidance. Finally, Count Four must be dismissed as without an "independent right," (which Petitioner has pled to be her rights under ICRA and the Iowa Constitution) Count Four cannot stand alone. As a result, dismissal of the Petition is proper.

II. ARGUMENT

A. Regardless of the Specific Claims Raised, *Smith v. Rasmussen*'s Legal Conclusions and Reasoning Govern and Should Inform This Court's Analysis.

The Eighth Circuit's 2001 holding in *Smith v. Rasmussen*, 249 F.3d 755, 761 (8th Cir. 2001), undoubtedly applies here: there, the plaintiffs challenged the same administrative rule on some of the same grounds (even if through different claims). Petitioner cannot avoid the inevitable conclusion that success for her on Counts Three and Five would result in a direct conflict with the Eighth Circuit's holding in *Rasmussen*. Thus, *Rasmussen* mandates dismissal on Count Five and should guide this Court's analysis as to Counts Three and Four.

Even in the absence of the Eighth Circuit having occasion to consider the exact claims Petitioner raises here, the Court in *Smith v. Rasmussen*'s legal conclusions are

[1] While noting that "gender-affirming" and "gender-confirming" surgery may be the preferred vernacular, in order to avoid confusion, the Department continues to make reference to "sex reassignment surgery" in conformance with the language of the disputed administrative rule: Iowa Admin. Code r. 441-78.1(4).

dispositive as to at least one claim, and inform this Court's analysis as to several others. As an initial matter, Petitioner correctly notes that *Rasmussen* does not govern Petitioner's ICRA claims – instead, those claims are properly dismissed on other grounds. *See* (DHS Br. in Supp. of Mot. to Dismiss at 4) ("Three of Petitioner's claims are properly resolved in light of *Rasmussen* as a matter of law[.]"). With respect to Petitioner's other three claims, issue preclusion does not require that the same claims be presented, as Petitioner implies. The doctrine of issue preclusion (also known as collateral estoppel) only requires that:

> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Stender v. Blessum, 897 N.W.2d 491, 513 (Iowa 2017). While the issues addressed by the precluding court must be identical, it does not follow that the judgment must also be for the same claim. *See id.* ("The ultimate final judgment need not be on the specific issue to be given preclusive effect.") (internal citation and quotation marks omitted).

The Eighth Circuit's holding in *Rasmussen* mandates dismissal of Petitioner's fifth claim. In *Rasmussen*, the Eighth Circuit held that "the State's prohibition on funding of sex reassignment surgery is both reasonable and consistent with the Medicaid Act," and that the Court could not "conclude as a substantive matter that the Department's regulation is unreasonable, arbitrary, or inconsistent with the Act . . . ." *Rasmussen*, 249 F.3d at 761. Thus, as a matter of law, the Eight Circuit found that the

rule Petitioner now seeks to challenge was not "arbitrary" or "unreasonable," contrary to what Petitioner pleads as the basis for her Claim Five. This Court cannot find for Petitioner on Claim Five without directly undercutting the holding and legal conclusions provided for in *Rasmussen*, as the same administrative rule is being challenged in a legally identical context.

While *Rasmussen* does not govern this Court's analysis of Petitioner's Equal Protection claim, *Rasmussen* should inform it. The applicable level of scrutiny for Petitioner's Equal Protection claim under the Iowa Constitution is rational basis review. Despite Petitioner's arguments, Petitioner has not and cannot cite governing case law that supports classifying Petitioner as a member of a quasi-suspect or suspect class for purposes of her Petition. Absent such a classification, DHS need only have a rational basis for its rule. *State v. Biddle*, 652 N.W.2d 191, 202 (Iowa 2002); *State v. Simmons*, 714 N.W.2d 264, 277 (Iowa 2006). As previously argued, the Eighth Circuit's holding in *Rasmussen*, finding the challenged regulation both "reasonable," and not "unreasonable, arbitrary, or inconsistent with the [Medicaid] Act," shows that, as a matter of law, Iowa Admin. Code. r. 441-78.1(4) meets the rational basis standard. *See Residential and Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 50 (Iowa 2016) ("We will not declare something unconstitutional under the rational-basis test unless it 'clearly, palpably, and without doubt infringe[s] upon the constitution.'") (internal citation omitted; bracket in original).

Although Petitioner argues that heightened scrutiny is warranted because "discrimination against transgender people is a form of sex discrimination," established precedent also undercuts this position. In *Sommers v. Iowa Civil Rights Comm'n*, 337 N.W.2d 470, 474 (Iowa 1983), the Iowa Supreme Court considered whether discrimination against transsexuals[2] constituted sex discrimination under the ICRA. The Court held that "we find that by proscribing discrimination on account of sex the legislature did not intend that the term would include transsexuals." *Id.* The same logic holds true here for Petitioner's sex discrimination claim, both under the Equal Protection Clause and the ICRA. In fact, for the latter, *Sommers* mandates dismissal of Petitioner's sex discrimination claim under the ICRA.

Petitioner's attempt to separate an analysis of the validity of the rule from its enforceability is improper. It is contradictory to posit, as Petitioner attempts to, that a rule can be valid, but that its enforcement is invalid. The analysis of whether the enforcement of an administrative rule is proper is the same as to the validity of the underlying rule itself, and Petitioner's citations do not contradict this view. "Administrative regulations have the force and effect of a statute." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 764 (Iowa 2009) (internal citation omitted). As a result, DHS cannot act in contravention to even its own rules. Thus, the required analysis falls on the validity of the underlying rule being enforced – an analysis that necessarily must be informed by existing precedent, such as *Rasmussen*. Thus, the proper analysis, as followed by the

[2] Again, DHS only intends to make reference to the phraseology used by the Court.

Eighth Circuit in *Rasmussen*, pertains to the rule itself and its reasonableness (and constitutionality) as of the time of its creation.

Finally, with regard to Petitioner's characterization of DHS's argument pertaining to Petitioner's Fourth Claim, DHS's original analysis holds true. Petitioner's Fourth Claim is dependent on this Court finding that Petitioner has either a valid Equal Protection claim or ICRA claim – without such a finding, Petitioner's Fourth Claim cannot stand alone. (DHS Br. in Supp. of Mot. to Dismiss at 6).

B. Petitioner's Reading of the ICRA Is an Unfaithful Contortion of the Statute's Text, Overall Context, and Purpose.

In her resistance, Petitioner lobs several theories in support of an unprecedentedly expanded reading of the ICRA. However, as shown below, there is only one reading of the ICRA that harmonizes the ICRA with not only the statute itself, but also federal law that serves as "guidance" and Iowa case law. For at least four reasons, the proper interpretation of the ICRA limits its application to physical "places, establishments, and facilities," and is exclusive of state agencies like DHS.

First, Petitioner's interpretation of the word "unit" as inclusive of all government agencies is incongruent with the ordinary and common meaning of the word as used throughout the ICRA. As both parties acknowledge, the word "unit" and "government unit" is undefined in the ICRA. However, the meaning of the word "unit" in the ICRA unambiguously refers to units of buildings. "When the legislature fails to define a statutory term, *we examine the context in which the term appears* and accord the

term its ordinary and common meaning." *State v. Pettijohn*, 899 N.W.2d 1, 16 (Iowa 2017) (emphasis added; internal citation omitted); *see also State v. Thompson*, 836 N.W.2d 470, 484 (Iowa 2017) ("We give the words of the statute 'their ordinary and common meaning by considering the context within which they are used.'") (internal citation omitted). It is well within the ordinary and common meaning of "unit" to refer to physical habitations. *See, e.g.,* Oxford University Press, "English Oxford Living Dictionaries: 'Unit' Definition," *available at* https://en.oxforddictionaries.com/definition/unit (last visited Oct. 31, 2017) ("A self-contained section in a building or group of buildings" as in "one- and two-bedroom units."). Petitioner's reading of the word "unit" is inconsistent with the use of the word "unit" in the rest of the ICRA, which uses "unit" only to refer to *dwelling* units. *See* (DHS Br. in Supp. of Mot. to Dismiss at 7); Iowa Code §§ 216.2(4) ("dwelling units" and "ground floor units"), 216.12(1)"d"(1) (dwellings as "unit[s]"); *State ex rel. Claypool v. Evans*, 757 N.W.2d 166 (Iowa 2008) (units in reference to housing). This is the *only* congruent meaning of the word "unit" as used within the ICRA. As a result, the word "unit" as it appears in Iowa Code § 216.2(13)(b) similarly refers to "units" of buildings or similar. *See State v. Richardson*, 890 N.W.2d 609, 619 (Iowa 2017) ("When the same word or term is used in different statutory sections that are similar in purpose, they will be given a consistent meaning.") (internal citation omitted).

Second, Petitioner misapplies the doctrine of *noscitur a sociis* by mischaracterizing the definition of "district" she provides. As Petitioner acknowledged: "The term

'district' denotes, in relevant part, 'a *territorial* division' or 'an area, region, or section with a distinguishing character.'" (Pet.'s Br. in Res. to DHS Mot. to Dismiss at 15) (emphasis added). Under this definition, it is clear that the ordinary and common meaning of "district" refers to physically demarcated districts: the use of the word "territorial" makes clear the type of division contemplated, as does the reference to a "section" alongside the physical terms "area" and "region." The ICRA undoubtedly was intended to be inclusive of territorially-divided districts such as school districts; the same logic does not apply to a statewide agency like DHS.

Third, the State's reading of Iowa Code § 216.2(13) does not render paragraph Iowa Code § 216.2(13)(b) superfluous, but instead reflects a harmonious reading of the ICRA. *See In re Estate of Sampson*, 838 N.W.2d 663, 671 (Iowa 2013) (courts should "read a statute as a whole and attempt to harmonize all of its provisions.") (internal citation omitted). Paragraph 216.2(13)(b) of the ICRA, pertaining to "government unit[s]" and "tax-supported district[s]," *must* be read with reference to paragraph 216.2(13)(a) (which defines "public accommodation" generally) because the plain text of the statute designates that paragraph 216.2(13)(a) is *inclusive* of paragraph 216.2(13)(b). Iowa Code §216.2(13)(b) ("'Public accommodation' *includes* each state and local government unit or tax-supported district. . . .") (emphasis added). As a result, 216.2(13)(b) must be read to fall within the "umbrella" of 216.2(13)(a), which defines public accommodations in terms of "place, establishment, or facility." In other words, paragraph 216.2(13)(b) is a subset of, and limited by, paragraph 216.2(13)(a)'s

definition of a public accommodation as a "place, establishment, or facility" – not, as Petitioner contends, an freestanding definition. Far from rendering 216.2(13)(b) superfluous, this reading harmonizes the two "public accommodation" definitions, and gives effect to the plain language of that paragraph.

Fourth, Iowa case law makes it clear that the federal Civil Rights Act should inform this Court's analysis of the ICRA. Petitioner is accurate that this Court's analysis of Petitioner's ICRA claim is not governed by federal precedent with regard to the Civil Rights Act – however, as with *Rasmussen* and Petitioner's Equal Protection claim, federal case law should serve as "guidance in interpreting the Iowa Civil Rights Act." *Pippen v. State*, 854 N.W.2d 1, 18 (Iowa 2014) (internal citation and quotation marks omitted). When viewed in that context, it is made clear that DHS's position is validated: Petitioner admits that the Civil Rights Act's definition of "public accommodation" supports DHS's reading of the ICRA as restricted to physical "places, establishments, and facilities." The ICRA, which was passed at a similar time and in a similar context as its federal counterpart, was intended to serve the same purpose. This is shown by Petitioner's own citation to *U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 454-55 (Iowa 1988), which clarifies that the intent of the ICRA's deviation in language from the federal Civil Rights Act's phraseology was *not* out of an intent to apply to government agencies. Instead, the intent was, as DHS has argued here, to include additional *physical* "establishments catering to the public generally," such as those cited by Petitioner. *See* (Pet.'s Br. in Res. to DHS Mot. to Dismiss at 23). In fact, all of

those facilities listed by Petitioner in support of her reading illustrate that even the current iteration of the ICRA is categorically restricted to places, establishments, and facilities – not agencies.

III. CONCLUSION

Petitioner's resistance fails to afford due deference to important and necessary authorities for this Court to consider. *Rasmussen*, far from being "outdated," instead serves as a dispositive ruling on the validity of the process to promulgate the disputed administrative rule, Iowa Admin. Code r. 441-78.1(4), and also acts as importance guidance in the disposition of Petitioner's Equal Protection claim. Similarly, Petitioner's reading of the ICRA creates irreconcilable inconsistencies, whereas the State's reading enjoys harmony both internally and externally. Finally, in light of Petitioner's untenable ICRA and constitutional claims, Petitioner's fourth claim must also be dismissed.

As a result, and for all those reasons previously- and here-stated, as well as all others, Respondent, the Iowa Department of Human Services, renews its prayer that this Court enter an order dismissing the Petition for Judicial Review *in toto*.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on this 1st day of November, 2017:

- ☐ U.S. Mail
- ☐ Federal Express
- ☐ Hand Delivery
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- ☒ ECF System Participant (Electronic Service)

Signature: */s/Matthew Gillespie*