

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DES MOINES MIDWIFE COLLECTIVE,
CAITLIN HAINLEY, and EMILY
ZAMBRANO-ANDREWS,

Plaintiffs,
v.

IOWA HEALTH FACILITIES COUNCIL,
HAROLD MILLER, AARON DEJONG,
KELLY BLACKFORD, BRENDA PERRIN,
and JAKE PORTER,

Defendants.

No. _____

PETITION

Introduction

1. This case involves two precious constitutional rights: the right of expectant mothers to give birth in safe, comfortable circumstances of their choice, and the rights of midwives to pursue their chosen occupation and provide that setting and care. Plaintiffs Caitlin Hainley and Emily Zambrano-Andrews are experienced midwives who have helped mothers deliver their babies in home-birth settings for years. They want to advance this passion by opening a freestanding birth center serving Iowans of all stripes. Their efforts are increasingly valuable due to reports of crowded hospitals, poor birth outcomes in Iowa, and the wishes of hundreds of Iowan mothers to give birth with the help of trained midwives outside of a hospital setting. But Ms. Hainley and Mrs. Zambrano-Andrews have been prevented from opening a birth center due to a state law that places the economic interests of existing hospitals over the constitutional rights of midwives and mothers.

2. Home birth is legal in Iowa. Freestanding birth centers are also legal in Iowa, but opening one requires going through the complex, lengthy, and expensive Certificate of Need

(CON) process to attempt to demonstrate “need”—effectively conditioning the opening of a new birth center on receiving permission from their direct competitors, most importantly, local hospitals. This unconstitutional process amounts to a “competitor’s veto,” giving established businesses, rather than expectant mothers, the right to determine what options are available for giving birth. This competitor’s veto doesn’t serve health or safety; it serves only the unconstitutional end of economic protectionism.

3. Plaintiffs are fit, willing, and able to provide safe, effective, and affordable childbirth services in freestanding birth centers. Ms. Hainley and Mrs. Zambrano-Andrews are fully licensed and certified nurse midwives, and their birth center will comply with all health and safety regulations. They have identified several viable locations for a freestanding birth center in a home or office in Des Moines. The only thing standing in the way of expanding their existing home-birth business into a freestanding birth center is Iowa’s CON requirement.

4. Plaintiffs request a declaratory judgment that the challenged laws are invalid, unenforceable, and void; a permanent injunction against further enforcement of the challenged laws; and costs and reasonable attorney fees. Plaintiffs do not seek money damages against any Defendant.

Parties, Jurisdiction, and Venue

5. Plaintiff Des Moines Midwife Collective (the “Midwife Collective”) is an LLC registered in the State of Iowa.

6. Plaintiffs Caitlin Hainley and Emily Zambrano-Andrews are United States citizens and residents of the State of Iowa.

7. Defendant Iowa Health Facilities Council (the “Council”) is an instrumentality of the State of Iowa established by Iowa Code § 135.62(2). Its duties include the enforcement of the

provisions of subchapter VI of Iowa Code Chapter 135. The members of the Council are Harold Miller, Aaron DeJong, Kelly Blackford, Brenda Perrin, and Jake Porter. They are sued in their official capacity only. The principal place of business of all Defendants is located at the Lucas State Office Building, Des Moines, Polk County, Iowa.

8. The district court has jurisdiction to hear an action to enforce the rights, privileges, and guarantees arising under the Iowa Constitution. Iowa Code § 602.6101.

9. Venue in Polk County is proper because the cause arose in Polk County. Defendants are public officials located in Polk County. Iowa Code § 616.3.

Factual Background

I. Plaintiffs could open a freestanding birth center immediately—but for Iowa’s CON requirement

10. Ms. Hainley and Mrs. Zambrano-Andrews are certified nurse midwives who attend home births in the State of Iowa.

11. Mrs. Zambrano-Andrews obtained her Associate Degree in Nursing in 2006, her Bachelor of Science in Nursing in 2009, her Masters of Science in Nursing and Nurse Midwifery in 2016, and her Doctorate of Nursing Practice in 2018. She has worked in obstetric care for almost two decades.

12. Mrs. Zambrano-Andrews is licensed as a Certified Nurse Midwife, an Advanced Registered Nurse Practitioner, and as a Registered Nurse.

13. Ms. Hainley obtained her Bachelor of Arts degree in 2005, her Associate Degree in Nursing in 2014, her Masters of Science in Nursing and Nurse Midwifery in 2016, and her Doctorate in Nursing Practice in 2017. She has worked in women’s health and obstetric care since 2008.

14. Ms. Hainley is licensed as a Certified Nurse Midwife, an Advanced Registered Nurse Practitioner, and a Registered Nurse. She is also licensed as an International Board Certified Lactation Consultant.

15. Mrs. Zambrano-Andrews and Ms. Hainley have been working as Certified Nurse Midwives since 2017.

16. Mrs. Zambrano-Andrews and Ms. Hainley met in 2014 while obtaining their Midwifery education at Frontier University. After taking a course through the American Birth Center Foundation while in midwifery school, they began planning to open a freestanding birth center in Iowa.

17. In 2021, Mrs. Zambrano-Andrews and Ms. Hainley founded the Midwife Collective, a wholly owned partnership dedicated to offering midwifery services that are affordable and accessible to all throughout Central Iowa.

18. The Midwife Collective currently operates a small lactation, prenatal, and women's health clinic with a lab in Des Moines and attends all births either at a client's home or at another location arranged by the expectant parents, including hotel rooms, short-term rentals, or friends' houses.

19. The Midwife Collective serves socio-economically and culturally diverse mothers who understand that pregnancy and childbirth are normal life processes. The Midwife Collective's holistic approach empowers families to take control of their health and truly partner with experienced midwives to create a personalized care plan.

20. The Midwife Collective is the only home-birth service within 240 miles of Des Moines that is insured and accepts insurance, including Medicaid.

21. Mrs. Zambrano-Andrews and Ms. Hainley already help women give birth on a regular basis, in the mothers' homes and other non-hospital settings.

22. The Midwife Collective is ready, willing, and able to transition their clinic and home-birth business into operating a freestanding birth center, which could be done with no additional hiring or training.

23. Mrs. Zambrano-Andrews and Ms. Hainley have concrete plans to open a freestanding birth center, including prospective locations, budgets, and detailed knowledge of the specific requirements of an ideal birth center.

24. Mrs. Zambrano-Andrews and Ms. Hainley have scouted several potential locations for their birth center in the Des Moines area. Their ideal birth center would convert a single-family home costing less than \$250,000; many options meeting their needs in their desired neighborhood are currently available for purchase and they expect that to continue.

25. As part of their current midwifery practice through the Midwife Collective, Ms. Zambrano-Andrews and Ms. Hainley already have access to all the skills, specialized equipment, and contacts necessary to operate a birth center. All that is missing is the property and a CON.

26. But for the burdensome, costly, and unconstitutional CON requirement, Plaintiffs would have already opened their birth center.

II. Freestanding birth centers provide many benefits for expectant parents

27. Midwifery is a safe, cost-effective, and responsible option for women and families for the delivery of a baby at either home or in a birth center. Midwives have training to evaluate the risks of a pregnancy and part of their standard of care is to transfer a mother or a new baby to a hospital if complications occur.

28. Midwifery and home birth services, when performed by Certified Nurse Midwives, are legal in Iowa, and do not require a CON.

29. Freestanding birth centers are legal in Iowa, but require a CON.

30. Giving birth at a freestanding birth center is an increasingly popular choice for women with low-risk pregnancies to deliver. These birth centers are generally staffed by midwives and provide pre-pregnancy, pregnancy, and postpartum care. Expectant parents choose freestanding birth centers over hospital deliveries for a variety of reasons, including lower costs, an approach to birth that attempts to minimize unnecessary interventions, a more home-like atmosphere, avoidance of contact with sick people, and compatibility with personal or religious values.

31. Numerous studies confirm that freestanding birth centers are a safe alternative to hospital births. One study analyzed a sample of 14,881 women admitted to a birth center in labor and found that less than 1% of births were transferred to a hospital for emergency reasons.¹ A smaller percentage of women and infants (0.4% of women and 0.6% of infants) were transferred to a hospital after birth for emergency reasons.² Birth centers maintain comparable health outcomes for mother and child.³

32. Beyond the benefits enjoyed by expecting mothers and their infants, freestanding birth centers can help alleviate the pressure on overwhelmed or understaffed hospital maternity wards.

¹ See Susan R. Stapleton, et al., *Outcomes of Care in Birth Centers: Demonstration of a Durable Model*, 58 *Journal of Midwifery and Women's Health* 3–14 (2013).

² *Id.*

³ See, e.g., *id.*; J.P. Rooks, et al., *Outcomes of Care in Birth Centers*, *The New England Journal of Medicine* (1989); Eileen K. Hutton, et al., *Outcomes associated with planned place of birth among women with low-risk pregnancies*, *Canadian Medical Association Journal* (2016).

33. Freestanding birth centers alleviate the financial burden of childbirth on the overall healthcare system. Service charges at birth centers are generally lower than charges for hospital births in the same area, and the lower number of unnecessary medical interventions can make childbirth safer and more affordable at birth centers.

III. Iowa imposes burdensome “certificate of need” requirements on freestanding birth centers

34. Despite the many benefits of freestanding birth centers, Iowa requires a sponsor planning to develop “a new ... or changed institutional health service,” including birth centers, to apply for a CON which must be approved by Defendant Council.⁴

35. An Iowa CON application is long and complicated and requires an application fee in the amount of three tenths of one percent of the anticipated cost of the project (up to a maximum of \$21,000).⁵

36. When an application is accepted, the Iowa Department of Health notifies all affected persons—including competitors—in writing and will notify any other affected persons through the certificate of need website.⁶ As part of the formal review process, the Defendant Council holds a public hearing where any affected persons can present testimony about the project.⁷ At the end of the formal review process, the Council issues a written decision approving or denying the application. Dissatisfied parties then can request a rehearing or appeal the decision, launching a lengthy legal process.

⁴ Iowa Code § 135.61(14)(f).

⁵ Iowa Admin. Code r. 641-202.4(135).

⁶ *Id.*

⁷ *Id.* r. 641-202.6(135).

37. Applications are evaluated by the Council against a series of 18 criteria.⁸ Among these are financial and economic feasibility standards.⁹

38. To satisfy the financial feasibility standards, among other things, the applicant must provide an analysis of the costs, both past and projected, and demonstrate that the proposed project follows their long-range plan or the long-range needs of the community, and that the project complies with the required three-year capital expenditure plan, to show the applicant's "sound financial planning."¹⁰

39. To show economic feasibility, the applicant must, among other things, demonstrate its project is cost-effective, show that they chose the least costly financing method, and show that the costs for construction or renovation are reasonable.¹¹

40. In addition to these criteria, the Council will deny a CON unless it finds four things: that there are not better alternative services available or practicable, that all existing services like the proposed service are being used efficiently, that there are no alternative arrangements possible if the proposed project requires construction, and that there is a need in the population for this proposed service.¹²

41. The CON requirement permits established birth providers to prevent competitors from entering the market. This increases prices paid by women and families who wish to deliver a baby in a freestanding birth center. It does so in a way that is arbitrary, capricious, and without any connection to a real public benefit from the grant or denial of a CON.

⁸ Iowa Code § 135.64(1).

⁹ Iowa Admin. Code r. 641-203.8(135).

¹⁰ *Id.*

¹¹ *Id.*

¹² Iowa Code § 135.64(2).

42. Numerous studies have demonstrated that CON laws do nothing to increase the quality of patient care or the availability of health services to the public and simply cause the public to pay more for the same or worse care than they would receive if they lived in a state without a CON law. For example, a study by the Americans for Prosperity Foundation examining all Iowa CON applications from July 2016 to February 2020 found that the Council had denied over \$250 million in investment in Iowa health care over that period. Applicants paid on average over \$15,000 in fees, not including the cost of legal representation.¹³

43. Iowa's CON law allows current institutional health facilities, in this case hospitals providing obstetrical services and Iowa's single freestanding birth center, to expend up to \$1.5 million in a twelve-month period for expansion and modernization without triggering the need to obtain a new CON. But this exemption does not apply to someone who wishes to enter a market to provide a service. For those individuals, like Plaintiffs, the first dollar expended on the project requires a CON.¹⁴

44. No freestanding birth center CON has been granted in Iowa in many years. The only freestanding birth center in the State recently transitioned out of managing labor and birth, meaning the State currently is without a single freestanding birth center.

45. Iowa's CON program collectively amounts to a competitor's veto that confers no health benefits. Rather, the CON deprives Plaintiffs of their constitutional right to provide safe and affordable childbirth services and the constitutional right of Iowa mothers to choose the place and

¹³ See Kevin Schmidt & Thomas Kimbrell, *Americans for Prosperity Foundation, Permission to Care: How Certificate of Need Laws Harm Patients and Stifle Health Care Innovation* (Oct. 2021), available at <https://americansforprosperityfoundation.org/wp-content/uploads/2021/10/Permission-to-Care-AFPF-CON-report-Oct-2021.pdf>.

¹⁴ Iowa Code § 135.61(18)(c).

manner of giving birth. As a result of this barrier to entry, there are no freestanding birth centers in the State of Iowa. The CON program is arbitrary, capricious, and unconstitutional.

46. Given the time-sensitive nature of childbirth, Plaintiffs and Plaintiffs' prospective clients are suffering substantial and irreparable harm and will continue to do so until this Court declares the challenged restrictions unlawful and enjoins their enforcement.

Legal Claims
First Claim For Relief
(Due Process of Law – Iowa Constitution)

47. Plaintiffs incorporate by reference each and every allegation set forth in this Petition.

48. Plaintiffs and their prospective patients have the right guaranteed by Art. I, § 9 of the Iowa Constitution to not be deprived of liberty or property without due process of law. This provision protects the fundamental right of mothers to choose the place and manner of giving birth and the Plaintiffs' fundamental right to earn a living.

49. These rights are deeply rooted in this nation's law, history, and tradition. During the colonial period, and at the time of the enactment of the Bill of Rights in 1791, the vast majority of American births occurred outside of a hospital with the assistance of midwives.¹⁵ When the Iowa Constitution was enacted in 1857, and when the Fourteenth Amendment was enacted in 1868, midwifery was universally legal and women maintained extensive choices among a variety of birth assistants. From the colonial period until the early part of the twentieth century, choices regarding the person assisting childbirth and the place and manner of childbirth were by practice, law, and custom a matter of individual and family choice.

¹⁵ Richard Wertz & Dorothy C. Wertz, *Lying-In, A History of Childbirth in America* 260 (1989).

50. The women and families who would use Plaintiffs' services have a fundamental constitutional right to direct the upbringing of their children. Plaintiffs have the right to vindicate these interests of their prospective clients.

51. By imposing the CON requirement on freestanding birth centers and their clients, the State infringes on Plaintiffs' rights to earn a living, limits mothers' privacy in family planning, and irrationally limits mothers' choices for childbirth services.

52. Iowa's CON requirement with respect to freestanding birth centers serves no compelling, or even legitimate, government interest. Rather, by arbitrarily restricting the entrance of new childbirth services based on the number of existing services, it serves only to protect incumbent hospitals' providers from economic competition.

53. By artificially limiting the supply of birth center services based on whether a new provider will compete with existing providers, the Certificate program increases costs, lowers service quality, curtails innovation, and decreases access to care. Iowa's CON requirement is not tailored to achieve any legitimate government interest. The burdens it imposes are arbitrary and serve only to undermine the purposes they purport to advance and unconstitutionally deprives Plaintiffs and their prospective clients of liberty and property without due process of law.

**Second Claim for Relief
(Equal Protection – Iowa Constitution)**

54. Plaintiffs incorporate by reference each and every allegation set forth in this Petition.

55. Plaintiffs each have the right guaranteed by Art. I, § 6 of the Iowa Constitution to be free from laws that do not "have a uniform operation" or that "grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

56. Iowa's CON requirement makes several classifications which are arbitrary, not rationally related to any legitimate government purpose, and treat similarly situated persons differently.

57. Through its competitor's veto provisions, Iowa's CON requirement draws an arbitrary distinction between childbirth service providers that may operate and those that may not.

58. This distinction is not related to the provider's fitness to operate; it relates only to whether a birth center is able to secure permission from a competitor.

59. Iowa's CON requirement treats freestanding birth centers differently from home births, which are not subject to the CON requirement.

60. Iowa's CON requirement also permits hospitals providing obstetrical services to expend up to \$1.5 million without being subject to the CON requirement.

61. Iowa's discriminatory CON provisions do not serve any compelling, or even legitimate, government interest and are not rationally related to any such interest. They serve only the economic interests of existing providers and unconstitutionally deny Plaintiffs and their prospective clients equal protection of the law.

**Third Claim for Relief
(Inalienable Rights – Iowa Constitution)**

62. Plaintiffs incorporate by reference each and every allegation set forth in this Petition.

63. Plaintiffs and their prospective patients each have inalienable rights guaranteed by Art. I, § 1 of the Iowa Constitution. Among these are the right of “enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.”

64. For the reasons stated above, the Iowa CON requirement unconstitutionally deprives Plaintiffs and their prospective clients of these inalienable rights.

**Fourth Claim for Relief
(Due Process – United States Constitution)**

65. Plaintiffs incorporate by reference each and every allegation set forth in this Petition.

66. Plaintiffs and their prospective patients each have the right guaranteed by Section 1 of the Fourteenth Amendment to not be deprived of liberty or property without due process of law. This provision protects the fundamental right of mothers to choose the place and manner of giving birth and the Plaintiffs' fundamental right to earn a living.

67. Though these rights are not explicit, they are deeply rooted in this nation's law, history, and tradition—as explained above—and are among the rights retained by the people under the Ninth Amendment.

68. For the reasons stated above, the Iowa CON requirement unconstitutionally deprives Plaintiffs and their prospective clients of these rights.

**Fifth Claim for Relief
(Equal Protection – United States Constitution)**

69. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

70. Under the Equal Protection Clause of the Fourteenth Amendment, a law that discriminates between who may and who may not exercise a fundamental right is unconstitutional unless the law's classifications are tailored to serve a government interest.

71. For the reasons stated above, Iowa's discriminatory CON provisions do not serve any compelling, or even legitimate, government interest and are not rationally related to any such

interest. They serve only the economic interests of existing providers and unconstitutionally deny Plaintiffs and their prospective clients equal protection of the law.

**Sixth Claim For Relief
(Privileges or Immunities – United States Constitution)**

72. Plaintiffs incorporate by reference each and every allegation set forth in this Petition.

73. The Privileges or Immunities Clause of the Fourteenth Amendment prohibits states from making or enforcing any law which abridges the privileges or immunities of citizens of the United States. This provision protects the rights explicitly set out in the Constitution as well as unenumerated rights.

74. The Fourteenth Amendment was enacted after the Civil War to address the failure of slave states to protect the civil rights of former slaves. The intention was to create federal protection for the Bill of Rights, natural rights, and common law rights. Chief among the authors' concerns was the right to enter a common occupation.

75. Congress also intended to afford constitutional protection to those rights enshrined in the Civil Rights Act of 1866. Among those protected liberties was the right to earn a living.

76. By imposing an arbitrary and discriminatory "Competitor's Veto," Defendants, acting under color of state law, are irrationally interfering with the constitutional rights of Ms. Hainley and Mrs. Zambrano-Andrews in violation of the Privileges or Immunities Clause.

Request for Relief

Plaintiffs respectfully request the following relief:

- A. Entry of a judgment declaring the provisions of Iowa Code Chapter 135, and the corresponding administrative regulations, that operate to require a CON for a birth center are unconstitutional;

- B. Entry of an injunction, permanently enjoining the Council and its members, their successors in office, and all those actively participating with them, from enforcing Iowa Code Chapter 135, and the corresponding administrative regulations, against Plaintiffs;
- C. An award of costs and attorney's fees pursuant to law, including 42 U.S.C. § 1988; and
- D. Any other such relief as the Court may deem just and proper.

Respectfully submitted this 10th day of January, 2023.

/s/ Alan R. Ostergren
Alan R. Ostergren
President and Chief Counsel
THE KIRKWOOD INSTITUTE, INC.
500 Locust Street, Suite 199
Des Moines, Iowa 50309
Telephone: (515) 207-0134
alan.ostergren@kirkwoodinstitute.org

James M. Manley*
Arizona Bar No. 031820
PACIFIC LEGAL FOUNDATION
3241 E Shea Blvd, #108
Phoenix, AZ 85028
Telephone: (916) 419-7111
jmanley@pacificlegal.org

Wilson C. Freeman*
Arizona Bar No. 036953
PACIFIC LEGAL FOUNDATION
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Telephone: (916) 419-7111
wfreeman@pacificlegal.org

Counsel for Plaintiffs

**Pro Hac Vice forthcoming*