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IN THE
COURT OF APPEALS OF INDIANA

No. 25A-PL-00782

CAITLIN BERNARD, M.D., and CAROLINE ROUSE, M.D., Plaintiffs-Appellees, v. INDIANA STATE HEALTH COMMISSIONER, in the officer's official capacity, and VOICES FOR LIFE, INC., Defendants-Appellants.	Interlocutory Appeal from the Marion Superior Court, No. 49D13-2502-PL-006359, The Honorable James A. Joven, Judge.

BRIEF OF APPELLANT INDIANA STATE HEALTH COMMISSIONER

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STATEMENT OF THE ISSUES

As part of Indiana's comprehensive regulation of abortion, Indiana requires abortion providers to submit terminated pregnancy reports to the Indiana Department of Health. Ind. Code § 16-34-2-5. These reports provide information about abortions important for "the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data" and needed "to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law." § 16-34-2-5(a). Reports do not contain patient names, addresses, birth dates, Social Security numbers, or similar information.

For decades, media organizations, nonprofits, and other interested members of the public were able to obtain these anonymized reports under Indiana's Access to Public Records Act (APRA), § 5-14-3-1 *et seq*. That enabled recipients to file complaints with the Indiana Attorney General's Office regarding potential violations of laws regulating abortion, enabling the Office to investigate. Recently, two abortion providers brought this lawsuit to prevent disclosure of all terminated pregnancy reports. The trial court preliminarily enjoined the Department's Commissioner from releasing any reports under APRA. This appeal presents the following questions:

1. Whether the plaintiff abortion providers have standing to seek prospective relief to prevent the release of all terminated pregnancy reports.

2. Whether APRA gives plaintiffs a private right of action to seek injunctive relief to prevent the Commissioner from disclosing records.

3. Whether APRA bars the disclosure of terminated pregnancy reports, either in whole or in part.

4. Whether plaintiffs satisfied the remaining requirements for obtaining a preliminary injunction preventing the release of all terminated pregnancy reports.

STATEMENT OF THE CASE

On February 6, 2025, plaintiffs Caitlin Bernard, M.D., and Caroline Rouse, M.D., sued the Indiana State Health Commissioner, in the officer's official capacity, and nonprofit organization Voices for Life, Inc., seeking a declaratory judgment that that the Department cannot disclose terminated pregnancy reports in response to APRA requests. App. II 32. Bernard and Rouse simultaneously moved for a temporary restraining order and a preliminary injunction preventing the release of the reports. App. II 43. On February 19, 2025, after briefing and a hearing, the trial court granted a temporary restraining order. App. II 156. It extended that temporary restraining order twice. App. II 163–64, 229–30.

On March 12, 2025, the trial court held a hearing on the motion for preliminary injunction. Tr. II 59–198. And on March 24, 2025, the trial court issued a preliminary injunction barring the Commissioner from releasing any terminated pregnancy reports under APRA. App. II 12. The court held that Bernard and Rouse had "demonstrated sufficient injury to meet the requirements of standing," that they had a reasonable likelihood of success on the merits of their statutory interpretation argument, and that the equities favored an injunction. App. II 15, 22, 23–30. The Commissioner timely appealed the preliminary injunction to this Court.

STATEMENT OF FACTS

I. Terminated Pregnancy Reports Are Part of a Comprehensive Regulatory Scheme Designed to Protect Life and Health

Indiana comprehensively regulates abortion to protect prenatal life and maternal health. Ind. Code § 16-34-2-1 *et seq*.; *see Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 962–64 (Ind.) ("For all of Indiana's history, abortion has been the subject of state lawmaking."), *reh'g denied*, 214 N.E.3d 348 (2023). For example, to advance those interests, the State limits the circumstances under which abortion can be performed and how abortions must be performed. Ind. Code § 16-34-2-1(a), (b), (c), (d). The State also requires attending physicians and medical professionals to "provide immediate care for a child born alive as a result of the abortion." § 16-34-2-3(a), (b). Other provisions detail the steps abortion providers must take to prevent abuse and coercion. §§ 16-34-2-4, 16-34-2-5(b), 16-34-6-6. Violating Indiana's regulations can expose a provider to criminal and licensing consequences. §§ 16-34-2-5(d), 16-34-2-7, 25-22.5-8-6.

As part of this regulatory regime, Indiana requires abortion providers to "report" certain details about each abortion performed to the Department "on a form drafted by" the Department. Ind. Code § 16-34-2-5(a). The reports' "purpose and function" is to promote "the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data," and "to monitor all abortions performed in the state of Indiana to assure they are done only under the authorized provisions of the law." *Id.* Indiana has required abortion providers to submit terminated pregnancy reports since the 1970s. *See* Pub. L. No. 322-1973, sec. 2, 1973

Ind. Acts 1740, 1744–45 (then codified at Ind. Code § 35-1-58.5-5); Pub. L. No. 2-1993, sec. 17, 1993 Ind. Acts 244, 572–73 (codified at Ind. Code § 16-34-2-5).

Terminated pregnancy reports must include various pieces of information relevant to public health, public safety, and legal compliance. Ind. Code § 16-34-2-5(a). That information includes information about where the abortion was performed; the age, marital status, educational level, race, and ethnicity of the woman seeking the abortion; the gestational age of the fetus; the reason for the abortion; whether the woman was a victim of abuse, coercion, harassment, or trafficking; whether the provider obtained informed consent; whether the fetus was delivered alive, and if so, how long the fetus lived; and other information about the procedure. *Id.* Terminated pregnancy reports are depersonalized. They do not include the woman's name, address, birth date, Social Security number, or driver's license number. They only include a numeric identifier created by the abortion provider. Tr. II 69:16–20 (Bernard); Ex. I 4. Only the provider can connect the identifier to the woman. *See* Tr. II 168:11–19.

Generally, an abortion provider must "complete the form" for terminated pregnancy reports and "transmit the completed form" to the Department within 30 days of performing an abortion. Ind. Code § 16-34-2-5(b). If the person seeking the abortion was younger than 16—the statutory age of consent in Indiana—the abortion provider must "transmit the form . . . separately to the department of child services" within three days after the abortion. *Id.*; *see* § 35-42-4-9(a). "Each failure to complete or timely transmit a form" for each abortion performed is a Class B misdemeanor and may lead to revocation of the provider's license. §§ 16-34-2-5(d), 25-22.5-8-6(b). The

Department is required to compile and publish quarterly public reports aggregating statistics from the individual reports submitted during that calendar quarter. § 16-34-2-5(e).

To promote compliance with state laws regulating health, the General Assembly has vested the Attorney General's Office with authority to "receive, investigate, and prosecute complaints" concerning regulated occupations. Ind. Code §§ 25-1-7-2, 25-1-7-5(b); *see* § 16-34-2-7(b). By law, the Attorney General's Office cannot initiate an investigation without a complaint from a non-employee. § 25-1-7-4. If, however, someone submits a complaint that raises questions about a physician's compliance with state laws, the Office can investigate the matter and, if warranted, pursue a licensing action. § 25-22.5-8-6(b); *see* §§ 25-1-7-3(b), 25-22.5-2-8(a)(7). Over the years, the Office has received various complaints about potential violations of abortion laws based on information in terminated pregnancy reports. Tr. II 131:17–21, 132:18–24 (Osborne). All have come from the public. *Id.*

II. For Decades, the Public Had Access to Terminated Pregnancy Reports Under Indiana's Access to Public Records Act (APRA)

For "decades," reporters, public-interest organizations, and other interested members of the public were able to obtain terminated pregnancy reports under the Access to Public Records Act (APRA). App. II 27; Tr. II 142:13–18 (Stover). APRA allows any "person" to "inspect and copy" the records of a public agency like the Department. Ind. Code § 5-14-3-3(a); *see* § 5-14-3-2(n), (q). It furthers the State's policy that "all persons are entitled to full and complete information regarding the affairs of government." § 5-14-3-1. According to APRA, providing access to state records "is

an essential function of a representative government" and a core "duty" of public officials and employees. *Id.* The statute places the "burden of proof for the nondisclosure of a public record" on "the public agency that would deny access to the record." *Id.*

Although APRA directs agencies to disclose most records upon request, it provides that certain records "may not be disclosed . . . unless access to the records is specifically required by a state or federal statute or is ordered by a court." Ind. Code § 5-14-3-4. Records that may not be disclosed include Social Security numbers, § 5-14-3-4(a)(12); the names and ages of minors who are victims of crime, § 5-14-3-4(a)(15); and "[p]atient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8." § 5-14-3-4(a)(9). Where a record "contains disclosable and nondisclosable information," however, APRA directs the public agency to "separate the material that may be disclosed and make it available for inspection and copying." § 5-14-3-6(a).

If an agency refuses to release records in response to an APRA request, the person requesting the record "may file an action . . . to compel the public agency" to disclose the record to the person. Ind. Code § 5-14-3-9(e). "[E]ach person who supplied any part of the public record at issue" may "intervene" in an action brought to compel disclosure. *Id.* APRA does not otherwise provide private parties with a right of action to prevent the disclosure of confidential information. Instead, APRA provides that a public employee may be subject to civil penalties or administrative discipline for disclosing nondisclosable information. § 5-14-3-10.

III. Litigation over Terminated Pregnancy Reports

A. The *Voices for Life* Litigation

To fulfill its duty under APRA, the Department provided terminated pregnancy reports upon lawful request for "decades." App. II 27; Tr. II 142:13–18 (Stover). That enabled the public to submit complaints about potential legal violations to the Attorney General's Office. Tr. II 129:25–131:21, 132:18–24 (Osborne). Before providing the reports to the public in response to APRA requests, the Department would review them and, on a "case-by-case basis," make any further redactions deemed necessary to protect patient confidentiality. Tr. II 142:25–143:9 (Stover). The Department, however, would not redact the reports "wholesale." Tr. II 143:2–6 (Stover). Voices for Life, Inc., a pro-life nonprofit organization based in South Bend, was one of the organizations that obtained redacted terminated pregnancy reports from the Department under APRA. Tr. II 5:15–17, 80:25–81:2.

In 2024, the Department changed its longstanding practice in response to a three-page informal opinion from the Public Access Counselor. Tr. II 148:2–7 (Stover); *see* App. II 82–84. Based on that informal opinion, the Department declined to provide Voices for Life with several requested terminated pregnancy reports. Compl. 3, 5, *Voices for Life, Inc. v. Weaver*, No. 49D02-2405-MI-019876 (Marion Super. Ct. May 1, 2024). Voices for Life sued to compel the disclosure of the reports under Indiana Code § 5-14-3-9(e). *Id.* at 7. Abortion providers Caitlin Bernard and Caroline Rouse inter-

vened in the action as defendants under Indiana Code § 5-14-3-9(e) to oppose disclosure of the requested terminated pregnancy reports. Mot. to Intervene, *Voices for Life, Inc. v. Weaver*, No. 49D02-2405-MI-019876 (Marion Super. Ct. June 11, 2024).

In a two-page order, the trial court judge dismissed the lawsuit. App. II 88–89. Voices for Life appealed, but while the appeal was pending, Voices for Life and the Department reached a settlement. Order, *Voices for Life, Inc. v. Ind. Dep't of Health*, No. 24A-MI-2396 (Ind. Ct. App. Feb. 6, 2025). As part of the settlement, the Department agreed to "[i]mmediately release terminated pregnancy reports as public records upon lawful request." App. II 94. The Department also agreed to "make redactions" that would "adequately protect personal health identifiers" without "inhibit[ing]" the public's ability "to determine whether a physician performed an abortion in accordance with Indiana law." *Id.*; *see* Tr. II 145:16–146:4 (Stover). Bernard and Rouse filed no objection to the settlement.

B. The Current Litigation

Instead, Bernard and Rouse filed this action to obtain a declaratory judgment that terminated pregnancy reports "are exempt from general disclosure" under APRA, and that APRA "does not authorize the [Department] to grant members of the public access to terminated pregnancy reports." App. II 41. They also moved for a temporary restraining order and preliminary injunction to prevent the Department from disclosing any reports. App. II 43. Following briefing and a hearing, the trial court issued a temporary restraining order on February 19, 2025, prohibiting the Commissioner and Department employees "from disclosing or otherwise providing

access to terminated pregnancy reports created in accordance with Indiana Code section 16-34-2-5 in response to any request made under [APRA]." App. II 156, 161–62. The court twice extended the temporary restraining order for a total of 33 days—13 days beyond the limit in Trial Rule 65(B). App. II 163–64, 229–30.

On March 12, the trial court held a hearing on the motion for preliminary injunction at which Bernard, Rouse, and other witnesses testified. Tr. II 59–198. The trial court granted Bernard and Rouse's request for a preliminary injunction on March 24, 2025, prohibiting the Department "from disclosing or otherwise providing access to Terminated Pregnancy Reports created in accordance with Indiana Code section 16-34-2-5 . . . in response to any [APRA] request." App. II 12, 31.

The court deemed terminated pregnancy reports to be "patient medical records" that cannot be disclosed under APRA because "the TPR form" calls for "information concerning a patient's diagnosis, treatment, or prognosis." App. II 22. The court, however, did not explain why the Department cannot release reports with that information redacted. Nor did the court explain what provision of APRA gives Bernard and Rouse a right to seek injunctive relief to prevent records' disclosure.

In issuing the preliminary injunction, the trial court rejected arguments that Bernard and Rouse lack standing. The court stated that Bernard and Rouse had standing to prevent disclosure because one of Bernard's patients sought an abortion elsewhere in the past; Bernard and Rouse "could" lose patients in the future; and the "disclosure of a TPR, *if* it included any patient health information, could have a chilling effect on the patient/physician relationship." App. II 15 (emphasis added).

The trial court also stated that Bernard and Rouse's intervention in the *Voices for Life* litigation "bolsters (if not independently establishes) the Plaintiffs' standing to bring this action." App. II 16.[1]

SUMMARY OF THE ARGUMENT

State law requires abortion providers to submit terminated pregnancy reports to facilitate the collection of vital statistics and to ensure that abortions are performed lawfully. For decades, the Department treated the reports as public records that must be provided to the public under Indiana's Access to Public Records Act (APRA). But the trial court's preliminary injunction blocks the Department from providing the public with any reports under APRA. That injunction should be vacated.

I. The trial court lacked jurisdiction to issue the preliminary injunction. To have standing to seek prospective relief, a plaintiff must be in immediate danger of suffering a direct, personal harm from the complained-of action. Bernard and Rouse did not satisfy that requirement here. Even the trial court did not explain how they were harmed directly and personally by the Department's disclosure of terminated pregnancy reports. Instead, it invoked hypothetical effects on third parties.

The trial court stated that the Department's disclosure of reports "could" prompt unidentified women to change how they interact with abortion providers "if" the disclosure reveals "private health information." But that putative harm is not direct. Nor are Bernard and Rouse in immediate danger of suffering it. All reports

[1] Defendants-Appellants sought a stay of the preliminary injunction pending appeal in the trial court, which the court denied. App. III 59. Defendants-Appellants then sought a stay pending appeal in this Court, which motion is currently pending.

that the Department releases are anonymized. Nothing but speculation suggests their release will reveal individually identifiable information about patients.

Bernard and Rouse's past intervention as defendants in separate litigation does not confer standing either. A plaintiff must satisfy jurisdictional requirements in every case. Nor does this litigation bear any resemblance to the prior litigation.

II. Bernard and Rouse lack a likelihood of success on the merits in any event. Their underlying claim is that the release of terminated pregnancy reports would violate Section 4(a) of APRA. To bring a claim "premised upon the violation of a duty imposed by statute," a plaintiff must establish that the "statute . . . confers a private right of action." *HealthPort Techs., LLC v. Garrison Law Firm, LLC*, 51 N.E.3d 1236, 1238–39 (Ind. Ct. App. 2016), *trans. denied*. They have not. Indeed, Bernard and Rouse conceded that APRA does not confer a private right of action on them.

APRA's text and structure confirms the legislature did not create a private right of action to prevent the disclosure of records. APRA provides a private right to compel disclosure, but not to prevent it. APRA leaves enforcement of Section 4(a) to public actors. It provides that public officials can seek civil penalties or discipline employees who violate APRA's nondisclosure requirements. As this Court has held, the legislature's decision to create alternative enforcement mechanisms precludes courts from "engraft[ing] another." *Kerwood v. Elkhart Cnty. Sheriff's Dep't*, 233 N.E.3d 1030, 1036 (Ind. Ct. App. 2024) (quoting *Doe #1 v. Ind. Dep't of Child Servs.*, 81 N.E.3d 199, 204 (Ind. 2017)).

Bernard and Rouse cannot sidestep the legislature's decision by invoking the Declaratory Judgment Act. Although the statute permits courts to remedy violations of enforceable rights by issuing declaratory judgments, it does not create new rights. Parties seeking a declaration must show that they have a private right to enforce. And regardless, the Declaratory Judgment Act does not authorize injunctive relief.

III. In any event, APRA does not forbid the disclosure of terminated pregnancy reports. APRA makes those reports, like all records in the custody of public agencies, presumptively subject to public disclosure. The trial court ruled that the reports are "patient medical records and charts," which are not subject to disclosure under Section 4(a)(9) of APRA. But that ignores how state law describes the records at issue. It specifies that terminated pregnancy reports are anonymized "report[s]" to the State, on forms drafted by the State, submitted to further two important public purposes—the advancement of public health and the monitoring of all abortions.

In declaring terminated pregnancy reports to be "patient medical records and charts," the trial court misconstrued what a "patient medical record[]" is. A patient medical record is not simply a piece of health-related information that relates to no one in particular. The modifier "patient" clarifies that "patient medical records and charts" must relate to specific, identifiable patients. Terminated pregnancy reports, however, do not contain information about identifiable patients. They are anonymized reports that undergo a further redaction process before being released.

Much of the information in terminated pregnancy reports does not even meet the trial court's understanding of what a "patient medical record" is. As a result,

APRA requires the Department to disclose that information to the public on lawful request. Yet the trial court blocked the Department from doing so. Its preliminary injunction defies APRA's express commands as well as binding precedent.

IV. Bernard and Rouse did not demonstrate that the other preliminary injunction factors entitle them to relief either. First, they cannot show irreparable harm. Any harm is speculative. Second, the harms from the injunction to the State and to the public decidedly weigh against injunctive relief. Not only does the injunction prevent the State from effectuating its policies and the public from obtaining information of vital interest. But the injunction also weakens oversight of abortion providers. It prevents the public from submitting complaints to the Attorney General's Office about potential violations of the law based on terminated pregnancy reports obtained under APRA. The trial court's attempt to downplay the harm ignores that its ruling undercuts the legislature's decision to provide robust oversight.

STANDARD OF REVIEW

The grant of a preliminary injunction is reviewed for abuse of discretion. *Willow Haven on 106th Street, LLC v. Nagireddy*, 252 N.E.3d 418, 422 (Ind. 2025). An abuse of discretion occurs "if the trial court's decision was against the logic and effect of the facts and circumstances before the court" or if it "misinterpret[ed] the law." *Id.* Factual findings are reviewed for clear error and legal conclusions de novo. *Id.*

ARGUMENT

The preliminary injunction forbidding the release of all terminated pregnancy reports under APRA should be vacated. A preliminary injunction "is an extraordinary

equitable remedy that should be granted with caution." *Willow Haven on 106th Street, LLC v. Nagireddy*, 252 N.E.3d 418, 422 (Ind. 2025). To obtain a preliminary injunction, a plaintiff must show (1) "they have a reasonable likelihood of success at trial"; (2) "they will suffer irreparable harm without an injunction" because "their remedies at law are inadequate"; (3) the harm to the plaintiff without injunction outweighs the injunction's harm to the defendant; and (4) "issuing the injunction will not disserve the public interest." *Id.* "If the movant fails to prove any of these requirements," a trial court abuses its discretion in issuing a preliminary injunction. *Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002).

The trial court erred in issuing an injunction here. Plaintiffs Bernard and Rouse failed to establish that the trial court had jurisdiction to issue a preliminary injunction—let alone to satisfy all four requirements for obtaining this extraordinary relief. Plaintiffs have no likelihood of success on the merits. They have admitted that they lack a private right of action to enforce the statutory provision at issue in this suit. And as decades of agency practice reinforces, APRA does not forbid the Department from releasing terminated pregnancy reports to the public with appropriate redactions. The trial court's decision to block the release of any reports frustrates a legislative judgment that the reports should be available to allow the public to obtain information vital for improving public health and ensuring that the law is followed.

Non-merits considerations reinforce that no injunction should have issued. Plaintiffs cannot demonstrate they will suffer any irreparable harm absent one, while the injunction undermines enforcement of state laws. It blocks implementation of

state policies and weakens oversight of abortion providers by the Attorney General's Office. Before the injunction issued, members of the public could submit complaints based on reports to the Office about potential legal violations. Now the public—which was the source of all complaints based on information in terminated pregnancy reports—no longer has that ability. Removing a critical oversight mechanism is contrary to the public interest.

I. Plaintiffs Bernard and Rouse Lack Standing

A threshold problem with the preliminary injunction is that the trial court lacked jurisdiction to issue it. "[O]ur state constitution's separation-of-powers clause," *Red Lobster Rests. LLC v. Fricke*, 234 N.E.3d 159, 167 (Ind. 2024), imposes "structural limits on the exercise of [the] judicial power," *Hoosier Contractors, LLC v. Gardner*, 212 N.E.3d 1234, 1238 (Ind. 2023). It "restrains the judiciary to resolving real controversies." *Schloss v. City of Indianapolis*, 553 N.E.2d 1204, 1206 (Ind. 1990). Whether a plaintiff has standing to bring suit is a legal question that is reviewed de novo. *City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022).

Bernard and Rouse do not have standing to seek prospective relief preventing the release of all terminated pregnancy reports pursuant to lawful APRA requests. As their own testimony establishes, the Department's release of reports does not harm them directly. Rather, their theory of standing depends on speculation about how unidentified third parties might (or might not) respond at some unknown future time. That is not enough. The trial court erred in granting a preliminary injunction to parties who have not established their standing to obtain any form of relief.

A. Any alleged harms are indirect and speculative

To seek prospective relief, a plaintiff must demonstrate she is "in immediate danger of suffering a direct injury as a result of the complained-of conduct." *Red Lobster*, 234 N.E.3d at 167. Or put slightly differently, the alleged injury must be "personal, direct, and . . . imminent." *Morales v. Rust*, 228 N.E.3d 1025, 1033 (Ind. 2024). "The direct injury required for standing is 'an injury resulting directly from a particular cause, without any intervening causes.'" *Franciscan All., Inc. v. City of Hammond*, 212 N.E.3d 1270, 1274 (Ind. Ct. App. 2023) (quoting *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 220 (Ind. 2022)). "[W]holly speculative and hypothetical" allegations are insufficient to establish standing. *Ind. Fam. Inst., Inc. v. City of Carmel*, 155 N.E.3d 1209, 1219–20 (Ind. Ct. App. 2020).

Bernard and Rouse did not show that the Department's release of terminated pregnancy reports inflicts a direct, personal injury. Even the trial court did not find the reports' release would directly and personally harm Bernard and Rouse. Rather, the court reasoned that, "*if* [a report] included any patient health information," its "disclosure . . . *could* have a chilling effect on the patient/physician relationship." App. II 15 (emphasis added). "A *patient*," the court explained, "*could* be less likely to disclose certain medical information to the physician knowing that the physician must report such information and that the Department may publicly release that information." *Id.* (emphasis added). That reasoning fails multiple times over.

***First*,** the alleged injury is not direct and personal. At least part of the trial court's concern arises from the fact that abortion providers must "complete" terminated pregnancy reports and "transmit" them to the Department. Ind. Code § 16-34-2-5(b). But Bernard and Rouse have not challenged the requirement to submit those reports to the Department. Any putative injury arising from their submission is not a "direct . . . result of the complained-of conduct." *Red Lobster*, 234 N.E.3d at 167.

The same is true of any putative injury arising from the Department's release of terminated pregnancy reports under APRA. As the trial court's own description makes clear, Bernard's and Rouse's alleged injuries are at least one step removed from the complained-of conduct. According to the trial court, the reason that Bernard and Rouse are allegedly injured by the Department is that a "*patient* could be less likely to disclose certain medical information." App. II 15 (emphasis added). Even if one sets aside the speculative nature of this allegation—there was no testimony that a pregnant woman had ever refused to provide pertinent information—the patient's decision is an "intervening cause." *Franciscan All.*, 212 N.E.3d at 1275.

The anecdote Bernard shared about the time a woman chose to seek an abortion from someone else highlights the point. According to Bernard, "one" pregnant woman "sought abortion care from an out of state provider rather than" from Bernard. Tr. II 96:23–97:4 (Bernard). But that description does not show the Department's actions are harming Bernard directly—or indeed at all. Bernard did not testify that she suffered a loss of income or any other personal harm to herself. And to the

extent she was harmed in any way, there was an intervening cause: a third party's decision.

This case is no different from other indirect-injury cases. For example, in *Franciscan Alliance*, the Court held that a city lacked standing to sue over a hospital's closure. It rejected arguments that the closure would harm the city by forcing the city to buy new ambulances to contend with increased "response times." 212 N.E.3d at 1274–75. The Court explained that the alleged injury was not directly traceable to the closure because increased "response times" was an intervening factor. *Id.* at 1275. Here, too, an external factor—a patient's decision—is an intervening cause.

***Second*,** the alleged injury is speculative. The trial court's standing analysis presumes that the release of terminated pregnancy reports will injure women to whom Bernard and Rouse provide abortions by making "patient health information" public. App. II 15. The trial court made this clear when it raised the concern that a report's release "could have a chilling effect on the patient/physician relationship" "*if* it included any patient health information." *Id.* (emphasis added). But there is no evidence that the release of reports will reveal personally identifiable information.

The terminated pregnancy reports that the Department releases under APRA are anonymized. No patient's name, address, birth date, Social Security number, or driver's license number appears on reports submitted to the Department. Reports do contain a unique number, Tr. II 69:16–20 (Bernard); Ex. I 4, but only the submitting abortion provider can connect that number to an individual patient, *see* Tr. II 168:11–19. Then, before the Department releases reports under APRA, the reports undergo

a second anonymization process. The Department redacts any potentially sensitive information that might raise privacy concerns. Tr. II 142:19–143:9 (Stover).

Any possibility that a report might contain identifying information after this double anonymization process is "too remote and speculative" to support standing. *Franciscan All.*, 212 N.E.3d at 1274. Although the Department has released reports with appropriate redactions to the public for decades, Bernard and Rouse know of no instance in which a patient has ever been identified from a report released under APRA. Tr. II 110:4–6 (Bernard), 118:2–4 (Rouse); App. II 191, 200. At a minimum, the absence of any concrete evidence about how the double anonymization is insufficient to protect patient privacy renders the case unripe. *See Ind. Fam. Inst.*, 155 N.E.3d at 1219–20.

Other courts have rejected theories of standing similar to those here. In *Dinerstein v. Google, LLC*, 73 F.4th 502 (7th Cir. 2023), a class of patients sued over a university medical center's release of "anonymized patient medical records" to Google. *Id.* at 507. But the Seventh Circuit held that the class lacked standing. It explained that "the dissemination of *anonymized* information" does not "give rise to any injury at all—let alone one concrete enough to support Article III standing." *Id.* at 513. And it deemed arguments that the "records were insufficiently anonymized" to be speculative. *Id.* at 514. That analysis applies with equal force here.

***Third*,** even if Bernard and Rouse had alleged a direct and personal injury, the evidence shows that any alleged injury is not imminent. In ruling that Bernard and

Rouse had standing, the trial court did not find that they would suffer injury imminently. Rather, it stated that Bernard and Rouse "could" suffer future injury. App. II 15. "Could" is not enough. As the Supreme Court has repeatedly stated, a plaintiff seeking prospective relief must be in "imminent," *Morales*, 228 N.E.3d at 1033, or "immediate" danger of suffering injury, *Red Lobster*, 234 N.E.3d at 167; *see City of Gary*, 190 N.E.3d at 351 (holding a plaintiff who suffered "no injury" lacked standing).

The record underscores how remote any alleged injury is. Although Bernard and Rouse offered generic testimony about how "patients don't trust" doctors who must "submit private health information to the Department," App. II 15; *see* Tr. II 95:24–96:3 (Bernard), they could not point to any concrete threatened injuries to themselves. Neither Bernard nor Rouse testified that a patient had ever declined to share information due to the reports' release under APRA.

The most plaintiffs could muster was an anecdote from Bernard that "one" pregnant patient—out of the many that she and Rouse see—sought an abortion in a different State. Tr. II 96:23–97:4 (Bernard). But a single, past occurrence cannot show that injury is imminent. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (one past event "does nothing to establish a real and immediate threat" of future injury). Bernard's and Rouse's speculation about "possible effect[s]" is insufficient to establish standing. *Franciscan All.*, 212 N.E.3d at 1274.

Contrary to the trial court's suggestion, *Holcomb v. Bray*, 187 N.E.3d 1268 (Ind. 2022), does not suggest that speculation is a substitute for actual injury. *Contra*

App. II 14. It, too, holds that a plaintiff must have "suffered or [be] in imminent danger of suffering" injury to have standing. *Holcomb*, 187 N.E.3d at 1286. In dicta, the Court commented that the Declaratory Judgment Act permits a plaintiff to sue "while there is still time for 'peaceable judicial settlement.'" *Id.* at 1287. But the Court did not have occasion to unpack that comment because it found that the Governor "has already suffered [an] injury and has been suffering it." *Id.* And of course subsequent Supreme Court decisions have reiterated that standing requires an "immediate" or imminent injury. *Red Lobster*, 234 N.E.3d at 167; *see Morales*, 228 N.E.3d at 1033.

***Fourth*,** Bernard's and Rouse's standing is even more attenuated with respect to terminated pregnancy reports they did not submit. Ordinarily, standing is "substantially more difficult" to prove when "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation . . . of someone else." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). And no evidence suggests that how the Department handles reports that third parties submit impacts Bernard and Rouse in any way. So Bernard and Rouse do not have a "personal stake" in what the Department does with those reports. *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989–90 (Ind. Ct. App. 2003), *trans. denied*. Thus, at a minimum, Bernard and Rouse do not have standing to seek injunctive relief preventing the release of reports they did not submit. *See Gill v. Whitford*, 585 U.S. 48, 66 (2018) (a plaintiff's remedy must be "limited to the inadequacy that produced his injury in fact" (alteration omitted)). So the trial court overstepped in enjoining the release of *all* reports. *See William J. Huff, II Revocable Tr. Decl., Dated June 28, 2011 v. Cain*, 120 N.E.3d 1029, 1036 (Ind.

Ct. App. 2019) (injunction should "never" be "more extensive in scope than is reasonably necessary to protect the interests of aggrieved parties"), *trans. denied*.

B. Plaintiffs' intervention in a different lawsuit cannot cure their failure to establish standing

Although plaintiffs' failure to establish their standing in this case should be dispositive, the trial court suggested that their intervention in the *Voices for Life* litigation "bolsters (if not independently establishes) the Plaintiffs' standing." App. II 16. But a court cannot dispense with the Constitution's standing requirements on the theory that a litigant has been involved in lawsuits sometime in the past. Standing is a "fundamental, threshold, constitutional" constraint that "must" be satisfied in every case, *Alexander*, 800 N.E.2d at 989, and "at all stages of litigation," *Hoosier Contractors*, 212 N.E.3d at 1238. It "denies the courts any jurisdiction absent an actual injured party participating in the case." *Hoosier Contractors*, 212 N.E.3d at 1238 (quoting *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995)).

Nor does Bernard's and Rouse's intervention add anything to their standing. In the *Voices for Life* litigation, Bernard and Rouse sought to intervene as defendants in an action that Voices for Life brought under Indiana Code § 5-14-3-9(e) after the Department denied Voices for Life access to particular terminated pregnancy reports. In seeking to intervene, Bernard and Rouse did not identify any harms that might support their standing as plaintiffs distinct from the harms alleged in this case. Rather, they principally invoked a statutory right to intervene under Indiana Code § 5-14-3-9(e). Mem. of Law in Supp. of Mot. to Intervene 8–9, *Voices for Life, Inc. v.*

Weaver, No. 49D02-2405-MI-019876 (Marion Super. Ct. June 11, 2024). But a statutory right to intervene cannot confer standing otherwise absent. Standing is a constitutional threshold that "the legislature cannot expand—or restrict—beyond constitutional limits." *Solarize Ind.*, 182 N.E.3d at 216 n.2; *see Serbon v. City of East Chicago*, 194 N.E.3d 84, 97 (Ind. Ct. App. 2022).

Nor do the grounds for intervention Bernard and Rouse invoked in *Voices for Life* apply here. Indiana Code § 5-14-3-9 provides that, if an agency denies a request to permit inspection or copying of a public record, a "person who has been denied the right to inspect or copy" the record "may file an action" to compel its disclosure. Ind. Code § 5-14-3-9(e). The provision then states that, "[w]henever an action is filed under this subsection," the agency must "notify each person who supplied any part of the public record at issue." *Id.* After the notification is completed, a person who supplied the record is "entitled to intervene in any litigation that results from the denial." *Id*. But this case does not "result from the denial" of an APRA request or arise under § 5-14-3-9(e). Benard and Rouse have sued under the Declaratory Judgment Act seeking to prevent the Department from releasing *any* terminated pregnancy reports to anyone. This proceeding is distinct from the *Voices for Life* case. *Contra* App. II 16.

However this case is analyzed, Bernard and Rouse lack standing. They have not sued to address a direct, personal, and imminent injury to themselves, but indirect, speculative, and remote hypotheticals. The trial court therefore did not have jurisdiction to enter a preliminary injunction. *Hoosier Contractors*, 212 N.E.3d at 1238 (absence of standing "denies the courts any jurisdiction" to "act" in a case).

II. APRA Does Not Confer a Private Right of Action to Enjoin Disclosure of Public Records

Even apart from the jurisdictional problem with this lawsuit, Bernard and Rouse do not have a likelihood of success on the merits because they lack a private right of action to enforce the APRA provisions at issue. In this case, Bernard and Rouse contend that it would violate Section 4(a)(9) of APRA for the Department to release terminated pregnancy reports under APRA. App. II 41; App. II 55. But the legislature decided against permitting private parties to enforce Section 4(a)(9), which means Benard and Rouse cannot seek an injunction enforcing it.

A. Plaintiffs do not have a private right of action

Where, as here, a claim "is premised upon the violation of a duty imposed by statute," a court must ask "whether the statute in question confers a private right of action." *HealthPort Techs., LLC v. Garrison Law Firm, LLC*, 51 N.E.3d 1236, 1238–39 (Ind. Ct. App. 2016), *trans. denied*. Whether a statute confers a private right of action is a question of law that this Court reviews de novo. *Kerwood v. Elkhart Cnty. Sheriff's Dep't*, 233 N.E.3d 1030, 1035 (Ind. Ct. App. 2024).

To determine whether a statute provides a private right of action, the courts must "examine the language of the statute." *Kerwood*, 233 N.E.3d at 1035. Courts do not have the power to create rights of action that do not exist. As the Supreme Court has explained, the "separation of powers requires [courts] to leave th[e] decision" about whether to create a private right "to the legislature." *Doe #1 v. Ind. Dep't of Child Servs.*, 81 N.E.3d 199, 204 (Ind. 2017). Whether a private right of action exists is "purely a question of legislative intent, not judicial preference." *Id.* at 202.

As all parties seem to agree, the legislature did not make Section 4(a)(9) privately enforceable. Bernard and Rouse conceded below that "APRA does not provide Plaintiffs a private right of action." App. III 41. That concession is reason enough to hold that Bernard and Rouse are not likely to succeed on the merits.

What is more, the legislature made plain that it entertained—and rejected—the idea of permitting private parties to enforce Section 4(a). In APRA, the legislature provided that private parties may seek to *compel* disclosure of records unlawfully withheld. Ind. Code § 5-14-3-9(e). But the legislature did not create a freestanding private right of action to *prevent* disclosure of records. Instead, the legislature authorized public officials to seek civil penalties against any public employee who knowingly or intentionally releases information required to be kept confidential, Ind. Code §§ 5-14-3-10(a), 34-28-5-4(a), and to discipline employees who violate Section 4(a) "in accordance with the personnel policies" of the public agency, § 5-14-3-10(b).

The legislature's decision to provide enforcement mechanisms removes any doubt about whether private parties can enforce Section 4(a). Ordinarily, courts are "reluctant to infer" that a private right exists absent "clear language" creating one. *Doe #1*, 81 N.E.3d at 202; *Kerwood*, 233 N.E.3d at 1036 n.5. And the Supreme Court has established a "general rule" that a "private party may not enforce rights under a statute designed to protect the public in general and containing a comprehensive enforcement mechanism." *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1260 (Ind. 2000).

Here, there can be no doubt that APRA "is designed mainly for [the] public benefit." *Doe #1*, 81 N.E.3d at 202; *see Shirey v. Flenar*, 89 N.E.3d 1102, 1106–07 (Ind.

Ct. App. 2017) (no private right of action to enforce statute even where it was "arguably designed to benefit individual patients"). It exists to protect the public—specifically, to provide "all persons" the maximum information about "the affairs of government" consistent with sound "public policy." Ind. Code § 5-14-3-1; *see id.* (public agency has burden to support its refusal to produce records); § 5-14-3-3 (public agency has duty to make records available upon lawful request). So the fact that APRA provides "*two* alternative enforcement mechanisms" conclusively establishes that it is not privately enforceable. *Doe #1*, 81 N.E.3d at 204; *see Kerwood*, 233 N.E.3d at 1035–36. As this Court explained, "Indiana courts find no private right of action where the General Assembly has provided independent enforcement—even if only an infraction." *Kerwood*, 233 N.E.3d at 1036 (quoting *Doe #1*, 81 N.E.3d at 204).

In fact, this Court has already recognized that APRA's enforcement mechanisms preclude the judiciary from "'engraft[ing] another'" means of enforcement. *Kerwood*, 233 N.E.3d at 1036 (quoting *Doe #1*, 81 N.E.3 at 204). In *Kerwood*, a plaintiff sued a public employee who disclosed information declared confidential under Indiana's expungement statute. *Id.* at 1036 & n.5; *see* Ind. Code § 5-14-3-10. To succeed, the Court explained, the plaintiff would have to show the legislature "intended to allow private actions." *Id.* at 1035. But the plaintiff could not make that showing because the legislature had provided for the imposition of civil penalties in APRA. This case is no different. Just as APRA's enforcement mechanisms barred the plaintiff's suit for alleged confidentiality violations in *Kerwood*, it bars Bernard's and Rouse's suit here. Plaintiffs have no likelihood of succeeding on the merits.

B. The trial court overlooked the absence of a right of action

Tellingly, the trial court did not address this fundamental problem with the plaintiffs' lawsuit to enforce Section 4(a). Instead, the trial court observed in passing that Bernard and Rouse had invoked the Declaratory Judgment Act. App. II 14. But that statute authorizes courts to issue declaratory relief where a person's "rights, status, and other legal relations are affected by a statute." Ind. Code § 34-14-1-2. It does not create new rights. *Cf. Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023) (observing that federal statutes cannot be enforced under § 1983 "as a matter of course"). Thus, as this Court has explained in cases involving requests for declaratory relief, a plaintiff asserting a claim "premised upon the violation of a duty imposed by statute" must establish that the "the statute in question confers a private right of action." *HealthPort*, 51 N.E.3d at 1238–39; *see Serbon*, 194 N.E.3d at 96. Excusing Bernard and Rouse from making that showing would allow them to end-run the legislature's decision not to permit private enforcement.

Besides, even if plaintiffs had a private right of action, the Declaratory Judgment Act would not allow them to obtain a preliminary injunction. "Nowhere in the act is there an express provision for an executory or coercive judgment in connection with a declaration of rights, status, or legal relations." *Brindley v. Meara*, 198 N.E. 301, 303 (Ind. 1935); *see Bryarly v. State*, 111 N.E.2d 277, 278–79 (Ind. 1953) (observing the statute does not "modify, change, or supplant the remedies or procedure" for obtaining coercive relief); *Myers v. State Life Ins. Co.*, 110 N.E.2d 312, 313 (Ind. App. 1953) ("[e]xecutory or coercive relief is not warranted" under Declaratory Judgment

Act). The trial court's decision to grant a preliminary injunction nevertheless contravenes the statutory text and binding precedent. The legislature's decision to vest Section 4(a)'s enforcement in public officials rather than private parties must be respected. *See Doe #1*, 81 N.E.3d at 204 ("separation of powers requires us to leave that decision to the legislature"); *Coons ex rel. Coons v. Kaiser*, 567 N.E.2d 851, 852 (Ind. Ct. App. 1991) ("When legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.").

III. Terminated Pregnancy Reports Are Public Records Under APRA

There is a third reason plaintiffs do not have a likelihood of success on the merits—APRA does not forbid the disclosure of terminated pregnancy reports. Under APRA, the reports are presumptively disclosable. On a facial challenge like this one, the challenger can prevent disclosure of all reports only by showing there is no set of circumstances under which a report (or portion of a report) can be disclosed. *See Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 975 (Ind.), *reh'g denied*, 214 N.E.3d 348 (2023).

The trial court deemed the reports to be "patient medical records and charts," which an agency cannot disclose under Section 4(a) of APRA. But the statute mandating the submission of reports to the Department shows that they are not patient records. Rather, they are reports collected by the State for law-enforcement and public-health purposes. Preventing their disclosure would subvert the legislative design.

In deeming terminated pregnancy reports "patient medical records and charts," the trial court not only disregarded the statutory design. It also overlooked

that a "patient" medical record must contain information about an identifiable patient. But the reports at issue here do not have information that can be linked to individual patients; a double anonymization process protects patient identities. The trial court had no basis for enjoining the disclosure of all reports under APRA.

A. The Indiana Code makes clear terminated pregnancy reports are distinct from "patient medical records and charts"

Under APRA, terminated pregnancy reports are presumptively public records subject to disclosure. Indiana's general policy is that "all persons are entitled to full and complete information regarding the affairs of government." Ind. Code § 5-14-3-1. APRA reflects this intent to "ensure Hoosiers have broad access to most government records." *Evansville Courier & Press v. Vanderburgh Cnty. Health Dep't*, 17 N.E.3d 922, 928–29 (Ind. 2014). It provides a right of access to public records, § 5-14-3-3; directs that the statute must be "liberally construed to implement" the State's policy in favor of disclosure, § 5-14-3-1; and states that an agency seeking to withhold a record has the "burden" of proving the record can be kept confidential, *id.* Thus, a court must start with the "presumption" that terminated pregnancy reports are public records subject to disclosure. *Evansville Courier & Press*, 17 N.E.3d at 929.

The trial court ruled that terminated pregnancy reports cannot be disclosed under Section 4(a)(9) of APRA, which prohibits public agencies from disclosing "patient medical records and charts." Ind. Code § 5-14-3-4(a)(9); *see* App. II 21–22. But that overlooks how the Indiana Code describes them. According to state law, these documents are "report[s]" that must be submitted to the Department, on a form

"drafted by" the Department, to promote two important public purposes—the "improvement of maternal health and life" and the "monitor[ing]" of "all abortions . . . to assure" they are performed "only" in accordance with "the law." Ind. Code § 16-34-2-5(a). That is why the Department has treated them as public records for "decades." Tr. II 173:18–20. Abortion providers do not have discretion as to whether to submit reports, what to put in them, or when to submit them. Rather, abortion providers must submit "report[s]" that contain 31 statutorily required pieces of information within 30 days (or, in some instances, 3 days) of each abortion. § 16-34-2-5(a)–(b).

The trial court largely overlooked how the Indiana Code describes terminated pregnancy reports. Instead, it seized on the Code's general definition of a "medical record," which states that a medical record is "written or printed information possessed by a provider (as defined in IC 16-18-2-295) concerning any diagnosis, treatment, or prognosis of the patient, unless otherwise defined." Ind. Code § 1-1-4-5(a)(6). The court then reasoned that terminated pregnancy reports are medical records because they contain information about "diagnosis, treatment, or prognosis." App. II 21–22. But that elliptical reasoning ignores that the Indiana Code states what the reports are—they are not provider records created to document a patient's diagnosis or treatment, but "report[s]" made to the Department, on a form "drafted by the Department," for vital public-health and law-enforcement purposes. Ind. Code § 16-34-2-5(a).

The mere fact that terminated pregnancy reports might contain some similar information to medical records does not imply they are one and the same—a point the

Supreme Court made in *Evansville Courier & Press*. In that case, media sought access to death certificates containing information about the cause of death. 17 N.E.3d at 926–27. A local health department refused to disclose the death certificates under APRA because another statute provided that a certificate of death registration—which also contained cause of death information—was confidential. *Id.* at 929. But the Supreme Court ordered the death certificates' release. *Id.* at 930. It explained that a certificate of death and a certificate of death registration are two different documents: a certificate of death is a "public record" "intended to record cause of death data for use by health officials," while a certificate of death registration is a private document "intended to authenticate the death for the purpose of property disposition." *Id.* The same is true here. State law treats reports as distinct from patient medical records and charts, describing them as reports created for public purposes.

Even on its own terms, the trial court's reasoning fails. The definition it invoked defines a "medical record" as "written or printed information possessed by a provider . . . concerning any diagnosis, treatment, or prognosis of the patient." Ind. Code § 1-1-4-5(a)(6). But terminated pregnancy reports do not contain information about the "diagnosis, treatment, or prognosis of [a] patient." To start, the reports do not contain information about "a patient" (more on that later). The reports provide anonymized information. Beyond that, much of the information in the reports does not relate to a patient's "diagnosis, treatment, or prognosis."

Some entries identify the abortion provider or attending physician required by law to be present. Ind. Code § 16-34-2-5(a)(5), (22)(C). Others affirm that abortion

providers complied with legal requirements for informed consent and parental notification. § 16-34-2-5(a)(2)–(3), (22), (24), (31). Still others contain information about whether the patient had been "abused," "coerced," "harassed," or "trafficked"—criminal activity about which the State needs to know so it can take appropriate action. § 16-34-2-5(a)(20); *see, e.g.*, §§ 16-34-6-5, 16-34-6-6. And other information pertains to the fetus—such as entries about gestational age, gender, and any fetal medical diagnoses—or the father. § 16-34-2-5(a)(7), (18), (21), (25), (29).

Even much of the information on the reports related to the woman does not concern her "diagnosis, treatment, or prognosis." Several portions of the report call for general demographic information, Ind. Code § 16-34-2-5(a)(1), (8)–(12), or information about prior pregnancies, § 16-34-2-5(a)(13)–(16), (26). Only once does the statute call for a woman's diagnosis code, § 16-34-2-5(a)(25); *see* Ex. I 7—and if an abortion is performed due to a lethal fetal anomaly, incest, or rape, there will be no maternal diagnosis. And there is no reason to assume that the abortion being provided is a "treatment" for any condition (to the extent it is ever a treatment). Abortions can be lawful for reasons other than to prevent a serious risk to the life or health of the mother. *See* § 16-34-2-1(a)(2).

In short, reports are not patient medical records or charts. What *is* common to all the information is that it is gathered for the purposes of monitoring compliance with Indiana law and promoting maternal health. *See* Ind. Code § 16-34-2-5(a). Forbidding disclosure of that information to potential complainants, researchers, reporters, and other interested parties would undermine the purpose behind the reports. It,

for example, would prevent the public from submitting complaints about potential legal violations based on the reports to the Attorney General's Office. *See* Tr. II 131:17–21, 132:18–24 (Osborne). And it would eliminate public access to information vital for making recommendations about how to improve maternal health and protect prenatal life. Adopting the trial court's view of terminated pregnancy reports undermines the public purposes of the statute requiring their creation.

B. The term "patient medical records and charts" does not encompass the depersonalized information in the reports

Even if one sets aside how Indiana law describes terminated pregnancy reports, the reports are not "patient medical records and charts." As the restrictive modifier "patient" makes clear, Section 4(a)(9) encompasses medical records and charts relating to *specific, identifiable patients*—not anonymized, depersonalized, or aggregated medical information. If the legislature had wanted Section 4(a)(9) to cover anything that might be considered a "medical record," the legislature could have said so. Instead, it specified that any medical records and charts must be "*patient* medical records and charts." The term "patient" cannot be ignored. *See Turner v. State*, 253 N.E.3d 526, 536–37 (Ind. 2025). Courts must "interpret a statute such that every word receives effect and meaning and no part is rendered meaningless." *Rheem Mfg. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941, 948 (Ind. 2001).

Context reinforces that the term "patient medical records and charts" in APRA does not encompass anonymized records but only records belonging to specific, identifiable patients. Section 4(a)(9) permits "patient medical records and charts" to be disclosed with the "written consent" of "the patient," or under provisions governing

the prosecution "of a person who has been charged with a potentially disease transmitting offense." Ind. Code §§ 5-14-3-4(a)(9), 16-41-8-4(e). Both those exceptions presume that the records relate to specific, identifiable patients. Obviously, a public agency cannot obtain a patient's written consent or respond to requests for records about a person charged with a potentially disease-transmitting offense unless the records at issue relate to someone it can identify. The exceptions in Section 4(a)(9) would not make sense if the statute covered anonymized or depersonalized records.

Meanwhile, other statutes require public agencies like the Department to make information about public health available to the public. *See, e.g.*, Ind. Code §§ 16-34-2-4.7(a), 16-34-2-5(e). Most relevant here, state law requires the Department to create periodic reports summarizing "the information submitted" in terminated pregnancy reports. § 16-34-2-5(e). Those reports contain information about individual maternal diagnoses and abortion procedures—the very information that the trial court deemed to make something a medical record. *See, e.g.*, Ind. Dep't of Health, Vital Records Div., *Annual Terminated Pregnancy Report – 2024*, at 13–16 (Apr. 2025), https://www.in.gov/health/vital-records/files/2024-Annual-ITOP-Report.pdf. Yet not even the trial court suggested that Section 4(a)(9) prohibits their disclosure. The broader statutory context demonstrates that "patient medical records and charts" encompasses records that relate to specific, identifiable patients.

Consequently, Section 4(a)(9) does not forbid the disclosure of the terminated pregnancy reports at issue. Those reports do not relate to specific, identifiable patients. As discussed above, no patient's name, address, or other personal information

appears on a terminated pregnancy report. The reports include a record identifier, Tr. II 69:16–20 (Bernard), but that identifier does not provide the Department with sufficient information to identify a patient. Moreover, before releasing the reports under APRA, the Department makes any redactions necessary to ensure that the reports' release will not compromise patient identities. Tr. II 142:21–143:9 (Stover). Nothing but speculation supports the notion that this double anonymization process is insufficient. Bernard and Rouse know of no instance in which a patient has ever been identified based on information in an individual terminated pregnancy report. Tr. II 110:4–6 (Bernard), 118:2–4 (Rouse).

The trial court disregarded that terminated pregnancy reports are anonymized, instead treating them the same as medical records relating to identifiable patients. App. II 21–22. But this Court has already made clear that lower courts "must consider the effects that redaction might have." *Unincorporated Operating Div. of Ind. Newspapers d/b/a The Indianapolis Star v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 908 (Ind. Ct. App. 2003), *trans. denied*. In *The Indianapolis Star*, a newspaper made an APRA request for an investigatory file containing the "personal identifiable information" of students. *Id.* at 903. The trial court ruled that a prohibition on disclosing "education records" prohibited the file's disclosure under APRA. *Id.* This Court disagreed. It explained that the university could not withhold a version of the file with "all identifying information redacted" because the file "no longer contained information directly related to a student." *Id.* at 907–08 (cleaned up). So too here. A ter-

minated pregnancy report that lacks information sufficient to identify a specific patient is not a "patient medical record[]" or "chart[]." § 5-14-3-4(a)(9). The report therefore must be disclosed.

C. At minimum, the trial court erred in enjoining the release of terminated pregnancy reports in their entirety

In all events, the trial court overstepped in enjoining the release of *all* individual terminated pregnancy reports. If a record contains some material that can be disclosed and some that cannot, APRA requires the agency to "separate the material that may be disclosed and make it available." Ind. Code § 5-14-3-6(a). But the trial court barred the public release of any "Terminated Pregnancy Reports created in accordance with Indiana Code section 16-34-2-5" in their entirety. App. II 31. That defies APRA's plain text.

The Indianapolis Star reinforces this conclusion. In that case, this Court observed that "APRA specifically mandates separation of discloseable information whenever a request is made pursuant to APRA." 787 N.E.2d at 908 n.14 (citing Ind. Code § 5-14-3-6(a)). A public agency cannot "deny[] access to the record as a whole." *Id.* at 908. The Court therefore ordered the trial court to grant a newspaper access to the investigatory file it sought from the public university and to "redact or otherwise separate any portion of these documents" that could identify individual students. *Id.* at 909.

In this case, the trial court never explained why it could not take a similar approach. It heard testimony that the Department has long released reports after redacting potentially sensitive information on a "case-by-case basis." Tr. II 142:3–

143:9 (Stover). But the court still enjoined the Department from releasing reports under APRA, without considering "the effects that redaction might have." *The Indianapolis Star*, 787 N.E.2d at 908. That was error.

The trial court sought to dismiss the Department's prior practice as unpersuasive because the legislature amended Indiana Code § 16-34-2-5 in 2022 to require an abortion provider to report "information about a patient diagnosis and any reasons why the physician performed the abortion." App. II 27. But the court was wrong to say that the requirement to provide a diagnosis code for the woman is new. Before 2022, a diagnosis code was required for "pre-viability" abortions. Ind. Code § 16-34-2-5(a)(24) (2021). What the 2022 amendments added is a requirement to state the "reason for the abortion," Ind. Code § 16-34-2-5(a)(19)—which seeks information related to the legal justification for the abortion, *see* § 16-34-2-1(a); Ex. I 7.

Regardless, the trial court's injunction prohibiting the release of all reports in their entirety cannot be squared with APRA's command that an agency must "separate the material that may be disclosed and make it available." Ind. Code § 5-14-3-6(a). The trial court's failure to address that command speaks volumes.

* * *

Ultimately, anyone seeking to prevent public agencies from releasing records under APRA faces a difficult task. APRA creates a presumption in favor of disclosure. Ind. Code § 5-14-3-1; *see Evansville Courier & Press*, 17 N.E.3d at 928–29. And even if only part of a record can be disclosed, APRA mandates that part to be disclosed. § 5-14-3-6(a). Yet plaintiffs are claiming that even redacted terminated pregnancy

reports cannot be disclosed despite a decades-long practice of disclosing them. They are not likely to succeed on the merits of that sweeping claim.

IV. Bernard and Rouse Failed to Demonstrate They Are Otherwise Entitled to Injunctive Relief

As Bernard and Rouse do not have a likelihood of success on the merits, the preliminary injunction must be vacated. *See State v. Econ. Freedom Fund*, 959 N.E.2d 794, 807 (Ind. 2011). Vacatur is also proper because they did not satisfy the remaining requirements for obtaining a preliminary injunction.

A. Bernard and Rouse did not demonstrate irreparable harm

As this Court has explained, a "prohibitory injunction is an extraordinary equitable remedy which should be granted with caution." *Schlehuser v. City of Seymour*, 674 N.E.2d 1009, 1012 (Ind. Ct. App. 1996). "The burden is on the plaintiff seeking the injunction to demonstrate that certain and irreparable injury would result if the injunction were denied." *Id.*; *see Wagler Excavating Corp. v. McKibben Const., Inc.*, 679 N.E.2d 155, 157 (Ind. Ct. App. 1997), *trans. denied*. Preliminary injunctions "will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties." *Ind. Pacers L.P. v. Leonard*, 436 N.E.2d 315, 318 (Ind. Ct. App. 1982); *see Daugherty v. Allen*, 729 N.E.2d 228, 236 (Ind. Ct. App. 2000), *trans. dismissed*.

The trial court ruled that Bernard and Rouse faced a threat of "irreparable harm" based on the "same harms" they cited in support of their standing. App. II 23. Even if those speculative harms are sufficient to confer standing, however, they do not provide a basis for issuing a preliminary injunction. Preliminary injunctions do not issue as a matter of course. A plaintiff must be facing "certain and irreparable"

harm. *Schlehuser*, 674 N.E.2d at 1012; *see Daugherty*, 729 N.E.2d at 236 (no irreparable harm where plaintiff presented "no evidence" of actual injury). But Bernard and Rouse have no evidence that they will face any cognizable harm—let alone "certain" harm—while this litigation continues. *See* pp. 25–32, *supra*.

Again, the trial court's own language highlights that plaintiffs failed to meet the legal standard. It did not find that Bernard and Rouse face "certain" harm. The most the trial court could say is that they "could" face a situation at some unknown future time in which the Department's actions would impact them. App. II 15. That is insufficient. As this Court has explained, "injunctive relief is not to be used simply to eliminate a possibility of a remote future injury." *Crossmann Cmties., Inc. v. Dean*, 767 N.E.2d 1035, 1042 (Ind. Ct. App. 2002) (quoting *Kennedy v. Kennedy*, 616 N.E.2d 39, 42 (Ind. Ct. App. 1993), *trans. denied*). And regardless, the trial court should not have entered injunctive relief concerning terminated pregnancy reports that Bernard and Rouse did not submit. Bernard and Rouse presented no evidence that the release of those reports harms them personally in any way.

B. The balance of harms and the public interest favor the disclosure of terminated pregnancy reports

The balance of harms and public interest weigh heavily against a preliminary injunction as well. As APRA reflects, both the State and its people have a strong interest in making public "full and complete information regarding the affairs of government." Ind. Code § 5-14-3-1. Public employees have an affirmative "duty" to disclose public records in response to APRA requests. *Id.*; *see* § 5-14-3-3(b). And the Gov-

ernor has a constitutional obligation to "take care" that Department employees "faithfully execute[]" their duties, including their statutory duties under APRA. Ind. Const. art. V, §§ 1, 16. Under the injunction, however, the State cannot disclose information of great public interest that the Governor, the Attorney General, and the Commissioner have determined must be disclosed by law. App. II 94–96; Nondisclosure of Terminated Pregnancy Reports, Official Opinion No. 2024-2 at 1 (Att'y Gen. of Ind. Apr. 11, 2024). The injunction "clearly inflicts irreparable harm." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *see Holcomb v. Bray*, 187 N.E.3d 1268, 1286 (Ind. 2022) (recognizing the Governor suffers harm when prevented from carrying out his constitutional obligations).

By blocking public access to individual terminated pregnancy reports, the injunction also weakens protections for maternal health and unborn life. As the Indiana Supreme Court has observed, there is a "valid and compelling" State interest in protecting prenatal human life at all stages. *Cheaney v. State*, 285 N.E.2d 265, 270 (Ind. 1972); *see Planned Parenthood*, 211 N.E.3d at 963, 979. One of the purposes of the reports is to ensure that "abortions are done only" in accordance with "the law." Ind. Code § 16-34-2-5(a). If someone suspects a violation of Indiana's laws regulating the medical profession and notifies the Attorney General's Office, the Office can investigate. §§ 25-1-7-2, 25-1-7-5(b). By law, however, the Office cannot investigate without a complaint from someone outside the Office. § 25-1-7-4. So depriving the public of

access to terminated pregnancy reports that could form the basis for complaints impairs the State's ability to uphold the law.

Saying that Department employees could submit complaints to the Attorney General's Office is no answer. *Contra* App. II 27. The legislature did not design an oversight regime under which only the Department can submit complaints; it designed one under which both the Department *and* the public can. The preliminary injunction removes one of those oversight mechanisms, directly weakening oversight of abortion providers. That has a real-world impact. Unrebutted testimony established below that all complaints about potential violations of state laws regulating abortion providers have come from the public. Tr. II 132:18–24 (Osborne).

Saying that the public can still access the Department's quarterly reports is no answer either. *Contra* App. II 26. Quarterly reports contain only aggregated data. *See* Ind. Code § 16-34-2-5(e). Those reports do not provide sufficient details. For example, they do not indicate whether a particular provider obtained the patient's informed consent as required by law. §§ 16-34-2-1(a)(1), 16-34-2-1.1. The provider's affirmation or denial that they obtained consent appears on the individual reports. §§ 16-34-2-5(a)(4), (24). The quarterly reports do not provide any details about whether the three viable fetuses born alive in 2024 were properly cared for as the law requires. *See* Ind. Dep't of Health, Vital Records Div., *Annual Terminated Pregnancy Report – 2024*, at 17 (Apr. 2025); § 16-34-2-3(b), (c). By contrast, this information appears on the individual reports. § 16-34-2-5(a)(22), (29). And even where the quarterly reports indicate that a terminated pregnancy report was submitted late—a Class B misdemeanor that

is grounds for taking away a provider's medical license, §§ 16-34-2-5(d), 25-22.5-8-6(b)—the quarterly report does not identify the provider in question.

In short, the preliminary injunction directly interferes with state policies and operations, undermines public confidence that Indiana's laws are being followed, and exposes to potential harm those that the law seeks to protect. Plus, the injunction harms the public, including researchers and media, interested in the data contained in individual reports. Now, investigators and researchers can no longer obtain access to data in individual reports that might inform efforts to improve public health. None of this is in the State's or the public's interest. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (government interest and public interest "merge"); *Avemco Ins. Co. v. State ex rel. McCarty*, 812 N.E.2d 108, 121 (Ind. Ct. App. 2004) (state laws reflect the public interest). The injunction is founded on a misapprehension of how the injunction harms the State and the public interest. It should be vacated.

CONCLUSION

The Court should vacate the preliminary injunction.

Respectfully submitted,

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