Filed: 7/11/2025 6:51 PM

IN THE
INDIANA COURT OF APPEALS

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.

REPLY OF APPELLANT INDIANA STATE HEALTH COMMISSIONER

THEODORE E. ROKITA
Attorney General of Indiana
Attorney No. 18857-49

JAMES A. BARTA
Solicitor General
Attorney No. 31589-49

JENNA M. LORENCE
Deputy Solicitor General
Attorney No. 38641-49

Office of the Attorney General
IGC-South, Fifth Floor
Indianapolis, Indiana 46204
Tel: (317) 232-0709
Fax: (317) 232-7979
Email: James.Barta@atg.in.gov

KATELYN E. DOERING
Attorney No. 37523-32
JOHN M. VASTAG
Attorney No. 39056-53
Deputy Attorneys General

Counsel for Appellant Indiana State Health Commissioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES [CONT'D]

CASES [CONT'D]

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES [CONT'D]

OTHER AUTHORITIES

SUMMARY OF THE ARGUMENT

The preliminary injunction—which prevents the Indiana Department of Health from fulfilling public requests for information vital for improving public health and ensuring abortions are lawfully performed—should be reversed.

I. Plaintiffs Bernard and Rouse lack standing to prevent the Department from fulfilling APRA requests for terminated pregnancy reports. Plaintiffs' principal standing theory assumes that the Department would disclose health information about specific, identifiable women who sought abortions. That is wrong. Reports are anonymized, and though reports were released for decades, plaintiffs cannot cite a single instance in which a woman was identified from them.

Bernard and Rouse assert other putative harms stemming from how people may interpret reports. Any such putative harms—to the extent free thinking inflicts harm—are not directly traceable to the Department. And while plaintiffs say they have an obligation under state law to protect confidential patient information, they aren't being asked to violate it. This case is about the Department's separate obligation to fulfill APRA requests.

II. Bernard and Rouse do not have a private right of action to block the release of terminated pregnancy reports regardless. Unable to identify any private right of action, plaintiffs invoke the Declaratory Judgment Act. But a party needs a private right to invoke the Act. Nor does the Act authorize injunctions. Plaintiffs' inability to identify a private right of action should end the matter.

III. APRA authorizes the Department to honor requests for terminated pregnancy reports. Releasing anonymized information does not violate APRA's bar on releasing "patient medical records and charts." Even plaintiffs seem to agree the term "patient medical records" doesn't encompass anonymized information. Their speculation that a yet-to-be identified report might be insufficiently anonymized cannot support the wholesale ban on fulfilling APRA requests. That ban defies the legislature's direction to make the vital information in reports available.

For the first time on appeal, plaintiffs develop an alternative argument that federal law prohibits the Department from releasing reports. As plaintiffs concede, however, the law they invoke—the Health Insurance Portability and Accountability Act of 1996 (HIPAA)—does not apply to the Department. HIPAA disclaims necessary interference with state efforts to regulate providers using laws like Indiana's terminated-pregnancy-report statute. And even if portions of the reports cannot be disclosed, it was improper to enjoin the release of disclosable portions.

IV. Plaintiffs did not satisfy the other requirements for injunctive relief. They will not be harmed—let alone irreparably—if the Department satisfies APRA requests. Meanwhile, the injunction prevents public access to data vital for improving maternal health and ensuring abortions are done legally. The injunction irreparably harms the State and the public by removing a legislative mechanism for upholding Indiana laws protecting prenatal life and maternal health.

ARGUMENT

I. Bernard and Rouse Cannot Establish Standing

Plaintiffs lack standing to block the Department from releasing terminated pregnancy reports under APRA. Although the trial court posited a "patient could be less likely to disclose certain medical information to the physician" performing an abortion "if [the Department releases a report that] included any patient health information," App. II 15, that alleged injury is not "personal, direct," or "imminent," *Morales v. Rust*, 228 N.E.3d 1025, 1033 (Ind. 2024); *see* Opening Br. 26. And plaintiffs do not identify any other basis for standing.

A. Speculation about third-party behavior is insufficient

1. Plaintiffs pay scant attention to the requirement that an injury be "personal" and "direct." Although they assert that putative injuries resulting from changed patient behavior are "direct," Resp. Br. 25, they ignore the test for a direct injury. "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)).

Plaintiffs do not explain how injuries that arise only if third parties decide to change their behavior lack an intervening cause. In fact, their own description shows there is one: plaintiffs do not say their putative injuries are the "direct result" of the Department's actions but "of *patients'* knowledge that the Doctors are legally required to transmit" information to the Department. Resp. Br. 26 (emphasis added). This case

is thus no different than *Franciscan Alliance*, in which the city's injury arose not directly from a hospital's closure, but from increased emergency response times that could follow the closure. Opening Br. 28.

Indeed, it is not even clear that plaintiffs' putative injury is traceable to the "complained-of conduct." *Red Lobster Rests. LLC v. Fricke*, 234 N.E.3d 159, 167 (Ind. 2024). This litigation challenges the release of reports under APRA. App. II 32. Yet plaintiffs trace their putative injury to patient awareness that abortion providers "are legally required to transmit" reports to the Department. Resp. Br. 26.

2. Plaintiffs' alleged injury is also speculative. Plaintiffs do not dispute that the "dissemination of *anonymized* information" does not "give rise to any injury at all—let alone one concrete enough to support . . . standing." *Dinerstein v. Google, LLC*, 73 F.4th 502, 513 (7th Cir. 2023); *see* Opening Br. 28–29. Instead, plaintiffs assert that terminated pregnancy reports may not be "sufficiently anonymized." Resp. Br. 26. But no patient's name, address, birth date, or similar identifying information appears on reports. *See* Ind. Code § 16-34-2-5(a). And before a report's release, the Department redacts any information that raises patient privacy concerns. Tr. II 142:19–143:9 (Stover). That plaintiffs cannot identify a single instance in which a report was insufficiently anonymized during the decades that the Department released them under APRA underscores how speculative any injury is.

Plaintiffs claim that the Department will stop "redacting key pieces of information" in reports due to a "Settlement Agreement." Resp. Br. 26. But while the agreement describes what information the Department generally will not redact, the

agreement also states that the Department will make "redactions" needed to "adequately protect personal health identifiers." Ex. I 9. As the Department explained, it still can—and will—redact "information [that] will expose a patient identity." Tr. II 145:25–146:4 (Stover); *see* Tr. II 145:21–24 ("if additional information needed to be redacted, it could be"). Plaintiffs simply ignore that testimony.

Plaintiffs argue a disciplinary proceeding against Bernard for repeatedly disclosing a patient's confidential information to the media in violation of HIPAA "belie[s]" the idea that "abortion patients could never be identified from the information in a TPR." Resp. Br. 26–27. Again, however, plaintiffs ignore that this case is not about whether a patient could be identified from "a TPR" but rather from an *anonymized* one. Nor does the disciplinary action against Bernard—which did not involve reports—suggest that anonymized reports released under APRA would identify patients. The reason the Medical Board concluded that Bernard had disclosed sufficient details about a ten-year-old rape victim from Ohio was that, "when taken in its entirety," the information allowed "at least one media outlet" to identify the girl from "criminal proceedings" against her rapist. App. II 68–70. That highly unusual constellation of circumstances was what led to the disciplinary action against Bernard.

Citing an informal opinion from the (former) Public Access Counselor, plaintiffs argue that information in terminated pregnancy reports "could be reverse engineered to identify patients—especially in smaller communities." Resp. Br. 23 (quoting App. II 32). But the only evidence that thinly reasoned opinion cites is the Medical

Board's decision to discipline Bernard for repeatedly disclosing confidential information about a highly sensational and unusual situation. *See* App. II 84. Meanwhile, the fact that plaintiffs know of no instance in which a person was ever identified from a report released under APRA—despite their release for decades—shows how unlikely identification is.

Plaintiffs claim that "[p]atients' fears" about identification "are credible" because "many . . . have rare medical conditions." Resp. Br. 19–20. But this concern is not new. The reports have listed information about pregnant women's "preexisting medical conditions" and the "medical indication" for abortions before, Ind. Code § 16-34-2-5(a); Opening Br. 47, and plaintiffs point to no instances of identification, Tr. II 110:4–6 (Bernard), 118:2–4 (Rouse). Plaintiffs do not say that identification is imminent or likely. Plaintiffs also invoke the possibility of "pregnancy coercion" and identification by abusive partners. Resp. Br. 20. Again, they cannot point to any examples of a partner requesting reports. And they ignore that the Department redacts any information that might identify someone in any event. Tr. II 142:19–143:9 (Stover). Plaintiffs' conjecture about "hypothetical" potentialities does not establish standing. *Ind. Fam. Inst., Inc. v. City of Carmel,* 155 N.E.3d 1209, 1220 (Ind. Ct. App. 2020).

3. In attempting to make this appeal about whether the Department has shown that a patient could "never be identified," Resp. Br. 26–27, plaintiffs invert the legal standard. Standing requires plaintiffs to show their injury is "imminent," *Morales*, 228 N.E.3d at 1033, or "immediate," *Red Lobster*, 234 N.E.3d at 167. There is no requirement for a defendant to show that injury is "never" possible. *See Ind. Fam.*

Inst., 155 N.E.3d at 1217–20; *Garau Germano, P.C. v. Robertson*, 133 N.E.3d 161, 167–70 (Ind. Ct. App. 2019), *trans. denied*. That is fatal: plaintiffs presented no non-speculative evidence of imminent injury. Opening Br. 29–30.

Plaintiffs continue to cite a past instance of a woman seeking an abortion out of state instead of from Bernard. Resp. Br. 21, 25. But one past occurrence does not indicate a "real and immediate threat" of future harm. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983). Plaintiffs, moreover, do not dispute that only one woman—out of the many they see—has ever sought an abortion elsewhere. *See* Opening Br. 30. And there is no evidence that a patient has ever declined to share information with them despite the Department's regular release of reports. *See id.* All plaintiffs offer is speculation about "possible effect[s]." *Franciscan All.*, 212 N.E.3d at 1274.[1]

In response, plaintiffs attempt to dilute standing's requirements. They say it is enough that "they *could* suffer an injury." Resp. Br. 25 (quoting *Holcomb v. Bray*,

[1] Plaintiffs' amici attempt to backfill plaintiffs' failure of proof. But untested assertions in amicus briefs are no substitute for record evidence. *See Ind. State Bd. of Med. Registration & Examination v. Suelean*, 37 N.E.2d 935, 937 (Ind. 1941). More broadly, amici misunderstand this case. Reading their briefs one would think that the Department wishes to disclose confidential information about specific, identifiable patients. *See, e.g.*, Br. of Amici Curiae Ind. State Med. Ass'n & Am. Med. Ass'n 7, 8, 11 ("Successful care requires . . . patients [to] be able to trust that physicians will hold their private health information in confidence."); Br. of Amici Curiae ACOG & SMFM 8–9 ("release of such reports will . . . violate patient confidentiality"). Nothing could be further from the truth. This case is about requests for anonymized information. Perhaps amici would prefer to operate without any government oversight and accountability—that is where their objections about providers disclosing any information would lead. But States unquestionably have a legitimate role in regulating the medical profession and protecting public health. *See Gonzales v. Carhart*, 550 U.S. 124, 157 (2007). And to do that, States can require medical professionals to provide relevant information—whether related to abortion, communicable diseases, opioids, or other public health matters.

187 N.E.3d 1268, 1287 (Ind. 2022)). But as the Department noted—and plaintiffs do not dispute—the decision they cite never held that "could suffer an injury" suffices for constitutional standing. Opening Br. 30–31. Rather, a party must have "suffered or [be] in imminent danger of suffering" an injury. *Holcomb*, 187 N.E.3d at 1286; *see Morales*, 228 N.E.3d at 1033. Plaintiffs cannot satisfy that test.

B. Plaintiffs' alternative theories lack merit

Plaintiffs attempt to supplement the trial court's standing analysis with new theories of their own. None has merit.

First, plaintiffs argue that they "have a personal stake in the outcome of this lawsuit because they created TPRs and supplied them to the Health Department." Resp. Br. 27. But that fact alone does not explain how releasing anonymized reports injures plaintiffs in a "personal," "direct," and concrete way. *Morales*, 228 N.E.3d at 1033. "[N]ot all" dissemination of information causes harm. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016); *see Dinerstein*, 73 F.4th at 507. Nor does APRA's provision allowing persons who submit records to intervene as defendants in a lawsuit to compel disclosure of records excuse plaintiffs from proving their standing. Opening Br. 27. Standing is a constitutional threshold; it cannot be changed by statute. *Solarize Ind., Inc.*, 182 N.E.3d at 216 n.2.

Second, plaintiffs assert an interest in "avoiding unwanted publicity" and "reputational harm from VFL's use of TPRs." Resp. Br. 27–28. But these alleged injuries are not the "direct" result of the conduct they have challenged: the Department's re-

lease of anonymized reports under APRA. *Franciscan All.*, 212 N.E.3d at 1274. Plaintiffs cited no evidence that a report's release has directly resulted in harassment or other injury. Rather, Bernard and Rouse "worry about how those [reports] could be interpreted by people who don't have the medical experience to fully understand everything." Tr. II 119:1–2 (Rouse); *see* Tr. II 103:5–11 (Bernard). No one, however, has a legally protected interest in controlling how others think.

Moreover, to the extent Bernard and Rouse dislike publicity, they have only themselves to blame. Both have thrust themselves into the national spotlight, sitting for interviews with national and local media outlets to discuss their work as abortion providers. Tr. II 107:23–108:19 (Bernard); Tr. II 116:23–25 (Rouse). As *Vanity Fair* put it, Bernard "has long paired her medical career with advocacy." Abigail Tracy, *"In the End We Will Win": The Faces of the Fight for Abortion Rights*, Vanity Fair (Oct. 12, 2022), https://perma.cc/5L5F-V6GK. In fact, Bernard has been such an abortion advocate that *The New Yorker* described Bernard as "the most famous obstetrician-gynecologist in the country." Peter Slevin, *One of the Last Abortion Doctors in Indiana*, The New Yorker (Feb. 25, 2024), https://perma.cc/KCP7-P5P8. Rouse similarly "advocate[s]" in "political spaces," including "[s]peaking at rallies, testifying in legislative bodies, and giving interviews." Caroline Rouse et al., *Doctors think "advocate" is a dirty word. But it's our ethical responsibility*, STAT (June 1, 2023), https://perma.cc/HR3X-3B5P; *see, e.g.*, Abigail Ruhman, *Advocates: Pregnancy care centers lack regulations, training to provide care for Hoosiers*, WFYI (Mar. 19, 2025), https://perma.cc/36JK-2EVH.

Plaintiffs complain that terminated pregnancy reports "contain their names and [work] addresses." Resp. Br. 27; *see* Br. of Amici Curiae Nat'l Abortion Fed'n, Inc., et al., at 10 (raising similar objection). But so do the websites of their employers, which also highlight Bernard's "interest[] in . . . abortion." Ind. Univ. Sch. of Med., *Caitlin Bernard, MD*, https://perma.cc/R587-CCHW; *see* Riley Children's Health, *Caroline E. Rouse, MD*, https://www.rileychildrens.org/find-a-doctor/physician/caroline-e-rouse (last visited July 11, 2025). To put it mildly, plaintiffs cannot trace any public attention to the Department's release of reports with technical information rather than their highly public advocacy. Contrary to amici's suggestion, Br. of Nat'l Abortion Fed'n 17–21, an injunction requiring redaction of providers' identities would not redress plaintiffs' claimed harms.

Third, plaintiffs claim standing because they "have an ethical obligation to safeguard the confidentiality of their patients' personal health information." Resp. Br. 28. From that description, one might think this lawsuit is about some requirement placed on abortion providers to disclose confidential information to the public. It isn't. It's about whether APRA requires *the Department* to release records. Plaintiffs' putative "ethical" dilemma is disconnected from the "complained-of conduct." *Red Lobster*, 234 N.E.3d at 167. As with plaintiffs' other standing arguments, moreover, this argument wrongly assumes that the Department's compliance with APRA requests will reveal "personal health information." Again, Bernard and Rouse disregard that reports released under APRA are anonymized. *See* p. 11, *supra*.

There is a further problem with Bernard's and Rouse's argument—they have not identified a colorable ethical dilemma. Plaintiffs assert Indiana law imposes a duty to "safeguard the confidentiality of their patients' personal health information." Resp. Br. 28; *see id.* at 16, 20. True enough. But abortion providers do not violate any state-law duty by submitting terminated pregnancy reports. Providers' legal obligations include the duty to submit timely and complete reports. *See* Ind. Code § 16-34-2-5; *see also* § 25-1-9-4(a)(3) (requiring physicians to comply with state laws). Plaintiffs may prefer some duties to others (though that did not stop Bernard from breaking confidentiality). But nothing about the Department's actions requires plaintiffs to choose between legal duties.

C. None of plaintiffs' theories permit them to block the release of *all* terminated pregnancy reports under APRA

At a minimum, the trial court overreached in ruling that plaintiffs could block the release of *all* terminated pregnancy reports—including reports they did not submit and reports even they might agree are sufficiently anonymized. Opening Br. 31. Plaintiffs do not explain how they have a "personal stake" in preventing the release of reports others submitted. *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989–90 (Ind. Ct. App. 2003), *trans. denied*. Instead, plaintiffs argue that this is an "issue of remedy." Resp. Br. 28. That is too facile: If plaintiffs challenged only the release of reports that they did not submit, the standing problem would be obvious. Plaintiffs could not claim standing by virtue of "creat[ing] TPRs." Resp. Br. 27. Why then do plaintiffs have standing now to challenge the Department's handling of reports that they did not create or submit?

Even if one assumes that the issue is one of remedy, the road leads to the same destination. An injunction should "never" be "more extensive in scope than is reasonably necessary to protect the interests *of aggrieved parties*." *William J. Huff, II Revocable Tr. Decl., Dated June 28, 2011 v. Cain*, 120 N.E.3d 1029, 1036 (Ind. Ct. App. 2019) (emphasis added), *trans. denied*. So it was improper to prevent the disclosure of reports in which plaintiffs have no personal interest.

Without citation, plaintiffs assert a universal preliminary injunction is appropriate because any declaratory judgment entered in their favor "would apply to all TPRs in the Health Department's possession." Resp. Br. 28. But "remedies," declaratory judgments included, "ordinarily 'operate with respect to specific parties.'" *California v. Texas*, 593 U.S. 659, 672 (2021); *see Haaland v. Brackeen*, 599 U.S. 255, 292–93 (2023). The Declaratory Judgment Act permits a court to declare the rights only of "person[s] . . . whose rights, status, or other legal relations are affected by a statute"—not the world at large. Ind. Code § 34-14-1-2; *see* § 34-14-1-11 ("no declaration shall prejudice the rights of persons not parties to the proceeding"). The trial court lacked authority to issue a universal injunction. *See Trump v. CASA, Inc.*, 600 U.S. ---, 2025 WL 1773631, at *7 (U.S. June 27, 2025) (equitable remedies are "party-specific").

II. Plaintiffs Lack a Private Right of Action to Enforce APRA

Even if plaintiffs have standing, they lack a private right of action to enforce Section 4(a) of APRA. Plaintiffs do not dispute that decisions about whether to permit private enforcement of statutes are for "the legislature" to make. *Doe #1 v. Ind. Dep't*

of Child Servs., 81 N.E.3d 199, 204 (Ind. 2017); *see* Opening Br. 34. Nor do plaintiffs dispute that the legislature decided against permitting private parties to enforce APRA Section 4(a), the provision at issue here. Opening Br. 35–36. Instead, in APRA Section 10, the legislature opted for public enforcement. *See id.* That choice confirms plaintiffs lack a "private right of action." *Kerwood v. Elkhart Cnty. Sheriff's Dep't*, 233 N.E.3d 1030, 1036 (Ind. Ct. App. 2024). Both the Supreme Court and this Court have held that private parties cannot enforce confidentiality provisions enforceable through Section 10. *See Doe #1*, 81 N.E.3d at 204 (no right of action for wrongful disclosure of child-abuse report); *Kerwood*, 233 N.E.3d at 1036 (no right of action for wrongful disclosure of expunged records).

Plaintiffs disregard this precedent. Plaintiffs just assert that they brought this case under the Declaratory Judgment Act, not APRA. Resp. Br. 29. But the "availability of [declaratory] relief presupposes the existence of a judicially remediable right." *Schilling v. Rogers*, 363 U.S. 666, 677 (1960); *see* Ind. Code § 34-14-1-15 (directing state courts to follow federal law on declaratory judgments "as far as possible"). As the Indiana Supreme Court has explained, the Declaratory Judgment Act does not "create new rights." *Bowser v. Tobin*, 18 N.E.2d 773, 775 (Ind. 1939). Rather, it creates a procedure for declaring "rights" already "in existence." *Id.* Thus, as this Court has held in cases involving requests for declaratory judgments, a plaintiff alleging the "violation of a duty imposed by statute" must show that 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*.

Other courts agree. As many have explained, neither the federal "Declaratory Judgment Act" nor state equivalents "provide an affirmative cause of action where none otherwise exists." *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878–79 (9th Cir. 2022) (collecting cases); *see Vilcek v. Uber USA, LLC*, 902 F.3d 815, 819–20 (8th Cir. 2018) (discussing state cases); *Harris Cnty. Tex. v. MERSCORP Inc.*, 791 F.3d 545, 552–53 (5th Cir. 2015) (discussing federal and state cases). That rule makes sense. Otherwise, parties could "end run" the legislature's decision to withhold a "private right of action." *Neighbors Against Large Swine Operations v. Cont'l Grain Co.*, 901 S.W.2d 127, 132 (Mo. Ct. App. 1995). Plaintiffs' tacit concession that the legislature decided against permitting them to enforce APRA Section 4 is fatal.

Even if plaintiffs needed no private right of action, they could not obtain injunctive relief. Opening Br. 37. Plaintiffs argue that a "trial court does not need statutory authorization to issue a preliminary injunction." Resp. Br. 30. But a court cannot grant *any* relief unless "the Legislature" or another authority provides "a right to enforce" rights "in court." *Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 509 (Ind. 2005). And the only authority that plaintiffs invoke is the Declaratory Judgment Act, which does not authorize "coercive" relief. *Brindley v. Meara*, 198 N.E. 301, 303 (Ind. 1935); *see* Opening Br. 37–38. Plaintiffs thus cannot obtain "a restraining order . . . while awaiting a declaration of rights." *State ex rel. Egan v. Super. Ct. of Lake Cnty.*, 6 N.E.2d 945, 947–48 (Ind. 1937).

Plaintiffs protest that courts have granted injunctions in cases with requests for declaratory relief before. Resp. Br. 30. But they cite no cases in which this Court

squarely addressed whether the Act provides a basis for an injunction. Meanwhile, in cases in which the issue was squarely addressed, this Court has made clear that any "coercive relief is not warranted" under the Act. *Myers v. State Life Ins. Co.*, 110 N.E.2d 312, 313 (Ind. App. 1953); *see* Opening Br. 37–38.

III. Terminated Pregnancy Reports Are Public Records Under APRA

APRA does not forbid disclosure of terminated pregnancy reports regardless. Plaintiffs do not dispute that reports are presumptively disclosable under APRA or that plaintiffs have the burden to demonstrate that *no* report can be disclosed. Opening Br. 38. Bernard and Rouse cannot meet their burden.

Plaintiffs insist that terminated pregnancy reports are "patient medical records." Ind. Code § 5-14-3-4(a)(9); *see* Resp. Br. 31. But the reports the Department would release are not the medical records of any patient precisely because they are anonymized. That is why state law speaks of reports not as medical records but a regulatory reporting tool. And though plaintiffs quibble over whether *some* reports might not be sufficiently anonymized, they do not dispute that other reports are. Thus, the trial court necessarily erred in finding that plaintiffs were likely to succeed on their facial challenge and enjoining *all* reports' release.

Plaintiffs alternatively argue that HIPAA prevents the Department from fulfilling lawful APRA requests—an argument that the trial court declined to embrace. But plaintiffs themselves admit that HIPAA "does not impose direct obligations on the Health Department." Resp. Br. 35. And in HIPAA, Congress disclaimed any intent to interfere with state regulatory measures like terminated pregnancy reports.

Even if the reports cannot be disclosed in full, the trial court erred in enjoining their disclosure altogether. APRA compels the Department to "separate" and release "disclosable" information. Ind. Code § 5-14-3-6(a). Plaintiffs do not dispute that APRA commands the release of at least some information on the reports. Instead, plaintiffs seek to change the subject by focusing on a settlement in a separate case. That attempt at distraction provides no basis for ignoring a statutory command.

A. Depersonalized reports are not "patient medical records"

APRA Section 4(a)(9) prohibits the release of "patient medical records and charts" under APRA. Ind. Code § 5-14-3-4(a)(9). Plaintiffs argue that terminated pregnancy reports are "patient medical records" under APRA Section 4(a)(9) because they meet the general definition of a "medical record" in Indiana Code § 1-1-4-5(a)(6). Resp. Br. 31. But APRA Section 4(a)(9) uses the term "*patient* medical records and charts"—not simply "medical records." Ind. Code § 5-14-3-4(a)(9) (emphasis added). Adopting plaintiffs' view would require treating the modifier "patient" as "meaningless." *Rheem Mfg. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941, 948 (Ind. 2001). By adding the modifier "patient," the legislature made plain that Section 4(a)(9) relates to records that belong to specific patients. Opening Br. 44–45. APRA does not prohibit the disclosure of depersonalized, anonymized records. *Id.*

Even if one were to adopt plaintiffs' more restrictive reading of the statute, Section 4(a)(9) still permits the disclosure of depersonalized information. Plaintiffs' own preferred definition of "medical record" requires a record to contain information "of the patient." Ind. Code § 1-1-4-5(a)(6). Plaintiffs do not dispute that anonymized

or depersonalized information is not "of the patient." *See* Opening Br. 41, 43–46. Thus, even under plaintiffs' reading, the Department must disclose any terminated pregnancy reports that do not reveal information about a specific, identifiable patient. Plaintiffs can only prevail on their facial challenge by showing that *every* report released under APRA would identify a specific patient. Plaintiffs have not made—and cannot make—that showing. *See* Opening Br. 43–46.

Plaintiffs claim that the "Department's contention that abortion patients could never be identified from the information in TPRs lacks credibility." Resp. Br. 32. But because plaintiffs bought a facial challenge to prevent the release of *all* reports—not an as-applied challenge concerning a specific report—the question is not whether there is *some* set of facts under which a report's release might lead to a patient's identification. Rather, plaintiffs must prove there are "no circumstances" under which the Department can lawfully fulfill an APRA request. *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Hawai'i, Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 975 (Ind.), *reh'g denied*, 214 N.E.3d 348 (Ind. 2023); *see Bondi v. VanDerStok*, 145 S. Ct. 857, 865–66 (2025). Plaintiffs fall short.

For all their criticism of the Department, plaintiffs provide no evidence that *all* terminated pregnancy reports contain information that could lead to a patient's identification. Instead, plaintiffs speculate about the possibility that a woman could be identified from a report *if* she lives in a "smaller communit[y]" or has a "rare medical condition[]." Resp. Br. 20, 32. That is reason enough to reject their facial challenge. Also, no evidence establishes that the disclosure of any specific report under

APRA will reveal a patient's identity. *See* pp. 11–13, *supra*. Reports contain no patient names, addresses, or birth dates, and before releasing any reports, the Department makes any additional redactions necessary to safeguard patient identities. Tr. II 142:21–143:9 (Stover). No evidence supports the notion that this double anonymization process is insufficient. Plaintiffs know of no instance in which a report has ever identified a patient during the decades reports were released under APRA. Opening Br. 45.

In a footnote, plaintiffs claim that decades-long track record is "not relevant" because in 2022 a "media outlet was able to identify one of Dr. Bernard's patients" from information she shared with the media. Resp. Br. 32 n.6. But Bernard's case did not involve a report. Besides, Bernard's decision to reveal sensitive details about an unusual, sensational situation hardly suggests a likelihood of recurrence. *See* p. 12, *supra*. Nor does plaintiffs' oblique mention of diagnoses and the overall "number" of abortions bear on whether individual reports contain identifying details. *Id.* It is undisputed that diagnosis codes could have appeared in reports even while the Department was releasing reports under APRA. *See* Opening Br. 47. Yet there is no evidence that a single woman was ever identified.[2]

[2] For the first time on appeal, plaintiffs dispute the Department's longstanding practice of releasing reports under APRA. Resp. Br. 32 n.6. As the trial court stated, however, it is "true" that "TPRs were subject to APRA disclosure 'for decades'" and "it was 'common practice' for the Department to release TPRs." App. II 27. That statement finds further support in testimony about the Department's standard practices for handling APRA requests. *See* Tr. II 142:10–143:9 (Stover).

B. The Indiana Code makes clear individual terminated pregnancy reports are not "patient medical records and charts"

Although Bernard and Rouse do not have a likelihood of success even under their own theory of "medical records," state law shows that terminated pregnancy reports are distinct from "patient medical records and charts." Opening Br. 39–43. The law describes terminated pregnancy reports not as documents created for the benefit of patients or as documents that belong to patients. Rather, it explains the documents are "report[s]" submitted for public-health and oversight purposes submitted on a form "drafted by the . . . [D]epartment." Ind. Code § 16-34-2-5(a). In fact, multiple pieces of information abortion providers must report—such as an abortion's legal justification—are relevant only for those purposes. *See* Opening Br. 41–42.

Plaintiffs urge the Court to ignore how state law describes terminated pregnancy reports, saying only the Indiana Code's general definition of "medical record" matters. Resp. Br. 33. But courts cannot ignore "context." Ind. Code § 1-1-4-5(a); *see Schafer v. Sellersburg Town Council*, 714 N.E.2d 212, 218 (Ind. Ct. App. 1999), *trans. denied*. Here, context demonstrates both that "patient medical records and charts" refers to a specific type of document—health records concerning specific, identifiable patients—and that terminated pregnancy reports are a different type of document. Opening Br. 39–43. Plaintiffs further argue that treating reports as confidential would promote the statutory "purpose" of protecting "sensitive information." Resp. Br. 33. Protecting sensitive information is only one legislative purpose; other purposes include promoting government transparency, improving maternal health, and ensuring legal compliance. Ind. Code §§ 5-14-3-1, 16-34-2-5(a). Nor, by directing the

Department to ensure that "no identifying information" appears in public quarterly reports, Ind. Code § 16-34-2-5(e), did the legislature imply that individual terminated pregnancy reports cannot be subject to APRA requests, Resp. Br. 32. Rather, it just demonstrates that the Department acts consistently with the legislature's balancing of privacy and disclosure by releasing reports with any necessary redactions.

Even if plaintiffs were correct that only their preferred definition of "medical record" matters, they cannot show that terminated pregnancy reports are "medical records." Opening Br. 41–42. Plaintiffs assert the reports are medical records because they contain "diagnosis codes." Resp. Br. 31. But only one of the 31 pieces of statutorily required information relates to the woman's diagnosis, and when abortions are performed for reasons unrelated to the mother's health, no medical diagnosis will be made. Opening Br. 42. Similarly, though plaintiffs assert that abortion is a "treatment," Resp. 31, abortion does not alleviate illness or disease, AAPLOG, *Response to ACOG Fact Sheet* (Feb. 2019), https://perma.cc/C5N6-W8RA. That is particularly clear where abortion is performed for a lethal fetal anomaly, incest, or rape, which together account for most abortions in Indiana. Opening Br. 42; *see* Ind. Dep't of Health, Vital Records Div., *Annual Terminated Pregnancy Report – 2024*, at 14 (Apr. 2025), https://www.in.gov/health/vital-records/files/2024-Annual-ITOP-Report.pdf. Thus, even if one accepts plaintiffs' invitation to define "medical records" as information about a patient's "diagnosis, prognosis, or treatment," plaintiffs cannot show that every terminated pregnancy report they seek to block is a "medical record."

C. Federal law does not require reports to be withheld

Plaintiffs alternatively argue that APRA Section 4(a)(3) requires terminated pregnancy reports to be kept confidential because they are protected under HIPAA, a federal law. Resp. Br. 34. Plaintiffs did not develop that argument below, and there are multiple problems with it regardless.

APRA Section 4(a)(3) prohibits a public agency from disclosing public records "required to be kept confidential by federal law." Ind. Code § 5-14-3-4(a)(3). But no federal law requires the Department to keep terminated pregnancy reports confidential. As plaintiffs themselves admit, "HIPAA does not impose direct obligations on the Health Department." Resp. Br. 35. Plaintiffs argue that admitted limitation is irrelevant because APRA Section 4(a)(3) is "written in the passive voice." *Id.* That argument ignores that the entirety of Section 4 is a direction to "public agenc[ies]." Ind. Code § 5-14-3-4(a). Section 4 is not an abstract command to no one in particular. As that prefatory language establishes, Section 4(a)(3) is a direction to public agencies withhold records that federal law requires them to safeguard.

Plaintiffs' reading of the statute has no limiting principle. It would require agencies to ask whether federal law requires anyone anywhere in the nation to keep information confidential. And if so, plaintiffs' reading would prohibit state agencies from publicly releasing information even if federal law does not prohibit it. That outcome cannot be squared with Section 4's text or APRA's overriding objective of providing Indiana citizens with "full and complete information regarding the affairs of gov-

ernment." Ind. Code § 5-14-3-1. And plaintiffs' reading would turn targeted confidentiality directives in federal law—such as directives specific to private fiduciaries or federal employees—into a cudgel against state agencies and public transparency. No authority supports plaintiffs' reading.

In arguing that APRA Section 4(a)(3) applies, plaintiffs also wrongly assume that HIPAA forbids "healthcare providers" from sharing the "information in TPRs" with the Department. Resp. Br. 35. But Congress provided that "[n]othing" in HIPAA should be "construed" to "limit the authority, power, or procedures established under any law providing for . . . public health surveillance" or "public health investigation or intervention." 42 U.S.C. § 1320d-7(b); *see* 45 C.F.R. § 160.203(c) (disclaiming any preemption of state laws "provid[ing] for . . . public health surveillance, investigation, or intervention"). And HIPAA's Privacy Rule authorizes healthcare providers to "disclose protected health information" as "required by law" for the very purposes for which Indiana collects terminated pregnancy reports. 45 C.F.R. § 164.512(a)(1); *see, e.g.*, § 164.512(b)(1)(i), (b)(1)(ii), (c)(1), (d), (i) (outlining various purposes); § 160.203(c) (disclaiming preemption of state regulatory efforts). It is plaintiffs, not the Department, who seek an "end-run around HIPAA." Resp. Br. 36.

Finally, as plaintiffs themselves tacitly acknowledge, HIPAA authorizes the release of "[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual." 45 C.F.R. § 164.514(a). Under HIPAA's safe harbor, HIPAA does not recognize information as protected once certain information is removed.

§ 164.514(b). Plaintiffs admit that terminated pregnancy reports could qualify for that safe harbor if the Department redacted certain "'dates'" and a numeric identifier. Resp. Br. 35. The fact that those reports could so readily qualify for HIPAA's safe harbor undermines any argument that their release—even in redacted form—always threatens confidentiality.

D. At a minimum, the injunction is overbroad

If nothing else, plaintiffs' concessions demonstrate that the trial court overstepped in enjoining the release of *all* terminated pregnancy reports—regardless of what information they contain or how heavy the redactions. Opening Br. 46–47. Plaintiffs do not dispute that, if a public record contains *any* "disclosable . . . information," APRA requires a public agency to "separate the material that may be disclosed and make it available." Ind. Code § 5-14-3-6(a). Nor do plaintiffs dispute that the Department could comply with this command by redacting any nondisclosable information. *See Unincorporated Operating Div. of Ind. Newspapers, Inc. d/b/a The Indianapolis Star v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 908 (Ind. Ct. App. 2003), *trans. denied*.

Instead, plaintiffs try to change the subject by saying the Department's and Voices for Life's settlement agreement "prohibits" certain redactions. Resp. Br. 33–34. That objection lacks merit. For one thing, plaintiffs misconstrue the agreement. As the Department explained, the agreement allows it to redact "information [that] will expose a patient identity." Tr. II 145:16–146:4 (Stover); *see* Ex. I 9; pp. 11–12, *supra*. For another, injunctions must be tailored to the alleged violation. *See William*

J. Huff, 120 N.E.3d at 1036. If what violates APRA is the release of unredacted reports, the trial court should have done no more than enjoin the release of unredacted reports. Imposing a broader prohibition was improper.

IV. The Remaining Factors Cut Against Injunctive Relief

A. Disclosure does not irreparably harm plaintiffs

Bernard and Rouse did not meet their burden below of "demonstrat[ing] that certain and irreparable injury would result if the injunction were denied." *Schlehuser v. City of Seymour*, 674 N.E.2d 1009, 1012 (Ind. Ct. App. 1996). On appeal, they recite the "same harms" on which they rely for standing. Resp. Br. 36–37. But these harms are insufficient even to confer standing, *see* pp. 10–18, *supra*, and they come nowhere near showing "certain and irreparable injury." "The mere apprehensions or fears of a complainant" do not support an injunction. *Daugherty v. Allen*, 729 N.E.2d 228, 236 (Ind. Ct. App. 2000), *trans. dismissed*.

Plaintiffs seek to dilute the standard for a preliminary injunction, saying "injunctive relief will be granted if it is more practicable, efficient, or adequate." Resp. Br. 36 (citing *Barlow v. Sipes*, 744 N.E.2d 1 (Ind. Ct. App. 2001), *trans. denied*). Legally, however, a party must demonstrate "irreparable harm"—not merely that the party believes injunctive relief is desirable. *Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 162–63 (Ind. 2002); *see Ind. Pacers L.P. v. Leonard*, 436 N.E.2d 315, 318 (Ind. Ct. App. 1982). Plaintiffs did not show they would suffer irreparable harm from the Department fulfilling APRA requests—let alone from it doing so for reports they did not submit. No universal injunction was proper.

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

The trial court's injunction harms the Department, the State, and the public interest. Opening Br. 49–52. APRA promotes government transparency and public access to full "information regarding the affairs of government." Ind. Code § 5-14-3-1. Indeed, the Department has an affirmative "duty" to disclose public records, *id.*; § 5-14-3-3(b), and the Governor must ensure faithful execution of the laws, Ind. Const. art. V, §§ 1, 16. Because the injunction prevents the Department from fulfilling its statutory duties under APRA, it harms the State. And because it frustrates the public-health monitoring and reporting purposes of the TPR statute, it deprives the State and the public of proper oversight over abortion providers. This is a key public policy. Ind. Dep't of Health, *Enforcement of Indiana's Pro-Life Laws, EO 25-20 Report*, at 1 (July 1, 2025), https://perma.cc/X72Q-H8CT.

Plaintiffs argue that the State "will not be meaningfully harmed" by preventing the release of terminated pregnancy reports "for a few more months." Resp. Br. 37. But the "inability to enforce" the policy choices of the State's political branches "clearly inflicts irreparable harm." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *see CASA*, 2025 WL 1773631, at *15. Plaintiffs also observe that the Department "remains able to review the TPRs itself." Resp. Br. 37. But plaintiffs cannot deny there is harm to the State. As explained, the legislature designed a system of oversight under which *both* the public and the Department can submit complaints to the Attorney General based on information in terminated pregnancy reports. Opening Br. 50–51. Blocking public access to reports removes an important pillar of that design. As a

witness testified, the public has submitted all complaints about potential legal violations. Tr. II 132:18–24 (Osborne). By weakening oversight of abortion providers, the injunction irreparably harms the State and the public interest.

Plaintiffs argue there is also a "significant public interest in safeguarding personal health information from public disclosure." Resp. Br. 38–39. But a "private assertion of public interest will rarely justify enjoining State conduct." *Walgreen*, 769 N.E.2d at 162; *see Nken v. Holder*, 556 U.S. 418, 435 (2009). And this case does not implicate any interest in protecting private health information from public disclosure because the reports are anonymized. HIPAA, the very federal law that plaintiffs cite, does not forbid the disclosure of anonymized information. *See* pp. 29–30, *supra*. And APRA establishes there is a strong public interest in transparency. Ind. Code § 5-14-3-1; *see The Indianapolis Star*, 787 N.E.2d at 908.

In accepting plaintiffs' one-sided account of the public interest and relative harms, the trial court misapprehended the law. Its sweeping injunction prevents the Department from providing the public with access to anonymized yet vital information the public had been able to access for decades and frustrates legislative efforts to defend prenatal life. If abortion providers like Bernard and Rouse are unhappy with the balance the legislature struck, they can make their case to the legislature. But their policy preferences and speculation about "what ifs" provide the courts with no basis for enjoining the release of appropriately anonymized reports.

CONCLUSION

The Court should vacate the preliminary injunction.

Respectfully submitted,

THEODORE E. ROKITA
Attorney General of Indiana
Attorney No. 18857-49

By: /s/ James A. Barta
JAMES A. BARTA
Solicitor General
Attorney No. 31589-49

JENNA M. LORENCE
Deputy Solicitor General
Attorney No. 38641-49

KATELYN E. DOERING
Attorney No. 37523-32
JOHN M. VASTAG
Attorney No. 39056-53
Deputy Attorneys General

Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
Phone: (317) 232-0709
Fax: (317) 232-7979
Email: James.Barta@atg.in.gov

Counsel for Appellant Indiana State Health Commissioner

CERTIFICATE OF WORD COUNT

I verify that this brief contains 6,955 words.

/s/ James A. Barta
James A. Barta
Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2025, I electronically filed the foregoing document using the Indiana E-filing System ("IEFS"). I also certify that on July 11, 2025, the foregoing document was served upon the following persons using the IEFS:

Kathrine D. Jack
JACK LAW OFFICE LLC
One Courthouse Plaza
Greenfield, IN 46140
(317) 477-2300
kjack@jacklawoffice.com

Stephanie Toti
Juanluis Rodriguez
The Lawyering Project
41 Schermerhorn St., No. 1056
Brooklyn, NY 11201
(646) 490-1053
stoti@lawyeringproject.org
prodriguez@lawyeringproject.org

Tanya Pellegrini
The Lawyering Project
584 Castro Street, No. 2062
San Francisco, CA 94114
(646) 480-8973
tpellegrini@lawyeringproject.org

Benjamin D. Horvath
2307 Edison Road, Floor #3
South Bend, IN 46615
(574) 315-2920
bdhorvath@comcast.net

Patrick T. Gillen
The Thomas More Society
309 W. Washington, Ste 1250
Chicago, IL 60606
(312) 782-1680
pgillen@thomasmoresociety.org

Mark W. Sniderman
Sniderman Law
One Indiana Square, Ste 1550
Indianapolis, IN 46204
(317) 361-4700
mark@snidermanlaw.com

William R. Groth
911 E. 86th Street, Ste 201-M
Indianapolis, IN 46204
(317) 912-3220
wgroth@fdgtlaborlaw.com

Abbe David Lowell
Brenna Frey
Lowell & Associates, PLLC
1250 H Street, Ste 250
Washington, DC 20005
(202) 964-6110
alowellpublicoutreach@lowellandassociates.com
bfrey@lowellandassociates.com

Courtney E. Endwright
Betz + Blevins
One Indiana Square, Ste 1660
Indianapolis, IN 46204
(317) 687-2222
cendwright@betzadvocates.com

Laura Hecht-Felella
C.A. Goldberg PLLC
16 Court Street, 33rd Floor
Brooklyn, NY 11241
(646) 666-8909
laura@cagoldberglaw.com

Reply of Appellant
Indiana State Health Commissioner

Libby Yin Goodknight
Krieg DeVault LLP
One Indiana Square, Ste 2800
Indianapolis, IN 46204
(317) 636-4341
lgoodknight@kdlegal.com

/s/ James A. Barta
James A. Barta
Solicitor General

Office of the Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Telephone: (317) 232-0709
Fax: (317) 232-7979
Email: James.Barta@atg.in.gov