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IN THE
INDIANA SUPREME COURT

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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,

Trial Court Cas No.
49D13-2502-PL-006359,

The Honorable James A. Joven,
Judge.

PETITION TO TRANSFER

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QUESTIONS PRESENTED ON TRANSFER

1. Whether plaintiffs show the direct and imminent harm from release of Termination of Pregnancy Reports needed to invoke the judicial power?
2. Whether plaintiffs can state a claim for declaratory relief from release of Termination of Pregnancy Reports under Indiana's Access to Public Records Act?
3. Whether "Termination of Pregnancy Reports" are "patient medical records" exempt from disclosure under Indiana's Access to Public Records Act because they contain information derived from treatment of an unidentified patient?

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INTRODUCTION

To promote and protect the right to life, Indiana law requires doctors who terminate a pregnancy to file an anonymized Termination of Pregnancy Report (TPRs) with Indiana's Department of Health. Voices for Life (VFL) requests these reports under Indiana's Access to Public Records Act (APRA) and uses information from the reports to pursue its pro-life mission. Plaintiffs filed suit seeking declaratory and injunctive relief to prevent release of TPRs under APRA based on the concocted claim that they could be disciplined by the Medical Board if someone used information from a TPR they filed to identify a patient and disclose the patient's identity and treatment. The trial court exercised jurisdiction and declared that anonymized TPRs were "patient medical records" exempt from disclosure under APRA because they contain information "related to" treatment of a patient. And the Court of Appeals affirmed that decision.

Voices for Life (VFL) petitions this Court for review because the decision below disregards binding precedent and violates the separation of powers. Termination of Pregnancy reports are "reports" as indicated by the legislature, not a "patient medical record." This Court should grant review, correct the errors made below, and order that this manufactured case be dismissed.

BACKGROUND AND PRIOR TREATMENT OF THE ISSUES

Indiana law requires doctors to file Termination of Pregnancy Reports (TPRs) when they provide care that results in the termination of a pregnancy. Ind. Code § 16-34-2-5(a). The purpose of the TPR is to foster "improvement of maternal health and life," and "assure…abortions are done…only under…the law." Id. TPRs are anonymized; they do not disclose the name of the patient or other personally identifying information. Id. Doctors must file the TPR filed with the Indiana Department of Health (IDOH). Ind. Code § 16-34-2-5(b).

VFL is a non-profit organization that seeks to protect human life at all ages.[1] For years VFL has requested TPRs from IDOH because TPRs are "reports. . . received. . . by a public agency," see Ind. Code § 5-14-3-2(r), and therefore public records that VFL can obtain under APRA. See Ind. Code § 5-13-3-3(a). And for years the department released TPRs as required by APRA. Tr. II 142:17-18.

But the Commissioner stopped releasing TPRs in 2024 based on an informal opinion rendered by Indiana's Public Access Counselor (PAC). App. II 82-84; Tr. II 148:2-7. In that opinion, the PAC reasoned that TPRs should be treated as "patient medical records" exempt from disclosure under APRA because they contained information about treatment of a patient that was also contained in that patient's medical record, and someone might "reverse engineer" a TPR to identify a patient and disclose her treatment. App. II 82-84. VFL filed suit to secure release of the

[1] The trial court took judicial notice of VFL's prior suit to obtain access to TPRs under APRA. Jt. App. at 13 & n. 2. VFL's mission is described in that action (Complaint at para. 2).

TPRs under APRA. App. II 13. The Commissioner settled that suit, agreeing to release TPRs while reserving the right to make redactions. Id.; Tr. II 145:16-146:4

Plaintiffs are doctors who provide OB-Gyn care and sometimes terminate a patient's pregnancy, which requires filing of a TPR. App. II 33. Plaintiffs filed suit against the Commissioner and VFL seeking a declaration that TPRs are medical records exempt from disclosure under APRA. App. II 41. They sought declaratory relief based on their stated fear that they might be sanctioned by Indiana's Medical Board for violating patient privacy if they filed TPRs and somebody used information derived from a TPR to identify the patient and then disclosed the patient's identity and treatment. App. II 39-41. They sought a declaration that TPRs were "patient medical records" exempt from disclosure under APRA and an injunction preventing the Commissioner from releasing the reports. App. II 41.

The trial court held an evidentiary hearing. At that hearing the Plaintiffs produced no evidence that any person had ever engaged in "reverse engineering" by combining information from an anonymized TPR with information from extrinsic sources to identify a patient, let alone any evidence that anyone had done all this and gone so far as to disclose the patient's identity and treatment. And the Plaintiffs produced no evidence supporting their claim that the Medical Board would discipline them for performing their statutory duty to file TPRs based on a third party's wrongdoing.

Nevertheless, the trial court found the plaintiffs had standing and granted relief. It found standing based on two harms: (1) Bernard's loss of a patients who

sought care in another state for fear of "reverse engineering" and invasion of privacy (which the court thought could happen with other patients); and (2) it thought that release of TPRs "could have a chilling effect on the physician/patient relationship," because a patient "could be less likely to disclose certain medical information knowing that the physician must report such information and that the Department may publicly release that information." App. II 15. It found the plaintiffs has shown a reasonable likelihood of success on their request for declaratory relief because TPRs contained information "related to" the diagnosis, treatment, or prognosis of a specific (albeit unidentified) patient, and therefore, were properly classified as a "medical record" under Ind. Code § 1-4-5(a)(6), and a "patient medical record," exempt from disclosure under APRA. Ind. Code § 5-14-3-4(a)(9). App. II 21-22. It found the plaintiffs' harms were irreparable and entered a preliminary injunction to prevent them. App. II 23-24. It rejected arguments that the plaintiffs lacked standing and could not state a claim for declaratory relief. App. II 14-15.

The Defendants appealed and the Court of Appeals affirmed. It agreed that the plaintiffs established standing based on the harms identified by the trial court. Op. 15-16. It also thought that those harms were imminent because "[a]bsent a judicial determination that such information is nondisclosable, disclosure will occur," and "[w]hen it does, Doctors may suffer concrete injuries, including reputational harm, increased harassment, and erosion of public trust." Op. 17. And here, the court dredged up from the record Bernard's testimony that the FBI had contacted her several years ago about a threat that somebody was going to kidnap

her daughter to prevent Bernard from performing abortions, and her claim that she suffered reputational harm because VFL had made public comments suggesting that she might be skirting state law. Op. 17 & n. 7. The court found the Plaintiffs' stated fear that the Medical Board would discipline them if someone used information from a TPR the filed to identify a patient and invade her privacy was credible and also supported their standing. Op. 17-18. It endorsed the trial court's conclusion that TPRs were properly classified as "patient medical records," and agreed that the plaintiffs' harms were irreparable and justified preliminary injunctive relief. Op. 20-24.

VFL now seeks discretionary review from this Court to vindicate its right to secure release of TPRs under APRA. Review is appropriate at this stage because this petition presents questions of law that this Court can review and correct on the record before it.

ARGUMENT

Transfer is warranted. The decision below disregards this Court's standing doctrine and violates the separation of powers by using the plaintiffs manufactured case to decide a nonjusticiable claim. The decision below disregards this Court's precedent governing private rights of action and violates the separation of powers by using the Declaratory Judgement Act to protect the plaintiffs' interests, as doctors, based on a "patient medical record" exemption intended to protect the interests of patients (not doctors). The decision below disregards this Court's precedent governing statutory interpretation and violates the separation of powers

by ruling that anonymized TPRs are not "reports," as indicated by the legislature, but "patient medical records" exempt from disclosure under APRA.

I. The Decisions Below Disregards This Courts Standing Doctrine And Violates The Separation Of Powers By Using The Plaintiffs' Manufactured Case To Decide A Nonjusticiable Claim.

A party must establish standing to invoke judicial power. *Holcomb v. Bray*, 187 N.E.3d 1268, 1284-85 (IN 2022). As this Court has explained:

> Standing is a doctrine deriving from our constitutional separation of powers. Under our tripartite system of government, the judicial branch is limited to exercising the "judicial power" of resolving "real issues through vigorous litigation." To ensure courts resolve only "real issues" rather than engage in "academic debate or *mere abstract speculation,*" we require plaintiffs to show they have "standing" to present the contested issue and to invoke a court's adjudicative power. That means they must demonstrate… that they have suffered, or are in imminent danger of suffering, "a direct injury as a result of the complained-of conduct."

Members of the Medical Licensing Board of Indiana v. Planned Parenthood Great Northwest, et al., 211 N.E.3d 957, 965-966 (2023) (cleaned up) (emphasis added).

Standing cannot be established based on hypothetical or speculative injury. *See Morales v. Rust*, 228 N.E.3d 1025, 1053-1054 (IN 2024)(plaintiff lacked standing to challenge law requiring a candidate to be affiliated with a party in order to appear on that party's primary ballot because he did not identify a candidate for whom he was unable to vote because of the affiliation requirement.); *Solarize Indiana, Inc. v. Southern Indiana Gass and Electric Co.*, 182 N.E.3d 212, 218-220 (Ind. 2022)(plaintiff lacked standing to challenge regulatory approval of electricity rates charged by competitor because it could not show its projects would be adversely affected). And standing cannot be established based on harm caused by

the intervening acts of third parties. See, e.g., *Franciscan Alliance, Inc. v. City of Hammond*, 212 N.E.3d 1270, 1274-75 (Ind. App. 2023)(citing *Solarize*, *supra*, and holding that the city did not have standing to challenge a private hospital's closing because it pay more for ambulance service and lose prospective businesses moving to the city because "[t]he direct injury required for standing is an injury resulting directly from a particular cause, without any intervening causes" and the "[h]ospital's closure is not the direct cause of the City's feared harms.").

In this case, the Plaintiffs did not show that IDOH's release of TPRs under APRA creates a risk of an actual or imminent harm sufficient to support standing for several reasons. First, plaintiffs' harms are hypothetical and speculative, not actual or imminent. Plaintiffs say that they fear that someone might: (1) use APRA to obtain anonymized TPR that they filed from the IDOH; (2) combine information from the TPR with extrinsic information from other sources; (3) identify one of their patients based on the resulting collation of information; (4) decide to disclose the patient's identity and treatment; and (5) the Medical Board might sanctioned the plaintiffs for violating their patient's privacy as a result of wrongdoing by a third party. But this harm rests upon sheer speculation. There is no evidence that anyone has ever used a TPR for such wrongdoing. There is no evidence that the Medical Board would discipline a doctor for complying with the statutory duty to file TPRs based on wrongdoing by a third party of the kind described above.

Further, Plaintiffs' harms are not directly caused by IDOH's release of TPRS but result from the intervening acts of third parties. The disciplinary action they

fear would depend on the Medical Board's decision to sanction the plaintiffs for performing their statutory third partye a TPR because a third-party engaged in the wrongdoing described above. The same is true of threats made by unknown third parties, even assuming a TPR is involved. Similarly, any loss of patients or patient candor would result from the patient's decision to go elsewhere or withhold information. And because this harm would be caused by the plaintiffs' conjuring of chimerical fears that TPRs might be reverse engineered and used to invade their patients' privacy, it is a self-inflicted injury that cannot be used to establish standing. *Cf. Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 401 (2013)(holding plaintiffs decision to take costly and burdensome measures based on fear that might be surveilled could not be used to support standing because "respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of a hypothetical future harm that is certainly not impending."); *Murthy v. Missouri*, 603 U.S. 43, 69-74 (2024) (rejecting claim that Plaintiffs show any of the platform censorship they complained of was fairly traceable to the government, and therefore, the self-censorship was a self-inflicted injury that could not be used to support standing).

Finally, the Plaintiffs cannot establish standing based on VFL's access to TPRs or other unwanted publicity. VFL has a statutory right to review public records under APRA and a constitutional right to speak on matters of public concern. *See, e.g., Kay v. Irish Rover, Inc.*, 252 N.E.3d 437 (Ind. Ct. App. 2025)(noting "public participation is fundamental to self-government, and thus

protected by the Indiana and United States Constitutions."). Such harm is not directly caused by the IDOH's release of TPRs, but rather, by what third parties think and say about what the reports seem to show.

The decision below disregards this Court's standing precedent and violates the separation of powers by using the Plaintiffs manufactured case to decide their non-justiciable claim.

II. The Decision Below Defies This Court's Right-of-Action Precedents And Violates The Separation of Powers By Using The UDJA To Protect Plaintiffs' Interests Based On The Patient Medical Record Exemption.

As the Commissioner points out, APRA does not grant plaintiffs a private claim to prevent disclosure of public records, and this Court's precedent prohibits courts from creating a private right of action under these circumstances. App. II 14-15. Undeterred, the courts below used the Uniform Declaratory Judgement Act (UDJA) to protect the plaintiffs interest by declaring that TPRs are "patient medical records" exempt from disclosure under APRA.

This use of the UDJA usurps legislative power. As this Court has explained, the UDJA does not "provide an additional form of action" or "create new rights." *Bowser v. Tobin*, 18 N.E.2d 773, 775 (Ind. 1939). Rather, it authorizes courts to "declar[e] . . . rights" already "in existence." Id.

The decision below disregards binding precedent and violates the separation of powers by using the UDJA to protect plaintiffs' interests, as doctors, based on the patient medical record exemption intended to protect the privacy interest of patients (not doctors). The plaintiffs, as doctors, do not fall within the zone of

interest protected by the exemption and the patient medical record exemption does not protect the interests that the plaintiffs advance in this case.

The Supreme Court recognized that the zone of interest test is rooted in the separation of powers. *Shulze v. State*, 731 N.E.2d 1041, 1044-1045 (Ind. 2000). It does so by determining if plaintiffs "fall within the class of plaintiffs whom [the legislature] authorized to sue under the statute." *Lexmark Intern., Inc. v. Static Control Components, Inc.* 134 S.Ct. 1377 (U.S. 2014). The inquiry is necessary to ensure that "a court cannot apply its independent policy judgment to recognize a cause of action [the legislature] denied." *Id*. If a party's injury does not fall within the zone of interest protected by the statute in question, the claim advanced under the statutory provision should be dismissed. *City of Evansville on Behalf of Dep't of Redev. v. Reising*, 547 N.E.2d 1106, 1113 (Ind. Ct. App. 1989)(holding that the plaintiffs claim must be dismissed because his desire to retain his property was not within the zone of interest protected by the statute upon which he based his claim.).

To the same effect are decision recognizing that a party seeking declaratory relief must show the defendant's "actions infringe[] upon a legally protected interest." *Medical Licensing Bd. of Ind. v. Ind. State Chiropractors Ass'n Inc.*, 373 N.E.2d 1114, 1115 (Ind. Ct. App. 1978)(italics added)(finding plaintiffs could not state a claim for declaratory relief because "there has been no showing that the Board's actions infringed upon a legally protected interest possessed by the Association."); Sa*ve Our Schl. v. Fort Wayne Cmty. Schs.*, 951 N.E.2d 244, 248-249 (Ind. Ct. App. 2011)(rejecting request for declaratory relief from a school board's

decision to close certain schools based on the Education Clause of Indiana's Constitution because the plaintiff's claim "is not cognizable under the Education Clause…." These cases recognize that using the UDJA to recognize legal interests not protected by Indiana law "seek[] implicitly to engage [this Court] in making societal and …value judgments … [although courts] are neither equipped nor empowered to make such determinations." *Stetina v. State, ex. rel. Medical Licensing Bd. of Ind.*, 513 N.E.2d 1234, 1238 (Ind. Ct. App. 1987).

The decision below disregarded precedent when it used the UDJA to declare that TPRs are "patient medical records" to protect the plaintiffs' interests. APRA exempts from disclosure "Patient medical records and charts created by a provider, unless the patient gives written consent under Ind. Code § 16-39 or as provided under Ind. Code § 16-41-8." Ind. Code § 5-14-3-4(a)(9). The statutory language shows that the purpose of the exemption is to protect patient privacy, which also explains why patients can waive the protection provided by the exemption.[2] But the statutory text provides no indication that the patient medical records exemption is

[2] APRA provides that "patient medical records and charts created by a provider," may not be disclosed "unless the patient gives written consent under Ind. Code § 16-39 or as provided under Ind. Code § 41-8." Ind. Code § 5-14-3-4(a)(9). The relevant portion of Title 39 of the Indiana Code is Ind. Code § 16-39-4, permits "release of medical records concerning an individual," to "a person authorized in writing by the individual to receive the medical record," Ind. Code § 16-41-8-1(e)(2). Likewise, the relevant portion of Title 41 of the Indiana Code provides that "release may be made of medical. . . information with the written consent of "all individuals identified in the information released," Ind. Code § 16-41-8-1(b)(2). But such release is not possible for a TPR because it does not identify an individual patient.

designed to protect the interests that the plaintiffs, as doctors, seek to protect by this lawsuit, e.g., their desire for privacy from public scrutiny or comment, or their desire to treat patients scared off or chilled by conjured fears that a TPR might be used to perpetrate an invasion of their privacy.

The decision below defies precedent and violated the separation of powers by using the UDJA to protect the plaintiffs' interests based on the patient medical records exemption, intended to protect patients not doctors. The plaintiffs, as doctors, do not fall within the zone of interest protected by the exemption, and the harms they complain about do not involve invasion of a legal interest protected by the patient medical record exemption.

III. The Decision Below Disregards This Court's Precedent Governing Statutory Interpretation And Violates The Separation Of Powers By Ruling That TPRs Are Not "Reports," But "Patient Medical Records."

This Court has laid down the principles that govern statutory interpretation. The key principles applicable here are the following:

> The primary purpose in statutory interpretation is to ascertain and give effect to the legislature's intent. The statute itself is the best evidence of legislative intent, and we strive to give the words in the statute their plain and ordinary meaning." We construe statutes only where there is some ambiguity which requires construction. The plain meaning of the statute, if it has one, must be given effect.
>
> *State v. American Family Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008)

(cleaned up). When a court interprets a statute, it assumes that when "the legislature use[s] two different terms…it follows that the legislature used two different terms to mean two different things." *State v. Neukam*, 189 N.E.3d 152,

154 (Ind. 2022). The straightforward application of these principle shows that TPRs are "reports" as indicated by the statute creating the TPR requirement, not "medical records" or "patient medical records" as those terms are defined in other statutes.

The TPR statute (Indiana Code § 16-34-2-5) describes a TPR as a "report." And the statutory term "report" describes exactly what the TPR is: an anonymized report by a doctor about care provided to (an unidentified) patient that is submitted to IDOH so it can perform its statutory duty to "supervise the health of life of the citizens of Indiana…." Ind. Code § 16-19-3-1. VFL is entitled to review these reports under APRA because the definition of "public record" includes a "report…received by…a public agency…." Ind. Code § 5-14-3-2(r).

Although TPRs contain information derived from a doctor's treatment of a patient, the patient who received the treatment is not identified in the report, which contains anonymized data. Because the TPR does not identify the patient whose treatment provided the basis for the report, it is not a "medical record" within the meaning of Ind. Code § 1-1-4-5(a)(6), which defines "medical record" to mean "written or printed information possessed by a provider…concerning any diagnosis, treatment, or prognosis of the patient, unless otherwise defined." Because the TPR does not identify the patient whose treatment provided the basis for the report, it is not a "[p]atient medical records [or] charts created by a provider," that is exempt from disclosure under APRA "unless the patient gives written consent under Ind. Code § 16-39 or as provided under Ind. Code § 16-41-8." Ind. Code § 5-14-3-4(a)(9).

In fact, the Plaintiffs' argument implicitly concedes that TPRs are not patient medical records. The Plaintiffs whole case is based on a stated fear that a third party could combine the information contained in the anonymized TPR with additional information derived from other extrinsic sources, use the resulting collation of information to identify the patient whose treatment provided the basis completion of the TPR, and go on to invade that patient's privacy. Such machinations would be unnecessary if the TPR were a patient's medical record. One could pick up a TPR and identify the patient who had been treated. This cannot be done because the TPR does not identify the patient, and the TPR does not identify the patient because it is a report filed with a public agency, as indicated by the legislature, not a "patient medical record," as decided below.

The decision to reclassify TPRs as patient medical records rests on reasoning routinely rejected in other contexts. The PAC reasoned that TPRs should be treated as patient medical records because the reports contain information derived from treatment of a patient that was also contained in the patient's medical record. Using the PAC's logic, the Best Evidence Rule would bar witness testimony that described events perceived by the witness because those events that were also recorded in a document; but the rule does not bar such evidence. Using the PAC's logic, the attorney-client privilege would allow clients to avoid discovery of facts by disclosing those facts to their attorney; but the privilege does not prevent discovery of facts known to the client on that ground.

The decision below adopted this tendentious reasoning when it ruled that TPRs were "patient medical records" because the "relate to" treatment of a patient. The court's apparent disagreement "our legislature's onerous requirements for the content and submission of TPRs," Opn at 3, provides no ground for judicial revision of statutes under guise of interpretation. The decision below disregards this Court's precedent governing statutory interpretation and violates the separation of powers by disregarding statutory language to reclassifying TPRs as patient medical records exempt from disclosure under APRA. That egregious usurpation of legislative power strips VFL of its statutory rights to access those reports in contravention of the legislature's judgment that "[p]roviding persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials…." Ind. Code § 5-14-3-1.

CONCLUSION

This Court should grant review, correct the errors made below, and order the case to be dismissed. A decision to that effect will enforce the separation of powers and vindicate fundamental values embodied in Indiana law, the protection of human life and a commitment to democratic self-government.

Respectfully submitted, this 20th day of January 2026.

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CERTIFICATE OF WORD COUNT

I verify that this brief contains 3,988 words.

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CERTIFICATE OF SERVICE

I certify that on January 29th, 2026, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS), on which date the following parties were served electronically.

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