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IN THE
Indiana Supreme Court

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 Case No. 49D13-2502-PL-006359, The Honorable James A. Joven, Judge.

REPLY IN SUPPORT OF PETITION TO TRANSFER

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ARGUMENT

I. Plaintiffs Lack Standing

The response belies plaintiffs' assertion that the Court of Appeals "faithfully applied" standing's requirements. Resp. 9. Plaintiffs challenge *the Department's* disclosure of terminated pregnancy reports under APRA. App.II 41. But plaintiffs look everywhere else for injury—putative inconsistencies in "position[s] taken by the Attorney General's Office," "VFL['s]" allegedly "misleading assertions," and a third party's choice regarding providers. Resp. 10-12. Plaintiffs ignore that any injuries must directly result from the challenged disclosures. Pet. 13-15.

In guessing at how third parties might (or might not) respond to disclosures, plaintiffs dispute that reports are anonymized. Resp. 11-12. But plaintiffs cite no evidence that any report disclosed under APRA contained medical data so unique it permitted identification of patients or that disclosure of such a report is imminent. *See* Pet. 11-13; Voices Pet. 12. Instead, plaintiffs say that "could" happen. Resp. 7-8, 11. Standing, however, demands more than academically conceivable possibilities.

Evidence plaintiffs will personally and imminently face harm from any disclosures is absent too. Plaintiffs cite APRA's intervention provision, but that provision does not authorize affirmative litigation to prevent disclosure and cannot excuse standing's constitutional requirements. Comm'r Br. 25, 32-33. Generalized interests in avoiding legal "ambiguit[ies]" and putative "chill[s]," Resp. 10, are likewise insufficient. Plaintiffs do not explain how the complained-of conduct—the

disclosure itself—exposes them to any potential legal liability or otherwise gives concrete form to these abstractions. Pet. 13.

Finally, plaintiffs observe that reports note their "names and business addresses." Resp. 10-11. But plaintiffs, who publicly tout their work as abortion providers at IU Health, cite no authority establishing that retransmitting truthful, public information inflicts injury. Comm'r Reply 15-17.

II. Plaintiffs Lack Enforceable Rights

It is undisputed plaintiffs lack a private right of action to enforce APRA's nondisclosure provisions. Pet. 15-17. Plaintiffs argue that fact is irrelevant because Indiana's Declaratory Judgment Act is a "remedial" statute authorizing declarations of "rights." Resp. 13 (quoting Ind. Code §§ 34-14-1-1, 34-14-1-12). But it is precisely because the Act is only remedial that plaintiffs need a "cause of action under a separate statute." *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878 (9th Cir. 2022). Not all duties imposed on government constitute "rights." Pet. 16.

State and federal cases reinforce this principle. *Contra* Resp. 13. This Court holds the Declaratory Judgment Act does not "create new rights"—inexplicable if any statutory duty were enforceable through it. *Bowser v. Tobin*, 18 N.E.2d 773, 775 (Ind. 1939). The Court of Appeals has held that parties must show statutes "confer[] a private right of action," including where parties sought "declaratory and injunctive relief." *Serbon v. City of East Chicago*, 194 N.E.3d 84, 90, 96 (Ind. Ct. App. 2022). And at least seven federal appeals courts concur. *See City of Reno*, 52 F.4th at 878.

Plaintiffs argue they need no private right to obtain a preliminary injunction. Resp. 12. But plaintiffs cannot establish the threshold requirement for an injunction—likelihood of success—if they have no right to enforce the statute allegedly violated. *Lankford v. Sherman*, 451 F.3d 496, 507 (8th Cir. 2006); *see Shook Heavy & Envt'l Const. Grp. v. City of Kokomo*, 632 N.E.2d 355, 359 (Ind. 1994) (no injunction proper where legislature specifically withholds a "cause of action").

Embracing plaintiffs' position would allow private parties to circumvent legislative policies about statutory enforcement. Pet. 18-20. Plaintiffs do not deny their theory would allow *any* litigant to enforce *any* statute by invoking the Declaratory Judgment Act and requesting a preliminary injunction. That is reason enough to grant transfer.

III. Redacted Reports Are Not "Patient Medical Records"

Revealingly, plaintiffs do not defend the Court of Appeals's view that "patient medical records" encompasses all records mentioning diagnosis, treatment, or prognosis of specific patients, even if individual patient identities cannot be determined. Pet. 20-22. Plaintiffs seemingly concede that "truly anonymized data" are not patient medical records. Resp. 16 n.4. That speaks volumes about the problems with the Court of Appeals's analysis and consequences of it.

Plaintiffs dispute that terminated pregnancy reports are truly anonymized, saying a requirement to ensure quarterly summaries are anonymized implies individual reports are not. Resp. 16. At most, however, that requirement suggests that individual reports could contain identifying information. Neither the trial court

nor Court of Appeals held that *every* individual report contains sufficiently unique information to permit patient identification. They only said that "could" happen, Op. 15 (quoting App. II 15), without quantifying the probability.

Even if disclosing unredacted reports would violate APRA, plaintiffs do not explain why redactions—a standard method of separating disclosable and non-disclosable information, Pet. 22-23—would not address any lingering issues. Plaintiffs argue a settlement prevents redaction, Resp. 16-17, but that is wrong, Comm'r Reply 11-12. Regardless, their argument cannot sustain an injunction that blocks disclosure of *redacted* reports. Pet. 22-23.[1]

IV. Transfer Is Warranted

This case warrants transfer. Interlocutory or not, Resp. 17, this appeal presents important *legal* issues about what constitutes cognizable injury, who can enforce statutory duties, and what "patient medical records" means. At least one of the issues—whether parties can obtain preliminary injunctions despite lacking a private right of action, Pet. 17-20—likely cannot be reviewed after final judgment because it goes to judicial authority to award interim relief. Declining to grant

[1] Plaintiffs misapprehend HIPAA's significance. Resp. 12 & n.2. HIPAA does not govern the Department, and even for private providers, the safe-harbor provision is not the outer boundary of what they can share; it is a safe harbor against penalties. Comm'r Reply 28-30. Nor did the Commissioner misconstrue plaintiffs' brief: procedure dates are the only specific information plaintiffs identified that could prevent private providers from sharing reports under HIPAA. *Id.* at 29-30.

transfer will allow separation-of-powers violations to persist while leaving agencies and litigants without clear guidance.[2]

CONCLUSION

The Court should grant transfer and reverse.

Respectfully submitted,

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[2] As Senate Bill 236 (cited Resp. 17) failed to advance, it can no longer affect this case. *Bill targeting abortion pill manufacturers, distributors fails to pass House*, 21Alive News (Feb. 18, 2026), https://www.21alivenews.com/2026/02/18/bill-targeting-abortion-pill-manufacturers-distributors-fails-pass-house/.

WORD COUNT CERTIFICATE

As required by Indiana Appellate Rule 44, I verify that the foregoing document contains no more than 1,000 words.

/s/ James A. Barta
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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, I electronically filed the foregoing document using the Indiana E-filing System ("IEFS"). I also certify that on February 19, 2026, the foregoing document was served upon the following persons using the IEFS:

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