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

The Honorable James A. Joven,
Judge.

REPLY IN SUPPORT OF VFL'S 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

The Response of the Plaintiffs/Appellees' (Plaintiffs) shows that this case is nothing more than a clever effort to avoid the public scrutiny made possible by release of TPRs under APRA. This Court must reject the Plaintiffs' effort to enlist the judicial power in their effort to rewrite the TPR statute and the "patient medical record and chart" exemption of APRA in a way that protects their interests.

ARGUMENT

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.

The Plaintiffs' Response shows no valid basis for standing. They claim a patient sought care out of state rather than run the risk of reverse-engineering and invasion of privacy. But such subjective fears do not establish standing.[1] And Plaintiffs point to no law suggesting Indiana law confers upon patients a right to treatment free from state laws regulating the practice of medicine or release of public records; recognizing such an interest would undermine the sovereign power of the state to regulate the practice of medicine.[2]

The Plaintiffs cannot establish standing based on Bernard's wrongful disclosure of patient information in public because that harm is self-inflicted and has nothing to do with her statutory duty to file TPRS. Pet. 11-13.

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[1] *See Hulse v. Ind. State Fair Board*, 94 N.E.3d 726, 731 (Ind. Ct. App. 2018) ("allegations of subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.")).

[2] Cf. Medical Licensing Bd. of Ind. v. Ind. State Chiropractors Ass'n Inc., 373 N.E.2d 1114, 1115 (Ind. Ct. App. 1978) (association showed no cognizable legal interest based on regulation defining chiropractic practice to exclude certain treatments).

Plaintiffs cannot use APRA's intervention provision to circumvent the constitutional requirements of standing because "the legislature cannot expand…beyond constitutional limits the class of persons who possess standing." *See*, *Solarize Ind., Inc. v. Southern Ind. Gas and Elec. Co.*, 182 N.E.3d 212, 216 n.2 (Ind. 2022)(noting "the legislature cannot expand…beyond constitutional limits the class of persons who possess standing."). And the declaratory judgment act requires that the Plaintiffs to establish standing to secure declaratory relief. *See*, *Adams v. Hamilton County*, 225 N.E.3d 498, 504 (Ind. 2025)(noting that the Declaratory Judgment Act "does not open the courts to resolving theoretical cases; it still requires a justiciable controversy or question.").

II. The Decision Below Violates The Separation of Powers By Using The UDJA To Protect Plaintiffs' Interests Based On The Patient Medical Record Exemption Intended to Protect Patients—Not Doctors.

The Plaintiffs provide no response to VFL's showing that they show not valid basis for declaratory relief, and further, that allowing them to use the APRA exemption for patient medical records and charts," which is designed to protect patient privacy interests, to protect their interests, as doctors, would violate the separation of powers. Pet. 14-17. Because there is none.

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."

The Plaintiffs' reference to patient medical records consistently fails to acknowledge that the statutory language requires links the information in the record to "the patient." Resp. 10-11. No amount of equivocation can transform the

report that the doctor files with IDOH about treatment rendered to an unidentified patient into the patient medical record that the doctor keeps in her possession.

The statutory requirement that the doctor keep the TPR in the "pregnant women's patient file," Resp 10, citing Ind. Code. §16-34-2.5.1, shows that the TPR filed with the IDOH is *not* the patient's medical record, which contains *a copy* of the TPR.

The Plaintiffs' attention to the detailed information that must be *included* in the TPR, see Resp. at 10, obscures the salient feature of the TPR, i.e. the information that the legislature deliberately *excluded* from the report, i.e., the patient's name and other personally identifying information.

Section (e)'s requirement that quarterly public reports be anonymized does not imply that individual TPRs, which are also (anonymized) reports, see Pet. 7, are patient medical records or charts. Subsection (a), anonymizes individual TPRs by operation of its terms, as noted above. Subsection (e) applies the anonymization requirement to the quarterly reports (which contain aggregate data). The two sections work together to ensure anonymization of both the individual and quarterly reports.

IV. Plaintiffs Cannot Avoid Review Based On Speculation About Legislation.

The Plaintiffs cannot avoid an actual decision misinterpreting existing legislation based on speculation about possible legislation. The bill contains no reference to the TPR requirement created by Ind. Stat. 16-34-5-2 so far as counsel

can tell. Whatever the case, the results of the legislative process are uncertain. And the legislature will not need to pass legislation to achieve the result already required by the plain language of the statute if this Court corrects the erroneous—and lawless—decision below.

CONCLUSION

As VFL has explained, the courts below addressed important questions of Indiana law and decided those questions incorrectly. The petition should be granted. The decision below should be reversed. And this Court should remand the case with directions that it be dismissed because the Plaintiffs fail to state a claim upon which relief may be granted by the judicial branch.[3]

[3] *See*, *Hoosier Contractors, LLC v. Gardner*, 212 N.E.3d 1234 (IN 2023)(noting motions to dismiss for lack of standing may be brought under Trial Rule 12(B)(6) for failure to state a claim upon which relief may be granted). VFL believes the Plaintiffs lack standing. Even if one assumes that the Plaintiffs have standing dismissal for failure to state a claim is still required because the "patient medical record and charts" exemption from APRA does not confer a legally protected interest or right on them, and therefore, they cannot state a claim for declaratory relief. In addition, TPRs are reports not "patient medical records and charts" exempt from disclosure under APRA.

Respectfully submitted, this 19th day of February 2026.

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CERTIFICATE OF WORD COUNT

I verify that this brief contains 990 words.

/s/ **Benjamin D. Horvath**

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CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

I certify that on February 19th, 2026 I electronically filed the foregoing document using the Indiana E-Filing System (IEFS), on which date the following parties were served.

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