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In the
Indiana Supreme Court

Case No. 26S-PL-128

THE INDIVIDUAL MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, in their official capacities, et al., **Appellants,** **v.** **ANONYMOUS PLAINTIFF 1, et al.,** **Appellees.**	**Appeal from Final Judgment from the Marion Superior Court** **Trial Court Case No. 49D01-2209-PL-031056** **The Honorable Christina R. Klineman, Judge**

BRIEF OF IOWA AND THE IOWA ATTORNEY GENERAL AND 18 OTHER STATES AND THEIR ATTORNEYS GENERAL AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

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INTEREST OF AMICUS CURIAE

Amici are the State of Iowa and 18 other States, represented by their Attorneys General.[1]

Amici have a sovereign interest in state courts properly interpreting state Religious Freedom Restoration Acts ("RFRA"). Many States have enacted such statutes. Those statutes protect religious exercise. But they do so through a defined legal test. They do not task courts with revising state laws in the abstract.

Indiana's RFRA is framed in as-applied terms—terms that inure protections to an individual. It bars a governmental entity from substantially burdening "a person's exercise of religion." Ind. Code § 34-13-9-8(a). It then asks whether "application of the burden to the person" furthers a compelling governmental interest and is the least restrictive means. *Id.* § 34-13-9-8(b). The relief section uses the same language. Relief is available only if "*the* person's exercise of religion has been substantially burdened, or is likely to be substantially burdened." Ind. Code § 34-13-9-10(a) (emphasis added).

That text matters. The relief does not authorize facial relief or another way to challenge an otherwise lawful generally applicable law. Instead, it asks whether applying a law to a particular person imposes a substantial burden on that person's religious exercise. That is an as-applied inquiry.

Amici also have a shared interest in preserving state authority to regulate medicine and protect unborn life. Indiana's law reflects a detailed legislative scheme.

[1] A list of *amici is* attached as **Appendix A**.

The trial court's order identifies exceptions for lethal fetal anomaly, rape or incest, as well as procedures necessary to prevent serious health risk or save the pregnant woman's life. The State's laws protecting life are core matters of state police power. They should not be displaced through speculative claims and indeterminate injunctions.

SUMMARY OF ARGUMENT

The decision below should be reversed. Plaintiffs have alleged only speculative and hypothetical future injuries that fail to establish the concrete and imminent injury-in-fact required under Indiana law. No Plaintiff is pregnant, none has sought an abortion prohibited by Indiana law, none has been denied an abortion and then appealed for religious reasons, and Plaintiffs' claimed burdens consist entirely of self-imposed behavioral changes based on anticipated future contingencies. Indiana standing doctrine, rooted in separation of powers, demands a personal, direct injury that the plaintiff has suffered or is in imminent danger of suffering. *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995); *Holcomb v. Bray*, 187 N.E.3d 1268, 1286 (Ind. 2022); *Horner v. Curry*, 125 N.E.3d 584, 589–90 (Ind. 2019). Permitting standing here will convert courts into forums for advisory opinions.

Even if standing existed, Plaintiffs fail to state a viable claim under Indiana's RFRA for the relief they seek. RFRA is expressly person-specific and requires individualized, fact-intensive analysis of whether "the person's exercise of religion has been substantially burdened" by a particular application of law. Ind. Code §§ 34-13-9-8, -10. It does not authorize courts to grant overbroad, class-wide, or prospective injunctions that effectively rewrite the State's abortion statutes.

The trial court's injunction—which bars enforcement "to the extent that" prohibiting abortions would substantially burden class members' religious exercise—is vague, indeterminate, and exceeds RFRA's narrow remedial scope. Such relief inverts the statutory framework, creates an unworkable exemption regime, and risks transforming RFRA into a general abortion carve-out untethered from concrete facts.

ARGUMENT

I. PLAINTIFFS LACK STANDING BECAUSE THEIR ALLEGED INJURIES ARE SPECULATIVE AND HYPOTHETICAL.

A. Established Jurisprudence Requires Concrete and Imminent Harm.

Standing limits judicial power. As the Indiana Supreme Court has held, "fundamentally, standing is a restraint upon this Court's exercise of its jurisdiction in that we cannot proceed where there is no demonstrable injury to the complainant before us." *Pence v. State*, 652 N.E.2d at 488. "That a particular statute is invalid is almost never a sufficient rationale for judicial intervention; the party challenging the law must show adequate injury or the immediate danger of sustaining some injury." *Id.* (internal quotation omitted). Standing ensures courts resolve "real issues through vigorous litigation," not "academic debate or mere abstract speculation." *Horner*, 125 N.E.3d at 589–90.

Indiana standing flows from the separation-of-powers clause in Article 3, Section 1. *Pence*, 652 N.E.2d at 488. A plaintiff must show "a sufficient injury [that]… must be personal, direct, and one the plaintiff has suffered or is in imminent danger of suffering." *Holcomb*, 187 N.E.3d at 1286; *Individual Members of the Med. Licensing*

Bd. of Ind. v. Anonymous Plaintiff 1, 233 N.E.3d 416, 432 (Ind. Ct. App. 2024), *trans. denied*, 246 N.E.3d 271 (Ind. 2024).

Disregarding standing leads to "an overjudicialization of the processes of self-governance." Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 27 Suffolk U. L. Rev. 825, 881 (1983). Indiana recognizes a narrow public standing doctrine for enforcement of public rights or duties. *State ex rel. Cittadine v. Indiana Dep't of Transp.*, 790 N.E.2d 978, 980 (Ind. 2003) ("[W]hen a case involves enforcement of a public rather than a private right the plaintiff need not have a special interest in the matter") quoting *Schloss v. City of Indianapolis*, 553 N.E. 2d 1204, 1206 n.3 (Ind. 1990). That doctrine does not apply here. This is a private RFRA action seeking individualized religious exemptions from a generally applicable law regulating medicine. It requires a concrete, personal injury. *See City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022); *Solarize Indiana, Inc. v. Southern Indiana Gas and Elec. Co.*, 182 N.E.3d 212, 217 (Ind. 2022)).

Intertwined with the standing inquiry are concerns with ripeness. Ripeness serves the same core function as standing and mootness. *See Horner*, 125 N.E.3d at 587 ("The purpose of standing—along with the corollary doctrines of mootness and ripeness—is to ensure the resolution of real issues through vigorous litigation, not to engage in academic debate or mere abstract speculation."). It prevents courts from addressing claims that depend on uncertain future events that may never occur. *See Seo v. State*, 148 N.E.3d 952, 970 (ripeness asks whether a claim has sufficiently matured into a concrete controversy rather than remaining hypothetical).

A foundational principle of the judicial role is that courts do not issue advisory opinions. Instead, they decide only actual disputes grounded in specific facts, not abstract or hypothetical questions. *See Snyder v. King*, 958 N.E.2d 764, 786 (Ind. 2011); *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347–48 ("The court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation."). That limitation has defined the American judiciary since its earliest days. *See* Paul M. Bator *et al.*, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 65–67 (3d ed. 1988) (describing the Justices' 1793 refusal to provide advisory opinions to President Washington to preserve separation of powers).

Requiring disputes to be concrete and developed through adversarial litigation promotes appropriate respect for the roles of the political branches. As this Court has explained, that approach "accords the deference due to 'the judgment of other repositories of constitutional power concerning the scope of their authority.'" *Citizens Nat'l Bank v. Foster*, 668 N.E.2d 1236, 1241 (Ind. 1996) (quotation omitted). That approach is enforced through justiciability doctrines such as standing and mootness. *See, e.g.*, *Pence*, 652 N.E.2d at 488 (standing requires a real case rather than abstract speculation); *Indiana Bureau of Motor Vehicles v. Zimmerman*, 476 N.E.2d 114, 118 (Ind. 1985) (courts should not decide issues absent a live controversy because such rulings would be advisory).

The Court of Appeals here recognized the same requirement, emphasizing that justiciability depends on "actual facts, not abstract possibilities." *Anonymous*

Plaintiff 1, 233 N.E.3d at 436. The need for concreteness is especially important in RFRA cases, which are determined by a given case's facts. Courts must evaluate the sincerity of a claimant's religious beliefs, determine whether a law substantially burdens that claimant's beliefs, and, if so, assess whether the government satisfies strict scrutiny. *See* Ind. Code §§ 34-13-9-8, 34-13-9-10. Without concrete facts—here, that could include: an actual pregnancy, a request for a prohibited abortion, and a claimant's medical and religious circumstances—courts cannot reliably perform this analysis. Deciding such issues in the abstract risks error and produces rulings disconnected from any actual legal violation.

Federal authority is consistent. Ripeness doctrine avoids "abstract disagreements over administrative policies" and premature judicial intervention before the effects of the law have been felt in a "concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967). Deferring review until enforcement allows for fuller factual development, sharper legal analysis, and more accurate balancing of competing interests.

B. Plaintiffs Fail to Demonstrate Imminent Injury.

Plaintiffs' claims rest on a chain of future possibilities. This Court need look no further than the record. No plaintiff is pregnant. No plaintiff has sought an abortion prohibited by Indiana law for religious reasons. *See Anonymous Plaintiff 1*, 233 N.E.3d at 438–42.

For example, Anonymous Plaintiff 1 "would like to attempt to have another child" but fears future health risks and believes her faith would require termination if her health were endangered. *Id.* Anonymous Plaintiff 2 is "not affiliated with any

religious organization" and has "significant anxiety" about an unintended pregnancy. *Id.* at 429. Anonymous Plaintiffs 4 and 5 are a "same-sex married couple" who considered pregnancy but now contend they are not doing so "due to the unavailability of a pregnancy termination." *Id.* at 430. Hoosier Jews for Choice has some members "capable of becoming pregnant." *Id.*

No Plaintiffs' present burdens related to intimacy or current non-pregnant status is caused by current enforcement of the law. They are self-imposed behavioral changes based on anticipated future contingencies. A sincere belief about what one *might* do in a possible future pregnancy is not the same as a present, concrete burden on religious exercise. RFRA cannot be applied in the abstract. The statute requires a court to determine whether "*the person's* exercise of religion has been substantially burdened" and whether the government has justified "application of the burden to *the person*." Ind. Code §§ 34-13-9-8(a)–(b), 34-13-9-10(a) (emphasis added). Speculative future scenarios do not satisfy standing. *Pence*, 652 N.E.2d at 488.

C. Permitting Standing Here Sets a Dangerous Precedent.

Plaintiffs' standing theory has no logical limit. Any state law could be challenged simply by alleging a hypothetical future scenario in which compliance might conflict with religious belief. But that generalized concern about generally applicable laws is not enough for any plaintiff's standing. *Horner*, 125 N.E.3d at 589–90.

Broad pre-enforcement review without concrete facts impedes the inherent truth-seeking function of courts and the adversarial process. When courts decide cases based on abstract hypotheticals rather than real-world applications, they lack

the benefit of developed facts, tested evidence, and vigorous adversarial presentation from both sides. That leads to decisions that are more likely to be wrong or unworkable when later applied to actual conduct. As one analysis notes, pre-enforcement review "involves adjudication of abstract disputes without a concrete set of facts," so "courts are less likely to reach correct decisions." Daniel Boger, *Pre-Enforcement Review: An Evaluation from the Perspective of Ripeness*, 36 Va. Envtl. L.J. 77, 80 (2017). Later enforcement proceedings allow fuller factual development and sharper legal analysis.

Class mechanisms exacerbate the problem. They exploit uncertainty about the "putative RFRA exempted set"—the potentially vast group of others who would likely qualify for the same exemption if one claimant prevails. Marcia L. McCormick & Sachin S. Pandya, *The Braidwood Exploit: On the RFRA Declaratory Judgment Class Action and Title VII Employer Liability*, 58 U. Rich. L. Rev. 413, 432 (2024). Plaintiffs can seek a declaratory judgment on behalf of a single RFRA claimant while simultaneously representing a large class. If the claimant wins on the merits, the judgment binds the entire class, effectively granting sweeping relief far beyond the individual facts presented.

That creates ambiguity in the compelling-interest analysis: the court may evaluate the exemption as if it applies only to the named plaintiffs, yet the real exempted set is much larger. The approach "tends to accomplish precisely the kind of result that the Court sought to avoid by declaring that, in general, the federal government is not subject to non-mutual collateral estoppel." *Id.* at 448; *see Trump v.*

CASA, Inc., 606 U.S. 831, 849–50 (2025). Here, the trial court's class-wide injunction converts a statute designed for targeted, as-applied relief into a prospective exemption regime for an undefined group based on hypothetical future claims.

In the context of unborn life, these risks are acute. Regulations intended to protect children and mothers rest on secular grounds, including the State's compelling interest in protecting actual or potential human life. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 301 (2022). When courts grant pre-enforcement, class-wide relief based on speculative future pregnancies and religious assertions, they short-circuit the fact-specific balancing that should have been required. *See CASA*, 606 U.S. at 849 (rejecting "a shortcut to relief that benefits parties and nonparties alike"). The result is not a careful accommodation of sincere belief, but a broad judicial override of legislative policy choices on a profoundly contested issue. That destabilizes the State's vital interest in asserting its own police powers over matters of health and safety.

As *Amici* States understand well, defining the contours of public health, medical standards, and the protection of unborn life is a core exercise of a State's sovereign police power. Permitting a preemptive, class-wide RFRA injunction to override those deliberate legislative choices drafts a dangerous blueprint to erode the regulatory authority of other States. If Plaintiffs' theory prevails, sister states face the risk that their own carefully balanced public health statutes will be destabilized by creative litigation strategies seeking to nullify state sovereignty through the guise of indeterminate, prospective religious exemptions.

The Court should not open this door. Standing and ripeness exist to prevent exactly this kind of unbounded, advisory litigation.

II. PLAINTIFFS LACK A VALID CLAIM UNDER RFRA FOR THE RELIEF SOUGHT.

A. RFRA Requires an Individualized Inquiry and Does Not Permit Facial Injunctions.

Indiana RFRA is written in person-specific terms. A governmental entity may not "substantially burden a *person's* exercise of religion" unless the burden is justified as applied to "*the person*." Ind. Code § 34-13-9-8(a)–(b) (emphasis added). Relief is available only if the court finds that "*the person's* exercise of religion has been substantially burdened" and the government failed to justify the burden as to "*the person*." *Id.* § 34-13-9-10(a) (emphasis added).

The Court of Appeals recognized that framework. A RFRA claimant must show the action "substantially burdens *the party's* sincerely held religious belief." *Anonymous Plaintiff 1*, 233 N.E.3d at 448. Federal precedent confirms the individualized approach. *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430–32 (2006) (requiring "focused inquiry" into the claimant whose sincere exercise of religion is being substantially burdened); *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–35 (2021) (applying strict scrutiny to a specific claimant's request for exemption); *House of Prayer Ministries v. Rush Cty. Bd. of Zoning Appeals*, 91 N.E.3d 1053 (Ind. Ct. App. 2018) (applying RFRA through concrete, fact-specific analysis). The trial court's class-wide injunction ignores that statutory structure.

B. The Trial Court's Injunction Is Overbroad and Indeterminate.

The injunction below does not resolve any specific burden on religious exercise. Instead, it bars enforcement against the certified class "to the extent that prohibiting them from receiving abortions would substantially burden their religious exercise." *See* Order on Cross-Motions for Summary Judgment at 16–17. That language does not identify any particular plaintiff, any particular pregnancy, any particular medical circumstance, or any particular application of Indiana law. It simply restates the RFRA test and applies it prospectively to unknown future situations. The operative injunction's formulation is both overbroad and indeterminate.

First, obey-the-law injunctions, like the one here, are improper. The injunction here fails to provide the specificity required of any injunction. Indiana Trial Rule 65(D) mandates that every injunction "shall be specific in terms" and "shall describe in reasonable detail . . . the act or acts sought to be restrained." A vague "to the extent" command does not tell physicians, prosecutors, or licensing boards what conduct is prohibited. A doctor performing an abortion cannot know whether the procedure falls inside or outside the injunction. A prosecutor cannot know whether enforcement is barred. A licensing board cannot know whether discipline is permitted. The State is left with no administrable rule beyond "do not violate RFRA in the future." That is not a remedy. It is a restatement of the legal standard itself.

An illustrative example is the Seventh Circuit's vacatur of a permanent injunction that required the defendant "to obey the law." *Securities and Exch. Comm'n v. Goulding*, 40 F.4th 558, 562 (7th Cir. 2022). "Instead of repeating the statutory language, the judge could and should have forbidden with greater

specificity what [the defendant] must not do." *Id.* The Seventh Circuit's approach reflects Indiana Trial Rule 65(D)'s wisdom in requiring more than generalized concerns when injunctions issue. Especially so when, as here, there is a purported conflict between state laws.

Second, any injunction under RFRA must color within RFRA's lines. The statute permits only "appropriate relief" that corresponds to a proven violation as to "the person" whose religious exercise has been substantially burdened. Ind. Code § 34-13-9-10(a)–(b). RFRA is structured around individualized, as-applied relief. It requires a court to find that a specific person's sincere religious exercise has been (or is likely to be) substantially burdened by a specific application of law.

But the injunction here exceeds the narrow relief RFRA authorizes, flipping RFRA's structure. It grants class-wide, forward-looking immunity based on hypothetical future pregnancies and speculative religious claims. It creates precisely the uncertainty scholars have identified in RFRA class litigation.

Such strategies exploit ambiguity in the "putative RFRA exempted set"—the potentially large group of people who would qualify for the exemption if one claimant succeeds. Marcia L. McCormick & Sachin S. Pandya, *The Braidwood Exploit: On the RFRA Declaratory Judgment Class Action and Title VII Employer Liability*, 58 U. Rich. L. Rev. 413, 444 (2024). By certifying a class and issuing prospective relief, the court effectively grants sweeping exemptions far beyond any concrete facts presented.

The compelling-interest analysis becomes distorted: the court evaluates the burden as if it applies only to the named plaintiffs, yet the real exempted set is much

broader and undefined. That approach "tends to accomplish precisely the kind of result that the Court sought to avoid" by allowing non-mutual, sweeping relief without proper tailoring. *Id.* at 448.

The result is a remedy that is neither "appropriate" under RFRA nor constitutional under separation-of-powers principles. It does not redress a proven violation. It rewrites the statute by judicially adding an open-ended religious exception that the legislature never enacted.

C. Plaintiffs' Theory Converts RFRA into a General Abortion Exemption.

RFRA is a shield against specific, proven burdens on religious exercise. It is not a vehicle for creating new substantive rights or restructuring statutory schemes. *See* Ind. Code §§ 34-13-9-8, -10. By its terms, the statute operates only when a court identifies a particular person, a particular religious exercise, and a particular application of law that substantially burdens that exercise.

Plaintiffs abandon each of those limits. They do not identify any specific abortion that has been denied. They point to no instance in which Indiana law has been applied to them—or may be imminently applied to them. Instead, they ask the Court to assume that future abortions—under unknown medical, factual, and religious circumstances—will qualify as protected religious exercise, and to enjoin enforcement in advance. That theory transforms RFRA in two fundamental ways.

First, it replaces case-specific adjudication with a categorical presumption. Under RFRA, the claimant bears the burden of proving that a concrete application of law "substantially burdens" her religious exercise. Ind. Code § 34-13-9-8(a). Plaintiffs

invert that framework. They treat hypothetical future abortions as presumptively protected and shift the burden to the State to justify enforcement in the abstract. RFRA does not work that way. It requires proof of a burden before relief is granted—not speculation about what burdens might arise in future, factually distinct scenarios.

Second, Plaintiffs' theory replaces as-applied relief with class-wide prospective immunity from a generally applicable law protecting unborn life. The injunction bars enforcement against the class "to the extent that preventing them from receiving abortions would substantially burden their religious exercise." *See* Order on Cross-Motions for Summary Judgment at 16–17. That vague formulation does not resolve any concrete dispute. It creates an ongoing and open-ended exemption regime that governs future conduct by unidentified class members under undefined circumstances.

In practical effect, the injunction adds a new, open-ended religious exception to Indiana's abortion statute—one the Legislature never enacted. The General Assembly created discrete and carefully defined exceptions. *See* Ind. Code § 16-34-2-1. The order below adds another: an undefined religious-exercise carve-out. It specifies no criteria for what qualifies as a religiously required abortion. It provides no process to assess sincerity. It sets no standards for determining a "substantial burden" in a medical context. It offers no mechanism for deciding who makes those determinations in real time.

Those omissions flow directly from granting relief without a concrete case. RFRA's standards—sincerity, substantial burden, and least restrictive means—are inherently fact-bound. When courts grant relief in the abstract, those standards cannot be applied. They are effectively replaced with a blanket exemption.

RFRA does not task courts with drafting extra exceptions to generally applicable statutes. Courts must evaluate the application of the law to a specific claimant. *Gonzales*, 546 U.S. at 430–31. They may grant only "appropriate relief" tied to a proven violation. Ind. Code § 34-13-9-10(b). And both the district court and Court of Appeals failed to do that here.

Broad, abstract exemptions risk destabilizing Indiana's careful and hard-fought attempt to enact laws protecting unborn life. Consider the practical consequence: a woman presents at a clinic requesting an abortion at 12 weeks because she believes continuing the pregnancy conflicts with her sincere religious views on bodily autonomy and family planning. Under the injunction, the doctor must decide whether enforcement is barred—and bears the risk if she errs. The State must decide whether to prosecute. No neutral decision-maker has evaluated the sincerity of the belief, the substantiality of the burden in this specific medical context, or whether the State's interest in protecting the unborn child justifies enforcement. The injunction forces these decisions into a legal gray zone, effectively nullifying the statute's core prohibitions whenever a religious claim is asserted.

Unclear religious-exemption doctrine can lead to a flood of cases inundating courthouses with nonviable religious liberty claims. Once courts begin granting

prospective, class-wide carve-outs based on hypothetical future conflicts, the exception threatens to swallow the rule. Every generally applicable law becomes vulnerable to preemptive RFRA challenges by anonymous plaintiffs asserting possible future burdens.

RFRA does not permit courts to create open-ended, prospective immunity untethered to any proven burden. Plaintiffs' theory would do exactly that. It should be rejected.

CONCLUSION

For the above reasons, *Amici* respectfully urge this Court to reverse the lower court's judgment and direct that Plaintiffs' claims be dismissed for lack of standing and failure to state a claim under RFRA.

Respectfully Submitted,

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WORD COUNT CERTIFICATE

As required by Indiana Appellate Rule 44, I verify that the foregoing document contains no more than 7,000 words.

/s/ William Bock III
William Bock III

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2026, I electronically filed the foregoing document using the Indiana E-filing System ("IEFS").

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ATTACHMENT A