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Monroe Circuit Court 6
Monroe County, Indiana

STATE OF INDIANA	)	MONROE COUNTY CIRCUIT COURT
	) SS:	
MONROE COUNTY	)	CAUSE NO. 53C06-2208-PL-001756

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY, INC.; WOMEN'S MED GROUP PROFESSIONAL CORPORATION; and ALL-OPTIONS, INC. on behalf of themselves, their staff, physicians, and patients; and AMY CALDWELL, M.D., on her own behalf and on behalf of her patients,

Plaintiffs,

v.

MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, in their official capacities; and the HENDRICKS COUNTY PROSECUTOR, LAKE COUNTY PROSECUTOR, MARION COUNTY PROSECUTOR, MONROE COUNTY PROSECUTOR, TIPPECANOE COUNTY PROSECUTOR, and the WARRICK COUNTY PROSECUTOR, in their official capacities,

Defendants.

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky ("PPGNHAIK"), Women's Med Group Professional Corporation ("Women's Med"), Dr. Amy Caldwell (collectively, the "Provider Plaintiffs") and All-Options, Inc. ("All-Options")

(collectively, "Plaintiffs") bring this amended complaint against the Members of the Medical Licensing Board of Indiana, in their official capacities, and Prosecutors of Hendricks County, Lake County, Marion County, Monroe County, Tippecanoe County, and Warrick County (the "County Prosecutors"), in their official capacities, (collectively, "Defendants") and in support thereof, state the following:

EXECUTIVE SUMMARY

1. This is an action for declaratory and injunctive relief against Defendants seeking relief from Senate Enrolled Act No. 1 ("S.B. 1"), enacted by the General Assembly and signed into law by Governor Eric Holcomb on August 5, 2022. On August 29, 2022, Plaintiffs filed a complaint in the instant action seeking enjoinment of S.B. 1 on the grounds that it violated Hoosiers' right to privacy under Article 1, Section 1 of the Indiana Constitution. On September 22, 2022, this Court granted a preliminary injunction enjoining S.B. 1 from taking effect. On June 30, 2023, the Indiana Supreme Court vacated the injunction, finding that "Article 1, Section 1 protects a woman's right to an abortion that is necessary to protect her life or to protect her from a serious health risk, but the General Assembly otherwise retains broad legislative discretion for determining whether and the extent to which to prohibit abortions." *Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 962, *reh'g denied*, No. 22S-PL-338, 2023 WL 5339995 (Ind. Aug. 21, 2023). The Indiana Supreme Court certified its decision on August 21, 2023, and S.B. 1 went into effect the same day.

2. S.B. 1 virtually eliminates abortion access across the state and deprives patients of their constitutional right to obtain abortions to protect them from serious health risks. Plaintiffs

bring this action on behalf of themselves and their staff, their abortion patients, and their clients to prevent the deprivation of their rights under the Indiana Constitution.

3. Now that S.B. 1 is in effect, abortion is banned in Indiana with only three exceptions: (1) when reasonable medical judgment dictates that performing the abortion is necessary to prevent death or a serious risk of substantial and irreversible physical impairment of a major bodily function (the "Health or Life Exception"), (2) when the pregnant person receives a diagnosis of a lethal fetal anomaly (the "Lethal Fetal Anomaly Exception"), and (3) when the pregnant person is a victim of rape or incest (the "Rape or Incest Exception"). Performing an abortion outside these exceptions constitutes a Level 5 felony punishable by one to six years' imprisonment, as well as a fine up to $10,000 and revocation of one's medical license. Ind. Code §§ 16-34-2-7; 22-22.5-8-6(b)(2); 35-50-2-6. S.B. 1 also eliminates licensed abortion clinics—where the vast majority of abortions occurred prior to S.B. 1's enactment—and requires abortion care to occur in a hospital or ambulatory outpatient surgical center ("ASC") majority owned by a hospital, regardless of gestational age, expense, and the difficulty of accessing hospital care, and notwithstanding the fact that abortions in outpatient clinics are as safe as abortions in hospitals and ASCs (the "Hospital Requirement").

4. S.B. 1 severely limits access to abortion care, prohibiting nearly all pregnant Hoosiers from accessing care in Indiana. S.B. 1's unconstitutionally narrow Health or Life Exception and needlessly restrictive Hospital Requirement infringe upon Article 1, Section 1 of the Indiana Constitution as applied to Plaintiffs and to pregnant Hoosiers who have a constitutional right to access an abortion because they face a serious health risk. *See Planned Parenthood Great Nw.*, 211 N.E.3d at 976-77 (a pregnant Hoosier's "right [under Article 1,

Section 1] to an abortion that is necessary to protect her life or to protect her from a serious health risk … may be broader than [S.B. 1's] current statutory exceptions.").

5. Moreover, by slashing the number of facilities providing abortion, which will be limited to hospitals concentrated in and around Indianapolis, the Hospital Requirement materially burdens even the few people who may qualify for the ban's exceptions. This means that even the Hoosiers who are entitled to abortion under Indiana law will be forced to disrupt their lives to travel either in state or out of state for their care, significantly delaying their abortions and causing them to incur higher expenses.

6. S.B. 1's Hospital Requirement prevents PPGNHAIK and Women's Med from providing abortion care at all. S.B. 1's unconstitutionally narrow Health or Life Exception, coupled with its severe criminal and licensure penalties, chills and prevents doctors practicing in hospitals from providing the care that Hoosiers are entitled to under the Indiana Constitution. The chilling effect is all the more acute due to Indiana's history of targeting abortion providers.[1] The severe penalties have forced Dr. Caldwell to sharply curtail the types of abortions she performs, contrary to her patients' needs and wishes.

7. S.B. 1's Health or Life Exception and Hospital Requirement have severely limited All-Options' ability to provide meaningful financial assistance to Hoosiers because (1) All-Options has had to provide larger grants to patients facing serious health risks, but who are

[1] For example, Indiana Attorney General Todd Rokita filed a complaint with the Indiana Medical Licensing Board against an abortion provider for sharing that a state abortion ban, since enjoined, forced a 10-year old rape victim and her mother to travel to Indiana for care. *See* Jenny Porter Tilley & Johnny Magdaleno, *An Indiana Doctor Spoke Up About a 10-Year-Old's Abortion. Here's What Happened Since*, INDYSTAR. (May 26, 2023), https://www.indystar.com/story/news/local/2023/05/26/indiana-doctor-abortion-10-year-old-ohio-caitlin-bernard-todd-rokita/70259789007. On November 2, 2023, the Indiana Supreme Court issued a per curiam opinion finding that Attorney General Rokita engaged in attorney misconduct for his characterization of the provider on Fox News and publicly reprimanded and fined him for this conduct. *In re Theodore E. Rokita*, No. 23S-DI-258, at 2, 5 (Ind. Sup. Ct. Nov. 2, 2023) (per curiam). Chief Justice Rush and Justice Goff, however, dissented "believing the discipline to be too lenient based on [Rokita's] position as Attorney General and the scope and breadth of the admitted misconduct." *Id.* at 5.

forced to travel out of state for abortion care due to the uncertainty and narrowness of the Health or Life Exception, and (2) abortions are often more expensive at hospitals.

8. For all these reasons, S.B. 1's Health or Life Exception and Hospital Requirement have caused—and will continue to cause—immediate and irreparable harm to Plaintiffs and pregnant Hoosiers seeking abortion because they face a serious health risk, including the Plaintiffs' patients and clients, unless and until this Court intervenes.

JURISDICTION AND VENUE

9. Jurisdiction is conferred upon this Court by the Indiana Constitution, Article 7, Section 8 and Indiana Code § 33-28-1-2.

10. This Court has subject matter jurisdiction over this matter because it involves questions of the constitutionality of a state law.

11. Plaintiffs' claims for declaratory and injunctive relief are authorized by Indiana Code § 34-14-1-1, as well as the general equitable powers of this Court.

12. Venue is appropriate pursuant to Indiana Trial Rule 75(A) because PPGNHAIK conducts business in Monroe County, including—until August 1, 2023—providing abortions and abortion care, and All-Options conducts business in Monroe County, including operating the Hoosier Abortion Fund, which provides critical support to people seeking abortions in Indiana.

THE PARTIES

A. Plaintiffs

13. PPGNHAIK is a not-for-profit corporation incorporated in Washington. It is the largest provider of reproductive health services in Indiana, operating 11 health centers throughout Indiana.

14. PPGNHAIK provides healthcare and educational services, including pregnancy diagnosis and counseling; contraceptive care and provision; testing, treatment, and vaccination

for sexually transmitted infections; annual medical examinations; HIV prevention and treatment services; cancer screenings, gender-affirming hormone care; and educational services relating to fertility and pregnancy. Until August 1, 2023, PPGNHAIK offered medication abortion (which is accomplished by ingesting pills and does not require a medical procedure) through 10 weeks after the first day of a patient's last menstrual period ("LMP") at its Lafayette health center, and medication abortion up to 10 weeks LMP and procedural abortion (also known as surgical abortion) up to 13 weeks 6 days LMP at its Bloomington, Merrillville, and Georgetown Road health centers. The Indiana Department of Health informed PPGNHAIK that as of the certification of the Indiana Supreme Court's decision in this matter on August 21, 2023, its abortion clinic licenses were considered null and void due to S.B. 1's Hospital Requirement.

15. Women's Med is a for-profit organization incorporated in Ohio. It operated a licensed abortion clinic in Indianapolis for over twenty years. Until August 1, 2023, the clinic provided medication abortions up to 10 weeks LMP and contraceptive services. The Indiana Department of Health informed Women's Med that as of certification of the Indiana Supreme Court's decision in this matter on August 21, 2023, its abortion clinic license was considered null and void due to S.B. 1's Hospital Requirement.

16. All-Options is a not-for-profit organization incorporated in Oregon. It provides unconditional, judgment-free support concerning pregnancy, parenting, adoption, and abortion. All-Options operates a Pregnancy Resource Center in Bloomington that offers unbiased peer counseling, referrals to social service providers, and resources such as free diapers, wipes, menstrual products, and condoms. The Pregnancy Resource Center includes the Hoosier Abortion Fund, which provides financial assistance to Indiana residents who need help paying for abortion care.

17. Dr. Amy Caldwell is an OB/GYN physician licensed to practice medicine in the State of Indiana. Dr. Caldwell is employed by IU Health and by Indiana University Medical School. She provides abortion care pursuant to S.B. 1's narrow exceptions at IU Health and—prior to August 1, 2023—provided abortion care at the Georgetown Road Health Center operated by PPGNHAIK.[2]

18. But for S.B. 1's unconstitutional Health or Life Exception, Dr. Caldwell would continue to provide abortions when they are necessary to prevent a serious health risk consistent with the Indiana Constitution. Further, but for the Hospital Requirement, Dr. Caldwell would continue to provide this care—as well as care for patients who qualify under the Lethal Fetal Anomaly and Rape or Incest Exceptions—at PPGNHAIK's clinic, not just at the hospitals where she works.

19. The Provider Plaintiffs bring this suit on behalf of themselves and their current and future physicians and staff who participate in activities, including providing abortions, that could subject them to liability in connection with S.B. 1 and on behalf of current and future patients seeking abortions.

20. But for S.B. 1's unconstitutionally narrow Health or Life Exception and Hospital Requirement, which severely limits the facilities at which Hoosiers can access abortion care, PPGNHAIK and Women's Med would continue to provide procedural and medication abortions when they are necessary to prevent a serious health risk consistent with the Indiana Constitution. PPGNHAIK and Women's Med have provided in the past, and desire to continue to provide in the future, abortions to patients facing a serious health risk who are eligible to receive care in an outpatient clinic setting. These include, but are not limited to, cancer patients who require

[2] Dr. Caldwell brings her claims as an individual physician and not on behalf of IU Health or the School of Medicine.

abortions before they can begin treatment, patients with mental health conditions who require abortions either to protect their own mental health or to continue taking necessary medications, patients who have had complications with previous high-risk pregnancies and who are at elevated risk of serious health issues, and patients with dangerous and debilitating conditions.

21. All-Options brings this suit on behalf of itself—and its current and future staff, who facilitate the funding of and referrals for abortion care—in connection with S.B. 1 and current and future Hoosier clients seeking abortions. But for S.B. 1's unconstitutional Health or Life Exception and Hospital Requirement, All-Options would be able to serve more Hoosiers unable to afford abortions protected by the Indiana Constitution and more effectively advance its mission to expand reproductive justice and destigmatize abortion in Indiana.

B. Defendants

22. The Members of the Medical Licensing Board of Indiana (the "Medical Board") are sued in their official capacities. The Medical Board is empowered to issue licenses and discipline medical practitioners, including by revoking their licenses. *E.g.*, Ind. Code §§ 25-0.5-3-7, 25-0.5-8-11, 25-0.5-10-17, 25-0.5-11-5, 25-22.5-2-1, 25-22.5-8-6.

23. The County Prosecutors are sued in their official capacities. Per the Indiana Code, the County Prosecutors are obligated to enforce state law in their respective counties. Ind. Code § 33-39-1-5.

STATUTORY FRAMEWORK

24. Following the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, Governor Holcomb called for a special legislative session to review Indiana's abortion laws. The legislature began the special session on July 25, 2022, and after 11 days of debate, the Senate approved the ban 28-19 and the House advanced it 62-38.

25. The General Assembly passed S.B. 1 on August 5, 2022. Governor Holcomb signed the bill into law on August 5, 2022. S.B. 1 took effect on August 21, 2023.

A. <u>Total Abortion Ban (Section 21)</u>

26. S.B. 1 is a total ban on abortion, making performing abortions a Level 5 felony, with only three extremely limited exceptions:

a. *First*, Section 21(1)(A) permits abortions "before the earlier of viability[3] of the fetus or twenty (20 weeks) of postfertilization age[4] of the fetus," but Section 21(a)(3) provides "earlier of viability of the fetus or twenty (20) weeks of postfertilization age and *any time after*," if a physician determines based on "professional, medical judgment" that an "abortion is necessary when reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life."[5] S.B. 1 §§ 21(1)(A)(i), (3)(A) (Ind. Code §§ 16-34-2-1(1)(A)(i), (3)(A)). Under S.B. 1, "serious health risk" means "in reasonable medical judgment, a condition exists that has complicated the mother's medical condition and necessitates an abortion to prevent death or a

[3] Viability is not defined in S.B. 1. However, Indiana Code generally states, "'[v]iability', for purposes of IC 16-34, means the ability of a fetus to live outside the mother's womb." Ind. Code § 16-18-2-365; *see also Colautti v. Franklin*, 439 U.S. 379, 388 (1979) ("Viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support."), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). The viability portion of the statute is not practically relevant and instead the 22-week LMP limit would govern.

[4] S.B. 1 refers to gestational age in terms of "postfertilization age." This complaint refers to gestational age in terms of the number of weeks since the patient's last menstrual period, which is the accepted approach in the medical field. Measuring gestational age by LMP adds two weeks to the "postfertilization age" because fertilization typically occurs two weeks after a patient's last menstrual period. In other words, 20 weeks "postfertilization" is equivalent to 22 weeks LMP.

[5] Although people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant, seek abortions, and bear children, because S.B. 1's total-abortion ban speaks only in terms of "women," Plaintiffs sometimes use the term "women" as a shorthand for anyone who may become pregnant.

serious risk of substantial and irreversible physical impairment of a major bodily function." *Id.* § 6 (Ind. Code § 16-18-2-327.9). The term expressly excludes "psychological or emotional conditions." S.B. 1 § 6. "A medical condition may not be determined to exist based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in physical harm." *Id.* Prior to performing the abortion, the physician must certify in writing that the abortion is necessary to prevent any serious health risk to the pregnant patient or to save the patient's life. *Id.* §§ 21(1)(C), (3)(E) (Ind. Code §§ 16-34-2-1(1)(E), (3)(E)). "All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate." *Id.*

b. *Second*, abortions are permitted up to 22 weeks LMP if a physician determines based on "professional, medical judgment" that "the fetus is diagnosed with a lethal fetal anomaly." S.B. 1 § 21(1)(A)(ii) (Ind. Code § 16-34-2-1(1)(A)(ii)). Under Indiana law, "lethal fetal anomaly" means "a fetal condition diagnosed before birth that, if the pregnancy results in a live birth, will with reasonable certainty result in the death of the child not more than three (3) months after the child's birth." Ind. Code § 16-25-4.5-2. Prior to performing the abortion, the physician must certify in writing that the abortion is necessary because the fetus is diagnosed with a lethal fetal anomaly. S.B. 1 § 21(1)(E) (Ind. Code § 16-34-2-1(1)(E)). "All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate." *Id.*

c. *Third*, abortions may be performed up to 12 weeks LMP if the pregnancy was a result of a rape or incest. S.B. 1 § 21(2)(A) (Ind. Code § 16-34-2-1(2)(A)). Prior to performing the abortion, the physician must certify in writing that the abortion is being performed at the patient's request because the pregnancy is a result of rape or incest. *Id.* § 21(2)(D) (Ind. Code § 16-34-2-1(2)(D)).

27. Further, S.B. 1's Hospital Requirement eliminates abortion clinics as a category of state-licensed facilities, terminating abortion clinics' ability to provide abortion care and requiring that all abortions be performed in a licensed hospital or ASC majority owned by a licensed hospital. *Id.* §§ 21(1)(B), (3)(C) (Ind. Code §§ 16-34-2-1(1)(B), (3)(C)); § 21(2)(C) (Ind. Code § 16-34-2-1(2)(C)).

B. <u>Criminal and Civil Penalties (Sections 28, 41)</u>

28. S.B. 1 imposes significant criminal and civil penalties.

29. Any "person who knowingly or intentionally performs an abortion prohibited" by Section 21 of S.B. 1 (Ind. Code § 16-34-2-1) is subject to criminal penalties, including imprisonment of one to six years and a fine of up to $10,000. S.B. 1 § 28(a) (Ind. Code § 16-34-2-7(a)); Ind. Code § 35-50-2-6).

30. A physician shall have their license to practice medicine revoked if the Attorney General proves by a preponderance of the evidence that the physician knowingly or intentionally performed an abortion either (1) that does not qualify for the Health or Life, Lethal Fetal Anomaly, or Rape or Incest Exception (Ind. Code § 16-34-2-7(a) (citing *id.* § 16-34-2-1)), (2) without obtaining consent from the patient or the patient's legal guardian (Ind. Code § 16-34-2-7(b) (citing *id.* §§ 16-34-2-1(a)(1)(D), 4), or (3) without waiting 18 hours and providing the pregnant patient orally and in writing the information outlined in Indiana Code § 16-34-2-1.1 (Ind. Code § 16-34-2-7(c)) with the intent to avoid the requirements for performing lawful

abortions as outlined in Indiana Code § 16-34-2-1. S.B. 1 § 41(1)-(2) (Ind. Code § 22-22.5-8-6(b)(2)).

FACTUAL ALLEGATIONS IN SUPPORT OF ALL CLAIMS

A. Abortion Is Safe and Common.

31. Abortion is a common, safe, and essential part of comprehensive health care, with one in five pregnancies in 2020 ending in abortion.

32. Legal abortion is one of the safest medical procedures in the United States and is substantially safer than continuing a pregnancy through to childbirth. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion, and every pregnancy-related complication is more common among patients giving birth than among those having abortions.

33. Complications from abortion are rare. When complications do occur, they can usually be managed in an outpatient setting, either at the time of the abortion or at a follow-up visit.

34. Meanwhile, Indiana's infant and maternal mortality rates are among the worst in the country. In 2021, 536 babies in Indiana died before their first birthday, which is nearly 45 babies every month or about 10 babies every week.[6] In 2019, 60 pregnancy-associated deaths occurred, and the Indiana Maternal Mortality Review Committee determined 80% of those deaths were preventable.[7]

[6] Ind. Dep't of Health, *Indiana Infant Mortality & Birth Outcomes, 2021* at 5 (Apr. 12, 2023), https://www.in.gov/health/mch/files/2021-Infant-Mortality-and-Morbidity.pdf.

[7] Ind. Dep't of Health, Div. of Fatality Review & Prevention, *Indiana Maternal Mortality Review Committee, 2021 Annual Report* at 11-12 (July 2021), https://www.in.gov/health/cfr/files/Maternal-Mortality-Report-11.16.21.pdf.

35. People decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal. Some decide that it is not the right time to have a child or to add to their families; some end a pregnancy because of a severe fetal anomaly; some choose not to carry a pregnancy to term because they have become pregnant as a result of rape or incest; some choose not to have biological children; and for some, continuing with a pregnancy could pose a significant risk to their health.

36. Most people who seek an abortion already have at least one child, so families must consider how having another child, which can place economic and emotional strain on a family—particularly if the pregnancy is medically complicated, the pregnancy will aggravate or cause the resurgence of a preexisting health condition, or there is a lethal fetal anomaly—will impact their ability to care for the children they already have.

37. People of color are most impacted by S.B. 1 given that they disproportionately access abortion care in Indiana. Statewide in 2020, 34.6% of people obtaining an abortion identified as Black or African American, and 10.7% identified as Hispanic or Latino.[8] Less than half of Hoosiers receiving an abortion identified as white.[9] In comparison, according to the 2020 Census, only 9.6% of Hoosiers identified as Black or African American alone and 8.2% identified as Hispanic or Latino.[10] Black Hoosiers will suffer some of the gravest consequences of S.B. 1's enforcement. A 2020 report found that Black, non-Hispanic Hoosiers experienced the highest rate of pregnancy-associated deaths in Indiana.[11] Additionally, the infant mortality

[8] Indiana Dep't of Health, Div. of Vital Records, *2021 Terminated Pregnancy Report* at 19-20 (July 30, 2021), https://www.in.gov/health/vital-records/files/ANNUAL-TPR-CY2020.pdf.

[9] *Id.*

[10] America Counts Staff, *INDIANA: 2020 Census,* U.S. Census Bureau (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html#:~:text=Race%20and%20ethnicity%20(White%20alone,or%20More%20Races%2010.2%25).

[11] *Id.*

rate among Black, non-Hispanic children in Indiana is more than twice the infant mortality rate of non-Hispanic white babies.[12]

38. Nationwide, new mothers' earnings drop after they give birth, and they do not fully recover to pre-pregnancy earning levels.[13]

39. Moreover, Indiana severely limits residents' eligibility for public benefits intended to help vulnerable parents and children, such as "Supplemental Nutritional Assistance Program" ("SNAP"). Whereas the federal government permits states to offer SNAP benefits to individuals up to 200% of the federal poverty line, Indiana limits eligibility at 130% and to those with less than $5,000 in assets.[14] Indiana imposes this restriction knowing that the national poverty rate for single mothers is 35% compared with the state's overall poverty rate of 12.6%.[15]

B. S.B. 1's Health or Life Exception Inflicts Irreparable Harm on Hoosiers.

40. S.B. 1's extremely limited Health or Life Exception unnecessarily restricts access to abortion care inconsistent with medical consensus, chills the provision of medical care, and will inflict serious harm on patients already facing extraordinarily difficult circumstances.

41. Hoosiers experiencing or at risk of pregnancy complications that may seriously and permanently impair their health—but that may not meet the limited exception for serious health risks set out in S.B. 1—will be forced to remain pregnant and to suffer serious and potentially life-long harms to their health. These serious conditions may include health

[12] Ind. Dep't of Health, Div. of Maternal & Child Health, *Disparities in Indiana Infant Mortality 2020* (May 2023), https://secure.in.gov/health/mch/files/IM-Disparities-2020.pdf.

[13] Danielle H. Sandler & Nichole Szembrot, *New Mothers Experience Temporary Drop in Earnings*, U.S. CENSUS BUREAU (June 16, 2020), https://www.census.gov/library/stories/2020/06/cost-of-motherhood-on-womens-employment-and-earnings.html.

[14] Ind. Fam. & Soc. Servs. Admin., *Do I Qualify for SNAP*, https://www.in.gov/fssa/dfr/snap-food-assistance/do-i-qualify-for-snap/#:~:text=All%20households%20(except%20those%20with,here%20for%20SNAP%20income%20limits.

[15] Off. of Juv. Just. & Delinq. Prevention, U.S. Dep't of Justice, *Poverty status of children by family structure 2021*, https://ojjdp.ojp.gov/statistical-briefing-book/population/faqs/qa01203; U.S. Census Bureau, *QuickFacts Indiana*, https://www.census.gov/quickfacts/fact/table/IN/PST045222.

conditions that cause extended and debilitating symptoms during the course of a pregnancy; health conditions that may worsen over the course of the pregnancy to eventually become life-threatening; health conditions that may significantly increase the patient's health risks if they remain pregnant or that may significantly increase the patient's future health risk, even after giving birth; and health conditions requiring treatment that would endanger the fetus, meaning that continuing the pregnancy could require forgoing needed treatment.

42. Additionally, pregnancy can exacerbate preexisting health conditions that are not clearly included within S.B. 1's Health or Life Exception, and this lack of clarity may chill doctors from providing necessary care. For example, preexisting pulmonary hypertension—or high blood pressure—can worsen as a pregnancy advances, which can lead to preeclampsia, eclampsia, cardiac hypertrophy, heart attack, heart or kidney damage, and stroke. These complications sometimes require urgent or emergent abortion care to preserve the patient's health or save their life. With respect to this and other conditions, pregnancy can also cause incremental changes to a patient's health that are not significantly health-limiting or life-threatening in the short-term but, over time, can become serious threats.

43. Pregnancy can also lead to the development of new and serious health conditions. Many of these conditions are not clearly encompassed within S.B. 1's Health or Life Exception, and this lack of clarity may chill doctors from providing necessary care. For instance, preeclampsia is a condition characterized by high blood pressure and a high level of protein in the urine that some people develop during pregnancy. If undiagnosed or untreated, preeclampsia's dangerous increase in blood pressure can cause organ damage, stroke, seizures, and death. This condition can prevent patients from working, taking care of their children, and completing the basic tasks of daily life; it may also require hospitalization for monitoring and

treatment. It can also progress to severe preeclampsia or eclampsia, which is characterized by seizures, and can cause both maternal and fetal mortality. The only treatment for patients with severe preeclampsia in the second trimester of pregnancy is to remove the placenta from the uterus; before the point of fetal viability, that treatment necessitates an abortion. Because preeclampsia and similar conditions are not clearly encompassed by the Health or Life Exception, doctors may hesitate to provide necessary care to patients suffering from them.

44. Moreover, the Health or Life Exception's explicit exclusion of patients suffering from psychological and psychiatric conditions, including suicidal ideation, is both inconsistent with best medical practices and will harm pregnant Hoosiers. Mental health conditions are medical conditions that are rooted in biochemistry and physiology and can pose serious health risks to pregnant patients. Just as with other existing health issues, mental health issues can be aggravated by the changes brought on by pregnancy.

45. Compounding the issue, pregnancy can make medication management for individuals with mental illness more difficult because it causes changes in drug metabolism, and some medications for mental health conditions and psychiatric conditions, such as bipolar disorder, schizophrenia, major depressive disorder, anxiety disorders, and psychotic disorders, pose potential risks to the fetus and do not have an established safety profile in pregnancy. If a patient's psychiatric medication carries risk to the fetus (as many do), the patient may need to discontinue or modify their medication in order to avoid risking harm to the fetus. However, this will significantly increase the likelihood that mental illness recurs. Thus, patients regulating a mental health condition with medication that may carry risk to the fetus may be faced with the difficult choice between (1) discontinuing or modifying their medication to avoid risking harm to the fetus and (2) continuing to treat their mental illness with necessary medications but risking

harm to the fetus. If the patient chooses to discontinue or modify her medications, there may be increased risk of symptoms both during and after pregnancy because it is more difficult to return to equilibrium after relapse than it is to maintain a stable condition.

46. Additionally, mental health conditions can make it more difficult to manage physical health issues during pregnancy. The consequences of aggravating an existing mental health condition or relapsing after a mental health condition is stable can be dire for pregnant patients and their families. Patients may require psychiatric hospitalization, may lose their jobs, and may be unable to care for their new babies or other dependents. If suffering from particularly severe mental illness, patients may also engage in self-harm (including attempting suicide) or may harm their infant.

47. Even patients whose pregnancies should qualify for S.B. 1's Health or Life Exception may still be unable to obtain an abortion because physicians will credibly fear that they will be prosecuted for the exercise of their professional medical judgment if government officials disagree with their assessment of a patient's condition.

C. S.B. 1's Hospital Requirement Inflicts Irreparable Harm on Hoosiers.

48. S.B. 1's Hospital Requirement inflicts devastating consequences for pregnant Hoosiers who are survivors of rape or incest or who have a medical condition that puts them at serious health risk, increasing the expense of abortion and delaying or denying access to desperately needed care. These heightened barriers exacerbate the personal hardship and trauma that some patients face due to the circumstances of their pregnancies.

49. S.B. 1's Hospital Requirement makes abortion nearly impossible to access for even those patients who meet the ban's exceptions. In 2021, 8,414 abortions were performed in

Indiana.[16] Over 98 percent of these abortions were performed at abortion clinics that are prohibited from providing abortion care under S.B. 1.[17] Less than two percent of abortions performed in the state that year were performed in hospitals,[18] and only one abortion was performed at an ASC (hospital-owned or otherwise) in the seven years before S.B. 1 was passed.[19]

50. On information and belief, as of the date of this Complaint, IU Health is one of two Indiana hospitals performing abortions—both of which are located in Indianapolis.

51. Moreover, the hospitals in Indiana that have recently provided abortion are geographically limited to large cities, and more particularly to Indianapolis and the surrounding area, meaning patients from around the state will need to travel long distances to access care. For instance, in 2021, only six hospitals statewide (and no ASCs) provided abortion care. Of those six, four are located in downtown Indianapolis, and one is metro-West. Only one hospital, Deaconess Women's Hospital, served an area outside Indianapolis, and it is located outside Evansville, the state's third-largest city. On information and belief, no hospital outside of Indianapolis is currently providing abortion care pursuant to S.B. 1's extremely narrow

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[16] *2021 Terminated Pregnancy Report*, *supra* note 8, at 2.

[17] *Id.* at 20.

[18] *See id.*

[19] *See id.* at 17 (identifying no abortions that occurred at an ASC); Ind. Dep't of Health, Div. of Vital Records, *2020 Terminated Pregnancy Report* at 18 (June 30, 2021), https://www.in.gov/health/vital-records/files/ANNUAL-TPR-CY2020.pdf (same); Ind. State Dep't of Health, Div. of Vital Records, *2019 Terminated Pregnancy Report* at 15 (June 30, 2020), https://www.in.gov/health/vital-records/files/2019-Indiana-Terminated-Pregnancy-Report.pdf (same); Ind. State Dep't of Health, Div. of Vital Records, *2018 Terminated Pregnancy Report* at 17 (June 30, 2019), https://www.in.gov/health/vital-records/files/2018-Indiana-Terminated-Pregnancy-Report.pdf (identifying one abortion that occurred at Community Hospital North Surgery Center, an ASC (*see* Ind. Dep't of Health, *Ambulatory Surgical Centers Directory*, https://www.in.gov/health/reports/QAMIS/ascdir/wdirasc.htm)); Ind. State Dep't of Health, Div. of Vital Records, *2017 Terminated Pregnancy Report* at 16 (June 30, 2018), https://www.in.gov/health/vital-records/files/2017-Indiana-Terminated-Pregnancy-Report.pdf (identifying no abortions that occurred at an ASC); Ind. State Dep't of Health, Div. of Vital Records, *2016 Terminated Pregnancy Report* at 19 (June 30, 2017), https://www.in.gov/health/vital-records/files/2016-Indiana-Terminated-Pregnancy-Report.pdf ("No terminations were reported from ambulatory surgical centers … in 2016."); Ind. State Dep't of Health, Div. of Vital Records, *2015 Terminated Pregnancy Report* at 16 (June 30, 2016), https://www.in.gov/health/vital-records/files/2015-TP-Report.pdf ("No terminations were reported from ambulatory surgical centers … .").

exceptions. In contrast, in 2021, seven abortion clinics spanning five Indiana counties provided 98% of all abortions provided in the state.

52. Further, out-of-pocket expenses can be many times greater for patients receiving abortion care in hospitals compared with those receiving abortion care provided in clinics. This higher cost will make obtaining abortion care in a hospital setting impossible for many Hoosiers.

53. In addition, it is extraordinarily logistically difficult for patients who are not already being cared for by hospital-based physicians to obtain an abortion within a hospital system. Hospitals often do not seek to make the general public aware that they offer abortions, and, for most hospitals, there is no obvious number to call or person to contact to inquire about this care. At least one Indiana hospital has been unwilling to accept payments from All-Options on behalf of patients. Given the stigma that surrounds abortion, patients will understandably be wary of cold-calling hospitals to inquire about this service, if they even become aware that hospitals provide this care.

54. Moreover, it is irrational to require one of the safest outpatient procedures in the United States to be performed in a hospital, particularly for patients who have already suffered trauma or patients who a referring physician has already determined may safely receive care at one of the Provider Plaintiffs' previously licensed abortion clinics.

55. Although certain outpatient abortion methods are sometimes referred to as "surgical abortion," that is a misnomer, as they do not entail the typical characteristics of surgery, such as an incision into bodily structures or general anesthesia. According to the American College of Obstetricians and Gynecologists, the leading professional organization for obstetrician-gynecologists, these methods are more appropriately characterized as a procedure, which is defined as a "short interventional technique that includes the following categories …

non-incisional diagnostic or therapeutic intervention through a natural body cavity or orifice" and is "generally associated with lower risk of complications."[20]

56. There is no medical reason to prevent clinics from providing abortions. Abortion at a clinic is as safe as at a hospital or ASC. Of the 17,943 abortions performed in 2021 and 2022 in Indiana, more than 98% were provided in abortion clinics.[21] Abortions performed in clinics are necessarily safe given that serious complications—that is, complications requiring hospitalization, surgery, or blood transfusion—from abortion care are exceedingly rare, occurring in less than one percent of abortions in 2021 and 2022.[22]

57. In the exceedingly rare event of a complication requiring hospital-based care, established policies and protocols ensure the patient's care is safely transferred to a hospital-based provider. These are the same policies and procedures that are followed for comparable outpatient gynecological or other procedures, as well as for those that carry greater risks.

58. The most common regimen of medication abortion consists of mifepristone, which is typically dispensed by a provider in a health care setting, and misoprostol, which is typically taken 0 to 48 hours later, most often outside of a health care setting. While major complications from medication abortion requiring hospitalization are exceedingly rare, those that do occur are most likely to take place outside of a health care setting. In other words, even if a

[20] Am. Coll. of Obstetricians & Gynecologists, *Definition of "Procedures" Related to Obstetrics and Gynecology* (Reaffirmed Mar. 2023), https://www.acog.org/clinical-information/policy-and-position-statements/position-statements/2018/definition-of-procedures-related-to-obstetrics-and-gynecology.

[21] Ind. Dep't of Health, Div. of Vital Records, *2022 Terminated Pregnancy Report* at 19 (June 30, 2023), https://www.in.gov/health/vital-records/files/2022-TPR-Annual.pdf; *2021 Terminated Pregnancy Report* at 17.

[22] *2021 Terminated Pregnancy Report*, *supra* note 8, at 17-18; Indiana Dep't of Health, *Indiana 2021 Abortion Complication Report* at 1 (last updated Jan. 25, 2023), https://www.in.gov/health/vital-records/files/Medical_Indiana-2021-Abortion-Complication-Report-Final.pdf; *2022 Terminated Pregnancy Report*, *supra* note 21, at 19; Indiana Dep't of Health, Div. of Vital Records, *2022 Terminated Pregnancy Complications Report* at 4 (June 30, 2023), https://www.in.gov/health/vital-records/files/2022-Complications-Report.pdf.

patient were to receive medication abortion at a hospital, it would be unlikely that the patient would be at a hospital at the time the complications began to occur.

59. Because of the extraordinary safety profile of procedural abortions in the outpatient setting, courts have repeatedly found that there is no medical basis for requiring procedural abortions to be performed in hospitals. *See, e.g.*, *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 433-34 (1983); *Planned Parenthood Ass'n of Kan. City v. Ashcroft*, 462 U.S. 476, 481-82 (1983); *Doe v. Bolton*, 410 U.S. 179, 193-95 (1973).

60. The mortality risk for abortion is lower than that of many other common procedures that are not required to be performed in a hospital. For example, one recent and robust analysis found that in the United States, the mortality rate for colonoscopy is 2.9 per 100,000 procedures; the mortality rate for tonsillectomy ranges from 2.9 to 6.3 per 100,000 procedures; and the mortality rate for plastic surgery is 0.8 to 1.7 per 100,000 procedures.[23] By contrast, the mortality rate for legal induced abortion is only 0.7 per 100,000 procedures.[24] These procedures of greater risk are routinely provided on an outpatient basis outside the hospital setting.

61. There is no rational basis for mandating that procedural abortions be provided in hospitals while continuing to allow identical or nearly identical procedures to take place in outpatient settings.

62. Forcing patients to seek abortions at hospitals does not improve patient health and safety, and instead only serves to harm those who are eligible for abortion care under Indiana law by limiting their options for access to care without medical justification. These harms will be

[23] Nat'l Acads. of Scis., Eng'g, & Med. et al., *The Safety and Quality of Abortion Care in the United States*, NAT'L ACADS. PRESS 1, 74-75 (2018).

[24] *Id.*

borne most heavily by patients who are lower income, have trouble getting off work and/or securing childcare to seek a hospital-based procedure, or who live in rural areas far from hospitals that offer abortion care.

63. The Hospital Requirement prevents Hoosiers from accessing abortions to which they are constitutionally and statutorily entitled, thereby inflicting immediate and irreparable harm on Hoosiers.

CLAIMS FOR RELIEF

First Claim

S.B. 1's Health or Life Exception Violates Article 1, Section 1 of the Indiana Constitution.

64. Plaintiffs hereby reaffirm and reallege each and every allegation made in Paragraphs 1–63 as if set forth fully herein.

65. Article 1, Section 1 of the Indiana Constitution provides that "all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." To that end, "Article 1, Section 1 protects a [pregnant person's] right to an abortion that is necessary to protect her life or to protect her from a serious health risk." *Planned Parenthood Great Nw.*, 211 N.E.3d at 985.

66. As applied to Plaintiffs and their patients who present with a serious physical or mental health risk that is not encompassed by S.B. 1's unconstitutionally narrow Health or Life Exception, S.B. 1 prohibits abortions that are necessary to protect a patient's life or to protect them from a serious health risk, in violation of the Indiana Constitution's protection under Article 1, Section 1. Further, the uncertainty caused by the Health or Life Exception's confusing definition of serious health risk and threats of licensure penalties and criminal prosecution chill Indiana physicians from providing abortions necessary to protect their patients' lives and health, also in violation of Article 1, Section 1.

Second Claim

S.B. 1's Hospital Requirement Violates Article 1, Section 1 of the Indiana Constitution.

67. Plaintiffs hereby reaffirm and reallege each and every allegation made in Paragraphs 1–66 as if set forth fully herein.

68. As applied to Plaintiffs and their patients who seek an abortion in the limited circumstances permissible under S.B. 1, S.B. 1's arbitrary and restrictive Hospital Requirement violates the protections of Article 1, Section 1 by making abortion care prohibitively expensive and otherwise erecting insurmountable barriers to access for pregnant Hoosiers who are entitled to abortion care under Indiana law, without increasing the safety of those abortions allowed under S.B. 1's narrow exceptions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the Court to grant the following relief:

i. Issue a preliminary and permanent injunction enjoining enforcement, operation, and execution of S.B. 1's definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to (1) health conditions requiring treatment that would endanger the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; (2) health conditions that cause extended and/or debilitating symptoms during the course of a pregnancy; (3) health conditions that are likely to worsen over the course of the pregnancy to eventually become life-threatening; and (4) health conditions that are likely to cause lasting damage to the patient's health or seriously increase the patient's future health risk, even after giving birth;

ii. Issue a preliminary and permanent injunction enjoining enforcement, operation, and execution of S.B. 1's definition of "serious health risk" insofar as it would prevent

physicians in their reasonable medical judgment from performing abortions due to (1) mental health conditions treated with medications that do not have an established safety profile in pregnancy or that pose risks to the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; and (2) severe and/or debilitating mental health conditions (including conditions that a patient has previously experienced and risk recurrence due to pregnancy);

iii. Issue a preliminary and permanent injunction enjoining the enforcement, operation, and execution of the Hospital Requirement such that clinics may continue to provide abortions in the limited circumstances in which abortions are legal in Indiana;

iv. Issue an Order, Judgment, and/or Writ from this Court declaring S.B. 1's Health or Life Exception and Hospital Requirement unconstitutional insofar as they would prevent physicians in their reasonable medical judgment from performing abortions in the above-specified circumstances; and

v. Pursuant to the Court's inherent powers, grant such other and further relief as the Court may deem just, proper, and equitable.

Respectfully submitted:

/s/ *Kenneth J. Falk*
Kenneth J. Falk, No. 6777-49

/s/ Gavin M. Rose
Gavin M. Rose, No. 26565-53

/s/ Stevie J. Pactor
Stevie J. Pactor, No. 35657-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
T: 317/635-4059
kfalk@aclu-in.org

grose@aclu-in.org
spactor@aclu-in.org

Alan E. Schoenfeld*, No. 8528-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
T: 212/230-8800

Allyson Slater*, No. 8501-95-TA
Katherine V. Mackey*, No. 8502-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109
T: 617/526-6000

Catherine Peyton Humphreville*,
No. 8527-95-TA
Planned Parenthood Federation
of America
123 Williams Street, 9th Floor
New York, NY 10038
T: 212/261-4649

Rupali Sharma*, No. 6698-95-TA
Lawyering Project
443 Western Ave #1025
South Portland, ME 04106
T: 908/930-6645

Attorneys for Plaintiffs

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I caused the foregoing to be electronically filed using the Indiana E-Filing system. Service will be made on all counsel of record by operation of the Indiana E-Filing system.

/s/ Kenneth J. Falk

Kenneth J. Falk, No. 6777-49
Gavin M. Rose, No. 26565-53
Stevie J. Pactor, No. 35657-49
ACLU of Indiana
1031 E. Washington Street
Indianapolis, IN 46202
(317) 635-4059

Alan E. Schoenfeld*, No. 8528-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

Allyson Slater*, No. 8501-95-TA
Katherine V. Mackey*, No. 8502-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Catherine Peyton Humphreville*,
No. 8527-95-TA
Planned Parenthood Federation
of America
123 Williams Street, 9th Floor
New York, NY 10038
(212) 261-4649

Rupali Sharma*, No. 6698-95-TA
Lawyering Project
443 Western Ave #1025
South Portland, ME 04106
(908) 930-6645

Attorneys for Plaintiffs

* Admitted *pro hac vice*

STATE OF INDIANA	)	MONROE COUNTY CIRCUIT COURT
	)SS:	
MONROE COUNTY	)	CAUSE NO. 53C06-2208-PL-001756

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY, INC.; WOMEN'S MED GROUP PROFESSIONAL CORPORATION; and ALL-OPTIONS, INC. on behalf of themselves, their staff, physicians, and patients; and AMY CALDWELL, M.D. on her own behalf and on behalf of her patients,

Plaintiffs,

v.

MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, in their official capacities; and the HENDRICKS COUNTY PROSECUTOR, LAKE COUNTY PROSECUTOR, MARION COUNTY PROSECUTOR, MONROE COUNTY PROSECUTOR, TIPPECANOE COUNTY PROSECUTOR, and the WARRICK COUNTY PROSECUTOR, in their official capacities;

Defendants.

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The Indiana Supreme Court has now held that Article 1, Section 1 is judicially enforceable and encompasses the right to an abortion that is necessary to save a patient's life or protect a patient from a serious health risk. In so holding, the Court indicated that S.B. 1's Health or Life Exception may not adequately protect that right. Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky ("PPGNHAIK"), Women's Med Group Professional Corporation ("Women's Med"), Dr. Amy Caldwell (collectively, the "Provider Plaintiffs"), and All-Options, Inc. ("All-Options") (collectively, "Plaintiffs") now seek a preliminary injunction to protect Hoosiers' constitutional right to access abortions to protect themselves from serious health risks, as articulated by our Supreme Court.

For the reasons explained below, Plaintiffs are likely to succeed on the merits of their claims that S.B. 1 violates Article 1, Section 1 of the Indiana Constitution in that the law's Health or Life Exception and Hospital Requirement do not adequately protect Hoosiers' constitutional rights. And absent a preliminary injunction, Plaintiffs and their patients and clients face immediate, irreparable harm, including the loss of their constitutional rights; the threat of criminal prosecution; loss of their medical licenses; and dramatic, irreversible, and potentially fatal health consequences.

The Supreme Court was correct that S.B. 1's Health or Life Exception may not be broad enough to adequately protect the constitutional right to an abortion necessary to save a patient's life or protect a patient from a serious health risk. By allowing abortions only in the most extreme circumstances, where the patient's pregnancy poses a risk of "death or a serious risk of substantial and irreversible physical impairment of a major bodily function," S.B. 1 violates the right to protect oneself from serious health risks guaranteed by Article 1, Section 1. Further,

pregnancy can either induce or exacerbate numerous serious health risks—including preeclampsia, deep vein thrombosis, hyperemesis, anemia, diabetes, and hypertension—that may not be clearly included within the Health or Life Exception. This lack of clarity chills doctors from providing abortions necessary to treat these serious health risks until they worsen to the point of being life threatening, when it may be too late to save a patient's life. Further, S.B. 1's severe penalty scheme, which subjects physicians to criminal prosecution and loss of medical license if they are later judged to have performed abortions where the health threat did not rise to the level required under S.B. 1, chills physicians from providing necessary and constitutionally permissible abortions, delays care while legal approvals are secured, and forces physicians to choose between honoring medical ethics and protecting their careers and livelihoods.

Moreover, in no circumstance, no matter how dire the threat to a patient's health or life, is a patient able to obtain an abortion if she is suffering from a mental health condition. S.B. 1's carveout of mental health conditions from its Health or Life Exception is contrary to the modern practice of medicine and ignores the various psychiatric conditions that could necessitate an abortion in order to protect patients from serious health risks.

S.B. 1's requirement that abortions be performed in hospitals or ambulatory surgical centers majority owned by hospitals further materially burdens pregnant patients' Article 1, Section 1 right to abortion to protect their health. Historically, nearly all abortions performed in Indiana have been performed at abortion clinics, which often provide care at lower costs, are more numerous than the hospitals willing to provide abortion care, and are not as geographically concentrated. By requiring—without valid medical justification—that abortions provided under S.B. 1's limited exceptions occur at hospitals or ambulatory surgical centers, S.B. 1 imposes substantial and unnecessary hurdles in the way of Hoosiers' ability to exercise their

constitutional rights. These harms outweigh any negligible harm that might be caused to Defendants if the injunction issues, and the public interest will be served by an injunction.

This Court should accordingly grant Plaintiffs' motion and preliminarily enjoin Defendants from enforcing, operating, and executing S.B. 1's statutory definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to (1) health conditions requiring treatment that would endanger the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; (2) health conditions that cause extended and/or debilitating symptoms during the course of a pregnancy; (3) health conditions that are likely to worsen over the course of the pregnancy to eventually become life-threatening; and (4) health conditions that are likely to cause lasting damage to the patient's health or seriously increase the patient's future health risk, even after giving birth.

Plaintiffs also respectfully ask this Court to grant a preliminary injunction enjoining enforcement of S.B. 1's statutory definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to (1) mental health conditions treated with medications that do not have an established safety profile in pregnancy or that pose risks to the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; and (2) severe and/or debilitating mental health conditions (including conditions that a patient has previously experienced and risk recurrence due to pregnancy). In these circumstances, mental health conditions indubitably pose serious health risks to pregnant patients, but are excluded from S.B. 1's definition of "serious health risk."

Finally, Plaintiffs respectfully request that the Court also preliminarily enjoin S.B. 1's Hospital Requirement such that clinics may provide abortions in the circumstances that remain legal in Indiana during the pendency of this litigation.

STATEMENT OF FACTS

I. Abortion Is Safe, Common, and Essential Reproductive Healthcare.

Procedural abortions (also known as surgical abortions[1]) and medication abortions are common and safe. About one in four American women will have an abortion by the time she reaches age 45,[2] and about one in five pregnancies in 2020 ended in abortion.[3] Legal abortion is one of the safest medical interventions in the United States and is substantially safer than continuing a pregnancy through to childbirth. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion,[4] and pregnancy-related complications are more common among patients who choose to give birth than among those who choose to have an abortion.[5] Complications from both medication and procedural abortion are

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[1] Although certain outpatient abortion methods are sometimes referred to as "surgical abortion," that is a misnomer, as they do not entail the typical characteristics of surgery, such as an incision into bodily structures or general anesthesia. According to the American College of Obstetricians and Gynecologists, the leading professional organization for obstetrician-gynecologists, these methods are more appropriately characterized as a procedure, which is defined as a "short interventional technique that includes the following general categories … non-incisional diagnostic or therapeutic intervention through a natural body cavity or orifice" and is "generally associated with lower risk of complications." Am. Coll. of Obstetricians & Gynecologists, *Definition of "Procedures" Related to Obstetrics and Gynecology* (reaffirmed Mar. 2023), https://www.acog.org/clinical-information/policy-and-position-statements/position-statements/2018/definition-of-procedures-related-to-obstetrics-and-gynecology.

[2] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 Am. J. Pub. Health 1904 (2017), https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304042.

[3] Rachel K. Jones et al., *Abortion Incidence and Service Availability in the United States, 2020*, 54:4 Persps. on Sexual & Reprod. Health 128 (Dec. 2022), https://onlinelibrary.wiley.com/doi/10.1363/psrh.12215.

[4] Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the US*, 119 Obstetrics & Gynecology 215–19 (2012), https://journals.lww.com/greenjournal/abstract/2012/02000/the_comparative_safety_of_legal_induced_abortion.3.aspx.

[5] *Id.*

rare.[6] When complications do occur, they can usually be managed in an outpatient setting, either at the time of the abortion or at a follow-up visit.

II. Plaintiffs Provide Safe and Essential Reproductive Health Care—Including Abortion Before S.B. 1 Took Effect—or Support Services to Those Seeking Care in Indiana.

PPGNHAIK is a not-for-profit corporation incorporated in the State of Washington. *See* 53C06-2208-PL-001756, Gibron Decl. ¶ 3 (originally filed on Aug. 31, 2022) (hereinafter, "Gibron Decl."). It is the largest provider of reproductive health services in Indiana, operating 11 health centers throughout the state. PPGNHAIK provides healthcare and educational services, including pregnancy diagnosis and counseling; contraceptive care and provision; testing, treatment, and vaccination for sexually transmitted infections; annual medical examinations; HIV prevention and treatment services; cancer screenings; gender-affirming hormone care; and educational services relating to fertility and pregnancy. *Id.* ¶¶ 7-8. As of August 1, 2023, PPGNHAIK stopped offering abortions in Indiana given the impending enforcement of S.B. 1 and once S.B. 1 became effective the licenses for its clinics to perform abortions were revoked. *See id.* ¶ 12; **Exhibit 1** (July 20, 2023 Letter from Indiana Department of Health to PPGNHAIK concerning revocation of abortion clinic license). However, PPGNHAIK would resume offering abortions in certain situations—including to patients facing

[6] Ushma Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175 (2015), https://journals.lww.com/greenjournal/fulltext/2015/01000/incidence_of_emergency_department_visits_and.29.aspx (finding a very low complication rate).

serious health risks who can safely obtain an abortion in an outpatient setting[7]—should Plaintiffs obtain the relief they seek. *See id.* ¶¶ 12-13.

Women's Med is a for-profit organization incorporated in Ohio. Haskell Decl. ¶ 1. Women's Med provides contraceptive services. *Id.* ¶ 3. Although, like PPGNHAIK, it stopped offering abortions in Indiana as of August 1, 2023 and subsequently had its license to perform abortions revoked, it would resume offering abortions in certain situations—including to patients facing serious health risks who can safely obtain an abortion in an outpatient setting —should Plaintiffs obtain the relief they seek. *Id.* ¶¶ 8-12.

Dr. Amy Caldwell is an OB/GYN physician licensed to practice medicine in Indiana. Caldwell Decl. ¶ 1. She provides both medication and procedural abortion care pursuant to S.B. 1's narrow exceptions at IU Health University Hospital. *Id.* Prior to August 1, 2023, Dr. Caldwell also provided abortion care at PPGNHAIK's Georgetown Road Health Center in Indianapolis. *Id.* As of August 1, 2023, Dr. Caldwell performs abortions in accordance with S.B. 1's statutory definition of when there is a "serious health risk" to a pregnant patient—in cases in which, in her reasonable medical judgment, the patient's pregnancy poses a risk of "death or a serious risk of substantial and irreversible physical impairment of a major bodily function." *Id.* ¶ 7. Should Plaintiffs obtain the relief they seek, Dr. Caldwell would resume performing abortions when a patient's pregnancy poses a serious health risk to that patient, consistent with the protections afforded by the Indiana Constitution. *Id.* ¶ 37.

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[7] Patients who face serious health risks who can safely obtain an abortion in an outpatient setting include—but are not limited to—cancer patients who require abortions before they can begin treatment, patients with mental health conditions who require abortions to protect their own mental health, patients who have had complications with previous high risk pregnancies and who are at elevated risk of serious health issues, and patients with dangerous and debilitating conditions. Haskell Decl. ¶ 11; Caldwell Decl. ¶ 11 n.1.

All-Options is a not-for-profit organization incorporated in Oregon. Dockray Decl. ¶ 1. It provides unconditional, judgment-free support concerning pregnancy, parenting, adoption, and abortion. *Id.* All-Options operates a Pregnancy Resource Center in Bloomington that offers unbiased peer counseling; referrals to social service providers; and resources such as free diapers, wipes, menstrual products, and condoms. *Id.* ¶¶ 1, 4. The Pregnancy Resource Center also operates the Hoosier Abortion Fund, which provides financial assistance to help pay for abortions for the many Indiana residents who would otherwise be unable to afford that care. *Id.* ¶ 5. The Health or Life Exception and the Hospital Requirement have limited All-Options' ability to provide meaningful financial assistance to Hoosiers because: (1) All-Options has had to provide larger grants to patients facing serious health risks who are forced to travel out of state for abortion care due to the uncertainty and narrowness of the Health or Life Exception, and (2) abortions are often more expensive at hospitals. *Id.* ¶¶ 15-19.

III. Indiana's Abortion Regulations Before S.B. 1.

Before the passage of S.B. 1, abortion was legal in Indiana until the earlier of viability or 22 weeks LMP (calculated from the first day of the pregnant person's last menstrual period). Ind. Code § 16-34-2-1(a)(2). In a normally progressing pregnancy, viability typically will not occur before approximately 24 weeks LMP. Prior to S.B. 1 abortions were permitted at licensed abortion clinics, hospitals, and ambulatory outpatient surgical centers ("ASCs"), including those majority-owned by a licensed hospital, *see, e.g.*, *id.* §§ 16-18-2-1.5, 16-21-2-1, but the vast majority occurred in licensed abortion clinics.[8]

[8] *See* Ind. Dep't of Health, Div. of Vital Records, *2022 Terminated Pregnancy Report* at 19 (June 30, 2023), https://www.in.gov/health/vital-records/files/2022-TPR-Annual.pdf; Ind. Dep't of Health, Div. of Vital Records, *2021 Terminated Pregnancy Report* at 17 (June 30, 2022),

IV. S.B. 1 Bans Abortion in Indiana.

The General Assembly passed S.B. 1 on August 5, 2022.[9] Governor Holcomb signed the bill into law the same day.[10] S.B. 1 bans abortion by making performing an abortion a Level 5 felony, punishable by imprisonment of one to six years and a fine of up to $10,000. S.B. 1 § 28(7)(A) (Ind. Code § 16-34-2-7(A)); Ind. Code § 35-50-2-6(B). S.B.1 contains only three extremely limited exceptions:

First, if a physician determines based on "professional, medical judgment" that an "abortion is necessary when reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk of the pregnant woman[11] or to save the pregnant woman's life" (the "Health or Life Exception"). S.B. 1 §§ 21(1)(A)(i), (3)(A). Section 21(3)(A) provides that abortions are permitted "before the earlier of viability of the fetus or [22 weeks LMP]" and any time after. *Id.* §§ 21(1)(A), (3). S.B. 1 defines "serious health risk" to mean

> in reasonable medical judgment, a condition exists that has complicated the mother's medical condition and necessitates an abortion to prevent death *or a serious risk of substantial and irreversible physical impairment of a major bodily*

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https://www.in.gov/health/vital-records/files/2021-ITOP-Report.pdf; Ind. Dep't of Health, Div. of Vital Records, *2020 Terminated Pregnancy Report* at 18 (June 30, 2021), https://www.in.gov/health/vital-records/files/ANNUAL-TPR-CY2020.pdf; Ind. State Dep't of Health, Div. of Vital Records, *2019 Terminated Pregnancy Report* at 15 (June 30, 2020), https://www.in.gov/health/vital-records/files/2019-Indiana-Terminated-Pregnancy-Report.pdf; Ind. State Dep't of Health, Div. of Vital Records, *2018 Terminated Pregnancy Report* at 17 (June 30, 2019), https://www.in.gov/health/vital-records/files/2018-Indiana-Terminated-Pregnancy-Report.pdf; Ind. State Dep't of Health, Div. of Vital Records, *2017 Terminated Pregnancy Report* at 16 (June 30, 2018), https://www.in.gov/health/vital-records/files/2017-Indiana-Terminated-Pregnancy-Report.pdf; Ind. State Dep't of Health, Div. of Vital Records, *2016 Terminated Pregnancy Report* at 19 (June 30, 2017), https://www.in.gov/health/vital-records/files/2016-Indiana-Terminated-Pregnancy-Report.pdf; Ind. State Dep't of Health, Div. of Vital Records, *2015 Terminated Pregnancy Report* at 17 (June 30, 2016), https://www.in.gov/health/vital-records/files/2015-TP-Report.pdf.

[9] Actions for Senate Bill 1, Indiana General Assembly 2022 Special Session, http://iga.in.gov/legislative/2022ss1/bills/senate/1/actions.

[10] *Id.*

[11] Although people of many gender identities, including transgender men and gender-diverse individuals, may become pregnant, seek abortions, and bear children, Plaintiffs at times use the terms "woman" and "women" because S.B. 1's total abortion ban speaks only in terms of "women."

> *function*. The term *does not include psychological or emotional conditions*. A medical condition may not be determined to exist based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in physical harm.

S.B. 1 § 6 (Ind. Code § 16-18-2-327.9) (emphasis added). Before performing the abortion, the physician must certify in writing that the abortion is necessary to prevent a serious health risk to the pregnant patient or to save the patient's life. S.B. 1 §§ 21(1)(E), (3)(E) (Ind. Code §§ 16-34-2-1(1)(E), (3)(E)). The certificate must include "[a]ll facts and reasons supporting the certification." *Id.*

Second, abortions are permitted up to 22 weeks LMP if a physician determines based on "professional, medical judgment" that "the fetus is diagnosed with a lethal fetal anomaly" (the "Lethal Fetal Anomaly Exception"). S.B. 1 § 21(1)(A)(ii) (Ind. Code § 16-34-2-1(1)(A)(ii)). "[L]ethal fetal anomaly" means "a fetal condition diagnosed before birth that, if the pregnancy results in a live birth, will with reasonable certainty result in the death of the child not more than three (3) months after the child's birth." Ind. Code § 16-25-4.5-2. Before performing the abortion, the physician must certify in writing that the abortion is necessary because the fetus is diagnosed with a lethal fetal anomaly. S.B. 1 § 21(1)(E) (Ind. Code § 16-34-2-1(1)(E)). As with the Health or Life Exception, the certificate must include "[a]ll facts and reasons supporting the certification." *Id.*

Third, abortions may be performed up to 12 weeks LMP if the pregnancy was a result of a rape or incest ("Rape or Incest Exception"). S.B. 1 § 21(2)(A) (Ind Code. § 16-34-2-1(2)(A)). Before performing the abortion, the physician must certify in writing, after proper examination, that the abortion is being performed at the patient's request because the pregnancy is a result of rape or incest. S.B. 1 § 21(2) (Ind. Code § 16-34-2-1(2)).

Under S.B. 1, a physician "*shall*" have their license to practice medicine revoked if the Attorney General proves by a preponderance of the evidence that the physician knowingly or intentionally performed an abortion "in all instances" outside of the three narrow exceptions. Ind. Code § 16-34-2-7(a) (citing *id.* § 16-34-2-1) (emphasis added). For a physician's license to be revoked under this section, the State must show by a preponderance of the evidence that the physician performed the abortion with the intent to avoid the requirements of those provisions. S.B. 1 § 41(b)(2) (Ind. Code § 22-22.5-8-6(b)(2)).

Finally, S.B. 1 also eliminates licensed abortion clinics—where the vast majority of abortions previously occurred—and requires that any abortions performed under S.B. 1's narrow exceptions take place at a licensed hospital or ambulatory surgical center majority-owned by a licensed hospital (the "Hospital Requirement"). S.B. 1 §§ 21(1)(B), (3)(C) (Ind. Code § 16-34-2-1(1)(B), 3(C)); S.B. 1 § 21(2)(C) (Ind. Code § 16-34-2-1(2)(C)).

V. The Indiana Supreme Court Vacated This Court's Previous Preliminary Injunction.

On August 31, 2022, Plaintiffs filed suit in Monroe County Circuit Court against members of the Medical Licensing Board of Indiana and several county prosecutors (collectively, "the State") challenging S.B. 1's constitutionality under Article 1, Sections 1, 12, and 23 of the Indiana Constitution. Plaintiffs simultaneously moved for a preliminary injunction barring its enforcement.

This Court issued a detailed and thorough order on September 22, 2022, granting a preliminary injunction and enjoining the State from enforcing S.B. 1 during the pendency of the litigation. This Court concluded not only that Article 1, Section 1 provides judicially enforceable rights, but also that Plaintiffs were reasonably likely to prevail on the merits and would suffer irreparable harm should S.B. 1 take effect during the pendency of the litigation. This Court also found that both the balance of the harms and the public interest favored an injunction.

Finally, this Court found Plaintiffs were unlikely to prevail on their Article 1, Section 23 claim, and Plaintiffs had previously withdrawn their Article 1, Section 12 claim. Plaintiffs maintain their claim that S.B. 1's Hospital Requirement violates Article 1, Section 1 of the Indiana Constitution because the Hospital Requirement materially burdens the Article 1, Section 1 right to an abortion to address serious health risks by forcing patients to have those abortions at hospitals, where such care is typically more expensive and generally requires time-intensive additional travel.

The State appealed the preliminary injunction to the Court of Appeals, moved for a stay of the preliminary injunction pending appeal, and sought to transfer the appeal to the Supreme Court under Indiana Rule of Appellate Procedure 56(A). On October 12, 2022, the Supreme Court granted the State's motion to transfer, but denied the motion to stay.

On June 30, 2023, the Indiana Supreme Court vacated the preliminary injunction and remanded the case for further proceedings. *First*, the Court held that the Plaintiffs had standing to contest the constitutionality of S.B. 1. *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 961 (Ind. 2023). *Second*, the Court held that Article 1, Section 1 is judicially enforceable. *Id.* at 966. *Third*, the Court held that Article 1, Section 1 protects the right to an abortion that is necessary to protect a patient's life or to protect her from a serious health risk. *Id.* at 975-77. It explained that Article 1, Section 1's "fundamental right of self-protection" "extends beyond just protecting against imminent death" and "includes protecting against 'great bodily harm.'" *Id.* at 976 (quoting *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021)). The Court noted that the appeal did "not present an opportunity to establish the precise contours of a constitutionally required life or health exception and the extent to which that exception may be broader than the current statutory

exceptions." *Id.* at 976-77. Given its analysis, the Court did not reach the question whether any aspect of S.B. 1 was unlawful because it materially burdened the rights established by Article I, Section 1. Finally, the Court concluded that Plaintiffs had not shown a reasonable likelihood of success on their challenge to the entirety of S.B. 1, but it noted that it vacated the injunction "without prejudice to future, narrower, facial or as-applied challenges." *Id.* at 965. Plaintiffs then petitioned for rehearing, which the Court denied on August 21, 2023. The Opinion was certified that same day.

VI. S.B. 1 Prevents Hoosiers Suffering Serious Health Risks, Including Mental Health Risks, from Obtaining Abortions, in Violation of Their Constitutional Rights.

Until and unless its statutory definition of "serious health risk" is enjoined, S.B. 1 forces Hoosiers to suffer a host of serious health risks that may not clearly rise to the level of threatening their "death or a serious risk of substantial and irreversible physical impairment of a major bodily function," S.B. 1 § 6 (Ind. Code § 16-18-2-327.9), but that may still have serious and/or long-lasting detrimental impacts on their health.

Certain health conditions (including mental health conditions) that are caused or exacerbated by pregnancy may not fall under S.B. 1's narrow definition of a "serious health risk" but are assuredly "serious" conditions nonetheless.[12] These serious conditions may include (1) health conditions requiring treatment that would endanger the fetus, meaning that continuing

[12] Although there is no one meaning of "serious" in the medical context, various statutes have attempted to define the meaning of "serious health condition." *See, e.g.*, Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2611(11) (defining "serious health condition" as "an illness, injury, impairment, or physical or mental condition that involves—(a) inpatient care in a hospital, hospice, or residential medical care facility; or (b) continuing treatment by a health care provider"); Or. Rev. Stat. § 659A.150(7) (maintaining an even broader definition of "serious health condition" that includes, *inter alia*, "[a]ny period of disability due to pregnancy, or period of absence for prenatal care"). It is clear that although the statutes do not agree on exactly what constitutes a "serious health condition," the term encompasses many conditions that are not covered by S.B. 1's narrow definition.

the pregnancy could require forgoing needed treatment; (2) health conditions that cause extended and debilitating symptoms during the course of a pregnancy; (3) health conditions that are likely to worsen over the course of the pregnancy to eventually become life-threatening; and (4) health conditions that are likely to cause lasting damage to the patient's health or seriously increase the patient's future health risk, even after giving birth. Moreover, the onerous restrictions imposed by S.B. 1's Health or Life Exception and Hospital Requirement are causing dangerous delays and obstacles to access for pregnant Hoosiers seeking medically necessary abortion care.

A. Health Risks Exacerbated by Pregnancy

Pregnancy can exacerbate preexisting health conditions that may not be clearly included in S.B. 1's Health or Life Exception unless they have progressed to an extremely severe level, such as hypertension and other cardiac diseases, autoimmune disorders, chronic renal disease, obstructive sleep apnea, endocarditis, complex pulmonary disease, pulmonary valvular heart disease, lupus, Crohn's disease, anemia, asthma and other pulmonary diseases, blood clots, multiple sclerosis, seizure disorders, Type 1 and 2 diabetes, and cancer. Ralston Decl. ¶ 21. Pregnant Hoosiers are also at greater risk of gastrointestinal disorders, changes to their breathing, blood clots, hypertensive disorders, infectious disease, and anemia, among other complications. Caldwell Decl. ¶ 13. These complications sometimes require urgent or emergent care to preserve the patient's health or save their life. *Id.* While it may be true that in some cases these conditions could be managed throughout pregnancy, it is frequently the case that continuing a pregnancy with these conditions (or in circumstances where these conditions are likely to arise) entails serious risk to the health of the pregnant patient. With respect to these and other conditions, pregnancy can also cause incremental changes to a patient's health that are not significantly health-limiting or life-threatening in the short-term but, over time, can become serious threats. Caldwell Decl. ¶ 15; Ralston Decl. ¶ 23. For example, preexisting pulmonary

hypertension—or high blood pressure—can worsen as a pregnancy advances, which can lead to preeclampsia, eclampsia, cardiac hypertrophy, heart attack, heart or kidney damage, and stroke. *Id.* ¶ 22.

B. Health Risks Caused by Pregnancy

Pregnancy can also lead to the development of new and serious health conditions, such as hyperemesis gravidarum (severe and frequent vomiting), preeclampsia (dangerously high blood pressure), and deep vein thrombosis (potentially fatal blood clots). Ralston Decl. ¶¶ 13, 19-20. For instance, preeclampsia is a condition characterized by high blood pressure and a high level of protein in the urine that some people develop during pregnancy. *Id.* ¶ 13. If undiagnosed or untreated, preeclampsia's dangerous increase in blood pressure can cause organ damage, stroke, seizures, and death. *Id*. It can also progress to severe preeclampsia or eclampsia, which is characterized by seizures and can cause both maternal and fetal mortality. *Id*. The only treatment for patients with severe preeclampsia in the second trimester of pregnancy is to remove the placenta from the uterus; before the point of fetal viability, that treatment necessitates an abortion. *Id*. Similarly, molar pregnancies, in which both a fetus and abnormal placental tissue develop, can cause dangerously high blood pressure and thyroid disease; again, the only treatment for this type of molar pregnancy is an abortion. *Id.* ¶ 14. If the molar cells are not removed, they can continue to grow and form a tumor and cause a variety of medical problems, including hemorrhage, infection, and death. *Id*. Additionally, preterm premature rupture of the membranes ("PPROM")—when the sac (or amniotic membrane) surrounding the fetus ruptures before the pregnancy is full-term—is a serious condition that places the pregnant person at increased risk of infection if she does not receive an abortion. *Id.* ¶ 16.

Additionally, some pregnant patients suffer from debilitating medical conditions that some Indiana hospitals or providers may decline to treat with abortion for fear that the condition

might later be judged to not clearly fall under the Health or Life Exception. For example, some patients experience hyperemesis gravidarum while pregnant, which causes uncontrollable, debilitating, near-constant nausea and frequent vomiting. Caldwell Decl. ¶ 14; Ralston Decl. ¶ 20. This condition can be so severe that it prevents patients from working, taking care of their children, and completing the basic tasks of daily life; it may also require frequent and/or lengthy hospitalizations. Caldwell Decl. ¶ 14; Ralston Decl. ¶ 20. Although hyperemesis gravidarum can sometimes be managed and is not often fatal, healthcare providers often recommend abortions, in consultation with their patients, to protect the patient from debilitating symptoms and serious health consequences that can continue past the pregnancy and impact the patient's long-term quality of life. Caldwell Decl. ¶ 14. Some Indiana providers, however, may decline to provide abortions to patients suffering from hyperemesis gravidarum for fear that its symptoms and risks do not clearly fall within the bounds of S.B. 1's Health or Life Exception.

There are also conditions that may not *initially* threaten severe bodily impairment or death, but regularly worsen to eventually pose such risks. To take just one example, as mentioned above, some patients develop preeclampsia while pregnant. Preeclampsia, which involves a dangerous increase in blood pressure, can occur at different stages in a pregnancy with varying and progressive degrees of severity. *See* Ralston Decl. ¶¶ 13, 19-20. Severe preeclampsia can result in organ damage, stroke, seizures, and death. Ralston Decl. ¶ 13. It is thus consistent with best practices to treat preeclampsia as soon as it is detected, regardless of its severity at the time. *Id.* Under S.B. 1's unconstitutionally narrow exception, a Hoosier experiencing preeclampsia could be forced to suffer this dangerous condition and wait for it to worsen without immediate access to the full range of treatment options, including abortion. *Id*.

C. Mental Health Risks During Pregnancy

S.B. 1 explicitly excludes (with no rationale or medical basis) patients suffering from psychological and psychiatric conditions, including suicidal ideation, from qualifying for its Health or Life Exception. This exclusion is inconsistent with best medical practices and harms pregnant Hoosiers. Mittal Decl. ¶ 31. Mental health conditions are medical conditions that are rooted in biochemistry and physiology and can pose serious health risks to pregnant patients. *Id.* ¶ 31. Just like other health conditions, mental health conditions, including some that are very severe, may emerge for the first time during pregnancy, sometimes due to psychological risk factors, such as youth, poverty, substance use, or a lack of family support. *Id.* ¶ 8. These mental health conditions can range from worsening anxiety and mood disorders to active suicidal ideation with intentions to self-harm or psychotic symptoms. *Id.* ¶¶ 8, 11, 29, 32. Just as with other existing health issues, mental health issues can be aggravated by the changes brought on by pregnancy. *Id.* ¶ 9. For example, patients with a documented history of mental illness whose condition is stable before pregnancy may experience a recurrence of mental illness as a result of the hormonal and neurochemical changes to her body and stress and anxiety relating to pregnancy. *Id.* ¶¶ 8-9. Moreover, pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum depression. *Id.* ¶¶ 8, 11.

Compounding the issue, pregnancy can make medication management for individuals with mental illness more difficult because it causes changes in drug metabolism, and some medications for mental health conditions and psychiatric conditions—such as bipolar disorder, schizophrenia, major depressive disorder, anxiety disorders, and psychotic disorders—carry risks to the fetus and do not have an established safety profile in pregnancy. Mittal Decl. ¶¶ 21-23, 26. If a patient's psychiatric medication carries risk to the fetus (as many do), the patient may need to discontinue or modify their medication in order to avoid risking harm to the fetus.

However, this will significantly increase the likelihood that mental illness recurs. *Id.* ¶¶ 25, 27-29. Thus, patients regulating a mental health condition with medication that may carry risk to the fetus may be faced with the difficult choice between (1) discontinuing or modifying their medication to avoid risking harm to the fetus and (2) continuing to treat their mental illness with necessary medications but risking harm to the fetus. If the patient chooses to discontinue or modify her medications, there may be increased risk of symptoms both during and after pregnancy because it is more difficult to return to equilibrium after relapse than it is to maintain a stable condition. *Id.* ¶¶ 8, 18, 25, 27. For some patients with serious psychiatric illnesses, medication is the difference in keeping their life, family, and/or career intact or not. *Id.* ¶ 30. If such patients are forced to cease taking their medication due to its potential teratogenic effects on a fetus, they may relapse and suffer dysphoric mood episodes, debilitating depression, or suicidal ideation, or engage in risky and self-harming behavior such as substance abuse. *Id.* ¶¶ 26-29.

Moreover, mental health conditions can make it more difficult to manage physical health issues during pregnancy. The consequences of aggravating an existing mental health condition or relapsing after a mental health condition is stable can be dire for pregnant patients and their families. Mittal Decl. ¶ 29. Patients may require psychiatric hospitalization, may lose their jobs, and may be unable to care for their new babies or other dependents. *Id.* If suffering from particularly severe mental illness, patients may also engage in self-harm (including attempting suicide) or may harm their infant. *Id.* A patient who finds themselves again pregnant and who has previously suffered debilitating postpartum depression or psychosis following a previous pregnancy may wish to avoid the risk of that outcome occurring again. *Id.* ¶ 32. There is no medically certain way to prevent these postpartum mental health conditions and so the patient may decide to seek an abortion. *Id.* No matter how severely her mental health deteriorated in

the past, that patient would never be able to receive an abortion in Indiana under S.B. 1's narrow definition of "serious health risk." *Id.* That definition ignores the reality that such mental health conditions objectively pose serious health risks to patients and prevents physicians from providing appropriate medical care. *Id.*

D. Health Risks of Delays in Necessary Abortion Care

Confusion about what constitutes a "serious health risk" under S.B. 1 is causing dangerous delays in abortion care. Some of the conditions discussed above, if allowed to progress, frequently pose a "serious risk of substantial and irreversible physical impairment of a major bodily function." For patients with chronic diseases or conditions, a physician may not be able to accurately predict whether the condition has progressed to the point that it is life-threatening or poses a serious risk of substantial impairment of a major bodily function in time to provide medically necessary abortion care. Ralston Decl. ¶ 23. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy) are significantly more likely to do so. *Id.* ¶ 19. Yet, S.B. 1 forces physicians determining whether a particular patient's condition poses a "serious risk" of "substantial" impairment to consider the law's harsh penalties, and, faced with the threat of losing one's medical license or of potentially being prosecuted and imprisoned, many physicians will delay treatment and wait until a patient's condition deteriorates to provide needed care. *Id.* ¶ 29. As a consequence, pregnant Hoosiers with worsening medical conditions may be—and have been—forced to wait for care until a physician determines that their conditions have become deadly or pose a serious risk of impairment such that they meet the high threshold for an abortion care exception under S.B. 1. Caldwell Decl. ¶ 17. For example, some Hoosier patients with PPROM were denied care at the hospitals where they first sought treatment due to the serious legal risks posed by S.B. 1 and had to wait to be transferred to a different hospital that

agreed to perform the procedure. *Id.* ¶ 31. Requiring patients to wait to be transferred to a different hospital before receiving needed treatment in such situations due to fear of liability under S.B. 1 dramatically and unnecessarily increases medical risks to the patient and could have dire and lasting consequences for their health. *Id.*

Moreover, even if it were clear which conditions fell within S.B. 1's Health or Life Exception, the law would still force many pregnant individuals to become gravely ill before they could access abortion care. Ralston Decl. ¶ 32. For example, pregnant patients with severe cardio-pulmonary disease may be able to tolerate the physiological changes of the first trimester but will become predictably more ill as pregnancy proceeds. *Id.* But S.B. 1 may chill a doctor from providing an abortion to such a patient earlier in pregnancy, even though it would be safer than either continuing the pregnancy to term or receiving a more complex abortion procedure later in pregnancy when her health has deteriorated. *Id.* These avoidable scenarios have already started to play out in hospital waiting rooms and parking lots in states that have severely restricted abortion care.[13] Ralston Decl. ¶ 33.

[13] A nurse practitioner in Tennessee, where abortion care is banned but doctors are allowed to use their "reasonable medical judgment" to determine whether an abortion is needed to save a mother's life or prevent a major injury, reported hearing "story after story from OBGYNs about women having to actually sit in parking lots in emergency rooms before coming in for care or being told to go back outside and sit in the parking lot." Jacqui Sieber et al., *A Regional Look at Abortion Access, One Year After the Fall of* Roe v. Wade, WUOT (June 26, 2023), https://www.wuot.org/2023-06-26/a-regional-look-at-abortion-access-one-year-after-the-fall-of-roe-v-wade. She continued, "[b]ecause even though they're bleeding heavily, and there's a threat for their life, it's not serious enough. And so, they sit outside until their condition worsens." *Id.* In Oklahoma, a woman with a cancerous molar pregnancy was turned away from a hospital because her situation was deemed not yet serious enough to qualify for abortion care. Selena Simmons-Duffin, *In Oklahoma, a Woman Was Told to Wait Until She's 'Crashing' for Abortion Care*, NPR (Apr. 25, 2023), https://www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals. She stated that the hospital staff told her that she could "sit in the parking lot," "[b]ut we cannot touch you unless you are crashing in front of us or your blood pressure goes so high that you are fixing to have a heart attack." *Id.*

E. The Hospital Requirement Limits Access to Medically Necessary Care

Finally, S.B. 1's Hospital Requirement severely limits the facilities at which Hoosiers can access abortion care to which they are entitled under the Health or Life Exception and under S.B. 1's Rape or Incest Exception. Caldwell Decl. ¶ 11. Hospitals have historically performed a very small number of abortions in Indiana, with clinics performing the vast majority.[14] The Hospital Requirement has resulted in an increase in the number of patients attempting to schedule hospital abortions. Moreover, the Hospital Requirement has resulted in delays in patients obtaining needed abortion care due to confusion about the legality of certain abortions in Indiana, lack of awareness regarding where and how abortions under S.B. 1's exceptions can still be obtained, and the additional complexity involved in referring patients to the extremely limited number of hospital providers. *Id.* ¶¶ 11, 31, 36. Indiana hospitals providing abortions are also geographically concentrated near the Indianapolis region, meaning that Hoosiers will have to travel farther to access abortion care at these facilities.[15] The Hospital Requirement also does not serve its alleged purpose of protecting the health of the pregnant patient because state-wide data and the academic literature show conclusively that abortions performed in outpatient clinics are as safe as abortions performed in hospitals.[16]

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[14] *See* Caldwell Decl. ¶ 11; Dockray Decl. ¶¶ 18, 21; *supra* note 8.

[15] Caldwell Decl. ¶ 11; Dockray Decl. ¶ 21; *2022 Terminated Pregnancy Report* at 19, *supra* note 8.

[16] *See, e.g.*, Nat'l Acads. of Scis., Eng'g, and Med. Committee on Reprod. Health Servs. et al., *Summary: The Safety and Quality of Abortion Care in the United States*, NAT'L ACADS. PRESS (2018), https://www.ncbi.nlm.nih.gov/books/NBK507229/ ("Most abortions can be provided safely in office-based settings."). In 2021, there were 14 reports of abortion complications of the 8,414 abortions performed in Indiana; the complications occurred in both clinics and hospitals. *See* Ind. Dep't of Health, *Indiana 2021 Abortion Complication Report* at 1, 4 (last updated Jan. 25, 2023), https://www.in.gov/health/vital-records/files/Medical_Indiana-2021-Abortion-Complication-Report-Final.pdf; *2021 Terminated Pregnancy Report*, *supra* note 8. In 2022, there were 100 reports of abortion complications of the 9,529 abortions performed in Indiana; the complications occurred in both clinics and

In addition, there are significant expenses that many pregnant patients have to incur in traveling to the Indianapolis region to obtain abortion care in a hospital or ambulatory surgical center majority owned by a hospital. Many pregnant Hoosiers who seek abortion care in outpatient clinic settings have family incomes below the federal poverty line and simply will be unable to pay the exorbitant costs of abortion care in a hospital or ambulatory surgical center. *See* Gibron Decl. ¶ 16 (in 2022, 52% of the patients who received abortion care from PPGNHAIK had family incomes below the federal poverty line). It follows that the Hospital Requirement creates an insurmountable financial and logistical barrier that prevents many pregnant Hoosiers (1) who are facing a serious health risk, (2) who are victims of rape or incest, and (3) who have received diagnoses of lethal fetal anomalies from receiving the necessary medical care to which they are constitutionally and statutorily entitled.

LEGAL STANDARD

A party seeking preliminary injunctive relief under Rule 65 of the Indiana Rules of Trial Procedure must demonstrate by a preponderance of the evidence that: (1) the remedy at law is inadequate and the plaintiff will suffer irreparable harm pending resolution of the action; (2) the plaintiff is reasonably likely to prevail on the merits; (3) the threatened injury to the plaintiff if an injunction is denied outweighs the threatened harm to the adverse party if the injunction is granted; and (4) the public interest will be disserved if injunctive relief is not granted. *See City of Gary v. Mitchell*, 843 N.E.2d 929, 933 (Ind. Ct. App. 2006); *Barlow v. Sipes*, 744 N.E.2d 1, 5 (Ind. Ct. App. 2001); *Norlund v. Faust*, 675 N.E.2d 1142, 1149 (Ind. Ct. App. 1997); *see also* Ind. Code § 34-26-1-5 (statutory requirements for obtaining pre-judgment injunction). "[T]he

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hospitals. *See* Ind. Dep't of Health, Div. of Vital Records, *2022 Terminated Pregnancy Complications Report* at 3, 7 (June 30, 2023), https://www.in.gov/health/vital-records/files/2022-Complications-Report.pdf; *2022 Terminated Pregnancy Report*, *supra* note 8.

purpose of a preliminary injunction is to maintain the status quo." *Abercrombie & Fitch Stores, Inc. v. Simon Prop. Grp., L.P.*, 160 N.E.3d 1103, 1108 (Ind. Ct. App. 2020) (citing *AGS Cap. Corp. v. Prod. Action Int'l, LLC*, 884 N.E.2d 294, 314 (Ind. Ct. App. 2008)).

ARGUMENT

This Court should enter the preliminary injunction sought by Plaintiffs because Plaintiffs have successfully demonstrated all four factors justifying injunctive relief. *First*, Plaintiffs have established a *prima facie* case for success on the merits, demonstrating that S.B. 1's Health or Life Exception and the Hospital Requirement violate Article 1, Section 1 of the Indiana Constitution by prohibiting abortions necessary to protect pregnant patients from serious health risks, including mental health risks, and by preventing patients from accessing abortions necessary to protect against serious health risks, even as defined under the statute. *Second*, Plaintiffs, their patients, and their clients are already suffering immediate and irreparable harm now that S.B. 1's overly narrow Health or Life Exception and Hospital Requirement have gone into effect, including serious physiological and psychological consequences for patients and clients, as well as the threat of prosecution and loss of medical licensure for Plaintiffs. *Third*, the injury to Plaintiffs and their patients and clients considerably outweighs any harm that might be caused to the State if the injunction issues. *Finally*, the requested injunctive relief will serve the public interest.

I. Plaintiffs Are Reasonably Likely to Succeed on the Merits.

Plaintiffs are entitled to an injunction because they have "establish[ed] a *prima facie* case" demonstrating "a reasonable likelihood of success at trial." *See N. Elec. Co. v. Torma*, 819 N.E.2d 417, 431 (Ind. Ct. App. 2004) (citing *Davis v. Sponhauer*, 574 N.E.2d 292, 302 (Ind. Ct. App. 1991)). A plaintiff must establish its *prima facie* case through probative and substantial evidence, *Ind. High Sch. Athletic Ass'n, v. Martin*, 731 N.E.2d 1, 7 (Ind. Ct. App. 2000),

meaning evidence that is "more than a scintilla and less than a preponderance," *Partlow v. Ind. Fam. & Soc. Servs. Admin.*, 717 N.E.2d 1212, 1217 (Ind. Ct. App. 1999).

The party seeking preliminary injunctive relief is *not* required to show they are "entitled to relief as a matter of law," nor are they required to "prove and plead a case which would entitle [them] to relief upon the merits." *Abercrombie & Fitch Stores*, 160 N.E.3d at 1109; *Hannum Wagle & Cline Eng'g, Inc. v. Am. Consulting, Inc.*, 64 N.E.3d 863, 874 (Ind. Ct. App. 2016). Moreover, where—as here—there is a great danger of irreparable harm to plaintiffs or the public, plaintiffs need not go beyond the establishment of their *prima facie* case. *See Ind. State Bd. of Pub. Welfare v. Tioga Pines Living Ctr., Inc.*, 637 N.E.2d 1306, 1311 (Ind. Ct. App. 1994) (contrasting with heightened standard testing the probability of recovery on the merits when irreparable harm is reduced).

A. Plaintiffs Are Reasonably Likely to Succeed in Showing that S.B. 1 Violates Hoosiers' Article 1, Section 1 Right to An Abortion That Is Necessary to Protect Them from a Serious Health Risk.

1. *Article 1, Section 1 Confers a Right to an Abortion Necessary to Protect the Patient's Life or Protect the Patient from a Serious Health Risk*

In its decision assessing the constitutionality of S.B. 1, the Indiana Supreme Court held that because Article 1, Section 1 protects Hoosiers' "fundamental right of self-protection," the "General Assembly cannot prohibit an abortion procedure that is necessary to protect a woman's life or to protect her from a serious health risk." *Planned Parenthood Great Nw.*, 211 N.E.3d at 976. In so holding, the Court expressly refrained from drawing any conclusions about whether S.B. 1's narrow Health or Life Exception is constitutional under the standard articulated by the Court. Rather, the Court held that because Plaintiffs' challenge to the entire law was facial rather than as-applied, the appeal did "not present an opportunity to establish the precise contours of a constitutionally required life or health exception and *the extent to which that exception may be*

broader than the current statutory exceptions." *Id.* at 976-77 (emphasis added). Notably, at least two justices of the Indiana Supreme Court have either strongly suggested or outright declared that they believe that S.B. 1's Health or Life Exception is insufficient to protect Hoosiers from a serious health risk. *See Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 214 N.E.3d 348, 349 (Ind. 2023) (Mem) (Rush, C.J., concurring in denial of rehearing) ("I am deeply concerned about [S.B.] 1's impact on Hoosier women's constitutional right to seek medical care that is necessary to protect their life or to protect them from a serious health risk. And I am likewise concerned about the law's impact on healthcare providers who must determine whether to provide that care and potentially expose themselves to criminal penalties and professional sanctions."); *id.* (Goff, J., dissenting from denial of rehearing) ("[A]bortion is not permitted in response to (1) conditions that cause serious pain, suffering, or disability without irreversible impairment; (2) severe psychiatric illnesses, which may require medication that can't be taken during pregnancy; or (3) psychiatric issues that may lead to suicide or self-harm. These are all potentially severe medical problems. And seeking medically necessary treatment for them likely falls within the ambit of the constitutional right to protect one's life and health."). Plaintiffs' present, more tailored motion, however, squarely presents that opportunity. Given the uncertain language and narrow scope of S.B. 1's Health or Life Exception as well as the reality of how it will affect patients who need abortions, S.B. 1 clearly contravenes Hoosiers' fundamental right of self-protection by chilling or prohibiting abortion care that is necessary to protect pregnant Hoosiers from serious health risks.

2. *S.B. 1 Violates Article 1, Section 1 By Chilling or Prohibiting Abortions Necessary to Protect the Patient's Life or Protect the Patient from a Serious Health Risk*

S.B. 1's narrow Health or Life Exception, which permits pregnant Hoosiers to obtain abortion care only when, in a doctor's "reasonable medical judgment, a condition exists that has

complicated the mother's medical condition and necessitates an abortion to prevent death or a serious risk of substantial and irreversible physical impairment of a major bodily function," fails to protect pregnant Hoosiers from serious health risks as required by Article 1, Section 1. The statutory definition of the term "serious health risk" renders the exception unconstitutionally narrow because it outlaws abortion for Hoosiers suffering objectively serious health risks that do not rise to the level of posing "a serious risk of substantial and irreversible physical impairment of a major bodily function." S.B. 1 § 6. Additionally, S.B. 1's threat of criminal liability and loss of licensure for physicians who perform abortions that are later judged as falling outside of the purported exception has the practical effect of forcing Hoosiers with serious conditions that progressively worsen during pregnancy to suffer additional and unnecessary serious health risks while doctors wait for their conditions to deteriorate and/or seek the approval and advice of legal counsel or hospital committees before providing care. It also prevents physicians from performing abortions to alleviate serious medical conditions that will remain stable during the pregnancy, forcing patients with these conditions to remain pregnant at serious risk to their health. These barriers to care violate Article 1, Section 1's protection of an individual's right to protect and preserve her own health.

It is well-established that pregnancy can pose serious health risks. As discussed above, pregnancy can exacerbate or lead to the development of myriad serious health conditions that can cause debilitating and/or long-term health consequences. These risks are well-recognized by courts, including the Indiana Supreme Court. In *Humphreys v. Clinic for Women, Inc.*, the Indiana Supreme Court credited evidence "demonstrating a number of different health risks faced by pregnant women with respect to which an abortion is medically necessary." 796 N.E.2d 247, 256 (Ind. 2003). This evidence included testimony that "many women confront serious

health risks when pregnant," such as "[h]ypertension" and "pregnancy-induced diabetes." *Id.* Further, the evidence showed that pregnancy "jeopardizes" the health of pregnant Hoosiers with heart disease, chronic renal failure, myasthenia gravis, pulmonary embolism, lupus, sickle cell anemia, asthma, arthritis, inflammatory bowel disease, gall bladder disease, liver disease, and epilepsy, among other conditions. *Id.* The evidence also demonstrated that "when cancer threatens a pregnant woman's life, the pregnancy puts further strain on the woman's health, and may require a suspension of cancer treatment because of harm to the fetus from such treatments." *Id.* In *A Woman's Choice-East Side Women's Clinic v. Newman*, the Indiana Supreme Court construed an Indiana abortion law's medical emergency exception to excuse compliance with the State's informed consent requirements when "such compliance would in any way pose a significant threat to the life or health of the" pregnant patient. 671 N.E.2d 104, 108 (Ind. 1996). The court acknowledged that a condition like PPROM, for example, poses a serious risk both at the condition's onset and after shock has occurred. *Id.* The Court concluded that the attending physician has "the flexibility to exercise to the fullest extent her professional judgment when diagnosing a patient. If the diagnosis indicates that an abortion is medically necessary, then the physician may perform it without delay." *Id.* at 109.

Many of these myriad health risks—despite having quite serious impacts on the pregnant patient—would not qualify as "serious health risk[s]" as currently defined by S.B. 1. Because S.B. 1's Health or Life Exception makes abortion only available to Hoosiers suffering from extreme physical ailments, it may prohibit patients from obtaining abortions even when faced with health risks that are objectively serious. S.B. 1 defines "serious health risk[s]" to include only those that pose a "serious risk of *substantial and irreversible physical impairment of a major bodily function*." S.B. 1 § 6 (emphasis added). On its face, S.B. 1 therefore condemns

pregnant Hoosiers to suffer, for example, all (1) substantial but *reversible* physical impairments of a major bodily function, (2) *moderate* and irreversible physical impairment of a major bodily function, and (3) substantial and irreversible physical impairments of *bodily functions that do not qualify as "major." Id.*

The language used in S.B. 1's Health or Life Exception also is not rooted in medical science or in the reality of how medical providers treat their patients. Caldwell Decl. ¶ 19. For example, what qualifies as a "*substantial* … physical impairment of a major bodily function?" What constitutes an "*irreversible* physical impairment of a major bodily function?" Does an impairment count as irreversible if it can only be remedied through a series of surgeries? What constitutes a "major bodily function," which is a legal—not medical—term? Since many doctors work in hospitals or clinics with risk management departments and large legal systems, any such answer is complicated and involves not just the doctor's judgment, but confirming with a specialist in maternal-fetal medicine and with a committee composed of lawyers, medical providers, and hospital administrators that the judgment call is appropriate. *Id.* ¶ 29. The lack of clarity about when a risk becomes a "serious health risk" under the Health or Life Exception is leading to dangerous delays in abortion care and the denial of needed abortions.

The risk of delayed care is not hypothetical. *See supra* pp. 18-19; Caldwell Decl. ¶ 31. In a study examining the impact of abortion bans on medical care over the past year, health professionals from the University of California, San Francisco, found that:

> [t]he post-*Dobbs* laws and their interpretations altered the standard of care . . . in ways that contributed to delays, worsened health outcomes, and increased the cost and logistic complexity of care. In several cases, patients experienced preventable complications, such as severe infection or having the placenta grow deep into the

> uterine wall and surrounding structures, because clinicians reported their "hands were tied," making it impossible for them to provide treatment sooner.[17]

Pregnant people suffering from serious medical issues in states where abortion has been severely restricted have had to wait outside in hospital parking lots until their condition worsened even further. *See supra* note 8. Absent injunctive relief, S.B. 1's unconstitutionally narrow Health or Life Exception will continue to endanger pregnant Hoosiers by preventing them from obtaining necessary and timely abortion care to protect against serious health risks. It therefore violates Hoosiers' fundamental right to self-protection as guaranteed by Article 1, Section 1.

Courts have also recognized the risks inherent in abortion bans that restrict doctors from providing medically indicated abortions. In *Zurawski v. Texas*, Case No. D-1-GN-23-000968 (Tex. Dist. Ct. Aug. 4, 2023) (attached hereto as **Exhibit 2**), a Texas district court judge held that enforcement of Texas's abortion bans was unconstitutional[18] under the Texas Constitution as applied to pregnant people with certain conditions, including, at least a physical medical condition or complication of pregnancy that poses a risk of infection, or otherwise makes continuing a pregnancy unsafe for the pregnant person; [and] a physical medical condition that is exacerbated by pregnancy, cannot be effectively treated during pregnancy, or requires recurrent invasive intervention." *Id.*, slip op. at 2. In concluding that the abortion bans were unconstitutional, the judge found that "there is uncertainty regarding whether the medical

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[17] Daniel Grossman et al., *Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision*, Advancing New Standards in Reproductive Health (ANSIRH), Univ. of Cal., S.F. (May 2023), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf; Ind. Dep't of Health, *Indiana Medical Error Reporting System - Final Report for 2018* (Dec. 16, 2019) at 27, https://www.in.gov/health/files/2018-MERS-Report.pdf.

[18] Specifically, the order partially enjoins Texas's "Pre-*Roe* Ban" (1925 Tex. Penal Code Arts. 1191-1194, 1196 (Vernon's Tex. Civ. States Civil Statutes Arts. 4512.1-4512.4, 4512.6)), "Trigger Ban" (Tex. Health & Safety Code §§ 170A *et seq.*), and S.B. 8 (Tex. Health & Safety Code §§ 171.002, 171.203-205). *Zurawski*, slip op. at 1.

exception to Texas's abortion bans … permits a physician to provide abortion care where, in the physician's good faith judgment and in consultation with the pregnant person, a pregnant person has a physical emergent medical condition." *Id.* The judge further found that this "uncertainty regarding the scope of the medical exception and the related threat of enforcement of Texas's abortion bans has created an imminent risk that … physicians throughout Texas will have no choice but to bar or delay the provision of abortion care to pregnant persons in Texas [with an emergent medical condition] for fear of liability under Texas's abortion bans." *Id.*, slip op. at 3-4.[19] S.B.1's unconstitutionally narrow Health or Life Exception is causing similar uncertainty among Indiana providers and erecting similar dangerous barriers to medically necessary abortion care in violation of the Indiana Constitution.

3. *Mental Health Conditions Can Constitute Serious Health Risks*

S.B. 1's Health or Life Exception is also insufficient to protect against serious health risks to the pregnant patient because it explicitly carves out "psychological or emotional conditions" from the definition of "serious health risk." Ind. Code § 16-18-2-327.9. As discussed above, pregnancy can (and frequently does) induce or exacerbate mental health issues that can pose serious risks to a patient's health and even endanger a pregnant patient's life.[20] Pregnancy can also cause the emergence of new and debilitating or dangerous mental health conditions. Moreover, patients regulating a mental health condition with medication that carries risk to the fetus may need to discontinue or modify their medication in order to avoid risking harm to the fetus, but this will significantly increase the likelihood that mental illness recurs with

[19] This decision has yet to take effect because the State of Texas immediately appealed to the Texas Supreme Court. Order on Case Granted, *Texas v. Zurawski*, Case No. 23-0629 (Tex. Aug. 25, 2023).

[20] *See, e.g.*, Kimberly Mangla et al., *Maternal Self-Harm Deaths: An Unrecognized and Preventable Outcome*, 221 Am. J. Obstetrics & Gynecology 295 (2019); Caldwell Decl. ¶ 22.

potentially dire consequences for their mental health. Mittal Decl. ¶¶ 19-30. The Health or Life Exception's distinction between physical and mental health conditions—and the prioritizing of the former over the latter—reflects an antiquated view of health and harms patients. *Id.* ¶¶ 31, 36. Indeed, the Indiana Supreme Court recognized that there is no clear distinction between physical and mental health conditions:

> Mental processes are done by the brain, of course, and the brain is an organ, so mental processes are bodily functions even though they are not mechanical or chemical. Persons who suffer mental health injuries are often substantially and irreversibly disabled.

A Woman's Choice-E. Side Women's Clinic, 671 N.E.2d at 111.

B. Plaintiffs Are Reasonably Likely to Succeed In Showing that S.B. 1's Hospital Requirement Violates Hoosiers' Article 1, Section 1 Right to an Abortion to Protect Themselves from a Serious Health Risk.

S.B. 1's Hospital Requirement materially burdens the constitutional right of Hoosiers who need abortions to protect against "'great bodily harm,'" *Planned Parenthood Great Nw.*, 211 N.E.3d at 976 (quoting *Larkin*, 173 N.E.3d at 670), but whose health conditions do not require treatment in a hospital. This Requirement is forcing such patients to needlessly seek out a hospital that provides abortions, the vast majority of which are located in or around Indianapolis, or an ASC majority-owned by a hospital, which have historically provided few—if any—abortions in Indiana, instead of receiving care at a clinic closer to their home and therefore more easily reached.[21] The Hospital Requirement is thus requiring Hoosiers to spend more on travel costs and potentially more on the cost of the abortion. *See* Gibron Decl. ¶ 6, 11, 14-17. These prohibitive costs make obtaining an abortion in a hospital setting impossible for the many Hoosiers who have the constitutional right to seek abortions because their pregnancies seriously

[21] *2021 Terminated Pregnancy Report* at 20, *supra* note 8.

threaten their lives or health. The Hospital Requirement also materially burdens the statutory right to seek abortions possessed by those Hoosiers who are victims of rape or incest. Under any of these circumstances, the Hospital Requirement is untenable and violates Article 1, Section 1 rights.

The extremely limited number of hospitals providing abortions and physicians performing abortions in the state now face an increased volume of referrals due to the Hospital Requirement. In 2021, 8,414 abortions were provided in Indiana, but less than two percent were performed at the six hospitals providing abortions at that time.[22] Abortion clinics provided 8,281 abortions out of the total 8,414.[23] No ASCs majority-owned by hospitals provided abortion care.[24] Now, only two hospitals and a small number of physicians at these hospitals must provide all in-state abortions to survivors of rape and incest and patients with a diagnosis of a lethal fetal anomaly, who previously were able to obtain abortions at clinics, as well as all patients requiring abortions under the Health or Life Exception.

Moreover, although it is irrelevant to a material burden analysis whether hospitals and ASCs are the "better" facilities to provide abortion care, the data about abortion safety belies any such argument. From 2006 through 2018, abortion clinics had zero medical errors, reflecting the consensus in the academic literature that abortion is extremely safe in an outpatient clinic setting.[25] Further, what is relevant here is that the Hospital Requirement materially burdens Hoosiers' access to vital healthcare to which they are constitutionally and statutorily entitled. As a result, Hoosiers who could otherwise seek abortions within Indiana will be forced to seek

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[22] *Id.* at 19-20.
[23] *Id.*
[24] *Id.*
[25] *See Indiana Medical Error Reporting System - Final Report for 2018* at 29.

abortion care out of state, which will significantly delay their abortions and cause them to incur higher expenses.

II. Without an Injunction, Plaintiffs and Their Patients and Clients Will Suffer Irreparable Harm.

Injunctive relief is warranted where a legal remedy is inadequate "because it provides incomplete relief or relief that is inefficient 'to the ends of justice and its prompt administration,'" including where monetary relief does not suffice to right the wrong. *Coates v. Heat Wagons, Inc.*, 942 N.E.2d 905, 912 (Ind. Ct. App. 2011) (quoting *Robert's Hair Designers, Inc. v. Pearson*, 780 N.E.2d 858, 864 (Ind. Ct. App. 2002)).

S.B. 1 is irreparably harming the Plaintiffs, including threatening criminal prosecution and loss of their medical licenses. S.B. 1 imposes such grave punishment on physicians who act in accordance with their ethical duties and provide abortions to patients suffering serious health risks if these risks fall short of a "serious risk of substantial and irreversible physical impairment of a major bodily function," as judged in hindsight by a prosecutor. Thus, Indiana physicians are faced with the impossible decision of either violating medical ethics by delaying or denying essential care to their patients or providing necessary abortion care and risking the loss of their livelihood and freedom. Ralston Decl. ¶¶ 34-38. Additionally, S.B. 1's extremely narrow Health or Life Exception, which relies solely on the *physician's*—not the physician's *and patient's*—"medical judgment," robs physicians of the ability to respect patient autonomy and to engage in a necessary collaborative decision-making process with their patients, thereby undermining the physician-patient relationship that is foundational to medical ethics and care. *Id.* ¶ 38.

Additionally, S.B. 1 is forcing pregnant Hoosiers who do not clearly fall into S.B. 1's unconstitutionally narrow Health or Life Exception to carry pregnancies while suffering the

myriad serious physical and mental health risks that pregnancy imposes. These include dangerously delaying their care until their conditions worsen significantly enough to give doctors assurance that they fall under the Health or Life Exception, forcing them to carry the pregnancy to term, or forcing them to travel out of state for care at potential further risk to their physical and mental health. *See supra* pp. 18-19.

Moreover, S.B. 1's Hospital Requirement is irreparably harming patients because the excessive cost and inaccessibility of abortion care at hospitals or ambulatory surgical centers majority-owned by hospitals makes it functionally impossible for many pregnant Hoosiers who fall under one of S.B. 1's exceptions to receive necessary abortion care, forcing them to travel out of state or remain pregnant against their will. *See supra* pp. 20-21.

These harms are irreparable and necessitate an injunction. Damages cannot provide complete relief to a patient forced to carry a dangerous pregnancy to term, or to a patient who suffers severe health consequences as the result of a pregnancy but cannot find a provider willing to perform an abortion under the threat of S.B. 1's severe penalties.

Plaintiffs also suffer a per se irreparable harm that weighs in favor of a preliminary injunction. "[W]here the action to be enjoined is unlawful"—including the infringement of constitutional rights—"the unlawful act constitutes *per se* 'irreparable harm' for purposes of the preliminary injunction analysis." *Gibson v. Ind. Dep't of Corr.*, 899 N.E.2d 40, 56 (Ind. Ct. App. 2008) (finding that "if [Plaintiffs] have a reasonable likelihood of success at trial with their constitutional challenges [], then it easily follows that the legal remedies are inadequate/irreparable harm occurs"); *Short On Cash.Net of New Castle, Inc. v. Dep't of Fin.*

Insts., 811 N.E.2d 819, 823 (Ind. Ct. App. 2004).[26] Indiana courts have "tailor[ed] [their] analysis accordingly" where a party claims that the defendant's "actions are unlawful and/or unconstitutional," meaning that once the court has determined that a constitutional right is being infringed, it need not further consider the nature of the harms inflicted on plaintiffs or whether the balance of harms weighs in their favor. *Planned Parenthood of Ind. v. Carter*, 854 N.E.2d 853, 864 (Ind. Ct. App. 2006); *L.E. Servs., Inc. v. State Lottery Comm'n of Ind.*, 646 N.E.2d 334, 349 (Ind. Ct. App. 1995), *trans. denied*.

Accordingly, Plaintiffs need not demonstrate that S.B. 1 inflicts irreparable harm on themselves and on people seeking abortions because violations of the Indiana Constitution are *per se* irreparable harm. *See Carter*, 854 N.E.2d at 864. Nonetheless, as discussed above, Plaintiffs and their patients and clients are demonstrably suffering irreparable harm beyond violations of their constitutional rights under S.B. 1.

III. The Balance of Harms Weighs in Favor of Granting an Injunction.

The injury to Plaintiffs and their patients and clients if the Court denies the preliminary injunction sought by Plaintiffs outweighs the potential harm that the injunction would inflict on Defendants. Indiana courts analyze and balance the full scope of the harms threatened in order to "protect the property and rights of the parties." *Bowling v. Nicholson*, 51 N.E.3d 439, 445 (Ind. Ct. App. 2016); *see, e.g., Cent. Ind. Podiatry, P.C. v. Krueger*, 882 N.E.2d 723, 733 (Ind. 2008); *Gleeson v. Preferred Sourcing, LLC*, 883 N.E.2d 164, 178-79 (Ind. Ct. App. 2008). The narrow Health or Life Exception and Hospital Requirement are preventing Hoosiers suffering serious health risks from their pregnancies from obtaining abortions that they are entitled to

[26] *See also B&S of Fort Wayne, Inc. v. City of Fort Wayne*, 159 N.E.3d 67, 73 (Ind. Ct. App. 2020) (quoting *Union Twp. Sch. Corp. v. State ex rel. Joyce*, 706 N.E.2d 183, 192 (Ind. Ct. App. 1998)).

under the Indiana Constitution. Further, physicians such as Dr. Caldwell are forced to choose between providing ethically and medically sound care for their patients by providing abortions to patients who face serious health risks and the loss of their license and criminal liability. Caldwell Decl. ¶¶ 27-31; Ralston Decl. ¶¶ 34-38. These harms outweigh any harm that might be caused to Defendants if the injunction issues.

IV. Injunctive Relief Is in the Public Interest.

Plaintiffs have established that an injunction serves the public interest by showing that they are likely to succeed in their challenge to S.B. 1—a factor that is frequently dispositive of the question of whether an injunction serves the public interest. *See, e.g.*, *Carter*, 854 N.E.2d at 881-83 (reversing denial of preliminary injunction and holding the public interest would not be disserved by upholding plaintiffs' constitutional right to privacy in medical records).

The factual circumstances also establish that enjoining S.B. 1's unconstitutional provisions is in the public interest. *See Bowling*, 51 N.E.3d at 445 ("Whether the public interest is disserved is a question of law for the court to determine from all the circumstances." (citing *Robert's Hair Designers*, 780 N.E.2d at 868-69)). As discussed above, S.B. 1's overly narrow Health or Life Exception is forcing Hoosiers to suffer substantial and serious physical and mental health risks and effects—consequences that are undeniably harmful to the public interest of Hoosiers across the state, even if they do not rise to the level of "death or a serious risk of substantial and irreversible physical impairment of a major bodily function." S.B. 1 § 6 (Ind. Code § 16-18-2-327.9). Pregnant Hoosiers who do not clearly fall into S.B. 1's narrow Health or Life Exception and therefore cannot obtain an abortion in Indiana may be forced to choose whether to seek an abortion out of state or carry a pregnancy to term while enduring serious risks to their health, in violation of Article 1, Section 1 of the Indiana Constitution. S.B. 1's Hospital Requirement also materially burdens that Article 1, Section 1 right by requiring Hoosiers in poor

health to travel farther and pay more for abortions to which they are constitutionally entitled, if they are able to access such abortions at all. Further, if the Health or Life Exception and Hospital Requirement are not enjoined, they will prevent Indiana physicians from making medical decisions based on their training, experience, and medical ethics. Instead, S.B. 1 requires them to deny care to patients who need it and will suffer serious health risks without it due to fear of violating the law and losing their licenses. Such circumstances violate the public interest.

V. Waiver of Bond

Trial Rule 65(C) requires that a bond be posted before a preliminary injunction may go into effect. However, "[t]he fixing of the amount of the security bond is a discretionary function of the trial court," and where there is no evidence that the injunction will cause any monetary damages or injury, a bond need not be required. *Kennedy v. Kennedy*, 616 N.E.2d 39, 43 (Ind. Ct. App. 1993) (internal quotation marks and citation omitted); *see also Crossmann Cmtys., Inc. v. Dean*, 767 N.E.2d 1035, 1043 (Ind. Ct. App. 2002) (same). The defendants here face no monetary losses or injuries if the preliminary injunction is granted. No bond should therefore be imposed.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant a preliminary injunction enjoining S.B. 1's enforcement, operation, and execution of its definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to (1) health conditions requiring treatment that would endanger the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; (2) health conditions that cause extended and/or debilitating symptoms during the course of a pregnancy; (3) health conditions that are likely to worsen over the course of the pregnancy to eventually

become life-threatening; and (4) health conditions that are likely to cause lasting damage to the patient's health or seriously increase the patient's future health risk, even after giving birth. Plaintiffs also respectfully ask this Court to grant a preliminary injunction enjoining enforcement of S.B. 1's statutory definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to (1) mental health conditions treated with medications that do not have an established safety profile in pregnancy or that pose risks to the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; and (2) serious and/or debilitating mental health conditions (including conditions that a patient has previously experienced and risk recurrence due to pregnancy). Finally, Plaintiffs respectfully request that the Court also preliminarily enjoin the Hospital Requirement such that clinics may provide abortions in the circumstances that remain legal in Indiana during the pendency of this litigation.

Respectfully submitted,

/s/ Kenneth J. Falk

KENNETH J. FALK, No. 6777-49
GAVIN M. ROSE, No. 26565-53
STEVIE J. PACTOR, No. 35657-49
ACLU OF INDIANA
1031 E. Washington Street
Indianapolis, IN 46202
(317) 635-4059

CATHERINE PEYTON HUMPHREVILLE*, No. 8527-95-TA
PLANNED PARENTHOOD FEDERATION OF AMERICA
123 Williams Street, 9th Floor
New York, NY 10038
(212) 261-4649

RUPALI SHARMA*, No. 6698-95-TA
LAWYERING PROJECT
443 Western Ave #1025
South Portland, ME 04106
(908) 930-6645

ALAN E. SCHOENFELD*, No. 8528-95-TA
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

ALLYSON SLATER*, No. 8501-95-TA
KATHERINE V. MACKEY*, No. 8502-95-TA
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Attorneys for Plaintiffs

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I caused the foregoing to be electronically filed using the Indiana E-Filing system. Service will be made on all counsel of record by operation of the Indiana E-Filing system.

/s/ Kenneth J. Falk

KENNETH J. FALK, No. 6777-49
GAVIN M. ROSE, No. 26565-53
STEVIE J. PACTOR, No. 35657-49
ACLU OF INDIANA
1031 E. Washington Street
Indianapolis, IN 46202
(317) 635-4059

ALAN E. SCHOENFELD*, No. 8528-95-TA
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

ALLYSON SLATER*, No. 8501-95-TA
KATHERINE V. MACKEY*, No. 8502-95-TA
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

CATHERINE PEYTON HUMPHREVILLE*, No. 8527-95-TA
PLANNED PARENTHOOD FEDERATION OF AMERICA
123 Williams Street, 9th Floor
New York, NY 10038
(212) 261-4649

RUPALI SHARMA*, No. 6698-95-TA
LAWYERING PROJECT
443 Western Ave #1025
South Portland, ME 04106
(908) 930-6645

Attorneys for Plaintiffs

* Admitted *pro hac vice*

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Monroe County, Indiana

STATE OF INDIANA	)	MONROE COUNTY CIRCUIT COURT
	)SS:	
MONROE COUNTY	)	CAUSE NO. 53C06-2208-PL-001756

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY, INC.; WOMEN'S MED GROUP PROFESSIONAL CORPORATION; and ALL-OPTIONS, INC. on behalf of themselves, their staff, physicians, and patients; and AMY CALDWELL, M.D. on her own behalf and on behalf of her patients,

Plaintiffs,

v.

MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, in their official capacities; and the HENDRICKS COUNTY PROSECUTOR, LAKE COUNTY PROSECUTOR, MARION COUNTY PROSECUTOR, MONROE COUNTY PROSECUTOR, TIPPECANOE COUNTY PROSECUTOR, and the WARRICK COUNTY PROSECUTOR, in their official capacities;

Defendants.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky ("PPGNHAIK"), Women's Med Group Professional Corp. ("Women's Med"), All-Options, Inc. ("All-Options"), and Dr. Amy Caldwell (collectively, "Plaintiffs"), pursuant to Rule 65 of the Indiana Rules of Trial Procedure, hereby file a Motion for a Preliminary Injunction to enjoin Members of the Medical Licensing Board of Indiana, in their official capacities, and Prosecutors

of Hendricks County, Lake County, Marion County, Monroe County, Tippecanoe County, and Warrick County (collectively, "Defendants") from enforcing, operating, and executing S.B. 1's definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to:

(1) health conditions requiring treatment that would endanger the fetus, meaning that continuing the pregnancy could require forgoing needed treatment;

(2) health conditions that cause extended and/or debilitating symptoms during the course of a pregnancy;

(3) health conditions that are likely to worsen over the course of the pregnancy to eventually become life-threatening; and

(4) health conditions that are likely to cause lasting damage to the patient's health or seriously increase the patient's future health risk, even after giving birth.

Plaintiffs also respectfully ask this Court to grant a preliminary injunction enjoining enforcement, operation, or execution of S.B. 1's statutory definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions due to:

(1) mental health conditions treated with medications that do not have an established safety profile in pregnancy or that pose risks to the fetus, meaning that continuing the pregnancy could require forgoing needed treatment; and

(2) serious and/or debilitating mental health conditions (including conditions that a patient has previously experienced and risk recurrence due to pregnancy).

Finally, Plaintiffs respectfully request that the Court also preliminarily enjoin S.B. 1's requirement that any abortions performed take place at a licensed hospital or ambulatory surgical

center majority-owned by a licensed hospital (the "Hospital Requirement") such that clinics may provide abortions in the circumstances that remain legal in Indiana during the pendency of this litigation.

As more fully set forth in Plaintiffs' Amended Compliant and supporting materials, a preliminary injunction enjoining Defendants from enforcing S.B. 1's statutory definition of "serious health risk" insofar as it would prevent physicians in their reasonable medical judgment from performing abortions in the above circumstances and its Hospital Requirement during the pendency of this litigation is proper because (1) without such injunction, Plaintiffs will continue suffering immediate and irreparable harm, for which they have no adequate remedy at law; (2) Plaintiffs have established a prima facie case for success on the merits; (3) the injury Plaintiffs would suffer if denied the injunction substantially outweighs any harm that Defendants might suffer due to the injunction; and (4) the public interest will be served by granting this injunction.

Plaintiffs further request that the injunction be granted without bond.

In further support of this motion, Plaintiffs rely in their separately submitted memorandum of law and the following evidentiary materials.

1. Declaration of William Mudd Martin Haskell, M.D., with attached exhibit;
2. Declaration of Amy Caldwell, M.D., M.S.;
3. Declaration of Parker Dockray;
4. Declaration of Steven J. Ralston, M.D., M.P.H.;
5. Declaration of Leena P. Mittal, M.D.;
6. July 20, 2023 Letter from Indiana Department of Health to PPGNHAIK concerning revocation of abortion clinic license;
7. *Zurawski v. Texas*, Case No. D-1-GN-23-000968 (Tex. Dist. Ct. Aug. 4, 2023).

Plaintiffs therefore request that the Court grant the following relief: a preliminary injunction immediately enjoining enforcement of S.B. 1's statutory definition of "serious health risk" as outlined above and its Hospital Requirement, the injunction issue without bond, and the Court grant all other necessary and proper relief.

Respectfully submitted:

/s/ *Kenneth J. Falk*
Kenneth J. Falk, No. 6777-49

/s/ Gavin M. Rose
Gavin M. Rose, No. 26565-53

/s/ Stevie J. Pactor
Stevie J. Pactor, No. 35657-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
T: 317/635-4059
kfalk@aclu-in.org
grose@aclu-in.org
spactor@aclu-in.org

Alan E. Schoenfeld*, No. 8528-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
T: 212/230-8800

Allyson Slater*, No. 8501-95-TA
Katherine V. Mackey*, No. 8502-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109
T: 617/526-6000

Catherine Peyton Humphreville*,
No. 8527-95-TA
Planned Parenthood Federation
of America
123 Williams Street, 9th Floor
New York, NY 10038
T: 212/261-4649

Rupali Sharma*, No. 6698-95-TA
Lawyering Project
443 Western Ave #1025
South Portland, ME 04106
T: 908/930-6645

Attorneys for Plaintiffs

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I caused the foregoing to be electronically filed using the Indiana E-Filing system. Service will be made on all counsel of record by operation of the Indiana E-Filing system.

/s/ Kenneth J. Falk

Kenneth J. Falk, No. 6777-49
Gavin M. Rose, No. 26565-53
Stevie J. Pactor, No. 35657-49
ACLU of Indiana
1031 E. Washington Street
Indianapolis, IN 46202
(317) 635-4059

Catherine Peyton Humphreville*,
No. 8527-95-TA
Planned Parenthood Federation
of America
123 Williams Street, 9th Floor
New York, NY 10038
(212) 261-4649

Rupali Sharma*, No. 6698-95-TA
Lawyering Project
443 Western Ave #1025
South Portland, ME 04106
(908) 930-6645

Attorneys for Plaintiffs

* Admitted *pro hac vice*

Alan E. Schoenfeld*, No. 8528-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

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Katherine V. Mackey*, No. 8502-95-TA
Wilmer Cutler Pickering
Hale and Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000