

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.: 49D13-2502-PL-006359
CAITLIN BERNARD, M.D. AND	)	
CAROLINE ROUSE, M.D.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
INDIANA STATE HEALTH	)	
COMMISSIONER, et al.,	)	
	)	
Defendants.	)	

**STATE DEFENDANT'S MOTION TO STAY INJUNCTION
PENDING APPEAL**

Pursuant to Indiana Trial Rule 62(B), Defendant Indiana State Health Commissioner respectfully asks this court to stay its Order Issuing Preliminary Injunction (dated March 24, 2025) pending appeal. The Order enjoined the Indiana Department of Health from releasing *any* redacted terminated pregnancy reports to the public, not just those involving the two doctors who filed this suit.

Absent a stay pending appeal, the State and the public interest will suffer irreparable harm. The preliminary injunction blocks policies adopted by state officials to ensure that state laws are faithfully enforced. It frustrates public access to information in the government's custody, contrary to the express intention of Indiana's public records laws. And by cutting off public access to terminated pregnancy reports (TPRs), the injunction undermines the State's and public's interest in ensuring important laws protecting prenatal life and maternal health are vigorously enforced. The Attorney General's Office cannot initiate an enforcement

action without a complaint, and historically, it has only received complaints about potential legal violations from members of the public.

The other requirements for a stay pending appeal are met as well. Although this Court may have ruled against the State, the State submits that it has a strong likelihood of success on appeal. For years, terminated pregnancy reports were released as public records under APRA precisely because they are not “patient medical records.” The reports are government-mandated reports with information relevant to public health monitoring and the enforcement of state laws. Plaintiffs, moreover, do not have standing or a cause of action to prevent the release of terminated pregnancy reports, particularly ones that they did not submit. The putative harms that plaintiffs cite from the reports’ release are speculative.

Finally, the balance of the equities favors a stay. Plaintiffs do not cite any tangible harm to themselves from the release of terminated pregnancy reports. Rather, they cite putative harms to patients that either are traceable to the submission of the reports to the Department—which is not challenged here—or wrongly presume the reports will reveal private information about individual patients. Plaintiffs, however, ignore that the Department will redact the reports before releasing them to remove any personally identifiable information. And no evidence suggests that the redactions will be insufficient.

A stay pending appeal should be granted.

BACKGROUND

Indiana has long regulated abortion, including by restricting the reasons for

which abortions can be performed. Ind. Code § 16-34-2-1. For more than three decades, Indiana has required abortion providers to submit terminated pregnancy reports documenting abortion procedures to the Indiana Department of Health. See Pub. L. No. 2-1993 (S.E.A. 24), 1993 Ind. Acts 244, 572–73 (codified at Ind. Code § 16-34-2-5(a)). The State requires submission of the reports to promote “the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data” and “to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.” Ind. Code § 16-34-2-5(a).

The reports must include various pieces of information relevant to public health, public safety, and compliance, such as where the abortion was performed; the age of the woman seeking an abortion; the gestational age of the fetus; the reason for the abortion; whether the patient indicated that the abortion was sought because of abuse, coercion, harassment, or trafficking; details about the procedure; information about the fetus; and information about the mother’s medical history. Ind. Code § 16-34-2-5(a). Much of the required information has appeared on the reports for decades. *See* 1993 Ind. Acts at 572–73. The health care provider must then transmit the completed form to the Department within 30 days. Ind. Code § 16-34-2-5(b). Failure to complete or timely transmit a form is a Class B misdemeanor. § 16-34-2-5(d).

The Department regularly compiles and releases public reports aggregating statistics from the individual reports submitted during that calendar quarter, while ensuring that no identifying information of a patient is included. Ind. Code § 16-34-

2-5(e). Until the Public Access Counselor issued his recent opinion, the Department also released redacted versions of the reports in response to requests submitted under Indiana’s Access to Public Records Act (APRA or the Act). The Act creates a presumption that records are open to public inspection but permits agencies to redact documents to protect confidential information. Ind. Code §§ 5-14-3-3(a), 5-14-3-6.

In 2024, the Department changed its longstanding practice and did not disclose redacted versions of the reports. This change resulted in the other defendant in this case, Voices for Life, filing a lawsuit against the Department under the Act to compel disclosure. *Voices for Life, Inc. v. Weaver*, No. 49D02-2405-MI-019876 (Marion Super. Ct.) (“*VFL*”). The plaintiffs in the present case—Dr. Bernard and Dr. Rouse—moved to intervene in the *VFL* case as of right under Indiana Code § 5-14-3-9(e). That statute requires an agency, “[w]henever an action is filed under this subsection,” to “notify each person who supplied any part of the public record at issue . . . that a request for release of the public record has been denied.” Ind. Code § 5-14-3-9(e). Those notified “are entitled to intervene in any litigation that results from the denial.” *Id.* In the *VFL* case, the trial court judge granted the Department’s motion to dismiss, but after the Department and Voices for Life settled the case on appeal, the action was dismissed with prejudice. Order, *Voices for Life, Inc. v. Ind. Dep’t of Health*, No. 24A-MI-02396 (Ind. Ct. App. Feb. 6, 2025).

Instead of filing any objections to the dismissal in *VFL*, the plaintiffs filed this separate lawsuit on February 6, 2025, seeking a declaratory judgment and moving for a temporary restraining order and a preliminary injunction. The Court heard

argument on the motion for temporary restraining order and subsequently issued a temporary restraining order on February 19. The Court renewed the order on February 25. The Court then held an evidentiary hearing and heard argument on the preliminary injunction on March 12, and it extended the temporary restraining order for a second time until March 24. On March 24, the Court issued its Special Findings of Fact, Conclusions of Law, and Order Issuing Preliminary Injunction.

REASONS FOR GRANTING A STAY

The traditional stay considerations—“irreparable harm,” “likelihood of success on the merits,” the “balance of harms,” and “the public interest”—all favor a stay pending appeal here. *Doe v. O'Connor*, 781 N.E.2d 672, 674 (Ind. 2003).

I. Absent a Stay, the Preliminary Injunction Will Inflict Irreparable Harm on the State and the Public Interest

The State and the public will suffer irreparable harm if the preliminary injunction is not stayed. As APRA reflects, the public has a strong interest in government transparency and disclosure: “[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government.” Ind. Code § 5-14-3-1; *see id.* (APRA “shall be liberally construed to implement this policy”). And the State’s “public officials and employees,” including the Commissioner, have a “duty” to release records required to be released. *Id.*; *see* Ind. Code § 5-14-3-3(b). In fact, it is the Governor’s constitutional responsibility to “take care that the laws are faithfully executed.” Ind. Const. art. V, §§ 1, 16.

As the Governor-approved settlement in *VFL* reflects, the Governor and Commissioner have determined that TPRs are public records required to be released

under APRA. That means the court’s injunction is inflicting irreparable harm on the State by preventing state officials from implementing their policies. *See Holcomb v. Bray*, 187 N.E.3d 1268, 1286 (Ind. 2022) (actions that allegedly infringe the Governor’s constitutional authority inflict a cognizable injury); *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018) (“the inability to enforce [state officials’] duly enacted plans clearly inflicts irreparable harm on the State”).

Equally important, the preliminary injunction is inflicting irreparable harm on the State by impairing enforcement of state laws. To initiate licensing actions against doctors who break the law, the Attorney General’s Office must receive a complaint from a member of the public or other person authorized to file complaints. Ind. Code § 25-1-7-4. The Indiana Code specifically prohibits “employees of the attorney general’s office acting in their official capacity” from filing complaints. *Id.* Therefore, the Court erred when it stated that the Attorney General’s Office suffers “no harm at all” in discharging its responsibility to “investigat[e] and intiat[e] enforcement actions” against doctors who violate Indiana’s pro-life laws, while at the same time denying the public the very tool—TPRs—that it needs to file a complaint that would allow the Attorney General to take action under the law. Order 16.

Indeed, complaints about potential violations of Indiana’s laws regulating abortion have been exclusively filed by citizens relying upon information contained in TPRs released under APRA. Hearing Trans. 76:17–23 (Osborne). The Attorney General’s Office has not received “information about potential violations of abortion laws directly through the Indiana Department of Health,” even though the Office

needs a complaint to initiate investigations and uphold important Indiana laws. *Id.* at 76:17–23, 80:24-25. Blocking the public’s access to TPRs prohibits the Office’s ability to receive complaints from the public regarding potential violations and, by extension, the public’s interest in seeing that state laws protecting prenatal life and maternal health are followed.

The quarterly reports the Department releases under Indiana Code § 16-34-2-5(e) are no substitute for individual reports. The quarterly reports contain only aggregated data, so there is not enough detail for members of the public to know whether a particular doctor is following the law with respect to any given abortion procedure. Absent a stay pending appeal, the State will suffer irreparable harm for as long as it takes to litigate an appeal from the preliminary injunction. As the record shows, the Attorney General has not been able to review any TPR petitions for compliance with Indiana’s abortion laws since December 2023 because the Indiana Department of Health has not released them or has been barred from releasing them. This untenable situation, in which the will of the General Assembly and Indiana’s strong laws on abortions cannot be regulated for compliance, cannot continue.

By blocking the public’s access to records and frustrating state policies, the preliminary injunction harms the public interest as well. The public’s interest is expressed through the laws and policies enacted by the public’s elected representatives. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (observing the government’s interest and public interest tend to “merge”). But the preliminary injunction prevents those laws and policies from being carried out, denying members

of the public access to government-mandate reports containing information of interest to all Indiana citizens and preventing the public from bringing potential violations of Indiana law to the attention of the Attorney General's Office. That, in turn, undermines the important policies that Indiana's laws seek to promote, including giving the public the assurance that medical practitioners will be qualified and adhere to all statutes and licensing requirements.

The harm and prejudice to the State weighs heavily in favor of a stay.

II. The State Has a Likelihood of Success on Appeal

Other factors favor a stay too. For this Court to grant a stay, the State needs only to have a likelihood of success on appeal. Although the Court may have rejected the State's merits arguments, that does not preclude it from concluding that those arguments are strong enough to warrant a stay. And the fact that terminated pregnancy reports were released pursuant to APRA for years without complaint provides additional, compelling evidence that the State's arguments are strong ones.

A. The State has strong justiciability arguments

The State is likely to succeed on its jurisdictional arguments. To establish standing, plaintiffs must establish the existence of the "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Smith v. Brendonwood Common, Inc.*, 949 N.E.2d 422, 424 (Ind. Ct. App. 2011) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)) (cleaned up). Plaintiffs must also show "a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the

challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Id.* (cleaned up).

This Court suggested plaintiffs have standing because “patients don’t trust” doctors who must “submit *private* health information to the Department.” Order 4 (emphasis added). But that describes a putative harm to patients, not plaintiffs. And that alleged harm is traceable to the submission of information to the Department, not its subsequent release. The notion that the Department’s disclosure of reports impacts individual patients presumes that redactions are not sufficient to protect patient privacy. But plaintiffs haven’t argued redactions are insufficient, and plaintiffs are unable to identify a single situation where the release of a terminated pregnancy report resulted in a patient’s identity being disclosed. Ex. 1 to State’s Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Bernard Interrogatory Responses at 7); Ex. 2 to State’s Response in Opposition (Rouse Interrogatory Responses at 6). Plaintiffs cannot establish standing by speculating third parties might change their behavior based on “wholly speculative” fears. *Ind. Fam. Inst., Inc. v. City of Carmel*, 155 N.E.3d 1209, 1219–20 (Ind. Ct. App. 2020).

If anything, the harms that plaintiffs allege are attributable to their own efforts to be at the forefront of publicity on abortion issues. *See* Hearing Trans. 47:2–12 (Bernard); 60:25–61:12 (Rouse); *One of the Last Abortion Doctors in Indiana*, The New Yorker (Feb. 25, 2024), <https://www.newyorker.com/news/persons-of-interest/one-of-the-last-abortion-doctors-in-indiana>; “A Warrior Mentality”: How Indiana Doctor Caitlin Bernard Became Voice of Abortion Rights, Indianapolis Star (July 27,

2022), <https://www.indystar.com/story/news/local/2022/07/27/how-indiana-doctor-caitlin-bernard-became-voice-of-abortion-rights/65379872007>; *see also* PLS_130–PLS_131 (listing both articles as “personal profile[s]” under “Advocacy Activities” section of Bernard’s CV); PLS_146, PLS_148–PLS_149 (listing Rouse’s op-eds and media interviews). They are not attributable to the Department’s actions.

The Court cited an instance in which a patient allegedly sought an abortion out of State rather than go to Plaintiff Bernard. Order 4. Again, however, any inconvenience associated with going to another State is a harm to the patient, not to Bernard. Bernard did not allege that she suffered any personal harm, such as lost income, from the patient’s decision to go to another doctor. Nor is the past alleged loss of a single patient—out of the many patients that Bernard sees—sufficient to establish an “imminent” risk of future harm. To support standing, the injury must be “imminent,” not merely possible or “theoretical.” *Morales v. Rust*, 228 N.E.3d 1025, 1033 (Ind. 2024); *see Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995) (plaintiff “must show adequate injury or the immediate danger of sustaining some injury”).

Plaintiffs’ intervention as defendants in a past case under a different statute does not show they have standing to sue as plaintiffs here. To invoke a court’s jurisdiction, plaintiffs must satisfy the constitutional threshold for standing. *See Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co*, 182 N.E.3d 212, 216–217 (Ind. 2022). Plaintiffs cannot bootstrap themselves into court by arguing they satisfied the statutory requirements for intervention in a separate case. *See id.* at 216 n.2 (observing the “legislature cannot expand . . . beyond constitutional limits the class

of persons who possess standing”); *Holcomb v. Bray*, 187 N.E3d 1268, 1286 (Ind. 2022) (holding a plaintiff seeking declaratory relief pursuant to the Declaratory Judgment Act “must also establish standing” for constitutional purposes). That is particularly true considering that this case is not “substantively and legally a successive proceeding.” Order 5. In *VFL*, the doctors intervened *as defendants* under APRA pursuant to a statutory provision that permits certain interested parties to participate in an action to compel disclosure. Ind. Code § 5-14-3-9(e). Here, the doctors do not seek to “enforce” the judgment in *VFL*—that Voices for Life could not compel disclosure of reports. They seek the distinct relief of preventing disclosure.¹

In the *VFL* case, moreover, plaintiffs did not identify any injuries that could support standing distinct from those asserted here. Plaintiffs argued in *VFL* that APRA granted them an unconditional right to intervene because they “submitted some of the TPRs at issue, that they had an “interest in avoiding a conflict of legal duties,” an “interest in protecting their patients’ privacy,” and an “interest in preventing the Attorney General’s erroneous interpretation of the TPR statute from becoming law.” Memorandum of Law in Support of Motion to Intervene at 8–10, *Voices for Life, Inc. v. Weaver*, No. 49D02-2405-MI-019876 (Marion Super. Ct.). But those assertions add nothing to the assertions made here. Plaintiffs’ interest in

¹ The State did not “waive” the argument that “the present action” is not the same proceeding as *VFL*. Order 5. The State disputed that Plaintiffs’ intervention in *VFL* served as a hook for standing in this action. See Response in Opposition to Preliminary Injunction at 10–11; Hearing Trans. 37:24–25, 123:19–21. Regardless, “a party can never waive the issue of subject matter jurisdiction.” *Georgetown Bd. of Zoning Appeals v. Keele*, 743 N.E.2d 301, 303 (Ind. Ct. App. 2001).

avoiding an “incorrect” interpretation of the law is not a concrete, personal injury. And plaintiffs’ speculation about potential harms cannot support standing.

In any event, Plaintiffs’ assertions about potential harms to *their* patients cannot give them standing to prevent the Department’s release of *all* terminated pregnancy reports. The Department’s release of reports that have to do with abortions performed by physicians who are not a party to this suit does not injure plaintiffs in any way. So plaintiffs do not have a “personal stake” in the release of those reports. *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 889–90 (Ind. Ct. App. 2003). And at the very least, the prohibition on the release of reports having nothing to do with plaintiffs is “overbroad.” *William J. Huff, II Revocable Tr. Declaration, Dated June 28, 2011 v. Cain*, 120 N.E.3d 1029, 1037 (Ind. Ct. App. 2019).

In short, no imminent, cognizable harm has been suffered here. Plaintiffs have not shown that putative patients would suffer injury or be unable to bring suit, and Plaintiffs have not shown that they are so closely related as to take on an unidentified patient’s own cause of action (much less shown any cause of action at all).

B. The State has strong arguments that terminated pregnancy reports are not patient medical records

The State also submits that it has strong arguments that APRA permits—indeed compels—disclosure of the reports. APRA places a heavy burden on the State to justify withholding information. Indiana’s public policy is “that all persons are entitled to full and complete information regarding the affairs of government,” and APRA must be “liberally construed to implement this policy.” Ind. Code § 5-14-3-1. APRA is intended to “ensure Hoosiers have broad access to most government records,”

and courts “apply a presumption in favor of disclosure.” *Evansville Courier & Press v. Vanderburgh Cnty. Health Dep’t*, 17 N.E.3d 922, 928–29 (Ind. 2014).

Citing the definition of “medical record” in Indiana Code § 1-1-4-5(6), the Court stated that terminated pregnancy reports are medical records because they contain information related to the diagnosis, treatment, or prognosis of a patient. Order 11. But APRA does not use the term “medical record.” It exempts “patient medical records and charts created by a provider.” Ind. Code § 5-14-3-4(a)(9). So looking at the definition of “medical records” elsewhere in Indiana Code isn’t enough; plaintiffs must show that the information the Department seeks to release—redacted versions of TPRs—are “patient medical records or charts created by a provider.” *Id.*

Terminated pregnancy reports are not patient medical records. Patient medical records can be disclosed with the patient’s informed consent. Ind. Code § 5-14-3-4(9). This implies that the medical record must belong to a patient. TPRs do not belong to the patient. TPRs are a separate documentation tool to be transmitted to the Department for purposes of compiling quarterly and annual reports for the State and the federal government. Relatedly, as the phrase “patient medical records and charts” indicates, APRA is concerned with documents generated while providing care to a patient for the purpose of facilitating future patient care. *Cf. Griffith v. Aultman Hosp.*, 54 N.E.3d 1196, 1202 (Ohio 2016) (scope of “medical record” hinged on “whether a healthcare provider made a decision to keep data that was generated in the process of the patient’s healthcare treatment”). TPRs are state forms that providers must fill out and submit to the Department, under criminal penalties for

noncompliance, for the regulatory purposes of serving maternal health and ensuring compliance with Indiana’s pro-life laws. Ind. Code § 16-34-2-5. The reports do not belong to patients; they pertain solely to the regulatory relationship between the provider and the Department. Providers retain the reports in patients’ files because they are required to by law. § 16-34-2-5.1. Plaintiffs present no evidence that they decide to keep them for purposes of patient care or any other reasons.

The key element in determining whether a report is a “patient medical record” under APRA is the purpose of the report. Patient charts and terminated pregnancy reports have different purposes. Physician behavior demonstrates this. Charting (generating patient medical records and charts) is a core provider responsibility during a patient encounter. By contrast, Bernard and Rouse testified that they do not fill out TPRs while seeing the patient. Rather, they convey the necessary details to a nurse after the encounter, who then fills out the report separately in the DRIVE system for the doctor’s later review and certification. Hearing Trans. 12:5–13 (Bernard), 56:12–15, 57:1–8 (Rouse). The reports are not a substitute for patient medical records or charts. And doctors would not fill out the reports if they were not required to by law. Dr. Bernard admits that she did not fill them out for every abortion she has performed after December 2024. Hearing Trans. 48:9–19 (Bernard). Doctors do not fill out similar forms for other procedures on their own motivation. This indicates that the reports serve a regulatory purpose, not a patient care purpose. And just because a form documents a particular medical procedure or indicates

“specific patient diagnoses” (Order 11) does not mean that it is prepared for the purpose of patient care, which patient medical records and charts are.

That TPRs may contain some of the information found on patient medical records and carry unique record identifiers, Order 11, does not imply that TPRs are patient medical records. Other APRA cases illustrate that very point. In the context of whether student-related information is an education record, the Indiana Court of Appeals concluded that peer-graded papers were not education records despite containing “information directly relating to a student.” *Unincorporated Operating Div. of Ind. Newspapers, Inc., Ind. Corp. d/b/a The Indianapolis Star v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 905 (Ind. Ct. App. 2003) (citing *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2002)). Since the papers were not “maintained by the school or a person acting for the school,” the papers did not qualify as education records, even though students in their peer-graded papers were more identifiable than a patient in a terminated pregnancy report. *Id.* (internal quotations omitted).

Similarly, the Indiana Supreme Court has distinguished between a certificate of death registration (which is confidential) and a certificate of death (which is not). *Evansville Courier & Press v. Vanderburgh Cnty. Health Dep’t*, 17 N.E.3d 922 (Ind. 2014). In that case, the Court reaffirmed the lower courts’ holdings that death certificates are public records because the purpose behind them is to “record cause of death data for use by health officials.” *Id.* at 929–30. Certification of death registrations, which are “intended to authenticate the death for the purpose of property disposition,” are confidential and exempted from disclosure. *Id.* at 930. Like

a certificate of death, the purpose and function of the reports to promote “the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data.” Ind. Code § 16-34-2-5. A further purpose of the reports is “to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law.” *Id.* Just as it is important that there is a public record of accurate and comprehensive cause of death data, it is essential for the public to have access to reports about abortion that contain data relevant to public health and compliance monitoring.

Furthermore, the physical location of the TPRs should not be relevant to the determination of whether the data qualifies as a medical record. Rather, the Court should consider the APRA definition of “patient medical records and charts created by a provider” to focus on “whether a healthcare provider made a decision to keep data that was generated in the process of the patient’s healthcare treatment.” *See Griffith*, 54 N.E.3d at 1202 (holding that where records are held or maintained is irrelevant to the determination of whether the information constitutes a medical record). Thus, whether a document is kept in a separate data holding room or within the patient’s medical file itself is immaterial to the determination of what a “medical record” is. The purpose of the retention is the key inquiry. TPRs are retained by doctors at the direction of the Department for auditing and investigatory purposes, not because a provider decided to retain the data for the benefit of current or future care or treatment plans for the patient. Consequently, since the TPRs are not patient medical records, they do not fall under any of the exemptions under APRA.

It was misplaced for this Court to rely on the definition of “medical records” in Indiana Code § 1-1-4-5(a)(6) (“written or printed information . . . concerning any diagnosis, treatment, or prognosis of the patient”). If APRA’s definition of “patient medical records” were coterminous with this definition, it would frustrate the purposes of APRA. Any Department health data “concerning any diagnosis, treatment, or prognosis” of a Hoosier—which would encompass virtually all the data that the Department tracks for the public benefit—would necessarily be subject to a blanket exemption from public disclosure. This cannot be so. And the exception in APRA permitting disclosure with the patient’s written consent, § 5-14-3-4(a)(9), which must be read together with the exemption for patient medical records, indicates that “patient medical records” are those that are the property of a patient. As discussed above, the Department has persuasive arguments that the reports are not the property of a patient. Understanding “patient medical records” as merely records that describe a patient’s health is too broad a reading of APRA.

This Court noted that, under a prior administration, the Department “supported” the position that “TPRs are exempt from APRA disclosure as patient medical records” in the *VFL* case “while opposing it here.” Order 12. But that different executive administrations have taken different positions does not mean the current administration’s position is wrong. Indeed, the current administration’s position is consistent with how the Department has treated TPRs for most of their history—as records subject to disclosure under APRA. *See* Hearing Trans. 117:17–23.

C. The State has strong arguments that Plaintiffs cannot prevent disclosure of the reports in their entirety

Even if one assumes that terminated pregnancy reports can be “patient medical records,” it does not follow that Plaintiffs can prevent the disclosure of the reports in their entirety. If a record contains some material that can be disclosed and some that is exempted from disclosure absent patient consent, APRA requires disclosure of the portion that can be released. Ind. Code § 5-14-3-6(a).

Plaintiffs argue that, because the entirety of the TPR is a medical record, the disclosable materials cannot be separated from the confidential materials. But with the proper redactions, a document can be transformed from one that is wholly non-disclosable to one that no longer qualifies as a protected record under the applicable law. *Trs. of Ind. Univ.*, 787 N.E.2d at 909 (stating that protected “education records” under FERPA can be declassified with sufficient redaction of personally identifiable information). To conclude that redactions are insufficient and thus medical records are exempt in their entirety “would potentially shield from disclosure all information concerning patient care.” *Sun-Times v. Cook Cnty. Health & Hosps. Sys.*, 215 N.E.3d 963, 973 (Ill. 2022). This would significantly hinder the State’s ability to compile health data and improve public health and patient outcomes.

Accordingly, the TPRs that will be produced under APRA will not include all 31 health factors and data submitted in the original TPR—specifically, they will omit information that could potentially identify the patient. The only information visible on the publicly available versions of the TPRs will be that which shows pertinent data on the provision of abortions in Indiana to ensure physicians are performing these

procedures in accordance with Indiana law. Pls.’ Ex. E at 1. In fact, most of the TPR is dedicated to logging information regarding the abortion procedure itself. Information related to a patient and her prior medical history are a comparatively small portion of the document. This is because the identity of those on whom the abortions were performed is not essential to effectuate the purpose of TPR filing.

D. The State has strong arguments that Plaintiffs lack a cause of action to prevent disclosure

Lastly, the State has strong arguments that plaintiffs lack a cause of action to obtain an injunction preventing disclosure of TPRs. APRA expressly grants parties seeking disclosure a cause of action to enforce APRA. Ind. Code § 5-14-3-9. Of course, Plaintiffs are not seeking disclosure of information: to the contrary, they seek to place themselves in the decisionmaking position of the State—with no mention of the concomitant elevated burden of proof—and have asked this Court to assist them in second-guessing the Executive’s settlement of another case. Plaintiffs cite no provision of APRA (or any other statute) that gives them a personal, enforceable “right” to prevent the government from disclosing government-mandated reports.

This Court’s ruling does not expressly address the cause of action issue. It observes that plaintiffs brought suit under the Declaratory Judgment Act. Order 3. But that statute permits a court to declare the parties’ “rights, status, and other legal relations.” Ind. Code § 34-14-1-1. It does not create new rights, such as a putative “right” to prevent disclosure of government-mandated reports collected for public health purposes. *See Bryarly v. State*, 111 N.E.2d 277 (Ind. 1953) (statute was neither “intended to abolish the well known causes of action” nor “designed to furnish an

additional remedy where an adequate one existed before”). Nor does the statute authorize injunctive relief. *See Brindley v. Meara*, 198 N.E. 301, 303 (Ind. 1935) (the statute does not operate to “modify, change, or supplant the remedies or the procedure by which executory or coercive judgments are obtained”). And additional relief can only be granted *after* a plaintiff has obtained a final declaratory judgment.

Furthermore, to the degree that Plaintiffs want to use this Court to change Executive policy, they are using statutes to further a goal explicitly forbidden by the Indiana Supreme Court: to eliminate the separation of powers. *Citizens Action Coal. of Ind. v. Koch*, 51 N.E.3d 236, 241 (Ind. 2016). As the Indiana Supreme Court put it, APRA is not an invitation for the Courts to “intermeddle with the internal functions of either the Executive or Legislative branches of Government.” *Id.* (quoting *State ex rel. Masariu v. Marion Super. Ct. No. 1*, 621 N.E.2d 1097 (Ind. 1993)). The Executive exercised its inherent and statutory authority in entering into a settlement with one organization, a settlement already ratified as a proper balancing of privacy interests. The plaintiffs’ request directly infringes on the Executive’s authority to determine what information to release to the public and to settle pending litigation. APRA does not invite Plaintiffs to play Executive.

III. The Balance of Equities Favors a Stay

These harms to the public interest outweigh any harms Plaintiffs have attempted to show. As explained above, Plaintiffs have not demonstrated that they have suffered any harms or that the harms alleged are traceable to the actions challenged here. Any putative harms are further mitigated by the fact that the

Department has committed to redacting anything that qualifies as “private health information” connected with any particular patient before releasing individual TPRs. Plaintiffs can point to no instance in which a TPR’s release has ever led to a patient’s identification, much less harm to themselves.

Even harms sufficient to confer standing on Plaintiffs would be outweighed by the much greater harm to the State and public interest. As noted, APRA imposes a presumption in favor of disclosure of information in government custody. This is demonstrated by decades of executive practice of releasing TPRs. Members of the public—including women considering abortion—have a strong interest in knowing the details about maternal health and compliance with the reporting and disclosure laws enacted by the public’s representatives that the reports enable the State to communicate.

CONCLUSION

The State respectfully requests that this Court stay its preliminary injunction pending appeal.

Respectfully submitted,

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Date: April 1, 2025

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