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IN THE
Indiana Supreme Court

No. 22A-PL-2938

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

PETITION TO TRANSFER

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QUESTIONS PRESENTED ON TRANSFER

1. Whether plaintiffs are likely to succeed on a claim that Indiana's Religious Freedom Restoration Act confers a right to otherwise unlawful abortions.

2. Whether plaintiffs have justiciable claims that Indiana law burdens a right to religiously directed abortions where no plaintiff is pregnant, plaintiffs assert that abortion is religiously directed only in specific circumstances, and the circumstances surrounding any future pregnancy are unknown.

3. Whether Indiana Trial Rule 23 permits certification of a Rule 23(B)(2) class consisting of "all persons whose religious beliefs direct them to obtain abortions" prohibited by Indiana's Senate Bill 1 and "who need, or will need," abortions but cannot obtain them because of that law.

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INTRODUCTION

Through our Nation's and this State's long history of respect for religion, religious freedom has never equaled a right to abortion—until now. Both First Amendment protections for religion and statutes codifying those protections like Indiana's Religious Freedom Restoration Act (RFRA) have consistently been understood to permit laws necessary to further compelling governmental interests, such as protecting prenatal life. The Court of Appeals, however, took the unprecedented steps of declaring that the State lacks a compelling interest in protecting prenatal life and that RFRA confers a right to abortion.

Those rulings alone tick all the boxes for review. They break new ground on a question of immense public importance while putting the Court of Appeals into conflict with this Court. They undermine weighty legislative policies by sanctioning abortions at all stages of pregnancy, even where there is no health-related justification. And they distort RFRA by making it virtually impossible for statutes to survive review if they contain exceptions—something nearly all statutes contain.

The damage does not stop there. The Court of Appeals also disregarded traditional requirements for justiciability by permitting suit over hypothetical situations that will never materialize unless multiple contingent events come to pass. And the court authorized RFRA claims to be brought by organizations and through class actions, even though those claims demand individualized assessments of religious belief, sincerity, and burdens. Combined, the rulings threaten to allow evasion of RFRA's requirements and an expansive abortion right.

BACKGROUND AND PRIOR TREATMENT OF THE ISSUES

"For all of Indiana's history," the State has regulated abortion to protect prenatal life out of the conviction that "legal protections inherent in personhood commence before birth." *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 961–62 (Ind.), *reh'g denied*, 214 N.E.3d 348 (Ind. 2023). This case concerns Indiana's most recent regulation, Senate Bill 1 (S.B. 1). S.B. 1 prohibits abortion except where necessary to save women's lives or avert serious health risks, where lethal fetal anomalies exist, and where pregnancies result from rape or incest. Ind. Code § 16-34-2-1(a).

Plaintiffs—several women and the organization Hoosier Jews for Choice (HJC)—allege that S.B. 1 "burdens" their "sincere religious beliefs" in contravention of RFRA by prohibiting abortion where their beliefs "direct" them to obtain abortions. App. II 61. When deposed, however, plaintiffs admitted that none were pregnant or will invariably want abortions. State Merits Br. 35–39 (collecting cites). All testified they want or may want children. *Id.* at 44–45. Whether any plaintiff would seek abortion would depend on plaintiff-specific considerations. *See, e.g.*, App. III 124 ("impact on my physical, mental, and emotional well-being"); App. III 188 ("ability to realize my full humanity"); *see also* State Merits Br. 45–46; State Class Cert. Br. 47.

Plaintiffs sought a preliminary injunction and certification of a Rule 23(B)(2) class consisting of "[a]ll persons in Indiana whose religious beliefs direct them to obtain abortions" prohibited by S.B. 1 and who "need, or will need, to obtain an

[otherwise unlawful] abortion." Class Cert. App. II 58. The trial court granted both motions, enjoining enforcement of S.B. 1 against plaintiffs. *Id.*; App. II 59.

The Court of Appeals affirmed. It rejected arguments that plaintiffs' claims were not justiciable because they rested on hypothetical scenarios, explaining that HJC had associational standing and plaintiffs have "altered" their "sexual and reproductive patterns." Op. 15, 28. The court also deemed a preliminary injunction proper, holding that plaintiffs were likely to succeed in demonstrating that "abortion" constitutes a "religious exercise" substantially burdened by S.B. 1. Op. 51, 52 n.17. It also held that the State lacks "a compelling interest in the protection of potential life beginning at fertilization." Op. 58; *see* Op. 58–63. Finally, the court upheld certification of the class. Op. 35–44.

ARGUMENT

This case presents several overlapping questions of immense public importance warranting review. The Court of Appeals' rulings create multiple conflicts, threaten severe damage to multiple legislative policies, and rewrite the rules for pursuing religious-exercise claims.

I. Indiana's Religious Freedom Restoration Act Does Not Confer an Abortion Right

The court erred in holding RFRA confers a right to abortion. Whatever plaintiffs' convictions, RFRA authorizes the State to burden religious exercise where doing so "further[s] . . . a compelling governmental interest" and "is the least restrictive means" of doing so. Ind. Code § 34-13-9-8(b). Here, there should have been no question that S.B. 1's restrictions on abortion further a compelling interest in

protecting prenatal life. Indiana's long history of treating abortion as a criminal offense reflects its conviction that "legal protections inherent in personhood commence before birth." *Planned Parenthood*, 211 N.E.3d at 961; *see id.* at 979. And in *Cheaney v. State*, 285 N.E.2d 265 (Ind. 1972), this Court held expressly that the State's interest in protecting prenatal life "from the moment of conception" is "both valid and compelling." *Id.* at 270.

"Although *Cheaney* has never been overruled," the Court of Appeals rejected *Cheaney*'s holding that protecting prenatal life is a compelling interest. Op. 57–63. But the prerogative of overruling this Court's decisions belongs to this Court, not lower courts. *Horn v. Hendrickson*, 824 N.E.2d 690, 694 (Ind. Ct. App. 2005). And contrary to the appellate court's view, the U.S. Supreme Court's rejection of a federal abortion right in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), does not undercut *Cheaney*. *Cheaney* held that protecting prenatal life is a compelling interest, whether or not a federal privacy right exists. *See* 285 N.E.2d at 267. *Dobbs* agreed that "a State's interest in protecting prenatal life" is as "'compelling before viability'" as after viability. 597 U.S. at 274–75. And courts regularly find far more mundane interests to be compelling. *See, e.g.*, *United States v. Wilgus*, 638 F.3d 1274, 1285 (10th Cir. 2011) ("protecting the bald eagle").

There also should have been no question that restricting abortion is the least restrictive means of protecting prenatal life. The least-restrictive-means standard requires laying the State's "'preferred means side by side with other potential options.'" *Blattert v. State*, 190 N.E.3d 417, 423 (Ind. Ct. App. 2022). As the Court of

Appeals conceded, the State must prohibit abortion to protect prenatal life; there is not "any alternative" means. Op. 58. The court, however, still held that S.B. 1 failed the least-restrictive-means test because S.B. 1 contains "exceptions" designed to accommodate important, competing interests. Op. 60.

That misapprehends how RFRA operates. RFRA authorizes governments to burden religious exercise as necessary to further compelling interests. Ind. Code § 34-13-9-8(b). It does not require proof that governmental interests behind a policy, or any exceptions to that policy, are *more compelling* than religious interests. Such a requirement would doom any law that balances interests and entangle courts in comparison of incommensurable goods. So while a "'*seriously* underinclusive'" statute may suggest that the statute does not actually pursue an important or stated interest, *State v. Katz*, 179 N.E.3d 431, 458–59 (Ind. 2022) (emphasis added), strict scrutiny imposes "no freestanding 'underinclusiveness limitation,'" *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015). As this Court recently observed in upholding a statute with "many limiting definitions and exceptions," a statute need not be "'perfectly tailored.'" *Katz*, 179 N.E.3d at 459.

S.B. 1's modest limitations, moreover, represent reasonable legislative judgments. *Contra* Op. 59–63. S.B. 1's targeting of abortion but not in vitro fertilization reflects that procedures intended to destroy prenatal life raise greater concerns than ones intended to foster it. "[P]olicymakers may focus on their most pressing concerns." *Williams-Yulee*, 575 U.S. at 449. Similarly, the legislature could "reasonably" conclude that respect for prenatal life does not preclude ending a

pregnancy in cases of *lethal* fetal anomaly, which does not implicate the same ethical and policy considerations as abortion of a viable fetus. *Id.* And the appellate court's admission that rape and incest involve "tragic" circumstances, Op. 62, highlights that such pregnancies likewise implicate different moral and psychological concerns.

Equally misguided is the concurrence's view that S.B. 1 unconstitutionally "prefer[s] one creed over another." Op. 73 (Bailey, J., concurring). S.B. 1 reflects a legislative judgment consistent with history, moral philosophy, and "biological markers." *Planned Parenthood*, 211 N.E.3d at 979. It is not a religious judgment. Indeed, people of all creeds both support abortion and oppose it. Class Cert Br. 17–21. S.B. 1 cannot be declared unconstitutional—especially where plaintiffs brought no constitutional claims—merely because it "happens to coincide . . . with the tenets of some or all religions." *McGowan v. Maryland*, 366 U.S. 420, 442 (1961).

II. The Appellate Court Disregarded Jurisdictional and Statutory Limits

In stretching to find a religious right to abortion, the Court of Appeals disregarded jurisdictional and statutory limits. RFRA requires fact-intensive inquiries into whether certain conduct is a religious exercise and substantially burdened. But the court upheld an injunction based on general statements about hypothetical situations that may never arise or may not arise as imagined. That is contrary to both RFRA and justiciability doctrines.

A. RFRA requires fact-intensive analysis of specific conduct

Under RFRA, a plaintiff must demonstrate that a statute's application "substantially burden[s] a person's exercise of religion." Ind. Code § 34-13-9-8(a).

That standard "'requires a case-by-case, fact-specific inquiry.'" *Barr v. City of Sinton*, 295 S.W.3d 287, 302 (Tex. 2009). What may be a religious exercise for one person (*e.g.*, consuming controlled substances) may be merely a ploy for another. *See United States v. Quaintance*, 608 F.3d 717, 722 (10th Cir. 2010). Close examination of the circumstances may reveal there is no "actual incompatibility" between a person's beliefs and the challenged requirement. *New Doe Child #1 v. Congress of the U.S.*, 891 F.3d 578, 587 (6th Cir. 2018). Or circumstances may suggest that a putative burden is insubstantial due to religiously acceptable alternatives. *See id.* at 589–91.

RFRA's focus on specific facts highlights a basic problem with the claim here—it is based on speculation about hypothetical situations. Plaintiffs' asserted religious exercise is obtaining "abortions." Op. 25 (quoting App. II 61); *see id.* at 47–52. Abortion, however, is not inherently religious, even for plaintiffs. Plaintiffs admit that their religious beliefs would not direct them to obtain abortions in some situations, *see, e.g.*, App. IV 153 (not for "morning sickness or back pain"), and that abortions might be sought for non-religious reasons, *see, e.g.*, App. III 156 (for "financial stability"). Plaintiffs further admit there could be religiously acceptable alternatives to abortion, *see, e.g.*, App. IV 100 (choosing to carry to term), 151 (induced labor or C-section), which could render any burden insubstantial. Thus, the question under RFRA is not whether abortion could *ever* constitute a religious exercise substantially burdened by S.B. 1's application. *Contra* Op. 32, 51. It is whether specific abortions sought by plaintiffs constitute religious exercises that would be substantially burdened by S.B. 1's application.

Without clairvoyance, however, answering that question is impossible. Plaintiffs are not pregnant or seeking abortions now. State Merits Br. 37–39. And the circumstances under which any abortions might be sought in the future are unknown. Indeed, there is no guarantee that plaintiffs will ever seek abortions. Whether plaintiffs would pursue abortion and how their religious beliefs would impact that decision is highly situational. *See, e.g.*, App. III 114 ("[a] risk to physical well-being" may in "certain" instances compel abortion, but "not any risk," "not morning sickness"); *see also* State Merits Br. 37–39. The Court of Appeals thus had no basis for concluding that plaintiffs were likely to demonstrate that, if they sought abortion, it would be for sincere religious reasons and that S.B. 1 would burden their religious conduct. State Merits Br. 34–40, 42–47.[1]

B. Standing and ripeness principles bar suit over hypothetical situations contingent on multiple unknowns

The same difficulty reveals a more fundamental problem as well—there are no justiciable claims. Standing requires plaintiffs to "'have suffered'" or be in "'immediate danger of suffering a direct injury as a result of the complained-of conduct.'" *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 217 (Ind. 2022). Here, the complained-of conduct is enforcement of S.B. 1 in situations where plaintiffs seek abortions for religious reasons. App. II 61. But no facts demonstrate that those hypothetical situations—which would require pregnancy, specific

[1] The court's statements regarding forfeiture, Op. 48 n.16, 52 n.17, overlook the State's argument that abstract statements of belief do not demonstrate that particular abortions satisfy RFRA's requirements. State Merits Br. 34–40.

conditions motivating abortion, and inability to obtain an abortion under S.B. 1—are imminent. That is why the Court of Appeals stressed that plaintiffs have "altered" their "sexual and reproductive patterns" to avoid pregnancy. Op. 28. But plaintiffs "cannot manufacture standing" by changing behavior "based on . . . fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013).

And even if plaintiffs' altered behavior suffices for standing, a ripeness problem remains. Ripeness requires claims to be based "on actual facts rather than on abstract possibilities." *Ind. Dep't of Envt'l Mgmt. v. Chem. Waste Mgmt., Inc.*, 643 N.E.2d 331, 336 (Ind. 1994). Claims are not ripe if they "rest[] upon contingent future events 'that may not occur as anticipated, or . . . may not occur at all.'" *Ind. Family Inst. Inc. v. City of Carmel*, 155 N.E.3d 1209, 1218 (Ind. Ct. App. 2020). All claims in this case, however, concern such hypothetical situations that may never arise or arise as anticipated. It is anyone's guess as to whether plaintiffs will ever face a substantial burden on sincere religious exercise. They may never want abortions. Any future abortions might not be sought for religious reasons. S.B. 1's exceptions may permit any abortions sought. Or plaintiffs may have alternatives to abortion.

None of the cases the Court of Appeals invoked supports its ruling. By the court's own admission, the alleged injuries in each were "immediate or imminent." Op. 31. Consider, for example, *Morales v. Rust*, 228 N.E.3d 1025 (Ind. 2024), in which candidate John Rust challenged a statute requiring him to obtain a certification from the county party chair to seek the Republican nomination. Rust had filed for

candidacy, collected sufficient signatures, and been refused the certification needed. *Id.* at 1032, 1034. So Rust suffered a direct, imminent injury from the certification requirement. *Id.* at 1033–34. By contrast, this case mirrors a situation in which a challenger is concerned a statute would bar him from qualifying for the Republican primary if (someday) he runs for office, if (theoretically) he decides to seek the Republican nomination without having voted in the two most recent Republican primaries, and if (hypothetically) the county chair withholds certification.

That leaves the Court of Appeals' statement that this case contains the "ripening seeds" of a controversy. Op. 31. Although picturesque, that language describes the statutory standard for a declaratory judgment. *See Zoercher v. Agler*, 172 N.E. 186, 189 (Ind. 1930). This Court has never read that language to excuse parties from demonstrating that disputes are "based on actual facts rather than abstract possibilities." *Holcomb v. Bray*, 187 N.E.3d 1268, 1287 (2022); *see Morales*, 228 N.E.3d at 1033–34. Nor can constitutional ripeness requirements be altered by RFRA's authorization of a cause of action when religious exercise is "likely to be substantially burdened" by an "impending violation." Ind. Code § 34-13-9-9; *see Solarize*, 182 N.E.3d at 216 n.2. Besides, simply too many contingencies must combine for the alleged violation to be "likely" or certainly "impending" here.

C. An organization suffering no injury cannot assert claims requiring personal, individualized inquiries on behalf of its members

By letting plaintiffs obtain injunctive relief based on hypotheticals, the Court of Appeals effectively excused plaintiffs from demonstrating that they will engage in

a religious exercise substantially burdened by S.B. 1. That is bad enough. But the court's decision to accord HJC standing to sue on behalf of third parties precludes any actual examination of those parties' beliefs and practices.

Under this Court's precedent, standing requires the plaintiff to "have suffered . . . a direct injury." *Solarize*, 182 N.E.3d at 217. HJC, an organization incapable of pregnancy (much less of seeking abortion), cannot satisfy the direct-injury standard. The Court of Appeals invoked associational standing, which is "rarely applied" in Indiana. Op. 12–13, 15. This Court, however, has "never" endorsed associational standing, *Bd. of Comm'rs of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 169–70 (Ind. 2017)—a federal doctrine that "arose more from historical accident than practice," *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 538–39 (6th Cir. 2021). And even under federal doctrine, associational standing is only appropriate where "'neither the claim asserted nor the relief requested requires the participation of individual members.'" *Harris v. McRae*, 448 U.S. 297, 321 (1980).

Since plaintiffs asserting religious-exercise claims must demonstrate a substantial burden on their religious practices, federal law holds that religious-exercise claims "ordinarily require[] individual participation." *Harris*, 448 U.S. at 321; *see, e.g.*, *Curto v. A Country Place Condo. Ass'n*, 921 F.3d 405, 410 n.2 (3d Cir. 2019); *Cornerstone Christian Sch. v. Univ. Interscholastic League*, 563 F.3d 127, 134 (5th Cir. 2009); *Mount Elliott Cemetery Ass'n v. City of Troy*, 171 F.3d 398, 404 (6th Cir. 1999). The Court of Appeals treated this case as extraordinary, asserting HJC members generally believe "abortion is directed to occur if it is necessary to prevent

physical or emotional harm." Op. 20–21 (quoting App. II 36). But that high-level description obscures that there is no "one answer" as to what this belief means in actual practice. App. V 35; *see* Merits Br. at 32–33. And more importantly, RFRA's focus is on specific conduct—not beliefs in the abstract. *See* pp. 12–14, *supra*. Simply because someone signed an organization's membership statement in the past is no guarantee that she will seek abortion in future because of what that statement says or that she will have no religiously acceptable alternative to abortion.

Recognizing associational standing for claims like this one paves the way for persons to obtain relief who could not satisfy RFRA's requirements on their own. Indeed, the Court of Appeals admitted that it allows persons to avoid providing "details" about "religious beliefs" or "conduct in the way that a RFRA challenge to statutory limitations may require." Op. 16. That should be particularly concerning in cases involving requests for injunctive relief. If an organization obtains an injunction for its members, then persons whose convictions do not match the organization's may nevertheless join to exempt themselves from state law.

III. The Court of Appeals Compounded the Impact of Its Errors by Upholding Class Certification

Certification of a class amplifies the impact of the Court of Appeals' errors. Under the class definition, there is no objective way to tell which women are class members. That guarantees problems for any further litigation. And the RFRA claim asserted requires the resolution of issues inherently incapable of class-wide adjudication—a problem underscored by the court's inability to describe an injunction that would redress all class members' injuries at once.

A. The class is improperly and amorphously defined

A threshold problem with the class definition is that plaintiffs cannot show they meet it. "An indispensable requirement" for a class action, 1 McLaughlin on Class Actions § 4:28 (20th ed.), is that it be brought by "members of [the] class." Ind. Trial R. 23(A). Here, the class is defined as women who "need" or "will need an abortion" prohibited by S.B. 1 and are "directed" to obtain the abortion by their "religious beliefs." Class Cert. App. II 58. But plaintiffs do not "need" abortions now, and there is no way to know whether they "will" need them in the future, much less whether the abortions will be prohibited by S.B. 1 or "directed" by plaintiffs' religious beliefs. The Court of Appeals' response—that plaintiffs "have restricted their efforts to become pregnant," Op. 42—ignores the class definition's terms.

The class definition is also indefinite. Class definitions "'must be specific enough for the court to determine whether or not an individual is a class member.'" *Clark-Floyd Landfill LLC v. Gonzalez*, 150 N.E.3d 238, 245 (Ind. Ct. App. 2020), *trans. denied*. As plaintiffs concede, State Class Cert. Reply 12, "courts have long recognized" that classes defined by subjective criteria flunk the definiteness requirement. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015); *see Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 935 (5th Cir. 2023) (employers that "oppose homosexual or transgender behavior for religious or nonreligious reasons"); *J.D. v. Azar*, 925 F.3d 1291, 1319 (D.C. Cir. 2019) ("pregnant minors who oppose abortion on moral or religious grounds"). Here, however, the class definition is impermissibly predicated on subjective elements—religious belief and motivation.

The Court of Appeals did not dispute that belief and motivation are subjective. Instead, it declared that, while the classes' "religious beliefs may differ as to when abortions are mandated," "the core belief of the members remains uniform." Op. 36. But that response simply ignores the requirement to use "objective criteria." *Mullins*, 795 F.3d at 657. Individual belief is not objective whether widely shared or not. That distinguishes this class from other RFRA classes defined by objective criteria. *See, e.g.*, *Doster v. Kendall*, 54 F.4th 398, 433 (6th Cir. 2022) ("Air Force members" who (1) "submitted a religious accommodation request," (2) "were confirmed" by the Air Force itself "as having had a sincerely held religious belief substantially burdened by the . . . vaccination requirement," and (3) had the accommodation rejected), *vacated as moot*, 144 S. Ct. 481 (2023).

B. The claims are incapable of class-wide resolution

However the class is defined, the claims here—which require individualized, fact-sensitive inquiries into whether abortions are religiously motivated and the degree of burden S.B. 1 imposes—cannot be adjudicated on a class-wide basis. Rule 23(A) requires "common" questions of law or fact and the "claims or defenses of the representative parties" to be "typical" of those of the class. Ind. Trial R. 23(A)(2)–(3). The Court of Appeals held those requirements were satisfied because the classes' claims all involve the "same laws" and "the unavailability of abortions." Op. 39. But Rule 23 demands more than superficial showings of common qualities, such as whether class members have "suffered a violation of the same provision of law." *Wal-*

Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). The court must be able to resolve questions "central to the validity of each one of the claims in one stroke." *Id.*

Moreover, where—as here—certification is sought under Rule 23(B)(2), the requirements for class cohesiveness are even more "'stringent.'" *Harris v. Union Pac. R.R. Co.*, 953 F.3d 1030, 1038 (8th Cir. 2020). The plaintiff must demonstrate that the defendant "has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Ind. Trial R. 23(B)(2). This means the class members' claims can be decided en masse and remedied through a single injunction "'without reference to . . . individual circumstances.'" *Harris*, 953 F.3d at 1038; *see Shook v. Bd. of Cnty. Comm'rs*, 543 F.3d 597, 604 (10th Cir. 2008).

In the RFRA context, however, individualized analysis is required because courts must determine whether particular individual conduct constitutes a sincere religious exercise and whether it is substantially burdened. *See Braidwood*, 70 F.4th at 935; *Doster*, 54 F.4th at 420. Here, plaintiffs must establish the class members' beliefs, their religious sincerity, and substantial burden. But plaintiffs concede that class members' beliefs are "personal" and that class members lack "uniform" beliefs. Appellees' Class Cert. Br. 33, 35. So a court cannot say all Muslim or Pagan women who seek a late-term abortion must be acting for sincere religious reasons simply because one Muslim or Pagan might be sincere. The only way to know is to examine each person's claim individually, making class certification improper. *See Perdue v. Murphy*, 915 N.E.2d 498, 508–09 (Ind. Ct. App. 2009).

Nor is it possible to write a single injunction that would provide relief to all class members while complying with Rule 65's requirements that an injunction be specific and no broader than necessary. State Merits Reply 28–29; State Class Cert. Br. 32–33. The Court of Appeals did not even try. It conceded that class members have "varying" beliefs as to when abortion is religiously directed. Op. 36; *see* Class Cert. App. II 21. But it did not explain how anyone could write a single injunction specifying precisely which abortions are permissible for each class member under what circumstances. That is telling. It is, moreover, no answer to put off the issue. *Contra* Op. 40. Rule 23(B) requires courts to determine that writing a single injunction is possible, even if doing so involves "touching aspects of the merits." *Wal-Mart*, 564 U.S. at 350–51; *see Perdue*, 915 N.E.2d at 507–09.

CONCLUSION

The Court should grant transfer and reverse.

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WORD COUNT CERTIFICATE

As required by Indiana Appellate Rule 44, I verify that the foregoing document contains no more than 4,200 words.

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CERTIFICATE OF SERVICE

I certify that on May 20, 2024, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I also certify that on May 20, 2024, the foregoing document was served upon the following persons using the IEFS:

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