

STATE OF INDIANA)
)
) SS: MONROE COUNTY CIRCUIT COURT
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 enjoinder 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. Total Abortion Ban (Section 21)

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 viability³ of the fetus or twenty (20) weeks of postfertilization age⁴ 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. Criminal and Civil Penalties (Sections 28, 41)

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\(White%20alone,or%20More%20Races%2010.2%25\)](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.](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

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 Acad. 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.

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

/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*