

**IN THE  
COURT OF APPEALS OF INDIANA**

VOICES FOR LIFE, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	Court of Appeals Cause No.
	)	24A-MI-2396
INDIANA DEPARTMENT OF HEALTH	)	
(IDOH); LINDSAY WEAVER, M.D., in her	)	
official capacity as Commissioner of the Indiana	)	
Department of Health; CAITLIN BERNARD,	)	
M.D.; and CAROLINE ROUSE, M.D.;	)	
	)	
Appellees.	)	

**APPELLEES’ RESPONSE IN OPPOSITION TO JOINT MOTION TO DESIGNATE  
APPELLANT’S MOTION FOR EXTENSION OF TIME AS CONFIDENTIAL**

Appellees, Dr. Caitlin Bernard and Dr. Caroline Rouse (collectively, the “Physicians”), respectfully submit this response in opposition to the joint motion filed on January 17, 2025, asking the Court to designate Appellant’s motion for an extension of time as confidential.

This case concerns efforts by Appellant, Voices for Life, Inc. (“VFL”), to obtain medical records known as Termination of Pregnancy Reports (“TPRs”), which contain confidential information about abortion patients, from the Indiana Department of Health (“IDOH”). Compl. (May 1, 2024). On June 13, 2024, the Superior Court granted the Physicians’ motion to intervene as Defendants. *See* Order Granting Mot. for Intervention (June 13, 2024). As a result, the Physicians were Defendants in the proceedings below and are Appellees here.

Access to court records is governed by the Indiana Rules for Access to Court Records. These rules embody a strong presumption in favor of public access. *See* Rule 1 cmt. (“The objective of this rule is to provide maximum public accessibility to Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access . . .

This rule starts from the presumption of open Public Access to Court Records.”). Rule 5 provides that court records may be excluded from public access only in “extraordinary circumstances,” if one of the following conditions is met: “(1) The public interest will be substantially served by prohibiting access; (2) Access or dissemination of the Court Record will create a significant risk of substantial harm to the requestor, other persons or the general public, or (3) A substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting Public Access.”

Here, the joint motion makes no claim that public access to Appellant’s motion for an extension of time would create a significant risk of substantial harm to anyone, nor that it would have a substantial prejudicial effect to on-going proceedings. It argues only that the extension motion should be made confidential because it discloses the subject-matter of settlement negotiations between VFL and the Indiana Attorney General’s office, and statements made during settlement discussions enjoy some protection under Indiana’s Rules of Evidence. But this argument does not come close to demonstrating that the public interest will be substantially served by prohibiting access to the motion.

First, Evidence Rule 408 offers only conditional protection to statements made during settlement negotiations. It renders such statements inadmissible “to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction,” but not for other purposes, “such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.” Ind. R. Evid. 408. Thus, the rule does not support the joint motion’s request to shield the talks between VFL and the Attorney General’s office from public view.

Second, the motion for an extension of time, which was verified by counsel for VFL, asserted that IDOH “has changed its position” on whether TPRs are subject to public disclosure and “now concedes that the TPR is a public record subject to disclosure under [Indiana’s Access to Public Records Act].” Verified Mot. for Extension of Time to File Br. of Appellant at 2. The public interest plainly weighs in favor of transparency concerning IDOH’s position. Interested parties, including the Physicians, should have an opportunity to take timely legal action to prevent IDOH from disclosing TPRs to VFL or other members of the public, and blocking public access to counsel’s verified disclosure will obstruct their ability to do so.

WHEREFORE, the Physicians urge the Court to deny the joint motion.

Dated: January 22, 2025

Respectfully submitted,

/s/ Kathrine D. Jack

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 22, 2025, a true and correct copy of the foregoing document was served via the Court's e-filing system on the following individual who have filed an appearance in this cause:

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