

STATE OF INDIANA) MONROE COUNTY CIRCUIT COURT
) SS:
MONROE COUNTY) CAUSE NO. _____

PLANNED PARENTHOOD GREAT)
NORTHWEST, HAWAI'I, ALASKA,)
INDIANA, KENTUCKY, INC.; WOMEN'S)
MED GROUP PROFESSIONAL)
CORPORATION; WHOLE WOMAN'S)
HEALTH ALLIANCE; 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, ST.)
JOSEPH COUNTY PROSECUTOR,)
TIPPECANOE COUNTY PROSECUTOR,)
and the WARRICK COUNTY)
PROSECUTOR, in their official capacities,)

Defendants.)

**COMPLAINT FOR PRELIMINARY
INJUNCTION AND DECLARATORY RELIEF**

Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky
("PPGNHAIK"), Women's Med Group Professional Corporation ("Women's Med"), Whole

Woman’s Health Alliance (“WWHA”), and Dr. Amy Caldwell (collectively, the “Provider Plaintiffs”) and All-Options, Inc. (“All-Options”) (collectively, “Plaintiffs”) bring this 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, St. Joseph 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. Absent intervention from this Court, S.B. 1 will take effect September 15, 2022, and virtually eliminate abortion access across the state. Plaintiffs bring this action on behalf of themselves and abortion patients to prevent the deprivation of their rights under the Indiana Constitution.

2. If S.B. 1 goes into effect, it will ban abortion in Indiana with only three extremely limited exceptions, one of which is unworkable because physicians cannot determine when in a pregnancy the exception permits abortions. Performing an abortion outside these exceptions will be a Level 5 felony punishable by one to six years imprisonment, as well as a fine up to \$10,000. Ind. Code § 16-34-2-7; § 35-50-2-6. S.B. 1 also eliminates licensed abortion clinics—where the vast majority of abortions occur—and requires abortion care to occur in a hospital or a majority hospital-owned ambulatory outpatient surgical center (“ASC”) 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.

3. S.B. 1 will severely limit access to abortion care, prohibiting nearly all pregnant Hoosiers from accessing care in Indiana. Moreover, by slashing the number of facilities providing abortion, which will be limited to hospitals concentrated in and around Indianapolis, S.B. 1 will materially burden even the few people who may qualify for the ban's extremely limited exceptions.

4. S.B. 1 will require the thousands of Hoosiers who seek abortion care each year to disrupt their lives and attempt to travel out of state for care, significantly delaying their abortions and causing them to incur higher expenses. Those who lack the resources or mobility to access abortion at great distances from home will suffer the devastating consequences of pregnancy against their will.

5. The impossibility of accessing timely abortion care in their home state will lead to psychological, physiological, and economic harm for all pregnant Hoosiers seeking abortions, and these impacts will fall hardest on already vulnerable populations.

6. S.B. 1's severe penalties will force the Provider Plaintiffs to stop providing abortions, contrary to their patients' needs and wishes. S.B. 1's penalties will force All-Options to divert its critical support for Hoosiers seeking abortions to more expensive out-of-state travel, contrary to its mission of supporting reproductive justice and destigmatizing abortion in Indiana.

7. S.B. 1's total abortion ban strips away the fundamental rights of people seeking abortion care in Indiana in violation of the State Constitution. It will infringe on Hoosiers' right to privacy, violate Indiana's guarantee of equal privileges and immunities, and violate the Constitution's due course of law clause through its unconstitutionally vague language.

8. For all these reasons, S.B. 1 will cause immediate and irreparable harm to Plaintiffs and numerous Hoosiers seeking abortion, including the Plaintiffs' patients and clients, unless 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 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. PPGNHAIK also offers medication abortion (which is accomplished by

ingesting pills and does not require a medical procedure) up to 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.

15. Women's Med is a for-profit organization incorporated in Ohio. It has operated a licensed abortion clinic in Indianapolis for over twenty years. The clinic provides procedural abortions up to 13 weeks 6 days LMP, medication abortions up to 10 weeks LMP, and contraceptive services.

16. WWHA is a not-for-profit organization incorporated in Texas. Its mission is to provide abortion care in underserved communities and destigmatize abortion. WWHA operates a licensed abortion clinic in South Bend, which provides medication abortions up to 10 weeks LMP and contraceptive services.

17. 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.

18. 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 at IU Health and the Georgetown Road Health Center operated by PPGNHAIK.¹

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

20. But for S.B. 1, the Provider Plaintiffs would continue to provide or facilitate procedural and medication abortions consistent with current law.

21. All-Options brings this suit on behalf of itself and its current and future staff who participate in activities that could subject them to liability in connection with S.B. 1 and current and future Hoosier clients seeking abortions.

22. But for S.B. 1, All-Options would continue to pay for patients to obtain abortions in Indiana consistent with current law and its mission to expand reproductive justice and destigmatize abortion in Indiana.

B. Defendants

23. 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, 25-22.5-8-6.

24. 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.

¹ Dr. Caldwell brings her claims as an individual physician and not on behalf of IU Health or the School of Medicine.

STATUTORY FRAMEWORK

25. 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.

26. 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 is scheduled to take effect on September 15, 2022.

A. Total Abortion Ban (Section 21)

27. 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 viability² of the fetus or twenty (20) weeks of postfertilization age³ 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*,”⁴ if a physician determines

² 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.

³ 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 (“LMP”), 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.

⁴ As discussed in the Third Claim, the time limitations in Section 21(3)(A) are inconsistent with Section 21(1)(A)(i), such that there is uncertainty as to when the Health and Life exception is applicable and is thus unconstitutionally vague.

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” (the “Health or Life Exception”).⁵ §§ 21(1)(A)(i), (3)(A) (Ind. Code §§ 16-34-2-1(1)(A)(i), (3)(A)). Under Indiana law, “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 serious risk of substantial and irreversible physical impairment of a major bodily function.” § 6 (Ind. Code § 16-18-2-327.9). The term expressly excludes “psychological or emotional conditions.” *Id.* “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. §§ 21(1)(E), (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” (the “Lethal Fetal Anomaly

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.

Exception”). § 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. § 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 (the “Rape or Incest Exception”). § 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. § 21(2)(D) (Ind. Code § 16-34-2-1(2)(D)).

28. Further, S.B. 1 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 (the “Hospitalization Requirement”). §§ 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)

- 29. S.B. 1 imposes significant criminal and civil penalties.

30. 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. § 28(a) (Ind. Code § 16-34-2-7(a)); Ind. Code § 35-50-2-6).

31. 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 Ind. Code § 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 Ind. Code §§ 16-34-2-1(a)(1)(D), 16-34-2-4)), or (3) without waiting the 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. § 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.

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

33. 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 more than twelve times higher than that associated with abortion, and every pregnancy-related complication is more common among patients giving birth than among those having abortions.

34. 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.

35. Meanwhile, Indiana’s infant and maternal mortality rates are among the worst in the country. In 2020, 522 babies in Indiana died before their first birthday, which is nearly 44 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

36. 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.

37. 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, will impact their ability to care for the children they already have.

38. People of color will likely be most impacted by S.B. 1 given that they disproportionately access abortion care in Indiana. Statewide in 2020, 35% of people obtaining

⁶ Indiana Dep’t of Health, *Indiana Infant Mortality & Birth Outcomes, 2020* at 4 (Mar. 2022), <https://www.in.gov/health/mch/files/2020-Infant-Mortality-Morbidity.pdf> (hereinafter “2020 *Indiana Mortality & Birth Outcomes*”).

⁷ Indiana Dep’t of Health, *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>.

an abortion identified as Black or African American, and 9.9% 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 rate among Black, non-Hispanic children in Indiana is more than twice the infant mortality rate of non-Hispanic white babies.¹²

39. Nationwide, new mothers’ earnings drop after they give birth, and they do not fully recover to pre-pregnancy earning levels.¹³

40. Moreover, Indiana severely limits residents’ eligibility for public benefits intended to help vulnerable parents and children, such as “Temporary Assistance for Needy Families” (“TANF”), which provides cash assistance, and 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

⁸ Indiana Dep’t of Health, *2021 Terminated Pregnancy Report* (June 30, 2022), at 12, <https://www.in.gov/health/vital-records/files/2021-ITOP-Report.pdf> (hereinafter “*2021 Terminated Pregnancy Report*”).

⁹ *Id.*

¹⁰ *Indiana: 2020 Census*, U.S. CENSUS BUR. (Aug. 25, 2021), [https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html#:~:text=Population%20\(up%207.4%25%20to%20331.4,or%20More%20Races%2010.2%25](https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html#:~:text=Population%20(up%207.4%25%20to%20331.4,or%20More%20Races%2010.2%25)

¹¹ *2020 Indiana Infant Mortality & Birth Outcomes* at 7.

¹² *Id.* at 8.

¹³ Danielle H. Sandler & Nichole Szembrot, *New Mothers Experience Temporary Drop in Earnings*, U.S. CENSUS BUR. (June 16, 2020), <https://www.census.gov/library/stories/2020/06/cost-of-motherhood-on-womens-employment-and-earnings.html> (accessed Aug. 27, 2022).

with less than \$5,000 in assets.¹⁴ Further, Indiana enforces a “family cap policy” barring anyone with one or more children from receiving additional TANF benefits for additional children.¹⁵ Indiana imposes this restriction knowing that the poverty rate for single mothers in Indiana is 32.8% compared with the state’s overall poverty rate of 11.9%.¹⁶

B. S.B. 1’s Abortion Ban Will Inflict Irreparable Harm on Hoosiers.

41. If S.B. 1 takes effect on September 15, it will virtually eliminate abortion access in Indiana and severely and irreparably harm thousands of pregnant Hoosiers every year.

42. Pregnancy and childbirth impact every aspect of an individual’s life—from physical and mental health to finances to personal relationships. Without the ability to decide whether to continue a pregnancy, Hoosiers will lose the right to make critical decisions about their health, bodies, lives, and futures.

43. S.B. 1 will leave the thousands of Hoosiers who seek abortion care each year with few options. Although those who are able to acquire the necessary resources may travel long distances to obtain care in another state, doing so will impose substantial economic and logistical burdens, particularly for those who are low-income or seeking to protect the confidentiality of their pregnancy and abortion decision from an abusive partner or family member. Low-income people from medically underserved communities constitute a substantial portion of patients who seek abortions. Nearly 75% of those who seek abortions nationwide have poverty-level incomes.

¹⁴ Indiana Div. of Fam. & Soc. Servs. Admin., *Do I Qualify for SNAP*, <https://www.in.gov/fssa/dfr/snap-food-assistance/do-i-qualify-for-snap/> (last visited Aug. 27, 2022).

¹⁵ Ind. Admin. Code § 10.3-9-2.

¹⁶ *2019 American Community Survey 1-Year Estimates—Selected Economic Characteristics: Indiana (2019)*, U.S. CENSUS BUR., <https://data.census.gov/cedsci/table?q=DP03&g=0400000US18&tid=ACSDP1Y2019.DP03> (last visited Aug. 27, 2022).

44. Hoosiers seeking abortions out of state will need to gather more money to cover higher travel costs for gas, flights, overnight lodging, and meals. They will likely lose income from taking time off work and could put their employment at risk. The longer time away from home required for out-of-state travel will also make it harder to find childcare. Many patients will be unable to overcome these barriers to seeking abortion out of state, while others will be appreciably delayed in accessing care, increasing the risk of the procedure.

45. The cost of an abortion procedure also increases as the pregnancy advances, so patients pay more for abortions if they are forced to wait. Patients can find themselves in a vicious cycle of delaying while gathering funds, only to find the procedure more expensive than anticipated, requiring further delay, or causing them to time out of care altogether. Although abortion is very safe, and significantly safer than continuing a pregnancy and giving birth, delaying abortion care unnecessarily increases medical risk. A patient whose care is delayed—*i.e.*, who must remain pregnant longer—will suffer both increased risks associated with remaining pregnant and comparatively increased risks associated with the abortion procedure.

46. Patients who are unable to travel out of state to access care will be forced to continue a pregnancy against their will, which jeopardizes their physical, mental, and emotional health, as well as the stability and well-being of their family, including their children. These negative impacts are often most severe for those who are already marginalized. The children of parents who are denied abortions are more likely to live in poverty than subsequent children born to people who sought and received an abortion. And Hoosiers experiencing intimate partner violence, forced pregnancy exacerbates the risk of new or increased violence, and further—often permanently—tethers the victim and the victim's family to their abuser because patients denied abortions are more likely to remain in contact with a violent partner. Each day that someone

remains pregnant against their will can involve extreme emotional distress, particularly for survivors of rape and incest and minors.

47. Some patients who are unable to travel to access care will resort to self-managing their abortion outside of the medical system.

48. S.B. 1's extremely limited exceptions will permit physicians to perform abortions in only the rarest cases and will inflict serious harm on patients already facing extraordinarily difficult circumstances.

49. First, Hoosiers experiencing or at risk of pregnancy complications that may seriously and permanently impair their health—but that do 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. Even patients whose pregnancies should qualify for S.B. 1's narrow 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.

50. S.B. 1's Health or Life Exception is also unclear as to when in pregnancy a physician may perform an abortion. Section 21(a)(1) provides "before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age 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." These two provisions provide two different time limits for when abortions are allowed under the Health or Life Exception. The "at any time after" language is contradicted by the earlier time limits in the beginning of the sentence and in conflict with Section 21(a)(1). If the earlier time limits in Section 21(a)(3) govern, then it is duplicative of Section 21(a)(1). This inconsistent language inhibits physicians from providing legal abortion services because of uncertainty as to

whether S.B. 1 allows their conduct. For example, if a physician is treating a pregnant patient facing a risk of death who is 23 weeks pregnant by LMP, S.B. 1's conflicting provisions do not provide clarity as to whether an abortion would be legal in that situation.

51. And practically, preventing physicians from providing abortions necessary to save the life or health of a pregnant person after 22 weeks LMP as set forth in Section 21(a)(1) will lead to dangerous results, namely that pregnant Hoosiers will be denied critical care if they encounter pregnancy complications at 23 weeks LMP or later. A physician might be forced to allow a patient to die rather than providing a life-saving abortion. Reading S.B. 1 to establish such a dynamic would drastically alter Indiana's current regime for handling post-22-week LMP abortions that threaten the life or health of the pregnant patient. Indiana law currently permits otherwise-prohibited abortions after 22 weeks LMP if "in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman." Ind. Code 16-34-2-1 Sec. 1(a)(3).

52. The uncertainty surrounding when physicians are protected from prosecution under the Health or Life Exception has significant consequences. The Health and Life Exception's ambiguity about how late in pregnancy a physician can perform an abortion prevents doctors from knowing if performing certain abortions will expose them to prosecution. Thus, S.B. 1 will force physicians to make excruciating decisions that pit their commitment to preserving the life and health of their patients against their own freedom.

53. Second, some survivors of rape and incest, and especially minors, do not know they are pregnant until later in pregnancy. This late knowledge of pregnancy will make it impossible for some patients to obtain an abortion before the Rape or Incest Exception

gestational age cutoff of 12 weeks LMP.¹⁷ S.B. 1's Hospitalization Requirement will also make it impossible for all patients who qualify for S.B. 1's limited exceptions to obtain care, because an abortion at a hospital will be prohibitively expensive for many patients, because the availability of abortion in a hospital setting is not generally known to the public, and because there is no clear way for patients to arrange for such care.

C. S.B. 1's Hospitalization Requirement Will Inflict Irreparable Harm on Hoosiers.

54. S.B. 1's Hospitalization Requirement will make abortion nearly impossible to access for even those patients who meet the ban's narrow exceptions. In 2021, 8,414 abortions were performed in Indiana.¹⁸ Over 98 percent of these abortions were performed at abortion clinics that will be prohibited from providing abortion care under S.B. 1.¹⁹ Less than two percent of abortions performed in the state that year were performed in hospitals, and only one abortion was performed at an ASC (hospital-owned or otherwise) in the last seven years.²⁰

55. There are no distinct, inherent characteristics distinguishing the provision of abortions at licensed hospitals and ASCs majority-owned by licensed hospitals from the

¹⁷ See *infra* at ¶45; 55 (explaining considerable costs of abortion and increasing expense as a pregnancy progresses).

¹⁸ 2021 *Terminated Pregnancy Report* at 19-20.

¹⁹ *Id.* at 20.

²⁰ See 2021 *Terminated Pregnancy Report* at 2. Only one abortion was performed by an ASC in 2020, and no ASCs performed abortions from 2015 through 2019. See Indiana Dep't of Health, 2020 *Terminated Pregnancy Report* (June 30, 2021) at 2, <https://www.in.gov/health/vital-records/files/ANNUAL-TPR-CY2020.pdf>; Indiana State Dep't of Health, 2019 *Terminated Pregnancy Report* (June 30, 2020) at 2, <https://www.in.gov/health/vital-records/files/2019-Indiana-Terminated-Pregnancy-Report.pdf>; Indiana State Dep't of Health, 2018 *Terminated Pregnancy Report* (June 30, 2019) at 3, <https://www.in.gov/health/vital-records/files/2018-Indiana-Terminated-Pregnancy-Report.pdf>; Indiana State Dep't of Health, 2017 *Terminated Pregnancy Report* (June 30, 2018) at Exec. Summ., <https://www.in.gov/health/vital-records/files/2017-Indiana-Terminated-Pregnancy-Report.pdf>; Indiana State Dep't of Health, 2016 *Terminated Pregnancy Report* (June 30, 2017) at Exec. Summ., <https://www.in.gov/health/vital-records/files/2016-Indiana-Terminated-Pregnancy-Report.pdf>; Indiana State Dep't of Health, 2015 *Terminated Pregnancy Report* (June 30, 2016) at Exec. Summ., <https://www.in.gov/health/vital-records/files/2015-TP-Report.pdf>.

provision of abortions at abortion clinics. Abortion at a clinic is as safe as at a hospital or ASC. Of the 8,281 abortions provided at Indiana abortion clinics in 2021, not one resulted in death.²¹ Less than one percent experienced complications. 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. In contrast, in 2021 seven abortion clinics spanning five Indiana counties provided 98% of all abortions provided in the state. Out-of-pocket expenses are many times greater for patients receiving abortion care in hospitals compared with those receiving abortion care provided in clinics. The cost of an abortion at IU Health, a hospital, is roughly \$5,000-\$7,000, whereas the cost of abortion in an outpatient clinic can range from around \$400 to \$725. This higher cost will make obtaining abortion care in a hospital setting impossible for many Hoosiers.

56. In addition, it would be 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 there is no obvious number to call or person to reach out to inquire about this care. Given the stigma that surrounds abortion, patients will understandably be wary to cold-call hospitals to inquire about this service, if they even become aware that hospitals provide this care.

²¹ 2021 *Terminated Pregnancy Report* at 18.

57. As such, with almost no available abortion care in Indiana, Hoosiers will suffer irreparable harm to their autonomy, their well-being, and their dignity, in violation of their rights under the Indiana Constitution. S.B. 1 inflicts immediate and irreparable harm on Hoosiers seeking vital and time-sensitive healthcare.

CLAIMS FOR RELIEF

First Claim

S.B. 1's Total Abortion Ban Violates Article 1, Section 1 of the Indiana Constitution (Substantive Due Process Right to Privacy)

58. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–57 as if set forth fully herein.

59. 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.” By banning all abortions except for those that fall within the law’s extremely narrow exceptions, thus forcing pregnancy and childbirth upon thousands of Hoosiers, S.B. 1 prohibits Plaintiffs’ patients and clients from exercising their fundamental right to privacy, which encompasses the right to abortion, in violation of the Indiana Constitution’s protections for individual liberties under Article 1, section 1. This impairment prevents the right to privacy from serving the purpose for which it was designed: protecting citizens from unwarranted, unnecessary, and overbearing governmental intrusion into their personal lives. Ind. Const. art. 1, § 1.

60. The magnitude of S.B. 1’s impairment of the right to privacy is immense because an individual’s decisions about what to do with their body are at the core of the privacy right created by Indiana’s Constitution. As such, S.B. 1 fails the material burden test and thus violates the right to privacy conferred by the Indiana Constitution.

Second Claim
**S.B. 1's Total Abortion Ban Violates Article 1, Section 23
of the Indiana Constitution (Equal Privileges and Immunities)**

61. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–57 as if set forth fully herein.

62. The Equal Privileges and Immunities Clause of Article 1, section 23 of the Indiana Constitution provides that “[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

63. S.B. 1 discriminates against abortion providers in violation of Article 1, section 23 by establishing that all abortion care must occur at a licensed hospital or ASC majority-owned by a licensed hospital, despite the fact that licensed abortion clinics have safely provided the vast majority of abortion care in Indiana for decades and there is no distinct, inherent medical reason why licensed hospitals and ASCs majority-owned by licensed hospitals should be preferred to abortion clinics in the performance of the vast majority of abortions, which are medically uncomplicated and extremely low-risk.

64. S.B. 1 discriminates against abortion clinics on its face. Prior to this enactment, abortion clinics were legally allowed to provide abortion care. S.B. 1 specifically targets abortion clinics, striking any mention of them.

Third Claim
S.B. 1 Violates Article 1, Section 12
of the Indiana Constitution (Vagueness)

65. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–57 as if set forth fully herein.

66. S.B. 1 violates the Indiana Constitution’s guarantee of due course of law, *see* Ind. Const. art. I, § 12, as the law’s contradictory language regarding the gestational age limit that applies to the Health or Life Exception renders the Health or Life Exception unconstitutionally vague.

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;
- ii. Issue an Order, Judgment, and/or Writ from this Court declaring S.B. 1 unconstitutional;
- iii. Assess the costs of this action against Defendants; and
- iv. Pursuant to the Court’s inherent powers, grant such other and further relief as the Court may deem just, proper, and equitable.

Respectfully submitted:

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