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IN THE INDIANA SUPREME COURT

Case No. 26S-PL-00128

INDIVIDUAL MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, ET AL.,

Appellants-Defendants,

v.

ANONYMOUS PLAINTIFF 1, ET AL.,

Appellees-Plaintiffs.

PROPOSED *AMICUS CURIAE* BRIEF ON BEHALF OF VOICES FOR LIFE, INC., IN SUPPORT OF APPELLANTS AND REVERSAL

On Transfer from the Indiana Court of Appeals

Appeal from Marion County Superior Court 1
Trial Court Case No. 49D01-2209-PL-031056
The Honorable Christina R. Klineman, Judge

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INTEREST OF THE AMICUS CURIAE

Voices for Life, Inc., is a non-profit corporation organized under the laws of the State of Indiana with its principal office in South Bend, Indiana. Co-founded in 2022 following *Dobbs v. Jackson Women's Health Organization*, the organization advocates for the protection and defense of unborn Hoosiers and the mothers who carry them through year-round grassroots engagement. Its programs include door-to-door community canvassing to initiate compassionate conversations about abortion and to connect women with local resources; sidewalk counseling at abortion referral sites; abortion clinic mission trips to reach Indiana women traveling out of state for abortions; and Sanctity of Life church ministry groups.

Voices for Life's legal enforcement program gives it a direct and unique institutional stake in this litigation. The organization monitors every abortion performed in Indiana by reviewing Terminated Pregnancy Reports ("TPRs") filed pursuant to Indiana Code § 16-34-2-5, the statute whose declared purpose is "to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law." To protect public access to those reports, Voices for Life brought a lawsuit against the Indiana Department of Health, successfully resolved by settlement in early 2025. Abortion doctors, however, have challenged the availability of TPRs under Indiana's Open Records Act in a subsequent lawsuit, which is now pending before this Court. The permanent injunction entered below—which creates an unlimited class-wide religious exemption from State abortion law with no verification mechanism, no reporting requirement,

and no means by which Voices for Life or any other entity could monitor whether an abortion performed under the claimed exemption in fact satisfies Indiana law—directly frustrates and contradicts the purpose of Indiana's TPR system and threatens the enforcement mission Voices for Life exists to fulfill.

SUMMARY OF ARGUMENT

The phrase "exercise of religion" as used in Indiana's RFRA has a fixed historical meaning that excludes abortion. Under the Imputed Common Law Meaning and Fixed-Meaning Canons, "religion" must be understood as it was when Indiana's religious liberty provisions were adopted in 1851—namely, as a relationship of duty to a theistic Creator. Indiana Code § 34-13-9-5's definitional language broadens protected conduct *within* that concept; it does not redefine the concept's outer boundaries. That 1851 meaning is confirmed by the Western natural law tradition from Cicero through Locke—all of whom condemned abortion as contrary to natural law—and by Indiana's own 1836 statute criminalizing abortion, years before the 1851 State Constitutional Convention. The framers of Article I, Sections 2 and 3 could not have understood those provisions as protecting, as a religious exercise, what Indiana law simultaneously treated as criminal. A fixed meaning cannot be expanded to encompass that which the State specifically knew about, addressed, and criminalized.

Even if RFRA could be stretched to cover abortion, it must be interpreted to avoid conflict with Article I, Section 1's protection of the right to life. The lower courts did not do this. They also ignored Indiana's own statutory declarations—including

the legislature's mandatory patient disclosure that human physical life begins at fertilization and its direct invocation of the compelling interest standard—and assessed the State's compelling interest at the wrong level of generality. Under *Gonzales v. O Centro*, 546 U.S. 418, 430-31 (2006), the question is not whether the State has a compelling interest in all circumstances, but whether it has a compelling interest in not granting this specific exemption: an unlimited, self-certifying religious carve-out with no gestational limit and no verification mechanism. It plainly does.

ARGUMENT

I. BOTH HISTORY AND TRADITION DEMONSTRATE THAT THE PHRASE "EXERCISE OF RELIGION" AS USED IN INDIANA'S RFRA DOES NOT INCLUDE A RIGHT TO ABORTION.

A. Courts Must Apply the Imputed Common Law and Fixed-Meaning Canons to Determine the Historical Meaning of "Religion."

The phrase "exercise of religion" is defined in RFRA as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." I.C. § 34-13-9-5. But RFRA does not define "religion." That absence requires application of two foundational interpretive canons.

First, under the Canon of Imputed Common Law Meaning, "words undefined in a statute are to be interpreted and applied according to their common law meanings." Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 320 (2012). "Exercise of religion" is not a statutory invention. It is the operative language of the Free Exercise Clause of the First Amendment and its Indiana constitutional analogs—Article I, Sections 2 and 3, which protect the natural right to worship God according to conscience and prohibit laws controlling the free

exercise of religious opinions or interfering with the rights of conscience. Ind. Const. art. I, §§ 2, 3. Indiana Code § 34-13-9-3 confirms this constitutional grounding by expressly excluding from RFRA's scope that "part of the First Amendment of the Constitution of the United States or the Constitution of the State of Indiana prohibiting laws respecting the establishment of religion"—the dimension embodied in Indiana Constitution Article I, Sections 4 and 6. That exclusion of the establishment dimension confirms that RFRA's operative protections run to the free exercise dimension of Sections 2 and 3. When a statute borrows a phrase from a constitutional provision, it adopts that provision's constitutional meaning. *See* I.C. § 1-1-4-1(1) (technical words and phrases having a peculiar and appropriate meaning in law are "understood according to their technical import").

Second, under the Fixed-Meaning Canon, "[w]ords must be given the meaning they had when the text was adopted." Scalia & Garner, *supra*, at 78. Constitutional provisions are treated "with 'particular deference, as though every word had been hammered into place.'" *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013). Courts have "no commission to revise the Constitution through judicial interpretation" and "cannot supplant what the framers and ratifiers believed they were agreeing to with . . . [other] notions of which aspects of liberty ought to be off limits for the legislative process." *Members of Med. Licensing Bd. v. Planned Parenthood Great Nw.*, 211 N.E.3d 957, 981 (Ind. 2023) (citing *Welling v. Merrill*, 52 Ind. 350, 353 (1876)). The Court applied this methodology to 1851 constitutional provisions in *State v. $2,435 in U.S. Currency*, 220 N.E.3d 542, 545-46 (Ind. 2023), where it asked what the right to

jury trial meant "as it existed at common law" when the 1851 Constitution was adopted. The meaning of "exercise of religion" in RFRA is likewise fixed at (no later than) 1851 instead of 2015 when RFRA was enacted. Courts are "not at liberty to discard" the natural law framework the framers brought to those provisions. *Price v. State*, 622 N.E.2d 954, 959 n.4 (Ind. 1993).

Section 34-13-9-5's statement that "exercise of religion" includes practices "whether or not compelled by, or central to, a system of religious belief" is a modifier, not a boundary-defining provision. It rejects the centrality limitation some courts had imposed—the requirement that a practice be mandatory within a faith tradition to qualify for protection. *See, e.g., Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715-16 (1981). Section 34-13-9-5 tells courts not to require doctrinal compulsion; it does not tell courts to abandon inquiry into what "religion" itself means as a matter of history and tradition. The constitutionally fixed meaning of "religion"—a relationship of duty to a theistic Creator—remains the baseline concept to which § 34-13-9-5's modifier applies. The sources discussed below establish that baseline.

B. Historically, "Religion" Has Meant a Relationship to a Theistic Creator.

Historical dictionaries are unambiguous. Samuel Johnson's *Dictionary of the English Language* (1755) defined "religion" as "[v]irtue, as founded upon reverence of God, and expectation of future awards and punishments" and "[a] system of divine faith and worship as opposite to others." Frank DeVito, *The Original Meaning of Religion*, NAT'L AFFAIRS, No. 65 (Winter 2025). The Nation's Founders concurred. James Madison equated "religion" with "the duty we owe the Creator." *Reynolds v.*

United States, 98 U.S. 145, 163 (1878). The Virginia Declaration of Rights—a direct predecessor to the First Amendment—grounded its protection in "religion, or the duty we owe to our Creator, and the manner of discharging it." DeVito, *supra*; *see* St. George Tucker, *Amendment I (Religion)*, BLACKSTONE'S COMMENTARIES WITH NOTES OF REFERENCE, 1:App. 296-97, 2:App. 3-11, Doc. 59 (1803), https://press-pubs.uchicago.edu/founders/documents/amendI_religions59.html (last visited May 22, 2026). The Supreme Court confirmed this in 1890: "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose." *Davis v. Beason*, 133 U.S. 333, 342-43 (1890).

Only in the mid-twentieth century did the Supreme Court expand "religion" to encompass non-theistic beliefs—and only through interpretation of specific statutory language ("in a relation to a Supreme Being") appearing in the Universal Military Training and Service Act, not in the First Amendment, let alone Indiana's RFRA. *Welsh v. United States*, 398 U.S. 333, 340 (1970); *United States v. Seeger*, 380 U.S. 163, 167 (1965). That expansion, grounded in different statutory text, does not govern RFRA's meaning under the Fixed-Meaning Canon. And even under the most permissive modern tests, a belief system generally needs to address issues such as "fundamental and ultimate questions having to do with deep and imponderable matters" and be "comprehensive in nature"—rather than be merely an isolated assertion of personal autonomy or bodily self-determination. *Africa v. Com. of Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981); *see Cavanaugh v. Bartelt*, 178 F.

Supp. 3d 819, 829 (D. Neb. 2016) (citing *Africa*, 662 F.3d 1025, 1032 (3d Cir. 1981)); *accord Love v. Reed*, 216 F.3d 682, 687 (8th Cir. 2000).

C. The Natural Law Tradition Confirms That "Religion" Does Not Encompass Abortion.

1. Natural Law—a Western, Not Merely Christian, Tradition—Informs American Legal History.

Natural law theory is not a sectarian doctrine. It originated long before Christianity in the classical tradition associated with Plato, Aristotle, and the Greek Stoic philosophers. *See* John Lawrence Hill, AFTER THE NATURAL LAW 34-54 (2016). Marcus Tullius Cicero carried this tradition to Rome and formulated the natural law that would travel directly to John Locke and the Founders:

> True law is right reason in agreement with nature[;] it is of universal application, unchanging and everlasting; . . . [T]here will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times.

M.T. Cicero, ON THE REPUBLIC 3:33 (C.W. Keyes, Trans., 1928), *available at* www.attalus.org/cicero/republic3.html (last visited May 22, 2026). Christian thinkers later integrated natural law into Christian philosophy, *see* Hill, *supra*, at 55-83, but the tradition's pre-Christian philosophical roots confirm its universal, not sectarian, character. Cicero's natural law was foundational to Locke, *see* Michael C. Hawley, NATURAL LAW REPUBLICANISM: CICERO'S LIBERAL LEGACY 137-86 (2022), and to the American Founders, *see, e.g.,* Timothy W. Caspar, *Cicero and America*, 8 EXPOSITIONS 145 (2014).

This tradition directly shaped American law. "American lawyers of the late eighteenth and early nineteenth centuries had no doubt that natural law played an

important role in the legal system." Stuart Banner, THE DECLINE OF NATURAL LAW 11 (2021). "The content of natural law was often sharply contested, but these were debates over which particular doctrines were part of natural law, not whether natural law existed or what its role in the legal system should be." *Id.* at 45. In Indiana, natural law reasoning was expressly invoked as late as *Runyan v. State*, 57 Ind. 80, 84 (1877) ("The right of self-defence [*sic*] in cases of this kind is founded on the law of nature; and is not, nor can be, superseded by any law of society."). Later, this Court reiterated that the judiciary is "not at liberty to discard the fact that the drafters of [Article I] conceived of their handiwork in natural law terms." *Price*, 622 N.E.2d at 959 n.4.

2. Abortion Was Considered Contrary to Natural Law, Never an Exercise of Religion.

Within this same natural law tradition, abortion was universally condemned as contrary to natural law—not recognized as a religious exercise. Locke was unequivocal: "[I]t is part of the worship of God, Not to kill another man; Not to know more women than one; ***Not to procure Abortion***[.]" John Locke, *An Essay Concerning Human Understanding* (1689), *in* THE WORKS, vol. 1 (1824 ed.), ch. III, § 19 (emphasis added). He equally dismissed the notion that "heinous enormities" could be excused by religious motivation: "These things are not lawful in the ordinary course of life, nor in any private house; and therefore neither are they so in the worship of God, or in any religious meeting." John Locke, *A Letter Concerning Toleration* (1689), *in* A LETTER CONCERNING TOLERATION AND OTHER WRITINGS, ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), at 37. Sir Edward Coke, Sir Matthew Hale,

and Sir William Blackstone denounced abortion as criminal (at least when it occurred after a certain period in the pregnancy). *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 242-43 (2022). "[B]y the end of the 1950s, statutes in all but four States and the District of Columbia prohibited abortion 'however and whenever performed, unless done to save or preserve the life of the mother.'" *Id.* at 249.

Indiana's record is equally clear. "For all of Indiana's history, abortion has been the subject of state lawmaking, and to the extent federal courts interpreting the Federal Constitution have permitted, the legislature has generally prohibited abortions except for pregnancies that threaten a woman's life." *Planned Parenthood*, 211 N.E.3d at 962. Indiana criminalized abortion at every stage of pregnancy before the 1851 Convention—a prohibition in place when the framers of Article I, Sections 2 and 3 drafted Indiana's religious liberty provisions. *Id.* The delegates who drafted Article I, Sections 2 and 3 could never have understood those provisions to protect, as religious exercise, conduct Indiana law simultaneously and unambiguously treated as criminal. "It is fair to assume that no delegate to the Convention believed that, by adopting Section 1, the framers were creating a right in pregnant women to choose to terminate their pregnancies." *Clinic for Women, Inc. v. Brizzi*, 837 N.E.2d 973, 999 (Ind. 2005) (Boehm, J., dissenting). The same conclusion applies with equal force to the religious liberty provisions of Sections 2 and 3.

While a fixed meaning can be faithfully applied to new circumstances the framers did not anticipate, it cannot be expanded to encompass conduct they specifically knew about and addressed. *See Meredith,* 984 N.E.2d at 1218; *see also*

Planned Parenthood, 211 N.E.3d at 981 (Ind. 2023) (quoting *Welling*, 52 Ind. at 353). Abortion was not an unanticipated circumstance in 1851 since Indiana had criminalized it in 1836. The delegates who framed Article I, Sections 2 and 3 cannot be understood to have agreed, in those provisions, to protect as an exercise of religion conduct Indiana law had long punished as a violation of criminal law. "Exercise of religion" in RFRA, which inherits this constitutional meaning, therefore fails to create a right to abortion regardless of the sincerity of any asserted religious motivation.

II. INDIANA'S RFRA MUST NOT BE INTERPRETED TO DENY ANOTHER'S RIGHT TO LIFE.

A. The Constitutional Avoidance Canon Requires Reading RFRA to Avoid Conflict with the Natural Law Right to Life in Article I, Section 1.

Article I, Section 1 of the Indiana Constitution declares 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[.]" Ind. Const. art. I, § 1. This Court has described these provisions as "Lockean Natural Rights Guarantees" and confirmed that "Article 1, Section 1 is judicially enforceable." *Planned Parenthood*, 211 N.E.3d at 967, 973. The unenumerated rights protected under the umbrella of life, liberty, and the pursuit of happiness "protect any interest 'of such a quality that the founding generation would have considered it fundamental or natural'—in other words, beyond the reach of government." *Id.* at 968-69 (quoting *Price*, 622 N.E.2d at 959 n.4).

"Life" appears first among the enumerated natural rights and not by accident. In Locke's framework, the protection of life is the primary purpose for which individuals enter the social contract: "The great and chief end of Men's uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property"—which he defined to include "Lives, Liberties and Estates." John Locke, TWO TREATISES OF GOVERNMENT, Bk. II, § 124. This Lockean framework that informs Indiana's religious liberty provisions in Article I, Sections 2 and 3 also undergirds, in the same Article and from the same 1851 Convention, the right to life. These provisions must be read together within the context that generated them. A purported religious liberty right grounded in Lockean theory cannot, within that theory, override the most foundational natural right the theory protects—particularly when Locke himself explicitly placed abortion far outside the zone of protected religious exercise.

The Plaintiffs' reading of RFRA creates precisely this conflict. Under their interpretation, any person asserting a religious motivation for seeking an abortion is entitled to one outside the Abortion Law's enumerated exceptions, with no individualized assessment and no consideration of the constitutional right to life of the unborn child to be aborted. But "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972); *see House of Prayer Ministries, Inc. v. Rush Cnty. Bd. of Zoning Appeals*, 91 N.E.3d 1053, 1064 (Ind. Ct. App. 2018) (citation omitted).

The Canon of Constitutional Avoidance requires reading RFRA to steer clear of this conflict. Where a statute admits of two readings—one that raises a serious constitutional question and one that does not—courts must adopt the reading that avoids the constitutional problem. *See Daniels v. FanDuel, Inc.*, 109 N.E.3d 390, 396 (Ind. 2018); *see, e.g., J.B. v. State*, 252 N.E.3d 910, 917 (Ind. 2025). By reading "exercise of religion" to carry its historically fixed meaning (*viz.*, a relationship of duty to a theistic Creator that does not encompass abortion) this Court would circumvent any such conflict between RFRA and Article I, Section 1.

B. The Lower Courts' Compelling Interest Analysis Ignored the Legislature's Affirmative Declarations That Human Physical Life Begins at Fertilization.

Even assuming RFRA applies here, the courts below conducted a fatally flawed compelling interest analysis by ignoring Indiana's own statutory structure.

The most consequential provision is one neither court addressed. Indiana Code § 16-34-2-1.1(a)(1)(E) requires that before any abortion is performed, the pregnant woman must be informed in writing that "human physical life begins when a human ovum is fertilized by a human sperm." This is not aspirational language. It is a mandatory substantive disclosure and a legislative declaration of fact embedded in the operative provisions of the Abortion Law itself. The General Assembly did not say "some believe" life begins at fertilization. It declared it as a matter of law and required that patients be told so before any abortion proceeds. This declaration directly defeats the lower court finding that Indiana lacks a compelling interest in protecting prenatal life from fertilization.

The Court of Appeals relied in part on the Abortion Law's in vitro fertilization ("IVF") and rape and incest exceptions as evidence that the State acknowledges no compelling interest from fertilization. *Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 452-55 (Ind. Ct. App. 2024). None of these exceptions, however, can possibly carry the weight Plaintiffs might want them to bear.

The IVF exemption and the I.C. § 16-34-2-1.1(a)(1)(E) declaration were enacted in the same bill—Public Law 179-2022. A legislature that simultaneously declares human physical life begins at fertilization and carves out a bounded accommodation for assisted reproduction has not repudiated the underlying principle; it has calibrated a specific exception in the exercise of its judgment.

The rape and incest exceptions were also created as a matter of legislative discretion, but this does not reflect any decision by lawmakers that the fetus conceived through rape or incest has any lesser moral value or that the State's interest in prenatal life is absent. It instead reflects the legislature's policy determination (which one might disagree with) that a woman should not be compelled to continue a pregnancy resulting from a crime committed against her—a judgment grounded in the *circumstances of conception*, not in any view about when life begins. The exception is bounded in time (ten weeks), grounded in an objectively verifiable triggering circumstance, and subject to documentation requirements. None of these limiting features applies to the religious exemption the permanent injunction entered

by the trial court creates, which is unlimited in gestational age, self-certified by the claimant alone, and subject to no verification or reporting whatsoever.

More fundamentally, the Court of Appeals assessed the State's compelling interest at the wrong level of generality. *See Gonzales*, 546 U.S. at 430-31. The question under RFRA is not whether the State has a compelling interest in protecting all prenatal life in all circumstances—something the legislature's circumscribed secular exceptions plainly answer. The question is whether the State has a compelling interest in *not granting this specific exemption*. The legislature can calibrate bounded exceptions for particular and objectively verifiable circumstances without thereby conceding that an unlimited judicially created religious exemption must also be permitted.

Indiana Code § 16-34-1-9 provides additional authority the lower courts failed to apply. After finding that fetuses at twenty weeks of postfertilization age possess the physical structures necessary to experience pain, the General Assembly declared expressly: "Indiana asserts a compelling state interest in protecting the life of a fetus." I.C. § 16-34-1-9(b). A court conducting compelling interest analysis under RFRA should not overlook a legislative declaration using RFRA's own compelling interest standard.

Finally, RFRA was enacted in 1993—the same year as Indiana Code § 16-34-1-1's declaration that "[c]hildbirth is preferred, encouraged, and supported over abortion." Statutes enacted in the same legislative session must be read harmoniously. A reading of RFRA that creates an unlimited class-wide exemption

from the Abortion Law does not harmonize these co-enacted statutes. It subordinates one to the other without legislative warrant. A harmonious reading consistent with Article I, Section 1's constitutional protection of life and with the legislature's affirmative declarations that life begins at fertilization would instead limit RFRA's reach to its historically fixed scope and not extend it to protect abortion.

CONCLUSION

For the foregoing reasons, *amicus curiae* Voices for Life, Inc., respectfully asks that this Court reverse the decisions below, hold that "exercise of religion" as used in Indiana's RFRA does not encompass the procurement of an abortion, and direct entry of judgment in favor of the Defendants.

Respectfully submitted, this 22nd day of May 2026.

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CERTIFICATE OF WORD COUNT

I verify that this brief contains no more than 4,200 words, and I verify that this brief contains 3,786 words.

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CERTIFICATE OF SERVICE

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