

IN THE INDIANA SUPREME COURT

Appellate Case No. 22A-PL-2938

INDIVIDUAL MEMBERS OF THE)	On Petition to Transfer from:
MEDICAL LICENSING BOARD OF)	Indiana Court of Appeals Case
INDIANA, et al.,)	No. 22A-PL-2938
<i>Defendants/Appellants,</i>)	
)	Interlocutory Appeal from the
v.)	Marion Superior Court
)	Trial Court No.
ANONYMOUS PLAINTIFF 1, et al.,)	49D01-2209-PL-031056
<i>Plaintiffs/Appellees.</i>)	
)	The Honorable Heather A. Welch,
)	Judge

BRIEF OF *AMICI CURIAE* COLUMBIA UNIVERSITY LAW, RIGHTS, AND RELIGION PROJECT; CINDY LONNBERG; DR. KATE OTT; DR. LEA TARAGIN-ZELLER; DR. LISA FISHBAYN JOFFE; DR. MELISSA PAGÁN; DR. MICHAL RAUCHER; DR. REBECCA TODD PETERS; DR. MONIQUE MOULTRIE; DR. RACHEL KRANSON; DR. ZAHRA AYUBI; ELEANORE SCOTT; FAITH ALOUD; HEART; INTERFAITH CENTER; LEORA SCHEINERMAN; METHODIST FEDERATION FOR SOCIAL ACTION; NANCY MCKINLEY; PRO-CHOICE SOUTH BEND; PROFESSOR JODY MADEIRA; RABBI MEIR BARGERON; RACHEL FRYMAN; SADHANA: COALITION OF PROGRESSIVE HINDUS; AND SHOUT YOUR ABORTION

Michael Graham (#18655-64)
Willkie Farr & Gallagher LLP
300 N. LaSalle Dr.
Chicago, IL 60654
+1 312-728-9015
MGraham@willkie.com

Elizabeth Reiner Platt (*Petition for Temporary Admission pending*)
Columbia University Law, Rights, and Religion Project
435 W. 116th Street
New York, NY 10027-7237
+1 917-647-2985
ep2801@columbia.edu

Laura Jehl (*Petition for Temporary Admission pending*)
Mia Guizzetti Hayes (*Petition for Temporary Admission pending*)
Willkie Farr & Gallagher LLP
1875 K Street NW
Washington, DC 20006
+1 202-303-1056
LJehl@willkie.com
+1 202 303-1197
MHayes@willkie.com

Attorneys for Amici Curiae

TABLE OF CONTENTS

INTERESTS OF *AMICI CURIAE*1

SUMMARY OF ARGUMENT3

ARGUMENT3

 I. RFRA Protects Religious Practice Beyond Religious Dogma.5

 II. Abortion Can Be A Sincere Religious Exercise.6

 A. Abortion Can Be Motivated By Religious Obligations To Oneself And
 Beliefs About “God’s Will.”8

 B. Abortion Can Be Motivated By Religious Obligations To Others.10

 C. Prayer and Religious Counseling Can Motivate Abortion Decisions.....12

 III. The Lower Courts Correctly Held That Indiana’s RFRA Confers A Right To A
 Religiously Motivated Abortion Made Unlawful By The Abortion Law.....13

CONCLUSION.....14

CERTIFICATE OF WORD COUNT16

CERTIFICATE OF SERVICE1

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apache Stronghold v. United States</i> , 101 F.4th 1036 (9th Cir. 2024)	13
<i>Blattert v. State</i> , 190 N.E.3d 417 (Ind. Ct. App. 2022).....	5
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	4
<i>Frazer v. Ill. Dep’t of Emp. Sec.</i> , 489 U.S. 829 (1989).....	5
<i>House of Prayer Ministries, Inc. v. Rush Cty. Bd. of Zoning Apps.</i> , 91 N.E.3d 1053 (Ind. Ct. App. 2018).....	5
<i>Lindh v. Warden</i> , No. 2:09-cv-00215, 2013 WL 139699 (S.D. Ind. Jan. 11, 2013)	5
<i>Patrick v. LeFevre</i> , 745 F.2d 153 (2d Cir. 1984).....	6
<i>Thomas v. Review Bd. of Ind. Emp. Sec. Div.</i> , 450 U.S. 707 (1981).....	6, 13
<i>United States v. Hoffman</i> , 436 F. Supp. 3d 1272 (D. Ariz. 2020)	6, 10
<i>United States v. Seeger</i> , 380 U.S. 163 (1965).....	6
Statutes	
I.C. §§ 34-13-9-5, 34-13-9-10.....	3, 5
I.C. § 34-13-9-8.....	5
I.C. § 34-13-9-9.....	5
Other Authorities	
<i>Abortion Explained! Religion & Spirituality</i> , WE TESTIFY, https://www.abortion.shop/abortion-explained-religion-spirituality (last visited June 6, 2024).....	10

Anonymous, *I Wasn't Ready*, SHOUT YOUR ABORTION (Jan. 31, 2020),
<https://shoutyourabortion.com/writing/i-wasnt-ready/>10

David Schraub, *Liberal Jews and Religious Liberty*, 98 N.Y.U. L. REV. 1556
 (2023).....9

Douglas Laycock, *The Supreme Court and Religious Liberty*, 40 CATH. LAW. 25
 (2000).....14

Eleanore Scott, *Reproductive Justice as Spiritual Freedom: Navigating Grief,
 Abortion and the Luminous Darkness* (Apr. 2024).....8, 13

Elizabeth Cohen et al., *This Conservative Christian Couple in South Carolina
 Have Become Outspoken Advocates for Abortion Rights*, CNN (Dec. 23,
 2022), [https://edition.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-
 grace-project/index.html](https://edition.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-grace-project/index.html)11

Elizabeth Sepper, *Free Exercise of Abortion*, 49 BYU L. REV. 177 (2023).....3

Katey Zeh, *A Complicated Choice: Making Space for Grief and Healing in the
 Pro-Choice Movement* (2022).....8

Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and
 Qualitative Perspectives*, 37 PERSPECTIVES ON SEXUAL & REPRODUCTIVE
 HEALTH (2005), [https://www.guttmacher.org/journals/psrh/2005/reasons-us-
 women-have-abortions-quantitative-and-qualitative-perspectives](https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives)10

Michal Raucher et al., *Abortion Among Jews*,
<https://www.michalraucher.com/new-page-2> (last visited June 6, 2024).....7

Michal Raucher et al., *Religious Scholars Release Initial Data on Religious
 Motivations for Abortions*, Columbia Law School Law Rights, and Religion
 Project (June 10, 2024),
[https://lawrightsreligion.law.columbia.edu/content/religious-scholars-release-
 initial-data-religious-motivations-abortions](https://lawrightsreligion.law.columbia.edu/content/religious-scholars-release-initial-data-religious-motivations-abortions) *passim*

Rebecca Todd Peters, *In My Words: Religious Women Have Abortions Too. And
 Many Faiths Affirm Abortion Rights.*, TODAY AT ELON (Jan. 24, 2022),
[https://www.elon.edu/u/news/2022/01/24/in-my-words-religious-women-
 have-abortions-too-and-many-faiths-affirm-abortion-rights/](https://www.elon.edu/u/news/2022/01/24/in-my-words-religious-women-have-abortions-too-and-many-faiths-affirm-abortion-rights/)10

*The Religious Freedom Restoration Act: Hearing on S. 2969 Before the S. Comm.
 on the Judiciary*, 102d Cong. 164 (1993)4

Sheila Katz & Danya Rутtenberg, *The Jewish Case for Abortion Rights*, Nat'l
 Council of Jewish Women (June 29, 2020), [https://www.ncjw.org/news/the-
 jewish-case-for-abortion-rights/](https://www.ncjw.org/news/the-jewish-case-for-abortion-rights/)8

The Study, ABORTION & RELIGION, <https://abortionandreligion.com/the-study/>
(last visited May 31, 2024)7

INTERESTS OF *AMICI CURIAE*

Amici curiae represent religious studies scholars who study the role of faith in reproductive decision-making and organizations with expertise on religion's impact on abortion decisions. *Amici* elevate the lived experiences of people of faith motivated by their religious beliefs to end their pregnancies. Several *Amici* are involved in a large-scale qualitative research study that examines, in part, whether religious beliefs motivated the decisions of Christians, Jews, and Muslims who had abortions. Religious leader *Amici* know the impact of faith on abortion decisions from their extensive experience providing spiritual and other care to individuals considering abortion. *Amici* demonstrate that religious commitments motivate some people to seek abortions and that, in such circumstances, abortion is a religious practice protected under religious liberty doctrine. *Amici* to this Brief are:

Columbia University Law, Rights and Religion Project

Cindy Lonnerberg, Co-Chair, Reproductive Justice Task Force of the Unitarian
Universalist Church of Bloomington, IN

Dr. Kate Ott, Jerre and Mary Jo Stead Professor of Christian Social Ethics and Director
of the Stead Center for Ethics and Values, Garrett-Evangelical Theological Seminary

Dr. Lea Taragin-Zeller, Assistant Professor, Department of Public Policy, The Hebrew
University of Jerusalem

Dr. Lisa Fishbayn Joffe, Director of the Hadassah-Brandeis Institute Project on Gender,
Culture, Religion and the Law at Brandeis University

Dr. Melissa Pagán, Director of Graduate Religious Studies & Associate Professor of
Religious Studies, Mount Saint Mary's University in Los Angeles

Dr. Michal Raucher, Associate Professor of Jewish Studies, Rutgers University

Dr. Rebecca Todd Peters, Professor of Religious Studies, Elon University

Dr. Monique Moultrie, Associate Professor Africana Studies, Religious Studies, Georgia
State University

Dr. Rachel Kranson, Assistant Professor of Religious Studies, University of Pittsburgh

Dr. Zahra Ayubi, Associate Professor of Religion, Dartmouth College

Eleanore Scott, MDiv, Union Theological Seminary

Faith Aloud – A Program of All-Options

HEART

Interfaith Center

Leora Scheinerman, Graduate Student, Rutgers University

Methodist Federation for Social Action

Nancy McKinley, Co-Chair, Reproductive Justice Task Force of the Unitarian
Universalist Church of Bloomington, IN

Pro-Choice South Bend

Professor Jody Madeira, Richard S. Melvin Professor of Law, Director, Center for Law,
Society & Culture, Indiana University Bloomington, Maurer School of Law

Rabbi Meir Barger, Congregation Achduth Vesholom, Fort Wayne, IN

Rachel Fryman, PhD LCSW, Assistant Professor, Wurzweiler School of Social Work,
Yeshiva University

Sadhana: Coalition of Progressive Hindus

Shout Your Abortion

SUMMARY OF ARGUMENT

Abortion can be a sincere religious exercise meriting protection under Indiana’s Religious Freedom Restoration Act (“RFRA”). Academic research and the testimony of abortion patients reveal the diversity of religious commitments that motivate some people to end pregnancies. Believers may consult religious doctrine or faith leaders when considering abortion. For others, abortion is motivated by religious obligations, including duties owed to others, obligations to themselves and the commitment to follow “God’s will.” Prayer and other forms of religious reflection are the decisive factors for some. RFRA protects “any exercise of religion whether or not compelled by, or central to, a system of religious belief.” I.C. §§ 34-13-9-5, 34-13-9-10. This includes abortion when religiously motivated. The lower courts correctly held that RFRA codifies a right to a religiously motivated abortion. Order Granting Plaintiffs’ Motion for Preliminary Injunction ¶ 22, *Individual Members of the Med. Licensing Bd. v. Anonymous Plaintiff 1*, No. 49D01-2209-PL-031056 (Sup. Ct. Marion Cnty. Dec. 2, 2022); Opinion by Judge Weissmann ¶¶ 107–118, *Individual Members of the Med. Licensing Bd. v. Anonymous Plaintiff 1*, No. 22A-PL-2938 (Ind. Ct. App. Apr. 4, 2024) (“Appeals Order”). Transfer should be denied.

ARGUMENT

It is incontrovertible that many people have sincere religious beliefs about abortion. Some people’s faiths leads them to avoid specific methods of family planning, such as contraceptives and abortion. Others’ faith may direct them to end pregnancy in certain circumstances. “To have a child can be a sacred choice, but not to have a child can also be a sacred choice.” Elizabeth Sepper, *Free Exercise of Abortion*, 49 *BYU L. REV.* 177, 177 (2023). As the Court of Appeals put

it: “[i]f a corporation can engage in a religious exercise by refusing to provide abortifacients . . . a pregnant person can engage in a religious exercise by pursuing an abortion.” Appeals Order ¶ 116.¹

Regrettably, anti-abortion lawyers and commentators, including some *Amici* supporting the State’s petition to transfer, persist in challenging the religiosity of beliefs that motivate individuals to end pregnancies. *See* Brief of *Amicus Curiae* Indiana Catholic Conference at 10, *Individual Members of the Med. Licensing Bd. v. Anonymous Plaintiff 1*, No. 22A-PL-2938 (Ind. Ct. App. May 21, 2024) (“Indiana Catholic Conference *Amicus* Brief”) (arguing that “the organizational Plaintiff can show only an undefined ‘connection’ between abortion and religious belief—not that the abortions it seeks are required by, motivated by, or in [sic] grounded in religious obligations”). Those intent on limiting religious liberty claims for abortion also press the inaccurate contention that religious teachings must mandate abortion for it to be a protected religious exercise.² Another frequent charge is that beliefs about abortion are “philosophical and personal” rather than religious. *See* Indiana Catholic Conference *Amicus* Brief at 11–12. This Brief explains why these assertions are wrong as a matter of fact and law.

¹ The Appellate court may have been referencing *Burwell v. Hobby Lobby Stores, Inc.*, which incorrectly described the contraceptives at issue in the case as “abortifacients.” 573 U.S. 682 (2014). This discrepancy is immaterial to the argument presented here.

² This can be traced back to debates over the federal Religious Freedom Restoration Act in 1991. Congressional testimony submitted by Coalitions for America cited law professors claiming “[t]he only instance of which we are aware where a sizable religious group teaches that abortion is religiously compelled confines that teaching to circumstances so extreme (such as endangerment of the life of the mother).” *The Religious Freedom Restoration Act: Hearing on S. 2969 Before the S. Comm. on the Judiciary*, 102d Cong. 164 (1993) (citing Johnny H. Killian, *Impact of Proposed Free Exercise of Religion Bill on Access to Abortion*, Cong. Rsch. Serv. 2 (July 2, 1991)). This quote improperly implies that only abortions mandated by religious teachings would be protected by RFRA.

I. RFRA Protects Religious Practice Beyond Religious Dogma.

RFRA provides that “a governmental entity may not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability,” except where “application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

I.C. § 34-13-9-8. RFRA provides a cause of action to any “person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation” of this statute.

I.C. § 34-13-9-9. Indiana courts have relied on common law interpretations of the federal RFRA and Religious Land Use and Institutionalized Persons Act (“RLUIPA”) in interpreting Indiana’s RFRA. *Blatter v. State*, 190 N.E.3d 417, 421–23, 421 n.1 (Ind. Ct. App. 2022) (“The relevant statutory language in Indiana’s RFRA largely tracks the language in the federal RFRA statute, so federal caselaw provides some useful guidance.”); *House of Prayer Ministries, Inc. v. Rush Cty. Bd. of Zoning Apps.*, 91 N.E.3d 1053, 1064 (Ind. Ct. App. 2018) (citing *Burwell* in interpreting Indiana’s RFRA and RLUIPA); *see also Lindh v. Warden*, No. 2:09-cv-00215, 2013 WL 139699, at *8 (S.D. Ind. Jan. 11, 2013) (“Because of their substantial similarity, both RFRA and RLUIPA cases are relied on by the Court interchangeably.”).

Both RFRA’s text and First Amendment doctrine categorically dismiss any requirement that a religious belief adhere to the dogma of an established religious organization to be protected. RFRA expressly protects “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” I.C. §§ 34-13-9-5, 34-13-9-10. The U.S. Supreme Court has long made clear that a religious belief need not be congruent with the dominant teachings or doctrine of a faith, nor shared by other members of one’s religious group, to merit protection. *See Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 834 (1989) (“[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious

organization.”). “Courts are not arbiters of scriptural interpretation.” *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). On the contrary, courts inquire into individual claimants’ personal, even wildly idiosyncratic, beliefs rather than the official tenets of a faith. One’s religious beliefs need not be “acceptable, logical, consistent, or comprehensible to others” to constitute protected religious exercise. *Id.* at 714.

Courts have also clarified that “sincere religious beliefs are no less deserving of protection merely because they may overlap with political or other secular beliefs.” *United States v. Hoffman*, 436 F. Supp. 3d 1272, 1284 (D. Ariz. 2020). Rather, “the claim of the adherent ‘that his [or her] belief is an essential part of a religious faith must be given great weight.’” *Patrick v. LeFevre*, 745 F.2d 153, 158 (2d Cir. 1984) (quoting *United States v. Seeger*, 380 U.S. 163, 184 (1965)). The central factual question is “whether [beliefs] are, in [the believer’s] own scheme of things, religious.” *Id.* (quoting *Seeger*, 380 U.S. at 185).

II. Abortion Can Be A Sincere Religious Exercise.

The State has argued that to receive protection under RFRA, an action must be imbued with “religious significance.” Brief of Appellants at 43, *Individual Members of the Med. Licensing Bd. v. Anonymous Plaintiff 1*, No. 22A-PL-2938 (Ind. Ct. App. Jan. 17, 2023). Without conceding this standard, *Amici* nevertheless demonstrate herein that abortions can be so imbued. Data

collected by *Amici* in The Abortion & Religion Study³ and Jews Who Have Had Abortions,⁴ as well as publicly available testimony, demonstrate the many ways that religious beliefs can motivate abortion and how faith can imbue abortion with religious significance. In a sample of 197 Jews who had abortions, Dr. Raucher found that 67 percent considered Jewish law, Jewish values, or a Rabbi’s ruling as factors in their abortion decisions. Research also demonstrates that many believers look beyond doctrine and religious authorities; when considering abortion, individuals may draw upon broader religious commitments, including duties owed to others, obligations to themselves and their relationship with God. Contrary to the assertions of some *Amici* in support of the State, these motivations extend beyond the protection of a pregnant person’s life, health, and well-being. *See* Indiana Catholic Conference Amicus Brief at 7 (arguing that to have standing, a Plaintiff would need to “experience a threat to [their] life, health, or well-being”).

³ The Abortion & Religion examines how religious individuals understand their abortions in light of their faith. Led by nationally recognized scholars—Dr. Zahra Ayubi, Associate Professor of Islamic Studies at Dartmouth College; Dr. Monique Moultrie, Associate Professor of Religious Studies at Georgia State University; Dr. Rebecca Todd Peters, Professor of Religious Studies at Elon University; and Dr. Michal Raucher, Associate Professor of Jewish Studies at Rutgers University—the project, which began in 2021, has, to date, collected over 180 interviews with religious individuals who had an abortion in the last twelve months. *The Study*, ABORTION & RELIGION, <https://abortionandreligion.com/the-study/> (last visited May 31, 2024). The scholars seek to collect a total of 500 such interviews. Religious studies scholars Dr. Melissa Pagan, Assistant Professor of Religious Studies at Mount Saint Mary’s University in Los Angeles, and Dr. Kate Ott, Professor of Christian Social Ethics and at Garrett-Evangelical Theological Seminary in Evanston, Illinois have also conducted interviews for the Abortion & Religion Study.

⁴ The Jews Who Have Had Abortions Study, led by Dr. Raucher, documents the stories and experiences of Jewish individuals who have had abortions after 1973 through surveys and interviews. Michal Raucher et al., *Abortion Among Jews*, <https://www.michalraucher.com/new-page-2> (last visited June 6, 2024). Dr. Raucher’s data, as reported in this brief, were collected via this study.

A. Abortion Can Be Motivated By Religious Obligations To Oneself And Beliefs About “God’s Will.”

Many religions value the obligation to preserve one’s life. Some Jews believe that Jewish law requires ending a pregnancy when necessary to preserve a pregnant person’s life. *See* Sheila Katz & Danya Ruttenberg, *The Jewish Case for Abortion Rights*, Nat’l Council of Jewish Women (June 29, 2020), <https://www.ncjw.org/news/the-jewish-case-for-abortion-rights/>. Through her research, Dr. Raucher spoke with a Conservative Jewish woman who believed that having an abortion was *pikuach nefesh*—saving a life—because her ex-husband made her “fearful for [her] safety, and [the] safety [of] [her] child had [she] had this baby.” Michal Raucher et al., *Religious Scholars Release Initial Data on Religious Motivations for Abortions*, Columbia Law School Law Rights, and Religion Project (June 10, 2024), <https://lawrightsreligion.law.columbia.edu/content/religious-scholars-release-initial-data-religious-motivations-abortions> (“LRRP Data”).

Some people’s faith compels them to care for their emotional needs, personal growth, and well-being when faced with an unplanned pregnancy. In “A Complicated Choice,” a book of abortion experiences collated by Rev. Katey Zeh, a college student described how a “conversation with God” provided the clarity she needed to prioritize her education and promising future by choosing not to become a parent at that time. Katey Zeh, *A Complicated Choice: Making Space for Grief and Healing in the Pro-Choice Movement* 80 (2022). Eleanore Scott, a seminary student in New York, was motivated to have an abortion by her belief that “if it is not the right time or the right circumstance to have a baby, a pregnant person has the inherent spiritual authority not to call that particular future into being.” Eleanore Scott, *Reproductive Justice as Spiritual Freedom: Navigating Grief, Abortion and the Luminous Darkness* 23 (Apr. 2024) (Master of Divinity Thesis Sermon, Union Theological Seminary) (on file with author).

Other interviewees described convictions about “God’s will,” in particular, what God would want for the individual, as guiding their abortion decisions. Dr. Peters spoke with Megan, a Methodist struggling financially who chose to have an abortion based on the belief that “the Lord . . . wouldn’t want you to go through something so stressful and put so much strain on . . . you[.] He wants what’s best for you.” LRRP Data. Dr. Peters also spoke with Emily, a Christian who was pregnant by an abusive partner. Through “[a] lot of praying, a lot of talking to God,” Emily concluded that God “would not want me to be in a situation for the rest of my life or [for] a child to be in a situation for the rest of its life to be tortured by somebody.” *Id.* Dr. Ayubi interviewed Sidrah, a 30-year-old Muslim, who discussed her belief that God provides ways for individuals to exit difficult situations. Although others pressured Sidrah to maintain her pregnancy, she believed God explicitly provided “the rope to get out of that . . . situation” by not making abortion *haram* or forbidden. *Id.* Sidrah reported that the experience “brought [her] closer to God.” *Id.* Dr. Ayubi also spoke with Sanober, a South Asian Muslim woman who felt that the difficult symptoms she experienced during two pregnancies indicated fetal abnormalities and were “Allah’s way . . . of guiding [her] to end these pregnancies.” *Id.*

For some, faith emphasizes the importance of their moral judgment in abortion decisions. A Jewish woman experiencing an unplanned pregnancy drew upon lessons from a Jewish youth program she had attended. She recalled a Rabbi’s writings that presented abortion as both life-saving and “a device of autonomy.” *Id.* Similarly, some Jews interpret the significance of abortion decisions as “in the context of recognizing the case-specific moral judgment of the pregnant woman.” David Schraub, *Liberal Jews and Religious Liberty*, 98 N.Y.U. L. REV. 1556, 1579 (2023) (internal citation omitted). For those who regard reproductive decision-making as integral to their faith, restricting the right to abortion is a significant religious burden.

B. Abortion Can Be Motivated By Religious Obligations To Others.

Similarly, people of faith have been motivated to end pregnancies due to the religious obligations they feel to care for others. Courts have found that performing acts of service to others, such as leaving food or water for migrants crossing the desert, can be a form of protected religious exercise. *See Hoffman*, 436 F. Supp. 3d at 1281–83; Order, *United States v. Warren*, No. 17-00341 (D. Ariz. Nov. 21, 2019), ECF No. 146. Jane, a college student, explained that she was not in a position to give a child “the right life right now,” and her abortion decision was rooted in love for the children she hoped to have someday. Rebecca Todd Peters, *In My Words: Religious Women Have Abortions Too. And Many Faiths Affirm Abortion Rights.*, TODAY AT ELON (Jan. 24, 2022), <https://www.elon.edu/u/news/2022/01/24/in-my-words-religious-women-have-abortions-too-and-many-faiths-affirm-abortion-rights/>. Jane connected this love to her understanding of Christ’s love. *Id.* Some women “described the indiscriminate bearing of children as a sin.” Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSPECTIVES ON SEXUAL & REPRODUCTIVE HEALTH 110, 118 (2005), <https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives>. Another attested that “motherhood is sacred and not something to be forcefully done due to miscalculations.” Anonymous, *I Wasn’t Ready*, SHOUT YOUR ABORTION (Jan. 31, 2020), <https://shoutyourabortion.com/writing/i-wasnt-ready/>. CoWanda Rusk, one of the storytellers for We Testify, an organization devoted to representing people who have abortions, felt that God planned her abortion “so that [she] could stand for His people and people like [her].” *Abortion Explained! Religion & Spirituality*, WE TESTIFY, <https://www.abortion.shop/abortion-explained-religion-spirituality> (last visited June 6, 2024).

Religious beliefs can also motivate abortion where a pregnant person knows that the fetus will suffer. Conservative Christian Jill Hartle prayed for guidance when she learned the fetus she

was carrying had a severe, and probably fatal, heart defect. Elizabeth Cohen *et al.*, *This Conservative Christian Couple in South Carolina Have Become Outspoken Advocates for Abortion Rights*, CNN (Dec. 23, 2022), <https://edition.cnn.com/2022/12/23/health/south-carolina-abortion-ivy-grace-project/index.html>. “The best option to protect our daughter from pain and suffering was to send her to heaven,” Jill said. *Id.* “When I prayed for healing – sometimes that healing does not happen on this earth.” *Id.* An Orthodox Jewish woman whose fetus had a terminal condition consulted her Rabbi, who “absolutely, . . . unequivocally recommended . . . an abortion.” LRRP Data. Sidrah, who spoke with Dr. Ayubi, had a pregnancy with fetal abnormalities. She chose to have an abortion, feeling it was “Allah’s *rahma* [grace, mercy, or compassion]” and that “God [was] calling” her child back. *Id.*

Dr. Ott spoke with Natalia, a Catholic woman with two children who terminated a medically threatening pregnancy. Natalia explained, “I prayed on it, and honestly, my solution at that point was not to let my children lose their mother.” *Id.* She reported that prayer and her decision to have an abortion “strengthened [her] connection with [God] so much more.” *Id.* Lizzie, a 20-year-old nondenominational Protestant, explained to Dr. Peters that she chose to have an abortion because she believed God was telling her, “[n]ow is not the time . . . You have so much going on that this baby would not have the life that you want for it.” *Id.*

Dr. Moultrie spoke with Ashle, a Baptist, who explained that “God would want . . . a child to have a good life, and a stable life, and a happy life, and all of his children to have as good of a life as possible.” *Id.* Ashle’s belief that God “would have not presented that option to [her] if he didn’t think it was the right thing” guided her abortion. *Id.* Dr. Moultrie also spoke with Alice, a Protestant woman who echoed Ashle’s belief that abortion can be a “selfless thing” done for others: “I do think I made a good decision . . . because I feel as though I wouldn’t have been able to

provide [or] be the person that I wanted to be for the child. And I don't think that's what God wants[.]” *Id.*

For those whose religious beliefs dictate the duties they owe to others—including existing and future children—Indiana Statute § 16-34-2-1 *et seq.* (the “Abortion Law”) infringes on their religious freedom by preventing adherents from ending pregnancies when they feel religiously obligated to do so.

C. Prayer and Religious Counseling Can Motivate Abortion Decisions.

Amici heard from dozens of individuals who engaged in religious counseling, prayer, and other forms of religious reflection when deciding whether to end a pregnancy. Dr. Raucher’s survey of Jews who had abortions found that more than 16 percent of respondents consulted a rabbi or religious figure for pastoral counseling, guidance regarding *halakha* (typically translated as “Jewish law”) or both. A Modern Orthodox Jewish woman in Dr. Raucher’s study reported that the “closest thing [to consulting God directly] that [she] could do” was to “talk to the rabbi and get approval,” including in the form of *psak* (a ruling of Jewish religious law). *Id.*

Narratives gathered by *Amici* reveal that prayer motivated some pregnant people to have an abortion. Dr. Pagan spoke to Erinn, a Catholic who described her decision-making process as a series of “talks with God” that allowed her to “reach[] a point where once [she] came to the decision, [she] was finally at peace.” *Id.* Jayne, a 29-year-old nondenominational Christian interviewed by Dr. Peters, concluded that her abortion decision “need[ed] to be a conversation with God.” *Id.* Dr. Peters also spoke with Lucy, a 27-year-old Protestant, who found prayer enabled them to “proceed better with what the doctor told [them] a couple of days later, that the best option [for their health] would be [an] abortion[.]” *Id.* Dr. Moultrie spoke with Skylar, a 30-year-old Protestant who prayed for guidance in her abortion decision and found her answer “in the peace” she experienced following prayer. *Id.*

In a sermon titled “Reproductive Justice as Spiritual Freedom,” Eleanore Scott contemplates her abortion experience, in which she “weighed the most ethically and morally substantive decision of [her] life” by “calling out to the divine, seeking wisdom and guidance from [her] ancestral past, [and] listening for the voice of the unborn fetus.” Scott, *Reproductive Justice as Spiritual Freedom*, at 23. Dominic, a 23-year-old Presbyterian who spoke with Dr. Peters, likewise prayed on their decision to have an abortion, asking God to “lead [them] in the direction [they] needed to go.” LRRP Data. Dominic believes that God then led them to “have that conversation with [their] pastor” and decide to have an abortion. *Id.*

As these narratives make clear, abortion is an exercise of religion when motivated by religious activities such as consultation with spiritual leaders, prayer, or religious reflection.

III. The Lower Courts Correctly Held That Indiana’s RFRA Confers A Right To A Religiously Motivated Abortion Made Unlawful By The Abortion Law.

Indiana’s RFRA protects religiously motivated abortions as an exercise of religion. As detailed in this Brief, there are numerous circumstances where an individual may seek an abortion for religious reasons that do not fall within the three secular exceptions provided by the Abortion Law. Prohibiting religiously motivated abortions would be a substantial burden on religious exercise. *Thomas*, 450 U.S. at 715–18 (holding that religious exercise is substantially burdened if the government “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.”); *Apache Stronghold v. United States*, 101 F.4th 1036, 1043 (9th Cir. 2024) (“preventing access to religious exercise is an example of substantial burden”).

The relief granted at the Trial and Appellate Court levels applies to a discrete number of individuals in Indiana whose “religious beliefs direct them to obtain abortions in situations prohibited by [the Abortion Law] who need, or will need, to obtain an abortion and who are not, or will not be, able to obtain an abortion because of the [Law].” Appeals Order ¶¶ 73–101; Order

Granting Plaintiffs’ Motion To Certify Case As Class Action at 6, 28, *Individual Members of the Med. Licensing Bd. v. Anonymous Plaintiff 1*, No. 49D01-2209-PL-031056 (Sup. Ct. Marion Cnty. June 6, 2023) (“Trial Order Granting Class Certification”). The Trial and Appellate courts correctly held that RFRA confers a right to abortion in such circumstances. Appeals Order ¶¶ 73–101; Trial Order Granting Class Certification at 6, 28.

CONCLUSION

The concept of religion as a “a great school marm in the sky who makes rules, and believers have to obey the rules” is wrong as a matter of law and of fact. Douglas Laycock, *The Supreme Court and Religious Liberty*, 40 CATH. LAW. 25, 46 (2000). RFRA protects a wide range of religious practices regardless of whether they are mandatory in any faith or derive from formal religious doctrine. Examination of the lived experiences of people who have had abortions reveals that some individuals are motivated by their religious commitments to end pregnancies. In such circumstances, abortion can be a sincere expression of faith and cannot be denigrated as merely philosophical or personal. The beliefs of some religious adherents cannot be treated as less worthy than the beliefs of others without running afoul of religious liberty law.

Because certain religiously motivated abortions are currently prohibited by the Abortion Law in violation of RFRA, and because the Trial and Appellate courts have correctly decided that RFRA protects religiously motivated abortions, transfer should be denied.

Dated: June 10, 2024

Respectfully Submitted,

/s/ Michael Graham
Michael Graham (#18655-64)
Willkie Farr & Gallagher LLP
300 N. LaSalle Dr.
Chicago, IL 60654
+1 312-728-9015
MGraham@willkie.com

Elizabeth Reiner Platt (*Petition for
Temporary Admission pending*)
Columbia University Law, Rights, and
Religion Project
435 W. 116th Street
New York, NY 10027-7237
+1 917-647-2985
ep2801@columbia.edu

Laura Jehl (*Petition for Temporary
Admission pending*)
Mia Guizzetti Hayes (*Petition for Temporary
Admission pending*)
Willkie Farr & Gallagher LLP
1875 K Street NW
Washington, DC 20006
+1 202-303-1056
LJehl@willkie.com
+1 202 303-1197
MHayes@willkie.com

Attorneys for Amici Curiae

CERTIFICATE OF WORD COUNT

I verify that this Brief contains no more than 4,200 words.

/s/ Michael Graham

Michael Graham (#18655-64)

Willkie Farr & Gallagher LLP

300 N. LaSalle Dr.

Chicago, IL 60654

+1 312-728-9015

MGraham@willkie.com

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2024, I electronically filed the foregoing document using the Indiana E-filing System (IEFS), and the foregoing document was served upon the following persons:

ATTORNEYS FOR APPELLANTS:

Theodore Edward Rokita (#1885749)
James Allen Barta (#3158949)
Katelyn Elizabeth Doering (#3752332)
Office of the Attorney General
302 West Washington Street, IGCS - Fifth Floor
Indianapolis, IN 46204
James.Barta@atg.in.gov

ATTORNEYS FOR APPELLEES:

Kenneth Jay Falk (#677749)
Gavin M. Rose
Stevie J. Pactor
ACLU of Indiana
2457 E. Washington St., Suite Z
Indianapolis, IN 46201
kfalk@aclu-in.org

Stevie Jean Pactor (#3565749)
Gavin Minor Rose (#2656553)
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
spactor@aclu-in.org
grose@aclu-in.org

ATTORNEYS FOR *AMICI CURIAE*:

Paul Joseph Carroll (#2629649)
The Becket Fund for Religious Liberty
WOOTEN HOY LLC
13 N. State St., Suite 241
Greenfield, IN 46140
paul@wootonhoylaw.com

Zechariah David Yoder (#3620512)
Jewish Coalition for Religious Liberty
Adler Attorneys
136 S. 9th Street, Suite 400
Noblesville, IN 46060-2614
zech@noblesvilleattorney.com

Lori H. Windham (#8710-95-TA)
Adele A. Keim (#871195TA)
Rebekah P. Ricketts (#871295TA)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave. NW
Washington, DC 20006
lwindham@becketlaw.org
akeim@becketlaw.org
rricket@becketlaw.org

Joshua M. Blackman (#870395TA)
Jewish Coalition for Religious Liberty
Josh Blackman LLC
1303 San Jacinto St.
Houston, TX 77002
josh@joshblackman.com

Howard Slough (#870295TA)
Jewish Coalition for Religious Liberty
2400 Virginia Ave N.W., Apt. C619

Brief of *Amici Curiae* Columbia University Law, Rights, and Religion Project *et al.*

Washington, DC 20037

hslugh@jcrcl.org

William R Groth (#732549)

Historians of Religion, Reproduction, and
the Law

BOWMAN & VLINK, LLC

3719 S East St, Suite A

Indianapolis, IN 46227

wgroth@fdgtlaborlaw.com

Mark William Sniderman (#2659949)

Historians of Religion, Reproduction, and
the Law

Sniderman Law

1 Indiana Sq, Suite 1550

Indianapolis, IN 46204

mark@snidermanlaw.com

Richard Brian Katskee (#877495TA)

Kalli Anne Joslin (#877395TA)

Alexander Joseph Lunchenitser

(#877595TA)

Americans United for Separation of Church
and State

1310 L Street Northwest, Suite 200

Washington, DC 20005

katskee@au.org

joslin@au.org

lunchenitser@au.org

Katherine Lacy Crosby (#3600522)

Women of Reform Judaism

Tachau Meek PLC

101 South Fifth Street, Suite 3600

PNC Tower

Louisville, KY 40202

kcrosby@tachaulaw.com

Jeffrey Arthur Macey (#2837849)

National Council of Jewish Women

Macey Swanson and Allman

445 North Pennsylvania Street, Suite 401

Indianapolis, IN 46204-1800

jmacey@maceylaw.com

Arend J Abel (#1076349)

Natalie Ann Lyons (#3658332)

Certain Scholars of Jewish Studies and
Religion

Cohen & Malad LLP

One Indiana Square, Suite 1400

Indianapolis, IN 46204-0000

aabel@cohenandmalad.com

nylons@cohenandmalad.com

Richard Edward Shevitz (#1200749)

Certain Scholars of Jewish Studies and
Religion

Milberg Coleman Bryson Phillips Grossman
PLLC

One Indiana Square, Suite 1400

Indianapolis, IN 46204

/s/ Michael Graham

Michael Graham (#18655-64)

Willkie Farr & Gallagher LLP

300 N. LaSalle Dr.

Chicago, IL 60654

+1 312-728-9015

MGraham@willkie.com