

IN THE INDIANA SUPREME COURT
Case No. 26S-PL-00128

THE INDIVIDUAL MEMBERS
OF THE MEDICAL LICENSING BOARD
OF INDIANA,
in their official capacities, et al.,

Defendants/Appellants,

v.

ANONYMOUS PLAINTIFF 1, et al.,

Plaintiffs/Appellees.

Direct Appeal from the Final
Judgment of the
Marion Superior Court

Trial Court No.
49D01-2209-PL-031056

Honorable Christina R.
Klineman, Judge

**BRIEF IN SUPPORT OF APPELLEES OF *AMICI CURIAE* NATIONAL COUNCIL OF
JEWISH WOMEN, ALLIANCE OF BAPTISTS, AMERICAN HUMANIST
ASSOCIATION, AVODAH, BEND THE ARC: A JEWISH PARTNERSHIP FOR
JUSTICE, CATHOLICS FOR CHOICE, DIGNITYUSA, ELLUMINATE, FAITHFUL
AMERICA, HADASSAH, THE WOMEN’S ZIONIST ORGANIZATION OF AMERICA,
HINDUS FOR HUMAN RIGHTS, INTERFAITH ALLIANCE, JEWISH ALLIANCE FOR
LAW AND SOCIAL ACTION, JEWISH CENTER FOR JUSTICE, JEWISH COUNCIL
FOR PUBLIC AFFAIRS, JEWISH DEMOCRATIC COUNCIL OF AMERICA (JDCA),
JEWISH ORTHODOX FEMINIST ALLIANCE, JEWISH WOMEN INTERNATIONAL,
JEWS OF COLOR MISHPACHA PROJECT, JQ INTERNATIONAL, KEHILLAT
SANKOFA, KESHET, METROPOLITAN COMMUNITY CHURCHES, MOVING
TRADITIONS, MUSLIM PUBLIC AFFAIRS COUNCIL (MPAC), MUSLIMS FOR
PROGRESSIVE VALUES, NEW JEWISH NARRATIVE, RABBINICAL ASSEMBLY,
RECONSTRUCTIONIST RABBINICAL ASSOCIATION, RELIGIOUS COMMUNITY
FOR REPRODUCTIVE CHOICE, SACRED, A FISCALLY SPONSORED PROJECT OF
NEO PHILANTHROPY, INC., SADHANA: COALITION OF PROGRESSIVE HINDUS,
THE SIKH COALITION, SOCIETY FOR HUMANISTIC JUDAISM, T’RUAH: THE
RABBINIC CALL FOR HUMAN RIGHTS, UNITARIAN UNIVERSALIST
ASSOCIATION, WOMEN OF REFORM JUDAISM, WOMEN’S ALLIANCE FOR
THEOLOGY, ETHICS AND RITUAL (WATER), WOMEN’S RABBINIC NETWORK,
ZIONESS MOVEMENT**

Jeffrey A. Macey
Macey Law, P.C.
429 N. Pennsylvania Street, Suite 407
Indianapolis, IN 46204
317-637-2345
jmacey@MaceyLaw.com
Attorney for Amici Curiae

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INTEREST OF AMICI CURIAE

Amici are faith- and conscience-based organizations representing a diverse array of theological traditions that affirm reproductive freedom as inextricably linked to religious freedom. Amici corroborate the sincerity of Plaintiffs' religious beliefs — including those that support and at times, even require, access to abortion — and recognize the ways in which Indiana Senate Enrolled Act 1 (2022) (S.E.A. 1) infringes upon the fulfillment of related, religious obligations.

Permeating the questions of standing and whether Plaintiffs will “engage in a religious exercise,” (see Appellants’ Brief at 43) are questions about the nature of the Jewish religious beliefs at issue in this case. This amicus brief aims to assist the Court with an exploration of those beliefs.

National Council of Jewish Women (NCJW) is a 133-year-old Jewish feminist civil rights organization working for equity and justice for women, children, and families in the United States and Israel. Through the efforts of its 250,000 grassroots advocates and 46 local sections, NCJW combines education, direct service, and advocacy to effect lasting social change at the local, state, and national levels. NCJW approaches its work through the intersections of gender, economic, and racial justice to center those most impacted in a uniquely Jewish way.

The organizations joining this brief as *amici curiae* are:

National Council of Jewish Women
Alliance of Baptists
American Humanist Association
Avodah
Bend the Arc: A Jewish Partnership for Justice.
Catholics for Choice
DignityUSA
Elluminate

Faithful America
Hadassah, The Women's Zionist Organization of America
Hindus for Human Rights
Interfaith Alliance
Jewish Alliance for Law and Social Action
Jewish Center for Justice
Jewish Council for Public Affairs
Jewish Democratic Council of America (JDCA)
Jewish Orthodox Feminist Alliance
Jewish Women International
Jews of Color Mishpacha Project
JQ International
Kehillat Sankofa
Keshet
Metropolitan Community Churches
Moving Traditions
Muslim Public Affairs Council (MPAC)
Muslims for Progressive Values
New Jewish Narrative
Rabbinical Assembly
Reconstructionist Rabbinical Association
Religious Community for Reproductive Choice
SACReD, a fiscally sponsored project of NEO Philanthropy, Inc
Sadhana: Coalition of Progressive Hindus
The Sikh Coalition
Society for Humanistic Judaism
T'ruah: The Rabbinic Call for Human Rights
Unitarian Universalist Association
Women of Reform Judaism
Women's Alliance for Theology, Ethics, and Ritual (WATER)
Women's Rabbinic Network
Zioness Movement

SUMMARY OF ARGUMENT

The Trial Court's ruling should be affirmed. Barriers to reproductive freedom infringe upon religious practice, such as the Jewish obligation to terminate a pregnancy under certain circumstances. By widely restricting abortion access, S.E.A. 1 substantially burdens Plaintiffs' protected religious exercise to receive the full spectrum of reproductive health care.

ARGUMENT

I. PLAINTIFFS HAVE DEMONSTRATED CONSISTENT, RELIGIOUSLY MOTIVATED BEHAVIOR REGARDING ABORTION

The Federal Religious Freedom Restoration Act (RFRA) and Indiana's RFRA form the basis for this analysis of the Plaintiffs' sincerely held religious beliefs. The Supreme Court has incorporated the sincerity test into two of the most significant federal religious accommodation statutes: RFRA, which provides religious exemptions to all federal laws, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), which provides accommodations in the state prison and land use context. *See* Kara Loewentheil and Elizabeth Reiner Platt, *In Defense of the Sincerity Test*, in RELIGIOUS EXEMPTIONS 247, 248 (Kevin Vallier, ed.; Michael Weber, ed., 2018) (citing to 42 U.S.C. § 2000cc et seq.).

Courts use five factors to evaluate the sincerity of claimants' religious beliefs: consistency and clarity in describing religious beliefs; consistent behavior; the presence of ulterior motives; timing; and demeanor. *See* Loewentheil and Platt at 251 (discussing religious beliefs); at 252 (discussing inconsistent behavior); at 255 (discussing ulterior motive); at 257 (discussing tardy timing); at 258 (discussing demeanor).

Courts look at the totality of the facts at hand to assess religious sincerity. Loewentheil & Platt, at 251. Courts apply these factors to judicially dispense with claimants who are

“animated by motives of deception” and seek to exploit the concept of sincerely held religious beliefs for personal gain. *Id.* at 250 (citing *Patrick v. LeFevre*, 745 F.2d 153, 157 (2d Cir. 1984)). *See also New v. U.S.*, 245 F. 710, 713 (9th Cir. 1917) (“the question of the defendant’s good faith is the cardinal question”); *International Soc. For Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2nd Cir. 1981) (“Our openness is legitimately restricted only when underlying motives of deception and fraud hide behind a facade of conscience and religious belief”). Courts can thus identify claimants exploiting the phrase “religious beliefs” as a form of protection for unlawful, nefarious, or otherwise harmful activity to society.

Courts look to whether a person has violated a religious belief in the past to find whether that person’s behavior on a particular issue has been consistent. *See Dobkin v. District of Columbia*, 194 A.2d 657, 659 (1963) (where an individual had worked on Saturdays before requesting a postponement of his trial to observe Shabbat). Simply stating a belief does not *ipse facto* make an individual’s beliefs sincerely held; an individual’s behavior must align with stated religious beliefs. *Kanai v. McHugh*, 638 F.3d 251, 263 (4th Cir. 2011). Courts are generally careful to examine consistency only as a matter of whether the claimant’s actions are consistent with his own stated beliefs. Loewentheil & Platt at 254 (citing to *Thomas v. Review Bd. Of Indiana Employment Sec. Division*, 450 U.S. 707, 714 (1981)); *see Lindell v. Casperson*, 360 F. Supp. 2d 932, 952-53 (2005) (noting a discrepancy in the plaintiff’s prior request for a vegetarian diet compared to the issue at hand, where the plaintiff requested certain kinds of meat and other dietary specifications to practice Wotanism).

Courts also look to whether an individual has recently converted to a religion if there is a

sudden change in the behavior of an individual striving to act in accordance with religious beliefs. *See Hussein v. Waldorf-Astoria*, 134 F.Supp 2d 591, 596-97 (S.D.N.Y. 2001). Courts can also look to see if there are discrepancies in a plaintiff's behavior with regard to a specific issue. The fact that a person does not adhere steadfastly to every tenet of his faith does not mark him as insincere. *Reed v. Faulkner*, 842 F.2d 960, 963 (1988).

In this case, the Plaintiffs have demonstrated that their religious beliefs are sincerely held. Of the five factors enumerated above, this brief focuses on the consistent, religiously motivated behavior of the Plaintiffs about abortion. Per *Reed*, it is the Plaintiffs' conduct beliefs about abortion that should govern the sincerely held analysis. The Plaintiffs' description of their religious beliefs about abortion have been consistent and clear, they have sincere motives in bringing the lawsuit, and their timing in bringing the lawsuit is appropriate.

Anonymous Plaintiffs 1 and 2 both cited their religious beliefs when explaining their decisions to terminate previous pregnancies. Anonymous Plaintiff 1, a Jewish woman, When deciding to terminate her second pregnancy, Plaintiff 1 consulted her religious leaders in her decision-making process. [Deposition of Plaintiff 1 at 18:15-25; Declaration of Plaintiff 1 ¶ 10]. In making her decision in accordance with her beliefs about Judaism, Plaintiff 1 took into consideration her physical, mental, and emotional health. Plaintiff 1 Dep. at 19; 20:1-9. Plaintiff 2 terminated her pregnancy in accordance with her religious belief that she was compelled to terminate a pregnancy if it would infringe on her ability to realize her full humanity and her inherent dignity. [Deposition of Plaintiff 2 at 30:16-18; 31:17-18.]

Plaintiffs 3 through 5, each of whom testified about the effect of the abortion ban on their exercise of religious liberty (Plaintiff 3 is an unmarried Muslim woman; Plaintiffs Four and 4 and 5 are married Jewish women) dismissed their claims after leaving Indiana. Plaintiffs

Four and Five required sperm donation or IVF to have children but stopped the process after the enactment of the abortion ban. [App. IV 102-103] Members of the Hoosier Jews for Choice who are able to become pregnant have altered their sexual practices or birth control practices as a response to S.E.A. 1., afraid that they will not be able to access abortion when experiencing physical or mental harm during pregnancy, as their religious beliefs dictate. HJ4C Deposition at 20:13-25; 21:1-8.

To assess whether individuals are credible regarding their statement of religious beliefs, courts look to individuals' demeanor. An assessment of demeanor would include past evidence of an individual's behavior. *See Hussein*, 134 F.Supp.2d at 598 (where the court considered the individual's past altercations with his employer and other disciplinary actions to evaluate his credibility, finding that he was being insincere in his religious beliefs). Courts recognize that religious beliefs may take time to crystallize. *See Watson v. Geren*, 569 F.3d 115, 121 (2d Cir. 2009) (where a conscientious objector described the time it took for his beliefs to formulate). A court should examine religious convictions for credibility, but not stray into the realm of religious inquiry, an area in which courts are forbidden to tread. *Moussazadeh*, 703 F.3d 781, 792 (5th Cir. 2019). To assess the Plaintiffs' credibility, a Court may consider evidence about their past behavior related to their religious beliefs about abortion, why they hold such sincere religious beliefs, how they behave according to their religious beliefs, and why they have sincere motives in bringing this lawsuit.

Plaintiff 1 attended Jewish school and camp, worked at a synagogue, and currently attends synagogue. Plaintiff 1 Dep. at 21:23-25; 22:7-8; 22:16. Plaintiff 2 began thinking through her religious beliefs while still attending a Catholic afterschool program. Plaintiff 2 Dep. at 22:5-7. She continues to reflect on her religious beliefs in a thoughtful manner. *Id.*

at 23:5-7. She does not see a distinction between her lifestyle choices and religious beliefs, showing that both are inextricably linked. *Id.* at 29:1; 28:23-25. Plaintiff 2 also sought a religious exemption from the COVID-19 vaccine with her state employer, which was granted. *Id.* at 28:6-16. Members of Hoosier Jews for Choice held a Havdalah, a Jewish service that ends the Sabbath, as part of a reproductive justice vigil in September 2022. HJ4C Dep. at 25:21-23. Hoosier Jews for Choice also consults with rabbis for articulation about its Jewish beliefs about abortion. *See generally* HJ4C Dep.

These behaviors generally speak to the Plaintiffs' credibility. These illustrations above are not exhaustive, but serve as examples from the past that underscore their credibility regarding their religious beliefs.

II. PLAINTIFFS' RELIGIOUS EXERCISE IS SUBSTANTIALLY BURDENED BY S.E.A. 1

The test for religiously motivated conduct under RFRA is two-fold:

- 1) A party establishes a prima facie defense under RFRA by showing the disputed governmental action substantially burdens a sincerely held religious belief;
- 2) then the burden shifts to the government to establish that a compelling governmental interest is satisfied through application of the challenged law to the person, the particular claimant whose sincere exercise of religion is being substantially burdened.

Ind. Code Ann. § 34-13-9-8. *See also* *Blatter v. State*, 190 N.E.3d 417, 421 (Ind. App. Ct. 2022).

A court may examine whether individuals are motivated by fear that their religious practices may be violated. *See St. John's United Church of Christ v. City of Chicago*, 502

F.3d 616, 627 (7th Cir. 2007) (where religious adherents could be motivated to bury loved ones elsewhere out of fear of future disinterment). Religiously motivated acts are given high protection. *See Cleveland v. U.S.*, 329 U.S. 14, 20 (1946) (the Court noting that if it accepted the petitioners' defense that criminal actions were motivated by religion, it would place beyond the law any act done under the claim of religious sanction).

Courts may look to various factors to determine that religiously motivated actions stem from sincerely held beliefs. *See Wisconsin v. Yoder*, 406 U.S. 205, 234-35 (1972) (where Amish individuals demonstrated that based on their long history and mode of life in the United States, their religious beliefs were sincere); *Sherbert v. Verner*, 374 U.S. 398, 399-401 (1963) (where the plaintiff was denied unemployment benefits because her sincere Seventh-day Adventist beliefs prevented her from working Saturdays); *Emp. Div. Dep't of Human Res. v. Smith*, 494 U.S. 872, 878 (1990) (where individuals were religiously motivated to use peyote for sacramental purposes).

Citations to extreme cases where individuals attempt to justify their personal behavior as religious exercise, claiming that RFRA is imposing a substantial burden on their religious exercise, only serve to highlight how carefully courts have tailored the contours of RFRA. *See Blatter v. State*, 190 N.E. 3d at 419 (where an individual claimed that his religion commanded him to discipline his children with corporal punishment and consequently claimed that the state was burdening his exercise of religion). Crucially, the exercise of religion may involve performance of, or abstention from, physical acts engaged in for religious reasons. *See Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682, 710 (2014) (quoting *Emp. Div. Dep't of Hum. Res. v. Smith*, 494 U.S. at 877).

S.E.A. 1's codification of the principle that life begins at conception substantially burdens

Plaintiffs’ and Hoosier Jews’ exercise of religion regarding abortion because their beliefs and conduct about abortion are religiously motivated. Various faith traditions hold different definitions on when life begins. The differing definitions and interpretations regarding abortion underscore how narrow and limiting S.E.A. 1 is for the exercise of various religious beliefs regarding abortion.

Jewish text not only permits abortion, but requires abortion if the pregnant woman’s life is in danger. In the Torah, or the Five Books of Moses, considered a most holy text in Judaism, Exodus 21:22-25 teaches,

When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman’s husband may exact from him, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.

The principle of *pikuach nefesh*—saving lives—is so strong that one is permitted to violate almost any commandment to save a life. Since the fetus is regarded as merely potential life, the pregnant person’s health and safety take precedent up until and even partway into the process of birth. *See Mishnah Oholot 7:6*. In a situation in which the pregnant person’s life is in danger from the pregnancy or labor, Jewish law is clear: the pregnant person’s life takes precedence.

Foundational Jewish legal texts explicitly permit access to abortion, including medication abortion, and even require it when the pregnant person’s health and life are at risk. *See Nat’l Council Of Jewish Women, [Abortion and Jewish Values Toolkit](#), at 16 (2020)*. The Mishnah (Ohalot 7:6) and Talmud (Sanhedrin 72b) affirm that the life, health, and wellbeing of the pregnant person supersede those of the fetus, which does not have the status of a *nefesh* (a full legal person) until birth (Exodus 21:22– 23). *See Rabbi D. Ruttenberg, The Torah of Abortion*

Justice (Annotated Source Sheet), VOICES ON SEFARIA, <https://voices.sefaria.org/sheets/234926.14?lang=bi> (last visited May 3, 2026). The Mishneh Torah allows for abortion whether “with a drug or by hand.” See Maimonides, Mishneh Torah, Laws of Murder and Preservation of Life, 1:9; see Expert Report of Rabbi D. Ruttenberg, ¶ 26, *Johnson v. Wyoming*, Case No. 18853 (Wyo. Dist. Ct. Teton Cnty. July 17, 2023), https://wyofile.com/wp-content/uploads/2023/09/2023_08_02_11_52_14-EX-E-1.pdf.

The Presbyterian Church, Lutheran Church, and United Church of Christ have all declined to take a position on when life begins, while noting the diverse range of religious views on the question. See Presbyterian Church (U.S.A.), Abortion/Reproductive Choice Issues, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; Evangelical Lutheran Church in America, [Social Statement on Abortion](#) at 1, 3 n.2 (1991); United Church of Christ, [Statement on Reproductive Health and Justice](#).

Catholic teachings on the abortion question have also varied dramatically. See Vatican Sacred Congregation for the Doctrine of the Faith, [Declaration on Procured Abortion](#), at n.19 (Nov. 18, 1974), see Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* 45-46 (2015); Frank K. Flinn, *Encyclopedia of Catholicism* 4-5 (2007); Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, Slate (Apr. 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html>; St. Thomas Aquinas, *Summa Contra Gentiles* 2.88-89; *Summa Theologiae* 1.118; Garry Wills, *Abortion Isn’t a Religious Issue*, L.A. Times (Nov. 4, 2007), <https://www.latimes.com/la-op-wills4nov04-story.html>.

“[A]mong Muslims, there is no universally agreed-upon moment when a fetus becomes

a person.” Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, Slate (Apr. 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html>. The predominant Islamic view is that a fetus acquires personhood 120 days from conception, *i.e.*, at approximately 19-20 weeks of gestation. Mark Cherry, *Religious Perspective on Bioethics* 196-97 (2004); Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Applications* 134-35, 140-41 (2009); Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* 94 (2006).

Plaintiffs’ religious beliefs have already been explained on the record; the analysis thus proceeds to Plaintiffs’ religious motivation. Plaintiffs’ conduct is religiously motivated, with each of the Plaintiffs sharing how their religious beliefs have motivated them to alter their conduct. Plaintiff 1 is taking birth control and began abstaining from sex with her husband on September 15, 2022, the day S.E.A. 1 went into effect. Plaintiff 1 Dep. at 51:3-11. Plaintiff 1 is afraid that she will not be able to access abortion, as her religious beliefs dictate, when experiencing physical and mental harm during pregnancy. Plaintiff 1 Decl. at ¶ 10 (describing her religious beliefs); Plaintiff 1 Dep. at 33:14-18 (describing her religious beliefs). Plaintiff 2 chose to reduce intimacy with her husband, afraid that she would not be able to access abortion to realize her bodily autonomy and inherent dignity according to her religious beliefs. *See* Plaintiff 2 Dep. at 22:18-21, 30:16-18; 31:17-18.

To comply with S.E.A 1’s narrow codification of when life begins and near-total abortion ban, Plaintiffs have altered their behaviors, ranging from no sexual intimacy to highly detailed precautions during sexual intercourse. During a medical emergency, pregnant individuals should not have the burden of seeking urgent relief through the legal system. Individuals would have to place their sincere religious beliefs at odds with compliance with the S.E.A.1 were it not for the

injunction in place.

This dramatic alteration of behavior in their personal lives shows that Plaintiffs are avoiding the possibility of becoming pregnant, because none of them would be able to access abortion as their religious beliefs dictate. Therefore, S.E.A. 1 places a substantive burden on Plaintiffs' and Hoosier Jews' exercise of their religious beliefs regarding abortion.

CONCLUSION

Plaintiffs hold sincere religious beliefs about abortion, demonstrating consistency and clarity in their behavior per their religious beliefs. Therefore, Plaintiffs' behavior regarding abortion access is religiously motivated. S.E.A. 1 places a substantive burden on the exercise of Plaintiffs' religious beliefs regarding abortion. Consequently, this Court should affirm the trial court.

Respectfully submitted,

/s/ Jeffrey A. Macey
Macey Law, P.C.
429 N. Pennsylvania Street, Suite 407
Indianapolis, IN 46204
317-637-2345
jmacey@MaceyLaw.com

Attorney for Amici Curiae

WORD COUNT CERTIFICATION

I hereby certify that the foregoing Brief of Amicus Curiae contains no more than 4200 words, pursuant to Ind. R. App. 44(E).

/s/Jeffrey A. Macey

Jeffrey A. Macey

Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that on, the foregoing document was electronically filed using the Indiana E-Filing System (IEFS). I also certify that on June 21, 2026, the following persons were served electronically with the foregoing document through IEFS:

Kenneth J. Falk, kfalk@aclu-in.org
Stevie J. Pactor, spactor@aclu-in.org
Gavin M. Rose, grose@aclu-in.org
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

James A. Barta, James.Barta@atg.in.gov
Robert M. Belden,
Jefferson S. Garn,
Lauren R. LaBaumbard
John P. Lowrey
Theodore E. Rokita
Office of the Attorney General IGC South, Fifth Floor
302 W. Washington Street Indianapolis, IN 46204

Zecaraiah D. Yoder
Adler Attorneys
136 South 9th Street Noblesville, IN 46060

Joshua M. Blackman
Josh Blackman LLC 1303
San Jacinto St. Houston, TX 77002

Howard Slugh
The Jewish Coalition for Religious Liberty
2400 Virginia Ave. N.W.
Apt. C619
Washington, D.C. 20037

Paul J. Carroll, paul@wootonhoylaw.com
Wooton Hoy, LLC
13 N. State Street Ste 241
Greenfield, IN 46140

Caleb H. Angell,
Adele A. Keim,
Lori H. Windham, lwindham@becketlaw.org
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave., NW
Ste. 400
Washington, DC 20006

William Bock III
111 Monument Circle, Suite 900
Indianapolis, IN 46204-0000

Paul O. Mullin
William D. Young
Lewis and Wilkins LLP
8777 Purdue Road, Suite 330
Indianapolis, IN 46268

James Bopp Jr.
Taylor Caitlyn Shetina
The Bopp Law Firm PC
1 South Sixth Street
Terre Haute, IN 47807

Ellen Rogers Bernstein
303 Hart Senate Office Building
120 Constitution Avenue NE
Washington, DC 20002

John Michael Westercamp
848 Bayside Drive
Greenwood, IN 46143

Benjamin D. Horvath
Velo Law
1750 Leonard Street, NE
Grand Rapids, MI 49505

Terry Tolliver
Brattain Minnix Garcia
One Indiana Square, #1530
Indianapolis, IN 46204

Asheesh Agarwal
Agarwal Strategies LLC
4638 Hickory Court
Zionsville, IN 46077

/s/Jeffrey A. Macey
Jeffrey A. Macey
Attorney for *Amici Curiae*