

**IN THE  
INDIANA COURT OF APPEALS**

Case No. 22A-PL-02938

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

Appellants,

v.

ANONYMOUS PLAINTIFF 1, et al.,

Appellees.

Interlocutory Appeal from  
the Marion Superior Court,

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

The Honorable  
Heather A. Welch,  
Judge.

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**BRIEF IN SUPPORT OF APPELLEES OF *AMICI CURIAE* NATIONAL COUNCIL  
OF JEWISH WOMEN, NATIONAL COUNCIL OF JEWISH WOMEN INDIANAPOLIS  
SECTION, RECONSTRUCTIONIST RABBINICAL ASSOCIATION, ZIONESS,  
T'RUAH, KESHET, RABBINICAL ASSEMBLY, MOVING TRADITIONS, AVODAH,  
MUSLIMS FOR PROGRESSIVE VALUES, RELIGIOUS COALITION FOR  
REPRODUCTIVE CHOICE, SADHANA: COALITION OF PROGRESSIVE HINDUS,  
HINDUS FOR HUMAN RIGHTS, AND CATHOLICS FOR CHOICE**

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**TABLE OF CONTENTS**

INTEREST OF AMICI CURIAE..... 6

SUMMARY OF ARGUMENT ..... 7

ARGUMENT ..... 7

I. PLAINTIFFS AND HOOSIER JEWS HOLD SINCERE RELIGIOUS BELIEFS ..... 7

    A. PLAINTIFFS AND HOOSIER JEWS CONSISTENTLY AND CLEARLY DESCRIBE  
        THEIR RELIGIOUS BELIEFS ABOUT ABORTION ..... 9

    B. PLAINTIFFS AND HOOSIER JEWS HAVE DEMONSTRATED CONSISTENT  
        BEHAVIOR ..... 11

    C. PLAINTIFFS AND HOOSIER JEWS HAVE SINCERE MOTIVES IN BRINGING  
        THE LAWSUIT ..... 13

    D. PLAINTIFFS AND HOOSIER JEWS DEMONSTRATE APPROPRIATE TIMING IN  
        BRINGING RELIGIOUSLY-MOTIVATED CLAIMS ..... 16

    E. PLAINTIFFS’ AND HOOSIER JEWS’ Demeanor IS CREDIBLE ..... 17

II. PLAINTIFFS’ AND HOOSIER JEWS’ BEHAVIOR IS RELIGIOUSLY MOTIVATED.... 19

CONCLUSION..... 26

CERTIFICATE OF WORD COUNT ..... 26

CERTIFICATE OF SERVICE ..... 26

**TABLE OF AUTHORITIES**

UNITED STATES SUPREME COURT CASES

*Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 (1978)..... 8

*Thomas v. Review Bd. Of Indiana Employment Sec. Division*, 450 U.S. 707 (1981)..... 13

*Cleveland v. U.S.*, 329 U.S. 14 (1946) ..... 21

*Wisconsin v. Yoder*, 406 U.S. 205 (1972) ..... 21

*Sherbert v. Verner*, 374 U.S. 398 (1963) ..... 21

UNITED STATES FEDERAL CASES

*Patrick v. LeFevre*, 745 F.2d 153 (2d Cir. 1984)..... 9

*New v. U.S.*, 245 F. 710 (9th Cir. 1917)..... 9

*International Soc. For Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430 (2d Cir. 1981)..... 9

*Theriault v. Carlson*, 495 F.2d 390 (5th Cir. 1974)..... 9

*Moussazadeh v. Texas Dep’t of Criminal Justice*, 703 F.3d 781 (5th Cir. 2012)..... 10, 19

*Kanai v. McHugh*, 638 F.3d 251 (4th Cir. 2011)..... 12

*Reed v. Faulker*, 842 F.2d 960 (1988) ..... 13

*U.S. v. Manneh*, 645 F.Supp.2d 98 (E.D.N.Y. 2008)..... 10, 18

*Lindell v. Casperson*, 360 F.Supp 2d 932 (2005). ..... 10

*Hussein v. Waldorf-Astoria*, 134 F.Supp 2d 591 (S.D.N.Y. 2001)..... 12, 13, 18

*Sherr v. Northport-East Northport Union Free School Dist.*, 672 F.Supp 81 (E.D.N.Y. 1987)..15,  
19

*U.S. v. Quaintance*, 608 F.3d 717 (2010). ..... 15

*Callahan v. Woods*, 658 F.2d 679 (9th Cir. 1981)..... 15

*Jolly v. Coughlin*, 76 F.3d 468 (2d Cir. 1996) ..... 15

<i>Jackson v. Mann</i> , 196 F.3d 316, 320 (2d Cir. 1999), .....	15
<i>Tagore v. U.S.</i> , 735 F.3d 324 (5th Cir. 2013) .....	15
<i>E.E.O.C. v. Red Robin Gourmet Burgers, Inc.</i> , Case No. C04–1291JLR (W.D. Wash. 2005) ...	15
<i>E.E.O.C. v. Alamo Rent-A-Car LLC</i> , 432 F.Supp. 2d 1006, 1011 (D. Ariz. 2006) .....	15
<i>Hanna v. Secretary of the Army</i> , 513 F.3d 4 (1st Cir. 2008) . .....	17
<i>Watson v. Geren</i> , 569 F.3d 115 (2d Cir. 2009) .....	17, 19
<i>Ochs v. Thalacker</i> , 90 F.3d 293 (8th Cir. 1996) .....	17
<i>U.S. v. Messinger</i> , 413 F.2d 927 (1969) . .....	17
<i>Blattert v. State</i> , 190 N.E.3d 417 (Ind. App. Ct. 2022) .....	20
<i>St. John’s United Church of Christ v. City of Chicago</i> , 502 F.3d 616 (7th Cir. 2007).....	21
STATE CASES	
<i>Rowe v. Lemmon</i> , 976 N.E.2d 129 (Ind. App. Ct. 2012). .....	9
<i>Dobkin v. District of Columbia</i> , 194 A.2d 657 (1963). .....	12
UNITED STATES STATUTES	
Religious Freedom Restoration Act (RFRA).....	8, 20
Religious Land Use and Institutionalized Persons Act (RLIUPA).....	8
STATE STATUTES	
Ind. Code Ann. § 34-13-9-8.....	20
Ind. Code Ann. § 34-13-9-9.....	21
SECONDARY AUTHORITY	
Kara Loewentheil and Elizabeth Reiner Platt, <i>In Defense of the Sincerity Test</i> , in RELIGIOUS EXEMPTIONS 247, 251 (Kevin Vallier, ed.; Michael Weber, ed., 2018).....	8, 9, 13, 15
<i>Mishnah Ohalot 7:6</i> . .....	10, 22

Torah, Exodus 21:22-25.....	22
Presbyterian Church (U.S.A.), Abortion/Reproductive Choice Issues .....	23
Evangelical Lutheran Church in America, Social Statement on Abortion at 1, 3 n.2 (1991).....	23
United Church of Christ, Statement on Reproductive Health and Justice .....	23
Vatican Sacred Congregation for the Doctrine of the Faith, <i>Declaration on Procured Abortion</i> , at n.19 (Nov. 18, 1974).....	23
Anne Stensvold, <i>A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates</i> 45-46 (2015).....	23
Frank K. Flinn, <i>Encyclopedia of Catholicism</i> 4-5 (2007).....	23
Elissa Strauss, <i>When Does Life Begin? It's Not So Simple</i> , Slate (Apr. 4, 2017).....	22, 23
St. Thomas Aquinas, <i>Summa Contra Gentiles</i> 2.88-89; <i>Summa Theologiae</i> 1.118 .....	23
Garry Wills, <i>Abortion Isn't a Religious Issue</i> , L.A. Times (Nov. 4, 2007).....	23
Mark Cherry, <i>Religious Perspective on Bioethics</i> 196 (2004).....	22
Abdulaziz Sachedina, <i>Islamic Biomedical Ethics: Principles and Applications</i> 1341 (2009);.....	22
Dariusch Atighetchi, <i>Islamic Bioethics: Problems and Perspectives</i> 94 (2006).;.....	23

## INTEREST OF AMICI CURIAE

*Amici* are interfaith organizations with a commitment to protecting religious liberty and pluralism. In particular, *amici* value religious guidance and teachings important to Judaism and other faith traditions. *Amici* recognize that attacking Plaintiffs’ and Hoosier Jews for Choice’ (“Hoosier Jews”) sincerely-held religious beliefs in this case has dangerous implications for their reproductive health care, including abortion. Plaintiffs and Hoosier Jews’ behavior is religiously motivated. S.E.A. 1 substantially burdens the free exercise of religion for Plaintiffs and Hoosier Jews.

National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families, and by safeguarding individual rights and freedoms.

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

- National Council of Jewish Women
- National Council of Jewish Women Indianapolis Section
- Reconstructionist Rabbinical Association
- Zioness
- T’ruah
- Keshet
- Rabbinical Assembly
- Moving Traditions
- Avodah
- Muslims for Progressive Values
- Religious Coalition for Reproductive Choice
- Sadhana: Coalition of Progressive Hindus
- Hindus for Human Rights
- Catholics for Choice

## SUMMARY OF ARGUMENT

After Indiana passed S.E.A.1, Plaintiffs 1, 2, 3, 4, and 5, and Hoosier Jews for Choice (“Hoosier Jews”) filed this lawsuit. The strength of their religious claims and arguments ensured that the trial court granted them a preliminary injunction. This brief offers general factors that courts consider when evaluating sincerely held beliefs,<sup>1</sup> and demonstrates that Plaintiffs hold sincere religious beliefs.<sup>2</sup> The brief then moves to the question of religious motivation; that is, why the plaintiffs and Hoosier Jews are motivated by their sincerely-held religious beliefs to actively seek abortions, and briefly touches upon how S.E.A. 1 burdens the exercise of their religious beliefs regarding abortion.

## ARGUMENT

### I. PLAINTIFFS AND HOOSIER JEWS HOLD SINCERE RELIGIOUS BELIEFS

There are several relevant factors courts use to evaluate the sincerity of claimants’ religious beliefs: consistency and clarity in describing their religious beliefs; consistent behavior; the presence of any ulterior motive; timing; and demeanor. *See* Kara Loewentheil and Elizabeth Reiner Platt, *In Defense of the Sincerity Test*, in *RELIGIOUS EXEMPTIONS* 247, 251 (Kevin Vallier, ed.; Michael Weber, ed., 2018) (discussing religious beliefs); *Id.* at 252 (discussing inconsistent

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<sup>1</sup> This brief utilizes the Religious Freedom Restoration (Act) and Indiana’s RFRA as the underlying basis for explaining how the Plaintiffs and Hoosier Jews have demonstrated 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* Loewentheil & Platt at 248 (citing to 42 U.S.C. § 2000cc et seq.).

<sup>2</sup> The brief does not address the issue of standing, as it assumes that Plaintiffs and Hoosier Jews have met the standing requirements, particularly the injury-in-fact requirement. The use of probabilistic injuries to support standing is permitted. *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 (1978).

behavior); *Id.* at 255 (discussing ulterior motive); *Id.* at 257 (discussing tardy timing); *Id.* at 258 (discussing demeanor).

No one factor is determinative in assessing religious sincerity; instead, courts look at the totality of the facts. *Lowenthal & 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 to *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”); *Therault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974) (holding that religious groups that are “obviously shams and absurdities and whose members are patently devoid of religious sincerity” are not protected by the First Amendment)).

Courts can identify claimants exploiting the phrase “religious beliefs” as a form of protection for unlawful, nefarious, or otherwise harmful activity to society. As the Becket Fund’s brief acknowledges, sincerity is a question of fact. *Becket Fund Br.* at 16 (defining sincerity by citing to *Rowe v. Lemmon*, 976 N.E.2d 129, 136 (Ind. App. Ct. 2012)). The fact of the matter is that the Plaintiffs and Hoosier Jews have demonstrated that their religious beliefs are sincerely held because the description of their religious beliefs about abortion have been consistent and clear, their behavior has been consistent with their religious beliefs about abortion, they have sincere motives in bringing the lawsuit, their timing in bringing the lawsuit is appropriate, and their demeanor is credible.



A. PLAINTIFFS AND HOOSIER JEWS CONSISTENTLY AND CLEARLY  
DESCRIBE THEIR RELIGIOUS BELIEFS ABOUT ABORTION

An analysis of sincerity seeks to determine an adherent's good faith in the expression of his religious belief.” *U.S. v. Manneh*, 645 F.Supp.2d 98, 112 (E.D.N.Y. 2008). A sincerity analysis “provides a rational means of differentiating between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud,” and requires a factfinder “to delve into the claimant's most veiled motivations.” *Id.* Courts look to see if there are discrepancies in a plaintiff’s behavior with regards to a specific issue. *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). A court may look to an individual’s words and actions to determine sincerity regarding an individual’s clarity and consistency about the individual’s religious beliefs. *Moussazadeh v. Texas Dep’t of Criminal Justice*, 703 F.3d 781, 791 (5th Cir. 2012).

This Court can assess Plaintiffs and Hoosier Jews’ sincerity through their assertions and responses in the Declarations and Depositions. Each of the plaintiffs was clear in sharing what she believes to be her religious beliefs. Plaintiff 1 believes that according to “Jewish law and teachings, that life of a pregnant woman, including her physical and mental health and wellbeing, must take precedence over the potential for life embodied in a fetus,” and that “a child takes its first breath after being born.” Pl. Ex. 1 ¶¶ 9, 10. Plaintiff 1 believes that a pregnancy can be terminated any time before birth when the pregnant person’s “physical, emotional, psychological health and well-being” are at risk, and cites to *Mishnah Ohalot* as the source of her belief. Defs’ Ex. 4 at 33:14-18.

Plaintiff 2 believes that there is a universal force or power that is larger than one's self, and refers to this as a universal consciousness. Defs' Ex. 5 at 22:18-21. She states that there is a connectiveness between humanity, and that harm is defined as "infringing on one's life, bodily autonomy, inherent dignity." Defs' Ex. 5 at 30:16-18; 31:17-18. Preserving bodily autonomy is a part of her religious beliefs. *Id.* at 31:17-18. Plaintiff 2 believes her pregnancy could be terminated if it infringed on her ability to realize her full humanity and inherent dignity. *Id.* at 58:1-3.

Plaintiff 3 believes that *ruh*, or soul, is breathed into a womb at approximately 120 days of gestation. Defs' Ex. 6 at 22:8-15. Her belief that a fetus acquires life approximately at the 120-day period is drawn from a variety of Islamic teachings. *Id.* Until the 120-day mark, Plaintiff 3 believes that a person should be able to terminate a pregnancy. *Id.* at 25:2-8. According to Islam, Plaintiff 3 also believes that a person's physical health and well-being is always a priority, including a pregnant person's physical health and well-being. *Id.* at 28:8-11.

Plaintiff 4 believes that a fetus becomes human when the fetus is born, guided by her understanding of different religious texts in Judaism. Defs' Ex. 7 at 14:2-17. Plaintiff 4 believes that a pregnant person can obtain an abortion when a person is experiencing mental, physical, or emotional harm, and that pregnant people overall have bodily autonomy. *Id.* at 15:9-23. Drawing on Judaism's teachings, Plaintiff 5 believes that a fetus is not a human until the fetus takes its first breath in the world. Defs' Ex. 8 at 20:9-14. Plaintiff 5 also believes that the pregnant person's life takes priority, particularly where the pregnant person may be experiencing physical or mental harm. *Id.* at 21:5-18; 22:2-16.

Members of the Hoosier Jews believe that under Jewish law and religious doctrine, life does not begin at conception, and that a fetus is considered a physical part of the woman's body, not

having a life of its own or independent rights. Pl. Ex. 5 ¶¶ 5,6; Defs' Ex. 10 at 26:16-20. The organization and its members believe that under Jewish law, an abortion is directed to occur to prevent physical or emotional harm to a pregnant person, even if there is not a physical health risk that is likely to cause substantial and irreversible physical impairment of a major bodily function. Defs' Ex. 10 at 28:19-21; 30:3-13.

Plaintiffs and Hoosier Jews have consistently and clearly describe their religious beliefs regarding abortion.

#### B. PLAINTIFFS AND HOOSIER JEWS HAVE DEMONSTRATED CONSISTENT BEHAVIOR

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. *Dobkin v. District of Columbia*, 194 A.2d 657, 659 (1963). For instance, in *Dobkin*, an individual claimed that he needed to postpone his trial to observe Shabbat.<sup>3</sup> *Id.* Upon further inquiry, the court found that in the past, the individual had gone into work on Saturdays, rendering the individual's personal behavior regarding the issue of observing Shabbat inconsistent. *Id.* In another case, a plaintiff claimed that he had to wear a beard to work in accordance with his religious preferences. *Hussein v. Waldorf-Astoria*, 134 F.Supp.2d 591, 596 (S.D.N.Y. 2001). He had not worn a beard to work in fourteen years. *Id.* Therefore, simply stating a belief does not *ipse facto* make an individual's beliefs sincerely held. *See Kanai v. McHugh*, 638 F.3d 251, 263 (4th Cir. 2011) (where the record showed that an individual's conscientious objector views were inconsistent with his request to join the infantry division). An individual's behavior must align with stated religious beliefs. *Id.* Courts are generally careful to examine consistency only as a matter of whether the claimant's

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<sup>3</sup> The term "Shabbat" is generally used in this brief to refer to the Sabbath.

actions are consistent with his own stated beliefs, and not whether others find them “acceptable, logical, consistent, or comprehensible.” Loewentheil & Platt at 254 (citing to *Thomas v. Review Bd. Of Indiana Employment Sec. Division*, 450 U.S. 707, 714 (1981)). A court may 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*, 134 F.Supp.2d at 596-97. Courts may also consider whether an individual may be struggling with his position on his religious beliefs; this scenario should not serve as an impetus for a court to press harshly on an inquiry into the sincerity of religious beliefs. *See Thomas*, 450 U.S. at 715. 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).

For the purposes of evaluating Plaintiffs’ and Hoosier Jews’ behavior regarding abortion, this Court must look to only their behavior regarding abortion.

When deciding to terminate her second pregnancy, Plaintiff 1 consulted her religious leaders in her decision-making process. Defs’ Ex. 4 at 18:15-25; Pl. Ex. 1 ¶ 10 (describing her religious beliefs). In making her decision in accordance with her beliefs about Judaism, Plaintiff 1 took into consideration her physical, mental, and emotional health. *Id.* 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 inherent dignity. Defs’ Ex. 5 at 30:16-18; 31:17-18.

Plaintiffs 3, 4, and 5 all used their religious beliefs in guiding their decisions about their access to abortion. Plaintiff 3 is Muslim and was sexually active prior to the enactment of S.E.A. 1. Defs’ Ex. 6. at 65: 25. Approximately around the time the law was enacted, Plaintiff 3 began abstaining from sexual intercourse, afraid that she would fall pregnant and could not access the

requisite healthcare needed, including abortion, because of her Crohn's Disease. *Id.* at 64: 2-17. Plaintiff 3's decision to abstain from intercourse is guided by the teaching in Islam that up to 120 days' gestation, a woman can make the decision that she could terminate a pregnancy. *Id.* at 46. Under S.E.A. 1, she would not be able to access abortion until the 120-day mark, per her religious beliefs. If she fell pregnant, she could not continue to prioritize her physical health and well-being, as her religious beliefs dictate.

Plaintiffs 4 and 5 are married, and were hoping to start a family. Defs' Ex. 8 at 41:6-11. Plaintiffs 4 and 5 had consulted the advice of numerous doctors, including a fertility doctor who would be performing the insemination, and had joined a wide range of sperm donor registration databases to identify a sperm donor. Defs' Ex. 8 at 42:2-6. Plaintiffs 4 and 5 halted the process of beginning a family because of S.E.A. 1's passage, afraid that they would not be able to access abortion when experiencing physical and mental harm during pregnancy, according to their religious beliefs. *Id.* at 43:19-24; *see* Defs' Ex. 7 at 15:9-23, Defs' Ex. 8 at 21:5-18, 22:2-16.

Members of the Hoosier Jews 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. Defs' Ex. 10 at 20:13-25; 21:1-8.

The Plaintiffs' and Hoosier Jews' behavior regarding abortion and abortion access is consistent with their religious beliefs.

### C. PLAINTIFFS AND HOOSIER JEWS HAVE SINCERE MOTIVES IN BRINGING THE LAWSUIT

Plaintiffs' espoused beliefs must be sincerely held and should stem from religious convictions. *Sherr v. Northport-East Northport Union Free School Dist.*, 672 F.Supp. 81, 94-95

(E.D.N.Y. 1987). Beliefs cannot be framed from a religious perspective merely to obtain a desired legal remedy. *Id.* A court would look to the evidence on the record to determine whether there is there is a commercial or secular motive rather than a sincere religious belief. *U.S. v. Quaintance*, 608 F.3d 717, 722 (2010). The mere presence of longstanding secular reasons does not in itself negate the sincerity of a belief. *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981).

Claimants who have demonstrated a willingness to lose benefits by complying with their religious beliefs are more likely to be deemed sincere. Loewentheil & Platt at 257 (citing to various cases including *Jolly v. Coughlin*, 76 F.3d 468, 476 (2nd Cir. 1996) (plaintiff’s decision to remain in medical confinement rather than submit to a PPD test demonstrated his sincerity); *Jackson v. Mann*, 196 F.3d 316, 320 (2d Cir. 1999) (where plaintiff had “gone without food for several days to avoid eating non-kosher food” was evidence of his sincerity); *Tagore v. U.S.*, 735 F.3d 324, 329 (5th Cir. 2013) (where plaintiff employee “was willing to sacrifice her government employment for the sake of wearing a religiously significant symbolic kirpan” was evidence of her sincerity); *E.E.O.C. v. Red Robin Gourmet Burgers, Inc.*, Case No. C04–1291JLR (W.D. Wash. 2005) (where employee’s decision to sacrifice his job rather than cover his tattoos was evidence of his sincerity); *E.E.O.C. v. Alamo Rent-A-Car LLC*, 432 F.Supp. 2d 1006, 1011 (D. Ariz. 2006) (where employee who wore a head covering despite supervisors’ warnings that progressive disciplinary action would be enforced and was terminated, was found to be sincere)).

Plaintiffs and Hoosier Jews have sincere motives in bringing this lawsuit. Five of the plaintiffs remain anonymous and select representative(s) of the Hoosier Jews was named and deposed; their anonymity should serve as a reminder to this Court of the dangers of serving as plaintiffs in a reproductive rights-related case.

Plaintiffs and Hoosier Jews have sacrificed personal benefits to comply with their religious beliefs about abortion. Plaintiff 1 is refraining from becoming pregnant, despite yearning for another pregnancy, because S.E.A. 1.'s passage. Pl. Ex. 1 ¶¶ 31, 32. 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. Defs' Ex. 4 at 51:3-11. Plaintiff 2 chose to reduce intimacy with her husband because of S.E.A. 1's passage Pl. Ex. 2 ¶ 16. Guided by her religious beliefs that there should not be foreign objects in one's body, Plaintiff 2 is not using pregnancy-prevention methods other than tracking ovulation and using condoms. Defs' Ex. 5 at 59:6-7; 60:1-20. Plaintiff 3 is practicing abstinence with her fiancée, because S.E.A. 1.'s passage. Pl. Ex. 3 ¶26; Defs' Ex. 6 at 68:12. Plaintiffs 4 and 5 are refraining from starting a family. Pl. Ex. 4 ¶¶ 11, 12. Plaintiffs 4 and 5 were partway through the process of seeking medical advice about in vitro fertilization and had joined a sperm donor database. Defs' Ex. 7 at 23-24; 42:2-6. Members of the Hoosier Jews have also altered their sexual practices, including the use of contraceptives. Defs' Ex. 10 at 20:13-25; 21:1-8.

When Plaintiffs were asked about how their behavior might change if a preliminary injunction were obtained, their answers emphasized how each had genuinely altered her behavior according to her religious beliefs about seeking abortion after S.E.A.1's passage, and that each of them had sacrificed benefits to comply with their religious beliefs. *See* Defs' Ex. 4 at 52:14-17 (Plaintiff 1 stating that she imagined "would resume sexual relations with [her] husband"); Defs' Ex. 5 at 59:2-7 (Plaintiff 2 stating she would not have to take extra precautions during sexual intercourse with her husband); Defs' Ex. 6 at 68:12 (Plaintiff 3 stating she would be intimate again with her fiancée); Defs' Ex. 7 at 23:18-20 (Plaintiff 4 stating she is no longer trying to get pregnant); Defs' Ex. 8 at 42:11-12 (Plaintiff 5 stating she and her spouse are no longer trying to

start a family); Defs' Ex. 10 at 53:6-12 (Hoosier Jews sharing how members altered their sexual practices).

#### D. PLAINTIFFS DEMONSTRATE APPROPRIATE TIMING IN BRINGING RELIGIOUSLY MOTIVATED CLAIMS

Timing alone is not evidence of insincerity. *Hanna v. Secretary of the Army*, 513 F.3d 4, 14 (1st Cir. 2008); *Watson v. Geren*, 569 F.3d 115, 133 (2nd Cir. 2009). A court may look to the circumstances of when an individual raises a religious claim. *See Ochs v. Thalacker*, 90 F.3d 293, 296 (8th Cir. 1996). A court may also look to whether a person is attempting to exploit religious beliefs as a means to an end. *Id.* A court may look at the chronological timing of the assertion of a religious claim. *See U.S. v. Messinger*, 413 F.2d 927, 928-32 (2d Cir. 1969) (where the appellant raised a religious claim two years after his initial registration for the Selective Service). The timing of a religiously-motivated claim may be viewed with suspicion when it occurs after a prolonged period of time in litigation. *Id.*

The argument that Plaintiffs and Hoosier Jews should have brought their challenge to S.E.A. 1 sooner is speculative and illogical. S.E.A. 1 was enacted after the Supreme Court ruling last June 2022. To challenge S.E.A. 1, S.E.A. 1 must first be enacted. Only after its enactment are the Plaintiffs and Hoosier Jews challenging the law. The timing of the Plaintiffs and Hoosier Jews in bringing this lawsuit in September 2022 is appropriate, given S.E.A. 1's passage a few weeks before.

This Court should look to the timing of the claims in this case. None of the Plaintiffs or Hoosier Jews altered existing claims or raised a new religious claim after filing the lawsuit. There was no delay in bringing the lawsuit after S.E.A. 1's passage. In their own words, Plaintiffs and Hoosier Jews described why they brought the lawsuit in September 2022. Plaintiff



1 is challenging Indiana under the theory of religious freedom because she believes that S.E.A. 1 violates her religious freedom. Defs' Ex. 4 at 10:25; 11:1-2. Plaintiff 2 observed the process of passing S.E.A. 1 in the Indiana General Assembly, and decided that if it passed, she would need to take legal action given her religious beliefs. Defs' Ex. 5 at 10:14-19.

Plaintiff 3 decided to bring a lawsuit about abortion because she believes that it is an important case for human rights, a decision she made based on the influence of her religion. *See* Defs' Ex. 6 at 13:24-25; 20:12-14. Plaintiff 4 had the idea to bring the lawsuit to try to help her faith community. *See* Defs' Ex. 7 at 8:13-16. Plaintiff 5 brought the lawsuit because without doing so, she could not "move forward with [her] beliefs as a Jewish person to be able to take care of [herself] or [her] wife" when they began a family. Defs' Ex. 8 at 13:5-10. Hoosier Jews was initially formed as an organization that advocates for individuals' right to access abortion, and after observing the aftermath of S.E.A. 1's passage, brought this lawsuit based on the religious beliefs of its Members. *See* Defs' Ex. 10 at 17:18-19; 18:5-12.

#### E. PLAINTIFFS' AND HOOSIER JEWS' Demeanor IS CREDIBLE

Assessing sincerity "demands a full exposition of facts." *Manneh*, 645 F.Supp.2d at 112. To assess whether individuals are credible regarding the espousal of their religious beliefs, courts look to their demeanor. Past evidence of an individual's behavior, other than with respect to the issue at hand, is sometimes considered when evaluating credibility. *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 find that he was being insincere in his religious beliefs). A court may look to how thoroughly an individual has "contemplated the foundations of his religious beliefs" and "thoughtfulness" as to the "theological ramifications of the questions posed to him." *Sherr*, 672 F.Supp. at 97. Religious beliefs may take time to crystallize. *See Watson*, 569 F.3d at 121 (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). Therefore, this Court would not be assessing the validity of the Plaintiffs' and Hoosier Jews' religious beliefs but would be assessing the credibility of each.

To assess the Plaintiffs' and Hoosier Jews' credibility, this Court may consider evidence about their past behavior, related to the Plaintiffs' and Hoosier Jews' religious beliefs. Their behavior emphasizes their credibility regarding 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. Defs' Ex. 4 at 21:23-25; 22:7-8;22:16. Plaintiff 2 began thinking through her religious beliefs while still attending a Catholic afterschool program. Defs' Ex. 5 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.

Plaintiff 3 attempts to fast during Ramadan, despite her Crohn's Disease. Defs' Ex. 6 at 28:23-25. Since she prioritizes her health and well-being according to her religious beliefs, she does not fast all the way through Ramadan because her Crohn's Disease prevents her from fasting the full period, and her religious beliefs instruct her to prioritize her physical well-being. Plaintiff 3 is registered with disability services at school. *Id.* at 56:24-25.

Plaintiff 4 belongs to a Reform synagogue. Defs' Ex. 7 at 9:5. She attends Shabbat each week and has relationships with family members who are rabbis. *Id.* at 11:2-3; 11:12-13. Plaintiff 5 had two Jewish wedding ceremonies with Plaintiff 4, one larger ceremony and one private. Defs' Ex. 8 at 11:25; 12:1-2; 12:4-6. Plaintiff attends synagogue, Shabbat, has Jewish things in her home, and observes all Jewish holidays. *Id.* at 14:3; 14:4; 14:6; 14:9.

Hoosier Jews held a Havdalah, a Jewish service that ends the Sabbath, as part of a reproductive justice vigil in September 2022. Defs' Ex. 10 at 25:21-23. Hoosier Jews also consults with rabbis for articulation about its Jewish beliefs about abortion. *See generally* Pl. Ex. 5.

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

## II. PLAINTIFFS' AND HOOSIER JEWS' BEHAVIOR IS RELIGIOUSLY MOTIVATED

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 person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, may assert the violation or impending violation as a claim in a judicial proceeding. *See* Ind. Code Ann. § 34-13-9-9. 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). A court would not simply find that an individual had a religious motive for her actions as a matter of course; 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 determine that religiously-motivated actions stem from sincerely held beliefs. *See Wisconsin v. Yoder*, 406 U.S. 205, 234-35 (1972) (where the 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).

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.

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. Rabbi Danya Ruttenberg, Scholar-in-Residence, National Council of Jewish Women (Jan 31, 2023). 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. *But see* Rabbi Ruttenberg, stating that the “dynamic [prioritizing the pregnant person’s physical and mental well-being] only starts to shift when the birth is already more than half completed (defined in later sources as when the head has emerged)--only then does the life of the baby come into consideration.”).

“[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).<sup>4</sup>

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<sup>4</sup> Various faith traditions hold different definitions on when life begins. For the Court’s convenience, some of the differing definitions are explained below and underscore how narrow and limiting S.E.A. 1 is for the exercise of religious beliefs regarding abortion. 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,

For the Court's convenience, the nexus between religious belief and substantive burden will be addressed in the following manner: what are the Plaintiffs' and Hoosier Jews' sincere religious beliefs, how their conduct regarding abortion is religiously-motivated, and how the conduct is then substantively burdened by S.E.A. 1. This nexus mirrors the first three factors that this Court should use to evaluate sincerity. *See supra* page 8.

Plaintiffs' and Hoosier Jews' religious beliefs have been detailed in this brief already; the analysis thus proceeds to Plaintiffs' and Hoosier Jews' religious motivation. Plaintiffs' and Hoosier Jews' conduct is religiously motivated, with each of the Plaintiffs and Hoosier Jews 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. Defs' Ex. 4 at 51:3-11. Plaintiff 1 is afraid that she will not be able

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<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), <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>; United Church of Christ, Statement on Reproductive Health and Justice, [https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy\\_url/455/reproductive-health-and-justice.pdf](https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf).

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), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html). At various points in time, Catholic scholars and the Catholic Church have espoused the view that "ensoulment" occurs 40 to 80 days after conception; at the time of quickening, *i.e.*, when the fetus first moves inside the womb, usually around 18 weeks of gestation; at or near the time of childbirth; or at some moment during fetal development that is impossible to pinpoint. *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>.

to access abortion, as her religious beliefs dictate, when experiencing physical and mental harm during pregnancy. *See* Pl. Ex. 1 ¶ 10 (describing her religious beliefs); Defs' Ex. 4 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* Defs' Ex. 5 at 22:18-21, 30:16-18; 31:17-18.

Plaintiff 3 is practicing abstinence because she fears falling pregnant and experiencing severe side effects as result of her underlying health conditions. She would not be able to access abortion as her religious beliefs dictate, up to the 120-day mark. *See* Defs' Ex. 6 at 25:2-8; 28:8-11 (describing her religious beliefs). Plaintiffs 4 and 5 are refraining from starting a family, afraid that they would not be able to access abortion, as their religious beliefs dictate, when experiencing physical and mental harm during pregnancy. *See* Defs. Ex. 7 at 15:9-23 (describing her religious beliefs); Defs' Ex. 8 at 21:5-18; 22:2-16 (describing her religious beliefs). Members of the Hoosier Jews have also altered their sexual practices, afraid that they would not be able to access abortion, as their religious beliefs dictate, when experiencing physical and mental harm during pregnancy. *See* Defs' Ex. 10 at 28:19-21; 30:3-13 (describing their religious beliefs).

S.E.A. 1 has substantially burdened the Plaintiffs' and Hoosier Jews' exercise of their religious beliefs regarding abortion. To comply with S.E.A 1's narrow codification of when life begins and near-total abortion ban, Plaintiffs and Hoosier Jews have altered their behaviors, ranging from no sexual intimacy to highly detailed precautions during sexual intercourse. *See* Defs' Ex. 4 at 52:14-17 (Plaintiff 1 alluding to current lack of sexual relations with [her] husband"); Defs' Ex. 5 at 59:2-7 (Plaintiff 2 referring to the extra precautions she now takes during intercourse with her husband); Defs' Ex. 6 at 68:12 (Plaintiff 3 stating she would be intimate again with her fiancée); Defs' Ex. 7 at 23:18-20 (Plaintiff 4 stating she is no longer

trying to get pregnant); Defs' Ex. 8 at 42:11-12 (Plaintiff 5 stating she and her spouse are no longer trying to start a family); Defs' Ex. 10 at 53:6-12 (Hoosier Jews sharing how members altered their sexual practices). This dramatic alteration of behavior in their personal lives shows that Plaintiffs and Hoosier Jews are avoiding the possibility of becoming pregnant, because none of them would be able to access abortion as their religious beliefs dictate.<sup>5</sup> Therefore, S.E.A. 1 places a substantive burden on Plaintiffs' and Hoosier Jews' exercise of their religious beliefs regarding abortion.

### CONCLUSION

Plaintiffs and Hoosier Jews hold sincere religious beliefs about abortion. Plaintiffs and Hoosier Jews demonstrate consistency and clarity in describing their religious beliefs; consistent behavior aligned with those beliefs; sincere motive in bringing this lawsuit; appropriate timing; and credible demeanor. Plaintiffs' and Hoosier Jews' behavior is religiously motivated; S.E.A. 1 places a substantive burden on the exercise of their religious beliefs regarding abortion. Therefore, this Court should affirm the trial court's preliminary injunction.

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<sup>5</sup> 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.



## **CERTIFICATE OF WORD COUNT**

I verify that this brief contains no more than 7,000 words including footnotes.

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