Received: 5/23/2026 12:25 AM
Filed: 06/03/2026 1:34 PM

IN THE INDIANA SUPREME COURT

Appellate Case No. [26S-PL-00128]

INDIVIDUAL MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA, et al., *Defendants/Appellants*,	)	On Petition to Transfer from: Indiana Court of Appeals Case No. 26A-PL-00582
v.	)	On Appeal from the Marion Superior Court Trial Court No. 49D01-2209-PL-31056 The Honorable Christina Klineman, Judge
ANONYMOUS PLAINTIFF 1, et al., *Plaintiffs/Appellees*.	)	

BRIEF OF *AMICUS CURIAE* DOCTOR CALUM MILLER

Asheesh Agarwal
Agarwal Strategies LLC
4638 Hickory Court
Zionsville, IN 46077
703-338-3913
chitown9401@yahoo.com

Dr. Calum Miller
Blackfriars Hall, University of Oxford
St Giles', Oxford OX1 3LY, United Kingdom

Counsel for *Amicus Curiae* Dr. Calum Miller

INTEREST OF *AMICUS CURIAE*

Doctor Calum Miller is a medical doctor and academic who has published widely on abortion policy across journals in law, medicine, ethics, and philosophy. He graduated from the University of Oxford medical school and served as a Research Fellow specialising in abortion policy at the University of Oxford for the last 6 years. He also holds a Master's Degree in Biblical Studies and has published a peer-reviewed paper on the arguments for and against abortion in the Jewish scriptures.

Dr. Miller was born not breathing and would have been eligible for homicide for a few minutes after birth on the alleged religious views of some of the plaintiffs.

SUMMARY OF ARGUMENT

Appellees ask this court to become the first apex court in the world to hold that an individual maintains the right to end the life of another on the basis of subjective personal theology. Rather than act as a shield against unjustified governmental burdens on religious exercise, appellees ask the Court to interpret Indiana's Religious Freedom Restoration Act ("RFRA")[1] to create a religious privilege to inflict lethal harm on third parties by redefining a biological consensus on the beginning of life.

Further, Appellees claim an impending burden to their broad and unprecedented claimed religious beliefs when, in fact, no such burden exists.

[1] Ind. Code § 34-13-9.

Until the year 2024, when political pressure escalated globally, not a single country in the world included an explicit right to abortion within its Constitution. To this day France is the only country with a right to abortion in the Constitution. But even France prohibits most abortions after 16 weeks' gestation[3] – long before the beginning of life proposed by some of the Appellees.[4]

B. Domestic statutes on a worldwide basis almost universally include explicit protections for fetal life.

Of the 193 countries around the world, around sixty of them allow for "abortion on demand." Most of these countries are in Europe or are former communist states.[5] These countries are the exception to the vast majority of countries worldwide, which maintain statutes with broad protections for fetal life.[6]

Of the countries that do allow for "abortion on demand," most place gestational limits on liberal access, thereby implicitly recognising a qualified but legitimate state interest in protecting unborn life. In two of the remaining countries, Canada and South Korea, previously existing restrictive abortion laws were struck down by the apex court.[7] In both cases, the court allowed a moderately permissive law to be installed instead, but the respective legislatures failed to agree upon replacement legislation. And in one other country, Guinea-Bissau , there exists an anomalous lack of abortion law for no discernible reason, though abortion does not appear to be readily or widely accessible. We can assume that

[3] Fr. Const. art. 34.
[4] *Anonymous v. Individual Members of the Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056, slip op. at 3 (Ind. Sup'r Ct. Mar. 5, 2026).
[5] *See Countries Where Abortion is Illegal 2026*, WORLD POPULATION REV. (accessed May 22, 2026), https://worldpopulationreview.com/country-rankings/countries-where-abortion-is-illegal.
[6] *Countries Where Abortion is Illegal*, *supra* note 5.
[7] *See R. v. Morgentaler*, [1988] 1 S.C.R. 30 (Can.); *Case on the Crime of Abortion* [2017Hun-Ba127, April 11, 2019] (S. Kor.).

the lack of law is not because of strong indigenous support for abortion up to birth, given the cultural, religious, and geographical context.

In sum, virtually every country in the world recognises some form of legitimate state interest in protecting unborn life. Objectively, as enumerated above, the vast majority of the worlds' countries explicitly restrict abortion, except in extreme circumstances like those in Indiana's abortion law. Excluding Europe, fewer than twenty-five out of 148 countries permit "abortion on demand."[8]

C. Domestic jurisprudence throughout the world has largely upheld protections of the right to life of unborn children.

A variety of domestic courts worldwide, including various apex courts, have explicitly upheld the right to life of the unborn child from the time of conception. A sampling of such holdings includes the Philippines, Ireland, Poland, El Salvador, Bolivia, Germany, Kenya, and Uganda.:

D. International law is substantially void of the "right" to abortion.

No UN treaties contain a right to abortion. The Convention on the Rights of the Child, signed though not ratified by the U.S., declares that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"[9] thereby recognising the existence of a child prior to birth, and prescribes a wide range of protections for all children, including a prohibition on discrimination on any grounds, including with respect to "social origin… disability, birth or other status"[10] – the precise grounds on which unborn children are denied personhood.

---

[8] *See Countries Where Abortion is Illegal*, *supra* note 5.
[9] *Convention on the Rights of the Child* pmbl., Nov. 20, 1989, 1577 U.N.T.S. 3, http://ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.
[10] *Convention on the Rights of the Child*, *supra* note 10, at art. 2.1.

The International Covenant on Civil and Political Rights ("ICCPR"), signed and ratified by the U.S., explicitly forbids the death penalty for two categories of people: (i) children under the age of 18; and (ii) pregnant women.[11] This kind of specific exclusion signals a special and intentional legal concern for unborn children. The same ICCPR provides that, "everyone shall have the right to recognition everywhere as a person before the law."[12] If the term "person," as used in Article 16, merely referred to those that the law considered "persons," this Article would be entirely redundant. Clearly, the ICCPR intends to recognise a natural or biological category, rather than merely a legal one. At the time of drafting of the ICCPR, virtually every country in the world maintained a near-total prohibition on abortion.

The American Convention on Human Rights, signed though not ratified by the U.S., expressly states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception."[13]

On this basis alone, the notion that the Court should allow for the completely subjective, theological reclassification of what constitutes human life for purposes of easing an alleged religious burden is contrary to global, as well as domestic, standardized practice and precedent.

E. Regional courts are widely consistent in their refusal to recognize the "right to an abortion."

[11] *International Convention on Civil and Political Rights* pt. III, art. 6.5, Mar. 23, 1973, 999 U.N.T.S., https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[12] *ICCPR*, *supra* note 13, at art. 16.
[13] *American Convention on Human Rights* 4.1, Nov. 22, 1969, 1144 U.N.T.S. 123.

Regional courts have consistently refused to declare a right to abortion under their human rights instruments. Even in Europe, where a majority of countries do permit some form of "abortion on demand,"[14] with gestational limits, typically 12 weeks, regional courts have declined to explicitly recognize such a right.

For example, in *A, B and C v. Ireland*, the European Court of Human Rights upheld Ireland's law prohibiting abortion except when the mother's life was at risk[15] – a law significantly stricter than Indiana's abortion law and with less exceptions.

In a recent decision, *Beatriz v El Salvador*, the Inter-American Court of Human Rights likewise refused to grant the relief sought, namely, a declaration that El Salvador violated Beatriz's rights by prohibiting abortion (in totality).[16]

F. Globally, religious freedom considerations do not confer a right to abortion.

Considering that the overwhelming majority of courts, especially at a regional level, have failed to find a human right to abortion (with some exceptions granting a limited right: Canada, South Korea, Mexico, Colombia, Ecuador[17]) *a fortiori* they have failed to discern a right to abortion pursuant to the right to religious freedom. Indeed, the idea would not even be seriously entertained in most parts of the world – which explains the lack of litigation thus far. The only case

[14] *See Countries Where Abortion is Illegal*, *supra* note 5.
[15] *A, B & C v. Ireland*, 53 Eur. H.R. Rep. 13 (2010), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-102332%22]}.
[16] *Beatriz v. El Salvador*, Inter-Am. Ct. H.R. (ser. C) No. 549 (Nov. 22, 2024), https://www.corteidh.or.cr/docs/casos/articulos/seriec_549_esp.pdf.
[17] *See Morgentaler*, 1 S.C.R. 30 (Can.); *Case on the Crime of Abortion* [2017Hun-Ba127] (S. Kor.); *Acción de Inconstitucionalidad 148/2017*, Suprema Corte de Justicia de la Nación, Pleno, Sept. 7, 2021 (Mex.); *Sentencia C-355/06*, Corte Constitucional, mayo 10, 2006 (Colom.); *Corte Constitucional*, *Acción Pública de Inconstitucionalidad* Expediente No. 34-19-IN/21 (Apr. 28, 2021) (Ecuador).

along similar lines of which I am aware after extensive research is a case in Uganda which is yet to be decided at first instance. But since the Ugandan Constitutional Court recently held that various diverse provisions of the Constitution are consistent with their near-total ban on abortion,[18] and since the Constitution of Uganda explicitly protects the right to life of unborn children,[19] the case seems very unlikely to succeed.

No court in the world has identified, pursuant to the right to religious freedom, a right to abortion. It would be deeply surprising for Indiana's highest court to discover such a right given that no author of any human rights instrument has ever made such a religious freedom right to abortion explicit, and no court in the world has ever made such a discovery – despite religious freedom being a widely cherished human right across the world.[20]

In sum, Indiana would be the only jurisdiction in the world to have identified a religious freedom right to abortion. Comparative international law not only fails to support such an idea; it refutes it decisively.

II. Comparative international law demonstrates a virtually unanimous consensus (implicitly or explicitly) on the existence of a legitimate state interest in protecting fetal life.

The evidence above demonstrates that there is a virtual unanimous consensus across the globe that governments maintain a legitimate interest in protecting human life. It is hard to fathom why any jurisdiction would have limitations on

[18] *Constitutional Petitions Nos. 25 of 2020 & 10 of 2017* (Const. Ct. Uganda at Kampala 2025), https://www.cehurd.org/download/consolidated-judgements-10-25-of-2020-on-abortion-for-cehurd-and-hrapf/?wpdmdl=14534&ind=1763393489059&refresh=f89705af&filename=1763393488wpdm_CP-NO.-25-2020-10-2017-JUDGEMENT001_compressed.pdf.
[19] Uganda Const. art. 22, § 2.
[20] *See, e.g.*, *ICCPR*, *supra* note 13, at art. 18.

abortion – especially wide-ranging restrictions, as exist throughout the majority of the countries in the world – unless they believed that protecting fetal life was an important aim, and one that the state may legitimately pursue.

As such, we may logically conclude that virtually the entire world at least implicitly believes the protection of fetal life to be a legitimate state interest, even if it is protected only partially.

A. Many courts, even in judgments hostile to fetal rights, have explicitly held that protecting fetal life is a legitimate state interest.

By way of example, the European Court of Human Rights held that Ireland's almost-total abortion ban pursued a legitimate aim in *A, B, and C v Ireland*;[21] the Supreme Court of the United States held the same even while imposing liberal abortion laws on every state in *Roe v Wade*.[22] Even while criticising Northern Ireland's near-total ban on abortion in *obiter* remarks, the UK Supreme Court seemingly unanimously agreed that Northern Ireland's general prohibition on abortion (e.g. in cases of non-fatal fetal disability) was consistent with Article 8 of the European Convention on Human Rights – thereby entailing that it pursued a legitimate aim.[23] The Colombian Constitutional Court – one of the few courts to unilaterally decriminalise abortion – nevertheless held in 2006 that the protection of life at all stages, including during gestation, was a constitutionally protected good.[24] And in *Murillo v Costa Rica*,[25] the Costa Rican

[21] *A, B & C v. Ireland*, 53 Eur. H.R. Rep. 13.
[22] 410 U.S. 113, 164 (1973).
[23] *In re N. Ir. Hum. Rts. Comm'n's Application for Jud. Rev.*, [2018] UKSC 27, https://supremecourt.uk/uploads/uksc_2017_0131_judgment_a9f7324d56.pdf.
[24] *Sentencia C-355/06*, Corte Constitucional, mayo 10.
[25] *Artavia Murillo et al. v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257 (2012).

court, while rejecting Costa Rica's protection of embryos from destruction as part of in vitro fertilisation (IVF), clearly accepted the requirement of the American Convention on Human Rights that human life must, in general, be protected from conception (while carving out exceptions from this).[26]

III. Historically and fundamentally, the major world religions have been consistent in general opposition to abortion.

A. Judaism: abortion is treated as a grave wrong, permitted only under narrow exceptions.

Judaism has historically been opposed to abortion unless the mother's life is at risk – a provision already allowed in Indiana. The extension of a mother's life being at risk to "risk of emotional harm" is an extremely modern innovation that bears little resemblance to historical Jewish teaching on the subject. Likewise, although Judaism can reasonably be interpreted as requiring abortion if the mother's life is at risk, the idea that Judaism would *require* abortion rather than merely permit it, in cases where the mother's life is *not* jeopardised, has minimal basis in historical Jewish teaching.

For example, in the Second Temple period, Pseudo-Phocylides (50 BC – 50 AD) condemns abortion,[27] as do the Sibylline Oracles from the same period.[28] The Parables of Enoch, from the early first century, describe an evil angel causing abortions,[29] while the Epistle of Enoch (a century earlier) describes people aborting unborn children as a sign of living under God's wrath.[30]

---

[26] *American Convention on Human Rights*, *supra* note 13, at 4.1.
[27] 184-86.
[28] 2.281-282.
[29] 1 Enoch 69.12.
[30] 1 Enoch 99.5.

Josephus, perhaps the greatest Jewish historian ever (first century AD), wrote that "The law moreover enjoins us to bring up all our offspring: and forbids women to cause abortion of what is begotten; or to destroy it afterward". He subsequently calls women who have abortions "murderers."[31] Philo (first century AD) clearly prohibited abortion, including in early pregnancy specifically, and noted that the *law* also forbade abortion.[32] In later pregnancy he supported punishing abortion with execution.[33] Even the Talmud – the fundamental text of Rabbinic Judaism – explicitly says that the covenant of Noah ("Whoever sheds the blood of man, by man shall his blood be shed") applies to fetuses.[34]

The passages of the Hebrew scriptures that some have interpreted to allow abortion or to indicate a beginning of life after birth have been widely mistranslated and misinterpreted.[35] For example, some have held that God blowing the breath of life into humans in Genesis 2:7 means that life begins when humans begin to breathe. But the same Hebrew scriptures describe God's spirit coming to the "bones in the womb of a woman with child."[36] Tacitus, the great Roman historian, specifically highlighted as one of the most important Jewish distinctive features that they did not perform abortions: "the Jews see to it that their numbers increase. It is a deadly sin to kill a born or unborn child… hence their eagerness to have children."[37]

---

[31] Against Apion, 2.25.
[32] Hypothetica, 7.7.
[33] Special Laws, 3.117-118.
[34] Sanhedrin 57b.
[35] Calum Miller, *Why Biblical Arguments for Abortion Fail*, 29 CHRISTIAN BIOETHICS 11 (2023), , https://academic.oup.com/cb/article-abstract/29/1/11/7103199.
[36] Ecclesiastes 11:5.
[37] Histories, 5.5.

B. The longstanding opposition to abortion maintained in common Christian teachings reflects traditional Jewish tenets.

Christianity has reflected a strong opposition to abortion in general since the first century, reflecting Judaism before it. The Didache, written in the late first century and considered scripture by many early Christians, condemns abortion as murder,[38] including possibly early abortions specifically (by condemning the "murder of children, the [plasmatos] of God"). The Epistle of Barnabas, written at the start of the second century and also considered scripture by many early Christians, says "you shall not slay the child by procuring abortion."[39] The Apocalypse of Peter, from the early second century, also considered scripture by many early Christians, condemns abortion in even more graphic terms.[40] ,:

Virtually every prominent Christian writer in the first 400 years of the church condemned abortion explicitly, often as murder: Athenagoras (177 AD), Athenagoras (177 AD), Tertullian (late 2nd century), Clement of Alexandria (late 2nd century), Minucius Felix (early 3rd century), Hippolytus (early 3rd century), Cyprian (mid 3rd century), Lactantius (early 4th century), Jerome (late 4th century), Ambrose (late 4th century), John Chrysostom (late 4th century), Basil the Great (late 4th century), and Augustine (late 4th century), among others.

When Church law began to be developed in the early 4th century, those procuring abortions were banned from Communion for life. Even as some Christians began to believe in delayed ensoulment centuries after Jesus existed,

[38] 2.2.
[39] 19.5.
[40] 25.

they still believed that early abortion was impermissible (even if not murder). Except where the mother's life is at risk, we have not reliably identified a single Christian writer who condoned abortion in the 1,900 years before last century.

C. Islam: sanctity of fetal life with limited exceptions.

Islam has traditionally held a view of the evolving and increasing value of the unborn child as it develops but nevertheless has held that abortion is impermissible except where **both** the pregnancy is sufficiently early **and** extreme circumstances obtain[41] – generally, circumstances which are already allowed by Indiana law. This wide-ranging Islamic position is reflected in the generally prohibitive laws that exist and are prevalent in almost every Islamic country. Buddhism and Hinduism have likewise traditionally prohibited abortion,[42] as has Sikhism.[43]

A. Opposition to abortion is not the imposition of an unusual religious dogma on wider society.

American survey data shows that only 40% of people who seldom or never go to any religious service support abortion in all circumstances, and only 30% of the American public more broadly.[44] This reflects the overwhelming global consensus discussed earlier. We may logically conclude that the legitimate interest in protecting fetal life – even despite differences on the scope and limits of that goal – is widely shared by the vast majority of Americans, global citizens, and global

[41] Hamza Yusuf, *When does a human foetus become human?* in ISLAM AND BIOMEDICINE (ed. Afifi al-Akiti & Aasim I. Padela). Cham: Springer.
[42] Yusuf, *supra* note 43.
[43] British Broadcasting Corporation (2009). "Sikhism and abortion": https://www.bbc.co.uk/religion/religions/sikhism/sikhethics/abortion.shtml
[44] Gallup, "Legality of Abortion Demographic Tables," (2026),https://news.gallup.com/poll/244097/legality-abortion-2018-demographic-tables.aspx

jurisdictions. Indeed, even the miniscule minority who believe that abortion should be always permissible may still, in some (or many) cases, demonstrably believe that protecting fetal life is a legitimate state interest (as did the Supreme Court in *Roe v Wade*), even if they also believe that it is always outweighed in practice.[45]

All in all: the notion that there is no compelling state interest in protecting fetal life is truly an extreme position – both in America and globally.

B. RFRA Implications.

RFRA protects the sincerely held religious beliefs of an individual or class, but it does not require the State to accept a claimant's theological reset of an entire global, historical tradition—particularly where that characterization is fundamentally contested and would entail grave harm to a third party.[46]

The court can certainly acknowledge religious diversity, absolute freedom of religious *thought*, and the notion that no-one can claim to know each and every individualized religious practice or belief (which is the benefit of understanding and relying upon broad, historical practice) without interpreting RFRA to be a loophole for the crime of homicide or adjacent life-ending crimes. No one – not even the most passionate defenders of religious freedom – has ever argued that religious freedom is absolute. It has limits: and the ending of human life is one of the most obvious limits there is.

II. The beginning of a human being's life cycle at fertilisation is an overwhelming biological consensus.

[45] See generally, Roe v. Wade, 410 U.S. 113 (1973).
[46] See generally Ind. Code § 34-13-9 (2025).

A. The concept of "life beginning at conception" is not religious, but scientific.

Notably, although the major world religions have united on a general opposition to abortion, none of their generally known scriptures mention "fertilisation." The reason for the notable omission is that life beginning at fertilisation is not a religious position at all – it was a discovery about which religious leaders knew nothing until very recently in the modern era.

While fetal protections were increasingly championed by doctors (rather than religious leaders) and enacted across the Anglophone world throughout the 19th century as a result of general advances in embryology,[47] it was only in 1876 that fertilisation was discovered by Oskar Hertwig. *This* – and no other historical event or religious doctrine – is the sole reason that anyone believes in fertilisation as the beginning of a human organism today.

B. The notion that life begins at fertilisation is a less divisive scientific notion than is often portrayed.

This consensus is far less controversial than is sometimes supposed. For example, a recent survey of 5,500 biologists – 85% of whom were pro-choice and 63% of whom were non-religious – found that 95% agreed that the life cycle of a human organism begins at fertilisation.[48] The same survey asked the general public who were the experts on when life begins, and found a decisive majority believed biologists were the experts.[49]

---

[47] Jones, D.A. (2005). *The Soul of the Embryo*. London: Continuum.
[48] Jacobs, S.A.,"The scientific consensus on when a human's life begins," Issues in Law and Medicine (2021), 36(2): 221-233.
[49] Id.

It is not difficult to find myriad examples of scientific textbooks and papers noting the beginning of life at fertilisation, almost always in passing or assumed as a given, on account of the lack of controversy on this point among biologists.[50] Identifying the true "beginning of life" may be a difficult concept for some activists and judges to determine independently. For biologists, however, it is very easy and has been answered decisively.

Consider briefly the logical consequences of holding that "life" really is an esoteric philosophical question on which religious people can decide their own answers. When I was born, I had an Apgar score of 2/10 – meaning I was nearly dead. I was not breathing at all. And, yet, I was clearly not dead. I was a human being with human rights, including the right to life. Yet, according to the alleged religious views of some of the appellees in this case, according to which life begins at the first breath, I was ripe for murder at this stage, and religious freedom principles should have permitted my mother such.[51]

III. Religious freedom cannot become a veto power over scientific facts or compelling state interests.

This point is uncontroversial on reflection and trite as a matter of law. Consequently, the lower courts have agreed that religious freedom can be overridden when there is a compelling state interest (among other criteria).[52] Yet, the language of the decisions sometimes alludes to a more absolutist approach to

[50] Condic, M.L., "The origin of life at sperm-egg fusion: quotes compiled from medical textbooks and peer-reviewed scientific literature." Bioethics Defense Fund (2021), https://bdfund.org/wp-content/uploads/2021/12/2021LifeQuotesCondic.pdf

[51] Complaint for Preliminary Injunction and Declaratory Relief passim, ¶ 55, at 11, Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind., No. 49D01-2209-PL-031056 (Ind. Super. Ct. Sept. 2022), https://www.aclu-in.org/app/uploads/2022/09/complaint_to_file.pdf.

[52] For example, see Sherbert v. Verner, 374 U.S. 398, 406–09 (1963) (holding that substantial burdens on religious exercise are invalid absent a compelling governmental interest).

religious freedom – for example, in allowing that no one person's definition of the beginning of life is more valid than any other. And, yet, the example above shows that this principle cannot possibly be accepted: if some of the plaintiffs are correct that life begins at the first breath, I was not alive when I was born and hence, presumably, could have legitimately been killed during those first few minutes. Yet, this is clearly absurd: I was obviously alive at that point, I obviously had human rights, including the right to life, and while anyone might be free to *believe* whatever they want about whether I was alive, no one in the bounds of sanity would allow such beliefs to cross into action because (ostensibly) "no one can agree when life begins." Biologists can. So can we.

IV. Protecting fetal life is a compelling state interest.

As is detailed in the above analysis, the vast number of varied authorities throughout the world implicitly agree that there is a legitimate state interest in protecting fetal life. Almost all countries put legal limits on abortion, almost all pro-choice people, even in the progressive West, believe in legal limits, no courts outside the US have ever held any unlimited right to abortion, no UN treaties contain any right to abortion at all, and so on. Even *Roe v. Wade* – the landmark decision establishing an abortion regime more liberal than almost any country in the world, and which has been roundly criticised even by pro-choice legal scholars (including Justice Ruth Bader Ginsburg) – explicitly held that there is a compelling interest in protecting fetal life.[53]

[53] Roe v. Wade, 410 U.S. 113, 163–64 (1973).

We can go even further: not only does virtually every country in the world implicitly hold – either in statute, jurisprudence, or both – that protecting fetal life is a legitimate state interest – a number of courts in some of the most progressive jurisdictions in the world, even while dismantling prenatal rights, have explicitly held that the state has a legitimate interest in protecting fetal life.

Overall, the idea that there is no compelling state interest in protecting fetal life is one of the most exotic and fanciful jurisprudential ideas in history.

V. Allowing exceptions to a legal prohibition on abortion does not nullify a state's claim to advancing its compelling interest.

A key argument presented in the lower court decision in this case is that Indiana cannot have a compelling state interest in protecting fetal life because Indiana has various policies which do not optimally protect fetal life.[54] This argument is obviously and fatally flawed: namely in that there are clear examples where a state can have a compelling state interest even though – for various reasons – it is unable or unwilling to fully pursue that state interest. Indeed, many of the court decisions mentioned above recognise an interest in protecting fetal life that persists despite not being fully pursued.

A. Examples to illustrate that exceptions to a prohibition do not indicate lack of compelling interest.

To give just a few examples: it is likely unanimously and globally accepted that there is a compelling state interest in preventing adult humans from being killed. And, yet, in some cases, the state permits of the killing of adults, with the

[54] Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind., No. 49D01-2209-PL-031056, Order on Cross-Motions for Summary Judgment at 14 (Marion Super. Ct. Mar. 5, 2026), https://www.documentcloud.org/documents/27773546-rfra-abortion-ban-lawsuit/.

most obvious example being self-defence. There is a compelling state interest in national security: and yet national security is not consistently pursued at all costs (e.g. mass surveillance). There is a compelling state interest in public health, and, yet, the government cannot, in general, legally oblige people to accept certain treatments.

To give a particularly germane example: *Roe v. Wade* itself held that the state has a compelling interest in protecting potential life (of the unborn) later in pregnancy – and yet allowed states to vary widely in the extent to which they pursued that protection (e.g. prohibiting abortion fully in the third trimester, vs allowing it on demand in the third trimester).[55] As such, an understanding should follow that a compelling interest does not disappear just because it is not fully upheld.

VI. There are various reasons for not fully pursuing a compelling interest, and political infeasibility is no less legally valid than other reasons.

In the examples used above, there are various reasons as to why a state may not fully pursue a compelling interest: most typically because it clashes with other rights. But another reason is that pursuing the compelling interest is politically infeasible. This is obviously the case in Indiana, where a total prohibition on abortion and discarding embryos created via IVF would be significantly less politically popular than the current law, would have little chance of lasting more than a couple of years, and would have the potential to mobilise significant opposition to that state interest, making it an overall counterproductive effort.

[55] Roe v. Wade, 410 U.S. 113 (1973).

This may be a less glamorous reason for not pursuing a compelling interest, but that is irrelevant to its legal pedigree. A compelling state interest may fail to be pursued because it clashes with other rights, and yet it remains a compelling interest. Or it may fail to be pursued for more pragmatic reasons – nevertheless, it remains a compelling interest. We might not like this parity – but there is no constitutional, statutory, or jurisprudential principle to nullify it, and so the parity remains.

This partly answers another question the lower courts pose in this case – namely, why certain exceptions are contemplated under Indiana's abortion law, but a religious freedom exception is not.[56] This is not as difficult a question as the courts suppose. One might similarly ask why there are "secular" exceptions to homicide (self-defence) but not religious exceptions to homicide. The answer to that question does not require significant cognition.

In casu, there are at least two answers to this question: one is that the former exceptions are politically infeasible to correct while the latter is not. The other is that the former exceptions cannot easily be exploited to allow de facto abortion on demand, while the religious freedom exception can (since anyone could claim to have a religious commitment to obligatory abortions for any given situation). If either answer succeeds (and in fact both do), the state is not being inconsistent. States arguably have discretion to balance their compelling interest with various principled and pragmatic considerations.

[56] See generally Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind., No. 49D01-2209-PL-031056, Order on Cross-Motions for Summary Judgment at 16–17 (Marion Super. Ct. Mar. 5, 2026).

This balancing act means that the state can retreat from fully prosecuting their interests where doing so would be politically inexpedient, where they have achieve 90% of their interests and where retreating does not leave an infinitely exploitable loophole, and where fully prosecuting their interests could undermine (culturally and politically) those same interests. At the same time, the state can fully prosecute their interests where doing so is politically achievable, would not cause significant cultural backlash, and where failure to do so would lead to gaping loopholes ripe for exploitation, thereby achieving virtually none of their interests.

VII. The state cannot use less intrusive measures, since they are inadequate to solve the problem of abortion.

A. Evidence shows that restrictions on abortion are successful in safeguarding a state's compelling interest in protecting all forms of human life.

First, we note that there is extensive evidence that restrictions on abortion work. There is much more that could be said about this as the evidence is voluminous,[57] but the Turnaway study (and myriad studies of the same design) demonstrates this most decisively.[58] In this study, women attending abortion clinics are (in some cases) denied abortions.[59] The study found that around 70% of those women denied abortions ended up giving birth, rather than obtaining an abortion elsewhere.[60] This demonstrates that unavailability of abortion services has a strong deterrent effect against abortion. This has been recognised even by

[57] Miller, C., "Aborcja, medycyna, i etyka – fakty, mity, wyzwania [Abortion, medicine, and ethics; facts, myths, and challenges] (2024)," Medycyna Praktyczna, 12(406): e83-94.
[58] Diana Greene Foster, The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion (2020). See also Advancing New Standards in Reproductive Health (ANSIRH), The Turnaway Study, https://www.ansirh.org/research/ongoing/turnaway-study (last visited May 22, 2026).
[59] Id.
[60] Id.

one of America's leading pro-choice researchers, Diana Greene Foster, who led the Turnaway study: "Stop saying that making abortion illegal won't stop people from having them… Research in the United States and abroad shows that when women are denied legal abortions, many carry their unwanted pregnancie to term and give birth… In the University of California San Francisco study I lead… more than two-thirds of women who were denied abortions because they were too late in pregnancy carried their unwanted pregnancies to term. Scientists in other countries where abortion is legal—Bangladesh, Nepal, South Africa, and Tunisia—have found that among women who are denied legal abortion, about half get an abortion somewhere else and half carry the unwanted pregnancy to term".[61]

B. The most commonly cited measures for decreasing sought after abortion, and thereby protecting prenatal life, are access to contraceptives and sexual education.

The most commonly cited measures for preventing abortions (and thereby protecting prenatal life) are widespread contraceptive and sexual education access. The problem with this argument is that other countries in Western Europe, such as my own (the UK), have tried this for decades and still have very high abortion rates. In the UK, we have around 300,000 abortions a year – around 1 in 3 babies.[62] This is despite the fact that we have free contraception available almost everywhere and widespread sex education in schools. A full half of abortions in the UK are performed on women who were already using contraception.[63]

---

[61] Foster, D.G. ,"Stop saying that making abortion illegal won't stop people from having them," Rewire News (2018), https://rewirenewsgroup.com/2018/10/04/stop-saying-that-making-abortion-illegal-doesnt-stop-them/.

[62] UK Government, "Abortion statistics for England and Wales: 2023," (2026), https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2023.

[63] Spencer, M., "Half of women who've had an abortion were failed by contraception, says BPAS," Standard (2017), https://www.standard.co.uk/lifestyle/half-of-women-who-ve-had-an-abortion-were-failed-by-contraception-a3582611.html.

CONCLUSION

The State of Indiana has a compelling interest in protecting fetal life. The legitimacy of the state's interest in doing so is recognised either implicitly or explicitly by virtually every country and court in the world. This compelling interest is not diminished by Indiana's failure to fully pursue that interest at any cost, nor by the reasons for its failure to do so. Even if it were properly implicated, Indiana's RFRA does not require that the State of Indiana take such drastic measures as to become an outlier on a global scale in allowing anyone to determine who qualifies as a human being – and therefore who they may kill.

The court should reverse the decision of the trial court.

Dated: May 22, 2026

Respectfully submitted,

AGARWAL STRATEGIES LLC

/s/ Asheesh Agarwal
Asheesh Agarwal # 28856-49
4638 Hickory Court
Zionsville, IN 46077
703-338-3913
chitown9401@yahoo.com

Counsel for Amicus Curiae
Dr. Calum Miller

WORD COUNT CERTIFICATE

I verify that this Brief contains no more than 7,000 words.

/s/ Asheesh Agarwal
Asheesh Agarwal # 28856-49
4638 Hickory Court
Zionsville, IN 46077
703-338-3913
chitown9401@yahoo.com

Counsel for Amicus Curiae
Dr. Calum Miller

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May 2026, the foregoing *Brief of Dr. Calum Miller* was filed with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court via the Indiana E-filing System ("IEFS") and contemporaneously served upon the following persons:

Todd Rokita
James A. Barta
Jefferson S. Garn
Robert Belden
Lauren LaBaumbard
John P. Lowrey
Office of the Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204

Kenneth J. Falk
Stevie J. Pactor
Gavin M. Rose
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

Zechariah Yoder
Adler Attorneys
136 South 9th Street
Noblesville, IN 46060

Joshua Blackman
1303 San Jacinto St.
Houston, TX 77002

Howard Slugh
2400 Virginia Ave. N.W., Apt. C619
Washington, DC 20037

/s/ Asheesh Agarwal
Asheesh Agarwal # 28856-49