



(Order Granting Plaintiffs' Motion for Preliminary Injunction at 1).

3. The plaintiffs at the time of this Court's preliminary injunction determination consisted of five women, Anonymous Plaintiffs 1-5, and an organization, Hoosier Hews for Choice. (*Id.* at 12-22).

4. Subsequent to the grant of the preliminary injunction, Anonymous Plaintiff 3 was dismissed from this action as she moved out of the State of Indiana. (Stipulation of Dismissal without Prejudice and Acknowledgment of Stipulation of Dismissal, both on February 13, 2023).

5. The State has appealed the preliminary injunction order and that appeal is fully briefed and set for oral argument before the Indiana Court of Appeals on September 12, 2023. (No. 22A-PL-02938).

6. At the time that this Court entered its preliminary injunction order a separate injunction had been entered against S.E.A. 1 by the Monroe Circuit Court on the grounds that the statute violated the Indiana Constitution. However, on June 30, 2023, the Indiana Supreme Court, issued its opinion vacating the preliminary injunction and remanding the case back to the trial court. *Members of the Medical Licensing Board of Indiana v. Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky, Inc.*, –N.E.3d–, No. 22S-PL-338, 2023 WL 4285163 (Ind. June 30, 2023).

7. The complaint in this case was filed as a putative class action pursuant to Rule 23(B)(2) of the Indiana Rules of Trial Procedure. (Motion to Certify Case as a Class Action,

filed on September 12, 2022).

8. Subsequent to the grant of the preliminary injunction, on June 6, 2023, this Court issued its Order Granting Plaintiffs' Motion to Certify Case as Class Action, certifying the following class pursuant to Rule 23(B)(2):

All persons in Indiana whose religious beliefs direct them to obtain abortions in situations prohibited by Senate Enrolled Act No. 1 (ss) who need, or will need, to obtain an abortion and who are not, or will not be, able to obtain an abortion because of the Act.

(*Id.* at 6, 28).

9. The State has moved to be allowed to pursue an interlocutory appeal of this class certification order pursuant to Appellate Rule 14(C), but the Indiana Court of Appeals has not yet ruled on the State's application. (Cause No. 23A-PL-01313).

*The issue presented by this motion*

10. Questions have been raised as to the extent that this Court's preliminary injunction order extends to members of the certified class and extends to protect providers of abortions who deliver abortions to persons entitled to receive them under the Court's preliminary injunction.

11. For the reasons noted below, plaintiffs believe it is clear that the preliminary injunction both extends to class members and necessarily protects those who provide abortions allowed by the preliminary injunction to those class members. Nevertheless, plaintiffs believe that it would be appropriate for this Court to clarify its injunction to make this explicit to avoid erroneous denials of otherwise permitted abortions.

*The ability of this Court to clarify the preliminary injunction*

12. A trial court has the authority to clarify its orders, as necessary. *See, e.g., Fackler v. Powell*, 839 N.E.2d 165, 167 (Ind. 2005) (referring to clarification of orders in a dissolution of marriage action); *Hannum Wagle & Cline Engineering, Inc. v. American Consulting, Inc.*, 64 N.E.3d 863, 872 (Ind. Ct. App. 2016) (noting that this Court modified its preliminary injunction after a motion to do so by defendants). As observed by a federal appellate court, “[d]uring the pendency of an appeal, the District Court retains inherent authority to clarify the scope and purpose of its prior orders.” *Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel*, 346 F. 3d 360, 363 (2d Cir. 2003).

13. As set out below, the clarification that plaintiffs seek does not change the substance of the preliminary injunction. However, to the extent that this Court believes it is necessary to avoid confusion, the preliminary injunction should be clarified. *See, e.g., Al Otro Lado v. Gaynor*, 513 F. Supp. 3d 1253, 1258 (S.D. Cal. 2021) (noting that plaintiffs had filed a Motion for Clarification of the Preliminary Injunction after an appeal was filed as the parties had a dispute as to the scope of the original preliminary injunction); *Miller v. Davis*, No. 15-44-DLB, 2015 WL 9461520, \*1 n.3 (E.D. Ky. Sept. 11, 2015) (the court notes that subsequent to its preliminary injunction order it had granted a motion by plaintiffs “to Clarify the Preliminary Injunction Pending Appeal and expanded its ruling to include other individuals who are legally eligible to marry in Kentucky”).

*Inasmuch as this Court’s preliminary injunction protects “plaintiffs,” the members of the certified class are plaintiffs, and the injunction applies to them*

14. Plaintiffs believe that the injunction should be deemed to apply to the certified class without any further action by the Court although, as noted, clarification of this point would be useful to avoid confusion and to protect the class.

15. The State clearly acknowledges that the class certification relates directly to the preliminary injunction. This is apparent from the State's motion to the Indiana Court of Appeals to accept an interlocutory appeal of this Court's class determination. (The State's motion is attached.) The State erroneously argues, at page 8 of its motion, that the injunction fails to give guidance as to how it is to comply with the preliminary injunction and argues further that:

[w]ith respect to the certified class, this problem is compounded, as the State cannot know who among women might become pregnant, desire an abortion, and have a sincere religious motivation for doing so. . . .

For purposes of this motion, the point is that the class certification and preliminary injunction orders overlap, interrelate, and inform the legal analyses relevant to each.

Obviously, the State would not consider the class certification and preliminary injunction orders to "overlap," "interrelate," or "inform" each other unless it considered the preliminary injunction to apply to the class.

16. If the Court had certified the class prior to issuing the preliminary injunction, there is no doubt that the relief would have extended to the plaintiff class members. *See, e.g., Miller v. Vilsak*, No. 4:21-cv-0595-O, 2021 WL 11115194, \*12 (N.D. Tex. July 1, 2021) (granting a preliminary injunction and class certification and noting that the injunction

applied to those who are “a member of the Certified Classes”); *Scholl v. Mnuchin*, 489 F. Supp. 3d 1008, 1043 (N.D. Cal. 2020) (“if plaintiffs meet the requirements under Rule 23, the court will provisionally certify a class for purposes of the preliminary injunction”); *B.E. v. Teeter*, No. C16-0227-JCC, 2016 WL 3939674, \*1, \*5 (W.D. Wash. July 21, 2016) (applying the prior-issued preliminary injunction to the newly certified class); *Lovely H. v. Eggleston*, 235 F.R.D. 248, 262 (S.D.N.Y. 2006) (granting applications for class certification and preliminary injunction and extending preliminary injunction to the class members).

17. Given that the State concedes that the preliminary injunction applies to the class and given that the injunction would apply to the class if the class had been certified first, no prejudice would ensue for the Court to recognize what is conceded and obvious and clarify the injunction.

18. In an unreported decision that was part of the litigation leading to the Supreme Court’s recent decision in *Allen v. Milligan*, –U.S.–, 143 S. Ct. 1487 (2023), the three-judge district court issuing the original decision in the case was asked by the defendants to clarify its preliminary injunction in the case and did so, after indicating “there should be no confusion, but if there is, we expressly clarify” the prior order. *Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM & 2:21-cv-1530-AMM, 2022 WL 272637, \*1 (N.D. Ala. Jan. 26, 2022).

19. The same is true here. There should be no confusion, but if there is this Court should clarify its preliminary injunction to hold that it applies to the class as well as to

the named plaintiffs.

*The injunction protects abortion providers to the extent that they provide abortions to plaintiffs and class members who are authorized by the preliminary injunction to obtain abortions*

20. “It is widely accepted . . . that a court may impose the equitable relief necessary to render complete relief to the plaintiff, even if that relief extends incidentally to non-parties.” *City of Chicago v. Barr*, 961 F.3d 882, 920-21 (7th Cir. 2020) (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), and other cases).

21. The defendants in this case are the Individual Members of the Medical Licensing Board, who have the power to discipline doctors who violate S.E.A. 1, Ind. Code § 25-22.5-8-6(b), and prosecutors who may enforce the criminal penalties that can be imposed on physicians who violate the law, Ind. Code § 16-34-2-7. S.E.A. 1 imposes no criminal penalties against pregnant persons who obtain abortions.

22. This Court’s preliminary injunction therefore runs against the persons who will enforce the law against abortion providers.

23. Again, there should be no confusion, but to the extent that there is, the Court should clarify the preliminary injunction to make it abundantly clear that the injunction protects providers who deliver abortion services as allowed by the injunction. This is obviously necessary to effectuate the religious rights of the plaintiffs and the members of the certified class, for prohibiting any Indiana providers from performing religiously mandated abortions would burden the plaintiffs’ religious exercise in the exact same way as prohibiting persons from obtaining abortions.

*Conclusion*

24. In order to protect the rights of the plaintiffs and the class members, as recognized by the preliminary injunction, this Court should clarify its preliminary injunction by explicitly stating that it applies to both the named plaintiffs and the members of the class and that it prevents the defendants from taking any adverse actions against abortion providers who deliver abortion services to the named plaintiffs and class members as authorized by the preliminary injunction.

WHEREFORE, plaintiffs request that this Court clarify its preliminary injunction as specified above, and for all other proper relief.

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### Certificate of Service

I hereby certify that on this 10th day of July 2023, I electronically filed the foregoing document using the Indiana E-filing system (“IEFS”).

I also certify that on this 10th day of July 2023, the foregoing document was served on the following counsel of record via IEFS.

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