

STATE OF INDIANA )  
 ) SS: MARION SUPERIOR COURT  
 COUNTY OF MARION ) CIVIL DIVISION  
 CAUSE NO. 49D100302PL00369

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CLINIC FOR WOMEN, INC., PLANNED :  
 PARENTHOOD OF CENTRAL AND SOUTHERN :  
 INDIANA, INC., WOMEN'S MEDICAL :  
 PROFESSIONAL CORPORATION, FORT WAYNE :  
 WOMEN'S HEALTH ORGANIZATION, INC., :  
 ULRICH G. KLOPFER, D.O., WOMEN'S PAVILION, :  
 INC., AND FRIENDSHIP FAMILY PLANNING CLINIC :  
 OF INDIANA, on behalf of themselves and their patients :  
 seeking abortions, :  
 Plaintiffs, :  
 :  
 vs. :  
 :  
 CARL J. BRIZZI, in his official capacity as a :  
 Prosecuting Attorney for Marion County, :  
 Defendant. :  
 :  
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**TEMPORARY RESTRAINING ORDER**

**Introduction**

Plaintiffs seek Temporary Restraining Order, with supporting affidavits, enjoining Defendant prosecutor from enforcing a 1995 Indiana law requiring “in person” counseling 18 hours before abortion procedures may legally proceed. I.C. 16-34-2-1.1(1).

The parties have litigated this matter several years in federal courts under federal constitutional claims. The United States District Court first enjoined enforcement of the “in person” requirement in 1995 shortly after passage by the Indiana General Assembly, and entered its final order in 2001. On September 16, 2002, a divided United States Court of Appeals, Seventh Circuit, held the “in person” requirement did not violate the Constitution of the United States and the opinion was criticized by a published dissent. On October 28, 2002, the entire 11-member Seventh Circuit panel considered *en banc*

whether to grant rehearing. Five federal appellate judges voted to rehear, and five voted against (one abstained). The United States Supreme Court denied a petition for writ of certiorari on February 24, 2003.

Plaintiffs filed this action three days later on February 27, 2003. It attacks enforcement of the “in person” requirement by asserting new claims under the Constitution of Indiana. Plaintiffs also filed their petition to temporary restraining order to preserve the status quo pending hearing on preliminary injunction and final determination of the merits.

### **Standard**

Indiana law allows a temporary restraining order may be granted for 10 days, pending hearing, when it appears irreparable injury will result in the meantime. Rule 65 , Indiana Rules of Trial Procedure; I.C. 34-26-1-5. The Court shall define the injury, why it is irreparable, and why it is issued without notice. Rule 65, supra.

### **Findings**

The Court finds:

1. Enforcement of the in-person requirement will automatically provide women seeking abortions in Indiana must make two trips to an authorized health care provider at least 18 hours apart.
2. Burdens created by the in-person requirement include the increase in medical risks associated with abortion, the chance that some women

may not obtain proper counseling or medical attention altogether, and transportation difficulties, especially for low-income patients.

3. It appears from the Complaint and specific facts shown in the affidavits that Plaintiffs' patients will suffer immediate and irreparable injury if the in-person requirement goes into effect.
4. The injuries are irreparable due to the time-sensitive nature of abortion.
5. The nature of the injuries at issue justify issuance of a temporary restraining order to maintain the status quo without notice.

**IT IS THEREFORE ORDERED:**

1. Defendant is hereby enjoined from enforcing Ind. Code 16-34-2-1.1(1) to the extent that it requires women to receive the state-mandated information in-person from an authorized health care provider, until further order of the Court.
2. This matter is set for a preliminary injunction hearing on March 11, 2003, at 10:00 a.m., Indianapolis time.

Dated this 3<sup>rd</sup> day of March, 2003.  
Hour of Issuance: \_\_\_\_\_

\_\_\_\_\_  
David J. Dreyer, Judge  
Marion County Superior

Distribution:

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