SUPREME COURT OF THE STATE OF LOUISIANA

DOCKET NO. 2026-CC-1015

DON MUELLER AND DANA-RAE MUELLER, INDIVIDUALLY, AND ON BEHALF OF THEIR DECEASED MINOR CHILD, E.C.,

Plaintiff – Respondent,

v.

RIVER OAKS, INC. D/B/A RIVER OAKS HOSPITAL AND RENNARD WEST

Defendant – Petitioner.

On Application for Writ of Certiorari from the Parish of Jefferson, 24th Judicial District Court, No. 840-406, Hon. Frank A. Brindisi presiding, and the Louisiana Fifth Circuit Court of Appeal, No. 26-C-89

BRIEF OF AMICI CURIAE IN SUPPORT OF DEFENDANT-PETITIONER

CIVIL PROCEEDING

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Pursuant to Supreme Court of Louisiana Rule VII, Section 11, the Federation of American Hospitals, the Alliance for Quality Improvement and Patient Safety, the Louisiana Hospital Association, and the Louisiana Alliance for Patient Safety PSO (collectively, "Amici Curiae") submit this Brief of Amici Curiae in support of Defendant-Petitioner River Oaks, Inc. d/b/a River Oaks Hospital. This brief is conditionally submitted with the accompanying motion seeking leave to file.

STATEMENT OF INTEREST OF AMICI CURIAE

The Federation of American Hospitals ("FAH") is the national representative of over 1,000 leading tax-paying community hospitals and health systems throughout the United States, accounting for nearly twenty percent (20%) of all U.S. hospitals. Through federal advocacy and policy analysis, FAH is dedicated to facilitating market-based innovations and committed to investing in local economies, creating jobs, growing the health care workforce of the future, and protecting access to full-services hospitals. FAH's members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals across urban and rural America, including hospitals in Louisiana. Its mission is to advance public policy, ensuring that patients and communities have access to high-quality and affordable 24/7 care.

The Alliance for Quality Improvement and Patient Safety ("AQIPS") is a not-for-profit national professional organization for Patient Safety Organizations ("PSOs") and their member providers, including hospitals and other providers throughout the State of Louisiana. AQIPS' mission is to foster the ability of PSOs and providers to improve patient safety, health care quality, and health care outcomes. Its member PSOs are federally listed PSOs[1] that work with providers in Louisiana and throughout the U.S. to collect, aggregate, and analyze patient safety information, and to develop and share patient safety stories, learnings, and best practice recommendations that will improve the safety and quality of care for patients in Louisiana and across the nation.

The Louisiana Hospital Association ("LHA") is a not-for-profit association representing all types of hospitals and health care systems throughout the state. Established in 1926, LHA carries out its mission by providing services and resources to members through advocacy,

[1] PSOs must meet the qualifications set forth in the PSQIA and apply for certification for listing by the Agency for Health Care Research and Quality ("AHRQ"), which is part of the U.S. Department of Health and Human Services. AHRQ lists on its websites entities that meet these requirements. *See* 42 U.S.C. § 299b-24; 42 C.F.R. § 3.102

education, research, representation, and communication. LHA is currently celebrating its centennial anniversary, marking 100 years of advancing health care in Louisiana.

The Louisiana Alliance for Patient Safety PSO ("LAPS PSO") is a federally listed patient safety organization established in 2016 (PSO Number P0186). The mission of LAPS PSO is to conduct patient-safety activities in order to support Louisiana hospitals and health systems that are PSO members in improving patient safety and the quality of health care delivery. The vision of the LAPS PSO is to foster the ability of member hospitals, health systems, and other health care organizations to provide patient-centered health care that is safe, effective, efficient, and equitable.

Amici Curiae collectively hold a substantial, legitimate interest that would be significantly affected by the outcome of the case, and which may not be adequately protected by the parties to the case. This shared interest rests in ensuring the proper interpretation of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. § 299b-21 *et seq.* (the "PSQIA," "Patient Safety Act," or "Act"), and its privilege for patient safety work product ("PSWP"). The nuances and importance of the PSQIA and PSWP are significantly implicated by the underlying matter, but these issues may not be fully addressed in the brief submitted by the parties to this appeal. The proper application of this privilege by Louisiana's courts is paramount in ensuring that health care providers are able to engage in the candid discussion and feedback necessary to learn and improve. Without a nationally uniform application and interpretation of the privilege's protections, all Louisiana patients, providers, and associated PSOs will suffer.

INTRODUCTION

The collective patient safety missions of Amici Curiae can only be accomplished through the privilege and confidentiality protections afforded by the PSQIA. As organizations that are at the forefront of fostering safer care for patients, Amici Curiae are uniquely positioned to demonstrate how PSOs and providers employ the PSQIA's pathways and protections to ensure that patient safety events can be analyzed in a shared learning system to prevent future similar events. Additionally, Amici Curiae's broad perspectives provide specialized insight into the devastating and far-reaching impacts at both the state and national levels should those pathways and protections be abrogated.

Should the PSWP privilege be stripped of its legal meaning and effect, Louisiana's healthcare providers will face an impossible decision between two unacceptable options. On one

hand, the providers may be forced to cease gathering patient safety data and carrying out safety analysis within their patient safety evaluation systems (each, a "PSES"), which, in turn, will deprive PSOs of the opportunity to build on those efforts. On the other hand, the providers could opt to continue gathering some data and carrying out some analysis in their PSES, but without the absolute candor necessary to learn and improve due to provider fears and risk of reputational harm.

If providers choose the first option, they are also likely to end their participation agreements with PSOs due to diminished value, thereby forfeiting their ability to: (a) contract with Qualified Health Plans;[2] and (b) attain compliance with the Patient Safety Structural Measure. If providers choose the second option, then their formerly privileged data collections and self-analyses will instead be weaponized against them, predictably resulting in reputational and other harm. This outcome would penalize providers for attempting to learn and improve patient safety without a secure safety net of privilege.

Regardless of the option chosen by specific providers, the resultant outcomes will inevitably lead to the cessation of robust patient safety event reporting and the candid exploration of systemic and other causes of patient safety events. The arrest of frank and open causal analyses and discussions about errors and evaluation by health care providers would place patients at greater risk, stifle opportunities to learn and improve, and deprive providers and PSOs of their ability to work synergistically in improving patient safety, health care quality, and healthcare outcomes.

The candid provider evaluations protected by the PSWP privilege are essential to ensuring patient safety, healthcare quality, and favorable healthcare outcomes. Leaving the application of the PSWP privilege uncertain—or, worse yet, entirely inapplicable for the categories of quintessential PSWP documents deemed discoverable by the District Court and Court of Appeal—will erode patient safety and return Louisiana providers to an era when patient safety learnings and best practices could not be shared. As a result, future provider analyses, if conducted at all, would only arise under the peer review statute, thus siloing the analyses to their individual institutions—and, even further, specifically within the Medical Staff—such that learnings cannot be shared, even amongst staff at the same hospital. This outdated and ineffective state of affairs is precisely what the PSQIA was created to remedy.

[2] Qualified Health Plans are plans that are certified to provide essential health benefits and meet other requirements under 42 U.S.C. § 18031.

SUMMARY OF ARGUMENT

The PSQIA reflects a carefully considered approach to promoting patient safety. The Act establishes a voluntary system in which providers (including hospitals, physicians, and others) establish systems (called "patient safety evaluation systems" or "PSES") for the "collection, management, or analysis of information for reporting to or by a patient safety organization." 42 U.S.C. § 299b-21(6). A patient safety organization, or "PSO," is a third-party entity[3] that meets certain qualifications and conducts "patient safety activities," as defined in Section 299b-21(5) of the Act. *See id.* at § 299b-24. When a provider creates or collects information that could affect patient safety, healthcare quality, or healthcare outcomes in its PSES for reporting to the PSO and actually submits such information, that information is called "patient safety work product" ("PSWP") and is afforded strict confidentiality and privilege protections. *Id.* at §§ 299b-21(7)(A)(i), 299b-22. A provider can also create PSWP through internal deliberations or analysis within its PSES, regardless of whether that information is reported to a PSO. *Id.* at § 299b-21(7)(A)(ii); *see also Boyle v. Main Line Health, Inc.*, 345 A.3d 291, 304 (Pa. Super. Ct. 2025).

The Act provides that "[n]otwithstanding any other provision of Federal, State, or local law," PSWP "shall" be privileged and "shall not be" subject to, *inter alia*, "a Federal, State, or local civil, criminal or administrative subpoena or order" or to "discovery in a Federal, State, or local civil, criminal or administrative proceeding against a provider." *Id.* at § 299b-22(a) (emphases supplied). The Act further provides that PSWP shall be confidential and "shall not be disclosed" except as specifically provided in its Section 299b-22(c). The exceptions in subsection (c) expressly permit the disclosure of PSWP to PSOs and other providers for patient safety and quality improvement purposes, and that is how PSWP is both reported to PSOs and can be shared among providers to improve the quality of patient care as outlined in the Patient Safety Regulations, 42 C.F.R. Part 3. *See* 42 C.F.R. § 3.206(b)(4). In addition, information created or collected in a provider PSES can also be used internally in a hospital or health system to share lessons learned, educate staff, and address patient safety issues as deemed appropriate by the entity.[4]

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[3] A PSO can also be a component of a provider, such as a healthcare system. 42 U.S.C. § 299b-24(b)(2).

[4] The preamble to the final rule specifies that it "does not limit the purpose for which [PSWP] may be shared internal to an entity." 73 Fed. Reg. 70732, 70737 (Nov. 21, 2008) (emphasis supplied). This is reflected in the definition of the term "disclosure," which provides that a "disclosure" is

In accordance with this statutory scheme, documents and information that qualify as PSWP must be afforded the privilege and confidentiality protections granted by Congress that expressly preempt any other federal, state, or local law. Accordingly, once River Oaks asserted a sufficient factual predicate to assert the PSWP privilege, then, as a matter of law, both the District Court and the Fifth Circuit Court of Appeal were required under the PSQIA to determine whether the documents identified on the privilege log as being privileged as PSWP ("the Privilege Log Documents") met the definition of PSWP. If the Privilege Log Documents met the definition of PSWP, then they were privileged and beyond the reach of discovery or court orders. Tiffany Manno's uncontradicted testimony clearly established that the documents were PSWP, and it was clear error that the PSWP privilege was set aside when they were ordered to be produced.

The rulings of the District Court and the Fifth Circuit Court of Appeal have stripped the PSWP privilege of its intended legal meaning and effect. At best, the PSWP privilege lives but is subject to perilous uncertainty and contradictory application by Louisiana courts. At worst, the PSWP privilege has no practical meaning or effect, and the PSQIA is a dead letter law in Louisiana. Both outcomes will erode patient safety and return Louisiana providers to a time where patient safety learnings and best practices cannot be shared. Future systemic safety analysis, if it is done at all, will exist only under Louisiana's peer review statute and will, therefore, be siloed within the medical staff, depriving providers of the multidisciplinary improvement that the PSQIA was created to advance.[5]

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the provision of access to PSWP by an entity or person to "another legally separate entity or natural person." 42 C.F.R. § 3.20 (emphasis supplied).

[5] Indeed, the Institute of Medicine's report, discussed further *infra*, noted that "[m]any current state peer review statutes . . . may not protect data about errors shared in collaborative networks, especially across state lines, or reported to voluntary reporting systems (e.g., independent data banks)." INSTITUTE OF MEDICINE, TO ERR IS HUMAN: BUILDING A SAFER HEALTH SYSTEM 111(Linda T. Kohn, Janet M. Corrigan, & Molla S. Donaldson eds., 1999). This observation precedes its recommendation 6.1 that "Congress should pass legislation to extend peer review protections to data related to patient safety and quality improvement that are collected and analyzed by health care organizations for internal use or shared with others solely for purposes of improvement safety and quality." *Id.* at 111-112 (emphasis supplied).

ARGUMENT FOR GRANT OF WRIT OF CERTIORARI

I. The Court of Appeal's Erroneous Interpretation of the PSQIA Statute Presents a Case of First Impression

A. The PSWP Privilege

The Patient Safety Act enacts a straightforward and mandatory statutory privilege for PSWP. The statutory language conveys express federal preemption of contradictory law: "[n]otwithstanding any other provision of Federal, State or local law . . . [PSWP] shall be privileged and shall not be . . . subject to discovery in connection with a Federal, State or local civil, criminal, or administrative proceeding . . . against a provider." 42 U.S.C. § 299b-22(a)(2); *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541 (2001) ("State action may be foreclosed by express language in a congressional enactment . . . .") (internal citations omitted); *Quimbey v. Cmty. Health Sys. Prof'l Servs. Corp.*, 222 F. Supp. 3d 1038, 1043 (D.N.M. 2016) ("The express language of the PSQIA demonstrates Congressional intent to preempt state peer-review statutes.").

Patient safety work product is expressly defined in Section 299b-21(7)(A) of the Patient Safety Act, which provides, as follows:

> **In general** — Except as provided in subparagraph (B), the term "patient safety work product" means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements
>
> (i) which —
>
> (I) ***are assembled or developed by a provider for reporting to a [PSO] and are reported to a [PSO]***; or
>
> (II) are developed by a [PSO] for the conduct of patient safety activities;
>
> and which could result in improved patient safety, health care quality, or health care outcomes; or
>
> (ii) ***which identify or constitute the deliberations or analysis of***, or identify the fact of reporting pursuant to, a [PSES].

42 U.S.C. § 299b-21(7) (emphases supplied). The statutory definition of PSWP also specifically enumerates what is not considered PSWP, including: "a patient's medical record, billing, and discharge information, or any other original patient or provider record," 42 U.S.C. § 299b-21(7)(B)(i), and "information that is collected, maintained, or developed separately, or exists separately, from a [PSES]," 42 U.S.C. § 299b-21(7)(B)(ii). As will be further argued below, the Privilege Log Documents sought by Plaintiffs fit squarely within the definition of PSWP, and

nothing in the record before the Court establishes that a recognized exclusion applies. These documents are, therefore, entitled to federal PSQIA privilege protection as a matter of law.

A Louisiana court's duty in construing statutory language is dictated by La. R.S. § 1.3, which provides that "[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language . . . . The word 'shall' is mandatory." *See also Luba Workers Comp. v. Sears*, 2025-01379 (La. 06/29/26), 2026 WL 1861942 at *5. However, the Court of Appeal failed to apply these fundamental principles to the plain language of the PSQIA. Instead, it appears to have committed one of two possible errors: (i) engrafting the state-law limitations of La. R.S. § 13:3715.3 (as interpreted by Louisiana courts) onto the federal PSQIA; or (ii) simply deferring to the District Court, which it stated had "sufficient information before it to assess the applicability of the asserted privileges, if any, and its ruling demonstrates a measured and considered approach." *Mueller v. River Oaks, Inc.*, 26-89 (La. App. 5 Cir. 07/06/26), 2026 WL 1949121 at *5.

Neither potential approach adopted by the Court of Appeal appropriately applies the PSQIA. The express federal preemption language immediately preceding the term "shall be privileged" demands that, if the Privilege Log Documents satisfy the definition of PSWP by any of the three pathways[6] identified therein, then they constitute PSWP and are privileged as a matter of law.

This Court has not yet had the opportunity to address the interpretation of the Patient Safety Act or the scope or application of its privilege for PSWP. Prior to the underlying *Mueller* decision, no Louisiana lower court opinions interpreting the PSQIA had been published. The dearth of jurisprudential authority as to this crucial issue underscores the importance of this Court's guidance. *See*, *e.g.*, *Anderson v. Avondale Indus., Inc.*, 00-2799 (La. 10/16/01), 798 So. 2d 93, 96 (grant of writ of certiorari appropriate to consider a "purely legal issue of first impression"). This Court should grant the writ to clarify that when a party sets forth a sufficient factual predicate for the assertion of the PSWP privilege, a court must determine whether the document/information meets the definition of PSWP. If it does, then the PSWP privilege attaches as a matter of law, and the court may not order its production.

[6] Of these three (3) enumerated pathways, two (2) are applicable to providers: the "reporting pathway" and the "deliberations and analysis pathway".

B. The Privilege Log Documents are Privileged and Confidential PSWP.

The Privilege Log Documents in the underlying matter are quintessential examples of PSWP. The District Court and Court of Appeal each erred in concluding otherwise.

1. Privileged PSWP under the "Reporting Pathway"

As defined by the Patient Safety Act, PSWP includes "data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements (i) which — (I) are assembled or developed by a provider for reporting to a [PSO] and are reported to a [PSO] . . . ." 42 U.S.C. § 299b-21(7)(A)(i)(l). This is often referred to as the "reporting pathway." The record below plainly implicates this pathway.

The testimony of Tiffany Manno clearly established that: (i) the Privilege Log Documents were all maintained within River Oaks' PSES for reporting to the PSO; and (ii) those documents were actually reported. The Court of Appeal confirmed Ms. Manno's testimony that "all documents identified on the privilege log as [PSWP] were created within the PSES and submitted to the PSO for purposes of analysis and reporting." *Mueller*, *supra*, at **4-5. That uncontradicted testimony alone is sufficient to permit the court to conclude that the documents were PSWP. *See*, *e.g.*, *Bella v. Knieper*, 2024-0277 (La. App. 1 Cir. 11/20/24), 405 So. 3d 1039, 1045-1046 ("[I]n evaluating and weighing the evidence, the trier of fact should accept as true the uncontradicted testimony of a witness, even when the witness is a party, absent a sound reason for its rejection or circumstances in the record casting suspicion on the reliability of the testimony.").[7] Neither the lower court nor Plaintiffs provided any reason to reject Ms. Manno's testimony or suspect its reliability, and no such reasons can be found within or outside of the record. Accordingly, Ms. Manno's testimony must be accepted as true, and the Privilege Log Documents therefore qualify as PSWP via the reporting pathway.

2. Privileged PSWP under the "Deliberations and Analysis Pathway"

PSWP also includes "data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements . . . (ii) which identify or constitute the deliberations or

[7] The opinion cited other Louisiana courts: *Holiday v. Borden Chem*., 508 So. 2d 1381, 1383 (La. 1987); *Johnson v. Ins. Co. of N. Am.,* 454 So. 2d 1113, 1117 (La. 1984); *Mergen v. Piper Aircraft Corp*., 524 So. 2d 1348, 1352 (La. App. 1st Cir. 1988), *writs denied*, 532 So. 2d 154, 155, 156 (La. 1988) ("The evidence of witnesses which stands uncontradicted must be accepted as true.").

analysis of, or identify the fact of reporting pursuant to, a [PSES]." 42 U.S.C. § 299b-21(7)(A)(ii). This is often called the "deliberations and analysis pathway." According to the PSQIA, such information constitutes PSWP regardless of whether the information is reported to the PSO. *Boyle v. Main Line Health, Inc.*, *supra*, at 304 ("[t]here is no requirement in the PSQIA that such 'deliberations and analysis,' as set forth in subsection (ii), be reported to a patient safety organization to qualify as protected [PSWP]."); *see also Rumsey v. Guthrie Med. Grp., P.C.*, 2019 U.S. Dist. LEXIS 164731, at *6 (M.D. Pa. Sept. 26, 2019).

While the Fifth Circuit's decision quotes the language pertaining to the deliberations and analysis pathway, the opinion does not directly address its application. *Mueller*, *supra*, at *9. However, Ms. Manno testified that the Privilege Log Documents were all created within the PSES and, further, were generated for internal deliberation and analysis with the aim of improving patient care. R. 262-3, Tr. lns. 45:22-46:3. Accordingly, the documents also meet the Act's deliberations and analysis pathway requirements and are therefore PSWP as a matter of law.

II. Recognition of the Strict, Preemptory Privilege for PSWP is a Matter of Substantial Public Importance because the Privilege is Essential to the PSQIA's Policy Goals.

The PSWP privilege is the *sine qua non* for the synergistic relationship between providers and PSOs that Congress codified when enacting the PSQIA. If the PSWP privilege does not produce its intended legal meaning and effect, then there is no foundation to support the provider-PSO relationship, and the public's substantial interests in achieving safer, more effective health care will be thwarted. Proper interpretation and application of the PSWP privilege is the means of advancing the PSQIA's policy goals and serving the public's interests.

In 1999, the Institute of Medicine ("IOM") published a report addressing preventable medical errors.[8] One of the IOM's central findings was that preventable patient harm often results from weaknesses in the systems through which care is delivered, rather than solely from the actions of individual clinicians. The report emphasized that improving patient safety requires identifying and addressing underlying system vulnerabilities so that human error is less likely to result in patient harm. INSTITUTE OF MEDICINE, *supra* n.5, at *ix*, 42, 51-53. The IOM recommended a multi-pronged approach to errors that included the establishment of a federal "peer review" privilege. *Id.* at 111-112, 128.[9]

[8] INSTITUTE OF MEDICINE, *supra* n.5.
[9] *See* footnote 5, *supra.*

In response to the IOM's findings, and after much inquiry and debate,[10] Congress enacted the Patient Safety Act, establishing a system under which individual health care providers are encouraged to come forward and confidentially report patient safety events to their institutional leadership so that those events can be fully analyzed and shared internally and across hospitals within a health system. As a result, health care entities are incentivized to voluntarily report both their analyses and the underlying events to a federally listed PSO which can aggregate or otherwise analyze this data to create best practice recommendations and protocols. This system minimizes future patient risks and improves both patient safety and the quality of patient care.[11] Congress designed the PSQIA to improve the quality of patient care by creating a non-punitive, confidential, voluntary reporting system, and to ensure accountability by raising standards for continuous improvements in health care. H.R. Rep. No. 109-197, at 9 (2005). The PSQIA was intended to provide a nationally uniform privilege to permit health care providers to employ proven practices to evaluate and share how to make patient care safer throughout the entire health care continuum. 42 U.S.C. § 299b-22(a).

The privilege and confidentiality protections provided for PSWP lie at the core of the learning environment that Congress created through the PSQIA. H.R. Rep. 109-197, at 9; S. Rep. No. 108-196, at 3. The system was designed to allow health care providers to assess their errors without fear that their data and analyses would be subject to discovery in litigation. The privilege was intended to eliminate the incentive to hide errors affecting patient safety and unsafe conditions. *See* INSTITUTE OF MEDICINE, *supra*, at 9. Congress viewed such protections as necessary and vital to encourage health care providers to report medical errors. H.R. Rep. No. 109-197, at 9. In order for the system to work, the privilege must be consistently and uniformly applied.[12] However, the PSQIA ensured that patients retained access to data needed in the unfortunate event that they were injured by a medical error or similar event. Specifically, the definition of PSWP specifically excludes from the definition of PSWP "a patient's medical records, billing and discharge information, or any other original patient or provider record," as well as "information that is

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[10] By 2003 alone, the Senate Committee on Health, Education, Labor and Pensions had held five (5) hearings concerning "medical error and patient safety." S. Rep. 108-196 at 2 (2003). It was nearly another two (2) years before the PSQIA was passed.

[11] *See* 42 U.S.C. § 299b-21(5) (definition of "patient safety activities").

[12] "An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all." *Upjohn Co. v. United States,* 449 U.S. 383, 393 (1981).

collected, maintained, or developed separately, or exists separately, from a [PSES]." 42 U.S.C. §§ 299b-21(7)(B)(i)-(ii). Accordingly, the PSQIA does not prevent disclosure of relevant information to patients. Rather, it protects the confidential deliberative processes used to understand why an event occurred and how future harm can be prevented. *Id.* at §§ 299b-21(7), 299b-22(a).

Improper applications of the privilege, such as those countenanced by the holdings below, undermine the important patient safety policy goals of the PSQIA. Unless the decision below is overturned, the scope of the PSQIA privilege will become so limited that it will, as a practical matter, eliminate the protections that providers need to fully analyze and learn from safety events. As recognized by the court in *Rumsey*, *supra*, so long as providers "remain within the confines of the [PSES]," the PSQIA privilege allows medical professionals to "provide the brutally honest feedback hospitals need to keep their patients safe without fear of its use in litigation." *Rumsey*, *supra*, at *8 (emphases supplied), *accord* 42 U.S.C. § 299b-21(7)(A)(ii).

A uniform national application and interpretation of the PSQIA is essential. Uncertainty over the status of the PSWP privilege has far-reaching negative implications. If the privilege is not consistently applied, lessons learned from harms inflicted on a patient through medical errors or systemic breakdowns will once again be carefully guarded as peer review findings, and PSOs will not have the same ability to generate and share patient safety stories and learnings from the safety analysis submitted by their participating providers. As a result, the cycle of patient harm mitigated by the PSQIA will return, and preventable mistakes will be repeated unnecessarily in hospitals and other health care settings across Louisiana.

While the inevitable increase in patient harm in Louisiana is of paramount concern for Amici Curiae, there are significant additional consequences for hospitals and health systems should they discontinue, or not initiate, the collection and analysis of patient safety data in their PSES or their participation in a PSO program. Although participation with a PSO is voluntary,[13] at least two regulatory requirements implemented after the passage of the Act impose consequences on hospitals that fail to participate with PSOs. First, 42 U.S.C. § 18031(h) required

[13] The House Report states: "The bill would add a new section 921 [to the Public Health Service Act] to identify and define the elements of a new voluntary reporting system." H.R. Rep. No. 109-197 at 14 (emphasis supplied). Also, the preamble to the Final Rule, 73 Fed. Reg. 70732, 70741 (Nov. 21, 2008) states: "To encourage voluntary reporting of patient safety events by providers, the protections must be substantial and broad enough so that providers can participate in the system without fear of liability or harm to reputation." (Emphasis supplied).

qualified health plans ("QHPs") to contract only with hospitals that meet certain patient safety standards. Beginning in 2017, this required QHPs to verify that contracting hospitals of fifty (50) beds or more utilize a PSES or implement an "evidence-based initiative" to improve health care quality through the collection, management, and analysis of patient safety events that reduces all cause preventable harm, prevents hospital readmission, or improves care coordination.[14] 45 C.F.R. § 156.1110(a)(2). If a hospital cannot establish compliance with this requirement, it cannot contract with a QHP and will be unable to care for patients insured by a QHP. This would deny Louisiana beneficiaries in the individual and small group markets access to medical care.[15]

The second development was the Centers for Medicare & Medicaid Services' ("CMS") establishment of the Patient Safety Structural Measure ("PSSM") in 2024.[16] The PSSM is an attestation-based composite quality measure within the Hospital Inpatient Quality Reporting ("IQR") Program[17] that evaluates whether hospitals have implemented organizational structures and practices associated with safer care. The measure contains five (5) domains addressing leadership, strategic planning, organizational learning, accountability and transparency, and patient and family engagement. *See* 89 Fed. Reg. 69486, 69488 (Aug. 28, 2024). One element within the Accountability and Transparency domain asks hospitals to attest that they voluntarily work with an AHRQ-listed PSO to conduct patient safety activities. *Id.* at 69487. A hospital must affirmatively attest to all elements within a domain to receive a point for that domain: CMS will not give partial credit within a domain. *Id.* at 69463. Reporting began in Spring 2026 for the measurement period of calendar year 2025, with payment determinations for the Hospital IQR Program—*i.e.* whether full annual payment updates will be awarded for reporting—to be released in FY 2027. *Id.* at 68989. Data collected under the Hospital IQR Program, including a hospital's PSSM score ranging from 0 to 5 points, will be publicly available on the Medicare.gov Care Compare website (data.cms.gov) beginning October, 2026. *Id.* at 69464, 69495. Failure to meet

[14] Utilizing the alternative "evidence-based initiative" carries no promise of privilege; accordingly, it is not considered to be a viable alternative to the PSWP privilege.
[15] According to CMS, in 2026, more than 294,000 Louisianians enrolled in such plans. *Marketplace 2026 Open Enrollment Period Report: National Snapshot*, Centers for Medicare & Medicaid Servs', https://www.cms.gov/newsroom/fact-sheets/marketplace-2026-open-enrollment-period-report-national-snapshot-0 (accessed 08/02/2026).
[16] 89 Fed. Reg. 68986, 69455-69488 (Aug. 28, 2024).
[17] Hospitals described in 42 U.S.C. § 1395ww(d) are subject to reporting under the Hospital IQR Program, described in detail in 42 C.F.R. § 412.140. This requirement encompasses most acute care hospitals.

this requirement (or others) may affect a hospital's publicly reported performance under the Hospital IQR Program, which can harm patients who may avoid necessary medical care because of misleading information of a hospital's performance, harm a hospital's reputation, and potentially negatively impact a hospital's payment rate update under the CMS prospective payment system.

CONCLUSION

For the reasons set forth above, Amici Curiae, the Federation of American Hospitals, Alliance for Quality Improvement and Patient Safety, Louisiana Hospital Association, and Louisiana Alliance for Patient Safety PSO, respectfully request that this Honorable Court to grant Petitioner's writ and hold that the records at issue are statutorily privileged.

DATED: August 5, 2026.

Respectfully submitted,

/s/ Andre M. Stolier
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume requirements set forth in La. S. Ct. R. IV, Section 11:

   - This document contains thirteen (13) pages, exclusive of the cover page, table of contents, index of authorities, and certifications by counsel.

DATED: August 5, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that, on August 5, 2026, I electronically filed the foregoing with the Clerk of Court by using the Louisiana Supreme Court E-Filing system. This document will also be electronically served to all counsel of record via email.

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