WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: 208.389.9000

WENDY S. HEIPT
(admitted *pro hac vice*)
wheipt@legalvoice.org
LEGAL VOICE
907 Pine Street, #500
Seattle, WA 98101
Telephone: 206.954.6798

KELLY O'NEILL, Bar No. 9303
koneill@legalvoice.org
LEGAL VOICE
P.O. Box 50201
Boise, ID 83705
Telephone: 208.649.4942

JAMILA A. JOHNSON
(admitted *pro hac vice*)
jjohnson@lawyeringproject.org
THE LAWYERING PROJECT
900 Camp St., 3rd Floor, No. 1197
New Orleans, LA 70122
Telephone: 347.706.4981

PAIGE SUELZLE
(admitted *pro hac vice*)
psuelzle@lawyeringproject.org
THE LAWYERING PROJECT
300 Lenora St., No. 1147
Seattle, WA 98121
Telephone: 347.515.6073

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

PLAINTIFFS' REPLY IN SUPPORT OF MOTION *IN LIMINE* SEEKING JUDICIAL NOTICE OF STATE GOVERNMENT DOCUMENTS

Plaintiffs respectfully request that the Court grant their motion for judicial notice because Defendant offers no valid basis for denying it.

ARGUMENT

1. **Defendant's legislative facts argument is unsupported by the cases he cites.**

Defendant's opposition rests on a misreading of the very cases he cites, none of which support the propositions for which they are offered. Defendant cites *Allied Concrete and Supply Co. v.* Baker, 904 F.3d 1053, 1061 (9th Cir. 2018) (*quoting Vance v. Bradley*, 440 U.S. 93, 111 (1979)), for the propositions that legislative facts provide the basis for legislative purpose under the Equal Protection Clause and that, while adjudicative facts are established through evidence such as testimony (outside of Rule 201), legislative facts are not. Neither case supports this characterization. In both *Allied Concrete* and *Vance*, the phrase "legislative fact" does not appear in contrast to "adjudicative fact," and neither opinion discusses how such facts should properly come before the Court. *See Allied Concrete & Supply Co.,* 904 F.3d at 1061; *Vance,* 440 U.S. at 111.

Defendant also cites *Von Saher v. Norton Simon Museum of Art at* Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), for the proposition that "[j]udicial notice of legislative facts . . . is unnecessary." This is taken out of context. Within the context of the case, the court found judicial notice unnecessary because "[j]udicial notice is generally not the appropriate means to establish the legal principles governing the case." *Id.* (*citing Toth v. Grand Trunk R.R.*, 306 F.3d 335, 349 (6th Cir. 2002)). That is not the purpose for which Plaintiffs are seeking judicial notice here. It was, however, the purpose of judicial notice requests in the other cases cited in Defendant's brief. *See Mollaei v. Otonomo Inc.*, 651 F.Supp.3d 1135, 1139 (N.D. Cal. 2023) (addressing statutory construction); *Carey v. J.A.K.'s Puppies, Inc.*, 763 F. Supp. 3d 952, 972 (C.D. Cal. 2025) ("As a document from the lawmaking process of AB 2152, Exhibit A does not contain adjudicative facts of this 'particular case' (i.e., facts concerning 'the immediate parties—

who did what, where, when, how and with what motive or intent.')"). In contrast, the documents at issue here *do* contain adjudicative facts that are relevant to this particular case.

Similarly, the Ninth Circuit's decision in an intellectual property case, *Blumenthal Distrib., Inc. v. Herman Miller, Inc.,* 811 F.App'x. 421, 422 (9th Cir. 2020) (mem.), is of no utility. That motion did not relate to legislative evidence relevant to adjudication of the issues before the court, but instead related to patents central to the applicability of underlying caselaw cited by the parties. *Id.*; *see Herman Miller, Inc. v. Blumenthal Distribution, Inc.*, No. 18-56471, 18-56493 (9th Cir. 2020) (Dkt. No. 26-1) (Herman Miller, Inc.'s Mot. for Judicial Notice at 3–5) (April 10, 2019). It is unclear why the court referred to these as legislative facts when the documents at issue were patents; however, those records clearly pertained to establishing the legal principles governing the case. While Defendant appropriately acknowledges that the cases cited by Plaintiffs are contrary to his position, his own citations provide no basis for denying Plaintiffs' motion.

2. Defendant cannot seriously contest that one avenue that Plaintiffs may use to establish a right to travel violation is demonstrating the predominant purpose of the legislation.

Defendant includes a footnote that halfheartedly disputes that *Att'y Gen. of N.Y v. Soto-Lopez*, 476 U.S. 898, 903 (1986), may be cited for the proposition that one method to demonstrate a right-to-travel violation is by showing that the predominant purpose of the challenged law is to deter or prevent travel. *See* Def.'s Opp. at n.1. This contention lacks merit. Courts have long recognized that a law enacted with the predominant purpose of impeding travel violates the constitutional right to travel, and courts routinely cite *Soto-Lopez* for this contention. *See United States v. Guest,* 383 U.S. 745, 760 (1966); *see also e.g., Matsuo v. United States*, 586 F.3d 1180, 1182 n.2 (9th Cir. 2009); *Yellowhammer Fund v. Att'y Gen. of Ala.*, 733 F. Supp. 3d 1167, 1188 (M.D. Ala. 2024); Order on Mot. to Dismiss at 11, Dkt. 41. Defendant cannot

credibly deny that legislative statements are probative not of the law governing this case, but of the elements Plaintiffs must prove to prevail on one of their claims.

3. Plaintiffs have explained why formal judicial notice is necessary here.

Undoubtedly, some discovery involving Idaho lawmakers will be necessary to establish the law's predominant purpose. However, because discovery directed at lawmakers is often disfavored and subject to limitation, Plaintiffs seek to avoid unnecessary discovery that would otherwise be required to admit these statements as evidence. Plaintiffs, therefore, request early clarification from the Court so that their legislative discovery can be confined to what is essential to the case.

For all the reasons outlined in Plaintiffs' motion *in limine*, the Court may take judicial notice of lawmakers' statements contained in the legislative history without requiring formal evidentiary admission. Moreover, Defendant has participated in proceedings where judicial-notice issues lingered well after trial—precisely the inefficiency Plaintiffs seek to avoid. See *Adkins v. State of Idaho*, No. CV01-23-14774 (Idaho 4th Jud. Dist. Ct., Apr. 11, 2025) (Findings of Fact & Conclusions of Law at 4–5).

Defendant's position appears to be that, although he concedes these documents are authentic, part of the legislative record, and potentially subject to judicial reliance, Plaintiffs should nevertheless be denied clarity or agreement on how those materials will properly be before the Court. That argument serves no practical purpose and only invites unnecessary procedural uncertainty.

4. Plaintiffs have sufficiently identified the "specific facts" to be noticed.

Defendant contends that Plaintiffs failed to identify the "specific facts" to be noticed. That is incorrect. Plaintiffs request judicial notice of the following limited facts: (1) that the

listed legislative materials exist; (2) that they are official records of the Idaho Legislature; and (3) that they contain the statements made by legislators and the Governor during the enactment of H.B. 242. *See Pl.'s Mot. In Limine Seeking Judicial Notice of State Gov't Documents*, Dkt. 70-1, at 6.

CONCLUSION

Plaintiffs' request is a practical one. They seek the Court's early guidance on the proper mechanism for presenting materials that are central to adjudicating one of their constitutional claims. Clarifying now whether the Court will consider these materials through judicial notice, or whether Plaintiffs must admit this evidence by some other means, will prevent Plaintiffs from having to pursue a needlessly cumbersome evidentiary path or guess at the undefined process Defendant appears to suggest. There is ample authority supporting judicial notice, and some case law that is not analogous, offered by Defendants that seems to suggest these documents be treated as purely legal. Because these statements are integral to Plaintiffs' proof, resolving this procedural question now will promote efficiency, and spare all parties from unnecessary confusion or duplication later in the case.

DATED: November 7, 2025

STOEL RIVES LLP

/s/ Wendy J. Olson
Wendy J. Olson

LEGAL VOICE

/s/ Wendy S. Heipt
Wendy S. Heipt
Kelly O'Neill

THE LAWYERING PROJECT

/s/ Jamila A. Johnson
Jamila A. Johnson
Paige Suelzle

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 7, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

James E.M. Craig
james.craig@ag.idaho.gov

Aaron M. Green
aaron.green@ag.idaho.gov

Brian V. Church
brian.church@ag.idaho.gov

/s/ Wendy J. Olson
Wendy J. Olson