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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF IDAHO**

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

*Plaintiff*,

v.

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

*Defendant*.

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

**ATTORNEY GENERAL LABRADOR'S MOTION FOR CERTIFICATION OF QUESTION TO THE IDAHO SUPREME COURT**

The Attorney General moves[1] for certification of the following question of law to the Idaho Supreme Court pursuant to Idaho Appellate Rule 12.3(a):

> In this facial challenge under the First Amendment to Idaho Code § 18-623, this Court must first "assess the statute's scope, because it is impossible to determine whether a statute reaches too far without knowing what the statute covers." *Matsumoto v. Labrador*, 122 F.4th 787, 806 (2024).
>
> What does "recruiting" mean within the context of Idaho Code § 18-623(1) under Idaho law, including applicable Idaho canons of construction? Put another way, what is criminalized by the statute's prohibition on "procur[ing] an abortion . . . or obtain[ing] an abortion inducing drug for the pregnant minor to use for an abortion by recruiting . . . the pregnant minor within this state," with the "intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor"?

The question of law is controlling in the pending action as the Plaintiffs in this case challenge the constitutionality of the "recruiting" provision of Idaho Code § 18-623 on First Amendment overbreadth grounds. The Idaho Supreme Court has never construed Idaho Code § 18-623. An immediate determination of the Idaho law with regard to the certified question by decree from the Idaho Supreme Court would materially advance the orderly resolution of the litigation in the United States court because it would provide a conclusive construction of the law being challenged under the canons of construction and methods of interpretation available under Idaho law.

This motion is further supported by additional argument contained in the Defendant's Memorandum in Support of Motion for Summary Judgment, Dkt. 137-1 at 21-24.

[1] Federal authority for certification arises generally out of *Pullman* abstention doctrine. *See Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 75-76 (1997).

DATED: April 16, 2026

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/*Aaron M. Green*
AARON M. GREEN
Deputy Attorney General

*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on April 16, 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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v.

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*Defendant*.

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

**MEMORANDUM IN SUPPORT OF ATTORNEY GENERAL LABRADOR'S MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Idaho protects the rights of parents and guardians to determine whether their child can receive an abortion. It does so by, among other things, criminalizing the acts of strangers and aliens to the parent-child relationship who, meddling in that relationship with the specific intent of hiding an abortion from the parents or guardians of a minor, procure an abortion or abortion inducing drug for that minor. Idaho Code § 18-623. Idaho Code § 18-623 is a law that protects the parent-child relationship from interlopers, wherever they are from, and wherever an abortion or abortion-inducing drug is ultimately procured. If Idaho can criminalize the enticement of a minor regardless of where the minor ends up being taken, it can criminalize the interference with parental rights *in Idaho* regardless of where a minor is taken for an abortion. Idaho's criminalization of pure conduct, or speech incident to that unlawful interference in the parent-child relationship, violates no person's fundamental rights.

Plaintiffs lack standing and lack persuasive arguments on the merits. Plaintiffs have disclaimed *any* intent to violate the specific intent provision of the statute they challenge. Additionally, Plaintiffs lack standing because, contrary to earlier assertions, they (by and large) do not actually interact with pregnant minors, they do not procure abortions, and they do not have any real intent to violate the provisions of the act. To the extent they profess a vague desire to do so in the future, these are mere "someday intentions"—albeit bleak ones. If the Court finds, contrary to their testimony under oath, that Plaintiffs do have standing, Plaintiffs would then lack clean hands.

On the merits, Plaintiffs' constitutional claims fail. The statute is not vague—the Ninth Circuit has already held as a matter of law that the statute proscribes an intelligible crime. Prohibitions on harboring and transportation regulate conduct, not speech, and so those challenges are barred as a matter of law under the Ninth Circuit's panel decision in this case. As for "recruiting" this Court should certify the question of its meaning to the Idaho Supreme Court to

avoid conflict between federal and state methods of interpreting state law. Plaintiffs' interstate travel claim fails because the statute doesn't restrict travel; it only criminalizes interference in a parent-child relationship that exists in Idaho. Even if legislative intent could be considered, the available history makes plain that the statute is an aid to support parents and does not penalize travel.

Parents, not Plaintiffs, have the right to decide whether a pregnant minor can travel to receive an abortion, whether authorized under Idaho law or the law of another State. *See Mirabelli v. Bonta*, 607 U.S. ___, 146 S. Ct. 797, 803 (2026) (per curiam) (holding California law which required keeping information about gender transition from parents violated their parental rights); *Parham v. J.R.*, 442 U.S. 584, 602–04 (1979) (holding that parents have the fundamental right to make medical decisions for their children). Plaintiffs have absolutely no right under any circumstance to usurp the parental right to make medical decisions for someone else's child. The Court should grant the motion in favor of the Attorney General as to all claims and all Plaintiffs.

## FACTUAL AND PROCEDURAL HISTORY

The Idaho Legislature enacted Idaho Code § 18-623 in 2023. The statute makes it illegal for a person to, with the specific intent of concealing an abortion from the parents or guardian of a pregnant unemancipated minor, procure such an abortion or obtain an abortion inducing drug by recruiting, harboring or transporting the minor within Idaho. This bill was about protecting the rights of parents to make decisions about their children against the efforts of busybodies, strangers, and aliens to the parent-child relationship to usurp that role. *E.g.*, Stmt. of Rep. Ehardt, House State Affairs Comm. (Mar. 3, 2023) [56:21][1].

[1] A more fulsome review of statements made in the legislative process appears at Section V.A.2.b., *infra.* Bracketed numbers are time stamps to when statements are made in the recording of each hearing. Recordings of the Idaho Legislature cited in this motion are available at: https://lso.legislature.idaho.gov/MediaArchive/MainMenu.do

Plaintiffs—a lawyer, an abortion fund, and an Idaho 501(c)(3)—sued to enjoin the Attorney General from enforcing the statute on July 11, 2023, bringing four claims regarding: vagueness (I), the right to interstate travel (II), a supposed right to *intra*state travel (III), and the First Amendment (IV). Dkt. 1 at 27–32. Plaintiffs later sought a preliminary injunction based on Counts I and IV. Dkt. 12-1 at 16–24. Defendant opposed and also moved to dismiss the Complaint. Dkts. 35-1; 37. This Court dismissed Count III, but allowed the remaining claims to proceed, and the Court granted Plaintiffs' requested injunction. Dkts. 40, 41.

Defendant appealed to the Ninth Circuit, which reversed this Court in part and remanded. *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024). It held that Plaintiffs had successfully pled standing and a proper defendant,[2] but that this Court erred by finding a likelihood of success on the vagueness challenge to Idaho Code § 18-623 and further erred by finding a likelihood of success as to the First Amendment challenge to the harboring and transporting prohibitions in the statute. The Ninth Circuit remanded for entry of a limited injunction. Following contested proceedings, the Court entered a revised injunction. Dkt. 58.

Discovery then commenced. Both sides engaged in document discovery and took depositions. Discovery closed on March 16, 2026. This motion for summary judgment against Plaintiffs' remaining causes of action follows.

[2] As the Attorney General has asserted from the beginning of this case, the Attorney General has no authority to prosecute violations of Idaho Code § 18-623 under the facts of this case. *See generally* Dkt. 35-1 at 18-23; Idaho Code § 18-623(4). Given the Ninth Circuit's decision in this case disagreeing with the Attorney General's Eleventh Amendment immunity argument, *Matsumoto*, 122 F. 4th at 802-03, the Attorney General does not restate the argument in this motion, having already raised and preserved it in prior briefing.

## LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) permits a party to seek summary judgment "identifying each claim or defense . . . on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Entry of summary judgment is mandatory "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party meets its burden of "informing the district court of the basis for its motion," *id.* at 323, the non-moving party may not rely upon the allegations or denials of the non-moving party's pleading. Fed. R. Civ. P. 56(e). Where, as here, the nonmoving party bears the burden of proof at trial, "the moving party need only point out 'that there is an absence of evidence to support the nonmoving party's case.'" *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting *Celotex*, 477 U.S. at 325). "[O]nce the moving party carries its initial burden of production, 'the nonmoving parties [are] obligated to produce evidence in response.'" *Id.* (quoting in parenthetical *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1107 (9th Cir. 2000)).

## ARGUMENT

### I. Plaintiffs lack standing to bring their claims.

The threshold question for Plaintiffs is whether they have pre-enforcement standing to bring their claims. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157–60 (2014). Plaintiffs "must demonstrate standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (citation omitted). "[A]t the summary judgment stage, a plaintiff must offer evidence and specific facts demonstrating

each element" of Article III standing. *Ctr. for Biological Diversity v. Exp.-Imp. Bank of the U.S.*, 894 F.3d 1005, 1012 (9th Cir. 2018).

Plaintiffs bear the burden of showing standing with respect to every claim they bring and the extent of the injunction that they seek. *Friends of the Earth, Inc. v. Laidlaw Env't Serv. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *American Encore v. Fontes*, 152 F.4th 1097, 1111 (9th Cir. 2025). "To establish standing … a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378–86 (2024) (citations omitted).

On a pre-enforcement challenge, an injury in fact that is both "actual or imminent" and "concrete and particularized" is still required. *Driehaus*, 573 U.S. at 158. A "future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk that the harm will occur.'" *Id.* (citation omitted). Thus, each Plaintiff needs to demonstrate "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement" by proving "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed" and "a credible threat of prosecution thereunder." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (citation omitted).

"[P]re-enforcement plaintiffs who fail[] to allege a concrete intent to violate the challenged law [cannot] establish a credible threat of enforcement." *Id.* at 787. This is because the "Constitution requires something more than a hypothetical intent to violate the law." *Id.* Without specific details about the future conduct, including details such as the "when, to whom, where, or under what circumstances," a court is left with only "mere some day intentions, which do not support a finding of the actual or imminent injury that our cases require." *Id.* 787–88 (cleaned up).

Here, each Plaintiff fails to show standing.

**A. Plaintiff Matsumoto lacks standing.**

This Court previously found that Plaintiff Matsumoto had standing because she "works as an attorney, advocate, and trusted resource for advocates and survivors of sexual and gender violence and abuse" and "would like to *continue* providing support and assistance to pregnant minors seeking to obtain an abortion, without the consent of the parents." Dkt. 40 at 21 (emphasis added); *id.* at 22 ("Matsumoto alleges that but for the statute's lack of clarity and her fear of imminent prosecution, she would assist minors in traveling to other states to get a lawful abortion."); *see also Matsumoto*, 122 F.4th at 797 ("Challengers claim that, in arguable violation of the statute, they have provided guidance and material support to minors in Idaho to access legal abortion care and intend to do so in the future."). And based on the allegations in the Complaint (Dkt. 1), including paragraphs 1, 40, and 43, the Court's ruling is understandable. However, discovery demonstrated these allegations lack evidentiary support, and she therefore lacks standing.

Her deposition shows that she holds nothing more than mere "some day intentions" to engage in conduct proscribed by the statute. Despite pleading that she works with pregnant minors, she testified she has *never* worked with pregnant minors—as a result, she has no more credible interest in the controversy than any other member of the public. SOF ¶ 1.

Injury sufficient for Article III standing must affect "the plaintiff in a personal and individual way"—and a "legal, moral, ideological, [or] policy" objection will not suffice. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992); *see also All. for Hippocratic Med.*, 602 U.S. at 378–86. On a pre-enforcement challenge, an injury in fact that is both "actual or imminent" and "concrete and particularized" is still required. *Driehaus*, 573 U.S. at 158 (citation omitted). In the pre-enforcement context, "future injury may suffice if the threatened injury is 'certainly

impending,' or there is a 'substantial risk that the harm will occur.'" *Id.* (citation omitted). This requires "information about the 'when, to whom, where, or under what circumstances' [Plaintiffs] would [engage in proscribed conduct] but for the challenged policies," or else the Court is left with "mere some day intentions which do not support a finding of the actual or imminent injury" required. *Unified Data Servs., LLC v. Federal Trade Comm'n*, 39 F.4th 1200, 1211 (9th Cir. 2022) (citation and internal quotation marks omitted).

It is not realistic that Plaintiff Matsumoto will sustain a direct injury as a result of Idaho Code § 18-623. She has never worked with pregnant minors and does not have concrete plans to work with pregnant minors, other than expressing a general desire to do so someday. Consider the allegations in the Complaint that Matsumoto:

- "routinely works with victims of domestic and sexual violence, including minors," and her work includes working "with minors who become pregnant." Dkt. 1 ¶ 1.
- has a "long histor[y] of serving as [a] trusted adult[] for minors who find themselves pregnant," and that she "associate[s] with pregnant minors as a show of solidarity." *Id.* ¶ 40.
- is an attorney who works with minor survivors who are victims of domestic and sexual violence, including some minors who "have become pregnant." *Id.* ¶ 43.
- provides "support and aid [to] pregnant minors at a difficult time in their lives," and that this "assistance" is provided "at moments when time is of the essence." *Id.* ¶ 57.

Contrast those clear allegations from the Complaint with her equally clear, but clearly contradictory, testimony from her deposition, that she:

- cannot recall ever working "with minors who became pregnant." SOF ¶ 1.
- has not, to her knowledge, worked with any pregnant minor. SOF ¶ 1.

Contrary to the Complaint, the actual facts show that she has never worked with a pregnant minor.[3] She has no concrete future plans—she simply "envision[s]" expanding her current

[3] It bears noting that Matsumoto also denied any previous recruiting, harboring, transporting or procuring, or seeking to conceal an abortion as individual elements. SOF ¶¶ 2–6.

expertise to "serve survivors of [domestic violence and sexual assault]," and has expressed a "willingness to" work with "minors who need legal representation." SOF ¶ 7. This is not only disconnected from the conduct proscribed by Idaho Code § 18-623, it lacks the kind of "details necessary to show that any such plans" to violate the law "are concrete." *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051, 1055 (9th Cir. 2022) (citations omitted); *see also Satanic Temple v. Labrador*, 149 F.4th 1047, 1052–53 (9th Cir. 2025).

"The Constitution requires something more than a hypothetical intent to violate the law." *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000). The mere intent to engage in possibly unlawful conduct does not constitute an injury in fact for those "without any description of concrete plans" or "any specification of *when* the some day [plans] will be." *Lujan*, 504 U.S. at 564 (emphasis in original). This describes Matsumoto; she has offered only speculation.

**B. Plaintiff IIA lacks standing.**

IIA also lacks standing for the injunctive relief that it seeks and has a similar history of misrepresenting its history of aiding minors.

IIA alleged in the Complaint that it:

- had "*long histories of serving as trusted adults for minors who find themselves pregnant* [and] *associate[s] with pregnant minors* as a show of solidarity, communicating a message to minors who find themselves pregnant." Dkt. 1 ¶ 40 (emphasis added).
- ". . . provided *direct assistance* or *financial assistance* for pregnant minors seeking abortion care, *with awareness* that the pregnant minor's parents do not know about the minor's intent to seek abortion care." *Id.* ¶ 55 (emphasis added).
- "support[s] and aid[s] pregnant minors at a difficult time in their lives" and "lend[s] [its] support, time, and money, so that young people can make informed decisions . . . [IIA] provide[s] this assistance at moments when time is of the essence, and when young people might feel they have nowhere to turn for a host of complicated and deeply personal reasons." *Id.* ¶ 57.

As with Plaintiff Matsumoto, the Court relied on these statements in finding standing for a preliminary injunction, Dkt. 40 at 18, 31, and in finding standing sufficient for their claims to survive a motion to dismiss, Dkt. 41 at 7 n.5 (incorporating preliminary injunction arguments). The Ninth Circuit relied on these false representations as well, collectively finding that each had "provided guidance and material support to minors inside and outside of Idaho to access legal abortion care in the past and want to continue to do so." *Matsumoto*, 122 F.4th at 796.

But these allegations were, as with Plaintiff Matsumoto, false. IIA, at its 30(b)(6) deposition:

- directly responded to the question, "Are there any circumstances IIA has known in advance that the money it is providing is going to support an abortion for a minor?" with "No, not with certainty at the time." SOF ¶ 13.
- further clarified that it does not provide direct assistance to minors, but rather to "trusted community members." SOF ¶ 18.
- even for the one time where IIA believed financial aid it previously provided had gone towards an abortion, IIA *inferred* that the aid had gone to an abortion for a minor through a follow-up conversation with the adult who received the aid *after* the aid was already provided. SOF ¶ 17.

IIA lacks standing of any sort. IIA does not provide direct assistance to minors. It does not procure abortions for pregnant minors. SOF ¶ 8. It does not have plans to do so. SOF ¶ 9. The only circumstance in which IIA is aware that its support *might* have gone to an abortion for an underage girl, it could only *infer* the purpose *after* IIA had already provided the support to a trusted community member—so there was never any requisite intent to conceal. SOF ¶¶ 11–13; 17. IIA does not consider its advocacy to be assistance. SOF ¶ 14. IIA does not harbor or transport minors. SOF ¶¶ 15–16. Thus, were it not enough that IIA's allegations in support of standing were false, IIA's testimony that it hasn't done anything that is arguably proscribed by the statute shows that IIA is not injured by Idaho Code § 18-623. IIA lacks Article III standing, and must be dismissed.

### C. Plaintiff NWAAF lacks standing.

NWAAF also lacks standing because it, like IIA, has simply disclaimed acting with respect to nearly every element of the statute over the course of discovery. At its deposition, NWAAF testified that it:

- does not procure abortions, including for minors. SOF ¶ 19.
- does not have any plans to procure abortions for minors. SOF ¶ 20.
- has never intended and has no plans to conceal an abortion from the parents or guardian of a minor. SOF ¶¶ 21–22.
- does not procure abortions by recruiting minors and disclaimed any plans to do so. SOF ¶¶ 23–24.
- does not procure abortions by harboring minors. SOF ¶ 25.

The single instance in which NWAAF could point to transporting an Idaho minor to get an abortion occurred three years before the statute at issue was passed, in 2020, and NWAAF testified that it has no plans to transport Idaho minors in the future. SOF ¶¶ 26–27. *See Bain v. California Tchrs. Ass'n*, 891 F.3d 1206, 1214 (9th Cir. 2018) (finding that hypothetical possibility that plaintiff could "conceivably" return to a previous job without more was just a "speculative some day intention"). Under these facts, NWAAF cannot show that it has standing—NWAAF has testified itself out of the ambit of the abortion trafficking law.

### D. Even if Plaintiffs do have standing, they lack clean hands.

If the Court goes so far as to find Plaintiffs have stated an injury, they lack clean hands for two reasons. Under the unclean hands doctrine, "plaintiffs seeking equitable relief must have acted fairly and without fraud or deceit as to the controversy in issue." *Adler v. Fed. Republic of Nigeria*, 219 F.3d 869, 877 (9th Cir. 2000) (internal quotation marks and citations omitted). "[W]here a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions." *Precision Instrument Mfg. Co. v. Auto Maint. Mach. Co.*, 324 U.S. 806, 815 (1945). "The [doctrine] requires only that a defendant who

asserts unclean hands prove inequitable conduct by the plaintiff and that the plaintiff's conduct directly relates to the claim which it has asserted against the defendant." *Intamin, Ltd. v. Magnetar Techs. Corp.*, 623 F. Supp. 2d 1055, 1075–76 (C.D. Cal. 2009) (citing *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933)). "[T]he extent of actual harm caused by the conduct in question, either to the defendant *or to the public interest*, is a highly relevant consideration." *Republic Molding Corp. v. B.W. Photo Utilities*, 319 F.2d 347, 349–50 (9th Cir. 1963) (emphasis added). "A court of equity acts only when and as conscience commands; and, if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity." *Keystone*, 290 U.S. at 245 (citation omitted).

*First*, as discussed above, Plaintiffs Matsumoto and IIA did not accurately represent to the Court the nature of their connection with pregnant Idaho minors—an issue which was key to standing at the preliminary injunction stage and controlled the scope of the Court's modified injunction on remand.

Whatever the source of the misrepresentations, these misstatements materially altered the course of litigation—this Court specifically relied on these representations, as did the Ninth Circuit, in finding standing. Dkt. 40 at 31; Dkt. 41 at 7 n.5 (incorporating Dkt. 40 standing discussion); *Matsumoto*, 122 F.4th at 796. "The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage." *Keystone*, 290 U.S. at 245 (citation omitted). The Court cannot assist Plaintiffs who obtained a preliminary injunction through false statements to the Court.

*Second*, in the event the Court finds that Plaintiffs somehow have standing, the very conduct Plaintiffs wish to engage in as a result of the equitable relief they seek *is itself inequitable*.

If it is true that Plaintiffs seek to intentionally conceal an abortion from the parents or guardian of a minor, *see Driehaus*, 573 U.S. at 159 (citing *Babbitt v. Farm Workers*, 442 U.S. 289, 306 (1979)), this is purposefully deceitful conduct that cuts directly at the heart of the parent-child relationship and therefore the public interest. *See Stanley v. Illinois*, 405 U.S. 645, 651–52 (1972). This interest is at issue in the instant litigation—the suit against the Attorney General in his official capacity is a suit against the State, which has its own interest in protecting the rights of parents, including by passage of the instant statute. "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents." *Calabretta v. Floyd*, 189 F.3d 808, 820 (9th Cir. 1999); *see also Stanley*, 405 U.S. at 651 (holding that the interest of a parent in his child "undeniably warrants deference and, absent a powerful countervailing interest, protection"). Because that interest is at the heart of this litigation, if Plaintiffs are allowed to secrete children away from their parents through their chosen injunctive remedy, that is an outrageously inequitable usage of federal injunctive power and is barred by the unclean hands doctrine.

The Court should not permit its equitable relief to be used as a cudgel against parents who would otherwise exercise their rights of care, custody, control and medical decision making over their children. This already violates Idaho law, per se, in many circumstances by constituting enticing a minor or kidnapping, *see* Idaho Code §§ 18-1509, -1510, -4501(2), and -4506. To the extent that Plaintiffs purport to justify such actions in outlier[4] cases—i.e., where there is child

[4] "[T]here is a presumption that fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68 (2000) (plur. op.) (discussing *Parham*, 442 U.S. 602). Absent specific facts, a court cannot "assume . . . that the interests of the child and the natural parents . . . diverge." *Santosky v. Kramer*, 455 U.S. 745, 760 (1982).

abuse—Plaintiffs are obligated to report such circumstances to law enforcement or the Idaho Department of Health and Welfare, instead of taking matters into their own hands to coverup the criminal act of sexual abuse by procuring an abortion for the pregnant underage girl. An injunction enabling Plaintiffs or others to practice deceit by concealing abortions from parents and guardians of underage pregnant girls is patently "offensive to the dictates of natural justice." *Deweese v. Reinhard*, 165 U.S. 386, 390 (1897).

## II. Idaho's prohibition on abortion trafficking is not unconstitutionally void for vagueness, as the Ninth Circuit has already held. (Count I)

Because the Ninth Circuit has already answered whether Idaho Code Section 18-623 is unconstitutionally vague, summary judgment against Plaintiff on Count I is proper. The Ninth Circuit held as a matter of law that Idaho Code § 18-623 is not unconstitutionally vague, *Matsumoto*, 122 F.4th at 805–06, and instead describes, "an intelligible crime that reaches the problems the legislature sought to rectify." *Id.* at 815. This Court is bound by the preliminary injunction phase determination. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agriculture*, 499 F.3d 1108, 1114 (9th Cir. 2007); *see also United States v. Ninety-Five Firearms*, 28 F.3d 940, 941 (9th Cir. 1994) (a statute's vagueness is a question of law).

## III. Idaho prohibition on abortion trafficking does not violate the First Amendment. (Count IV).

No portion of Idaho Code § 18-623 violates the First Amendment, and to the extent the Court is inclined to hold otherwise, it should certify a question to the Idaho Supreme Court to clarify the scope of the statute.

### A. Plaintiffs' rights of association are not implicated.

Plaintiff's Count IV must be dismissed insofar as it alleges a freedom of association claim. The Ninth Circuit has already held Idaho Code § 18-623 does not burden associational rights. *Matsumoto*, 122 F.4th at 806. This point is law of the case. *Cattlemen*, 499 F.3d at 1114.

**B. "Harbor" and "Transport" describe conduct, not speech.**

Additionally, Plaintiff's Count IV must be dismissed insofar as it challenges the statute's prohibition on "harboring" or "transporting." The Ninth Circuit has already concluded that neither of these words criminalizes First Amendment protected speech. *Matsumoto*, 122 F.4th at 806–08 . These legal holdings are law of the case. *Cattlemen*, 499 F.3d at 1114.

**C. "Recruit" is not overbroad when properly interpreted; alternatively this Court should certify a question of state law construction to the Idaho Supreme Court.[5]**

Recruitment under the statute is not overbroad, nor does it capture all the conduct described in Plaintiffs' Complaint. The Ninth Circuit was incorrect to describe the "recruiting" prong of the statute as facially overbroad, not only as a matter of federal law, but also because as a matter of *Idaho* law—which the Ninth Circuit did not attempt to apply—the Idaho Supreme Court would construe the statute to avoid facial overbreadth. Certification on this state question of law to the Idaho Supreme Court to determine the proper interpretation of the recruiting prong is the correct course because the Ninth Circuit did not apply Idaho canons of construction or consider the lengths that the Idaho Supreme Court will go through to save an Idaho statute.

***1. "Recruiting" is not facially overbroad.***

A plain text reading of the "recruitment" provision is not facially overbroad.[6] "Because it destroys some good along with the bad, '[i]nvalidation for overbreadth is 'strong medicine' that is

[5] Because the Idaho Supreme Court requires certification to come "upon . . . motion" of the parties or the Court, a motion seeking certification is filed herewith. *See* Idaho Appellate Rule 12.3. Defendant will not offer additional substantive argument in that separate motion.

[6] Defendant recognizes that the Ninth Circuit decision binds this Court on this point as to the interpretation of "recruiting" under *federal* law. Defendant raises these issues in Section IV.C.1 for purposes of issue preservation. However, as discussed *infra*, certification to the Idaho Supreme Court remains open because the Ninth Circuit did not purport to address issues of state construction of state law, and the Idaho Supreme Court would construe the statute to achieve a "constitutional result." *Bradbury v. Idaho Jud. Council*, 136 Idaho 63, 68, 28 P.3d 1006, 1011 (2001); *see also Reinkemeyer v. SAFECO Ins. Co. of Am.*, 166 F.3d 982, 984 (9th Cir. 1999) (per curiam) (the Ninth

not to be 'casually employed.'" *United States v. Hansen*, 599 U.S. 762, 770 (2023) (citation omitted). "To justify facial invalidation, a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep." *Id.* (collecting cases).

Recruiting is not overbroad because the scope of the word is narrow. The prohibition on recruiting only applies if the criminal defendant procures an abortion for the pregnant minor or obtains an abortion inducing drug for the pregnant minor *and* does so with the specific intent to conceal the abortion from the parents or guardian of the minor. The statute sweeps in only conduct, i.e., procuring an abortion or obtaining an abortion inducing drug. *See Virginia v. Hicks*, 539 U.S. 113, 123–24 (2003). And, as the specific intent element requires, only such conceivable recruiting conduct done "not simply [with] the general intent to do the immediate act with no particular, clear, or undifferentiated end in mind, but the additional deliberate and conscious purpose or design of accomplishing a very specific and more remote result." 21 Am. Jur. 2d Criminal Law § 114 (Feb. 2026). This is a narrow slice of conduct.

Speech incident to that narrow slice of conduct—conduct that must be done with the direct and specific intent to conceal the abortion from the pregnant minor's parents or guardian—directly interferes in the parent-child relationship in Idaho and subverts parental medical decision making. Even if it is speech, it is speech done with the specific intent to conceal the abortion from the parents or guardian of a minor—which is not protected under the First Amendment because it is deceptive and specifically intended to impair the uncontestable interest that parents have in care, custody and control of their children. *E.g. Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190

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Circuit is "bound by the answers of state supreme courts to certified questions just as we are bound by state supreme court interpretations of state law in other contexts.").

(1948) (holding "governmental power" "to protect people against fraud" "has always been recognized in this country and is firmly established").

Moreover, recruitment is not nearly as broad as the Ninth Circuit suggested. Recruitment requires inducement to do something, even under the definition adopted by the Ninth Circuit. *Matsumoto*, 122 F.4th at 808. What recruiting covers in the context of abortion trafficking is, at its broadest, a direct enticement to go imminently get an abortion or take an abortion inducing drug *and* then actually procuring that abortion. This is a reasonable construction of the text that should have governed the overbreadth analysis and does not result in substantial abridgement of speech. But the Ninth Circuit suggested it covered situations involving no inducement. To tick down each item on the list of potential items that the Court believed could theoretically constitute recruiting: emotional support cannot be recruitment because to communicate care and concern and acceptance for someone does not persuade the person to *do* anything (*id.* at 809). Nor does talking about abortion generally, or what the Ninth Circuit called "persuasive encouragement." *Id.* at 810.

Providing information about abortion does not violate the statute either because, again, the criminal act is to *procure* an abortion or obtain an abortion inducing drug by recruitment and to do so with the requisite intent. To simply convey information does not procure anything.[7] *Id.* As for the "attempt" examples, *id.* at 810–11, the panel was simply wrong—attempt liability in Idaho requires the State to prove a specific intent to commit the crime attempted, *State v. Pratt*, 125 Idaho 546, 558, 873 P.2d 800, 812 (1993), and requires "a step of preparation in 'dangerous proximity to the commission of the offense planned.'" *State v. Allen*, 149 Idaho 545, 547, 237 P.3d 14, 16 (Ct. App. 2010) (citation omitted). None of the examples the panel gives (pamphleteering or displaying

[7] It's notable that the Ninth Circuit recognized it was adopting a definition that was both contestable and not the only reasonable construction of the statute. *Matsumoto*, 122 F.4th at 809 ("could *arguably* satisfy the plain meaning . . . .").

a bumper sticker) could possibly come in "dangerous proximity" to actually procuring a specific abortion for a specific minor, let alone with the specific intent to do so.

Some of what the Ninth Circuit read to be recruitment is simply conduct, not speech, so even if it is included, it fails to show overbreadth. Giving payment to someone for a service or doing so on behalf of someone else, providing food or bus tickets, or any of the other interactions that are essentially commercial transactions on behalf of another party are conduct, not speech. *Compare Matsumoto*, 122 F.4th at 810, *with B & L Prods, Inc. v. Newsom*, 104 F.4th 108, 114 (9th Cir. 2024) (holding that the act of "consummating a business transaction is non-expressive conduct unprotected by the First Amendment") (collecting cases). Because providing services to another party is not speech, but conduct, such examples cannot suffice to show overbreadth.

***2. Certification to the Idaho Supreme Court to interpret "recruiting" under Idaho state law is appropriate.***

Certification of the "recruiting" prong's scope to the Idaho Supreme Court is appropriate before any final determination of its constitutionality as the Ninth Circuit did not apply Idaho canons of statutory construction in its interpretation of the recruiting prong. Here, there is good reason to think that the Idaho Supreme Court would not construe the recruiting prong with the breadth that the Ninth Circuit did.

"The highest court of each State, of course [is] 'the final arbiter of what is state law.'" *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (citation omitted). "Certification provides a means to obtain authoritative answers to unclear questions of state law." *Toner for Toner v. Lederle Labs., Div. of Am. Cyanamid Co.*, 779 F.2d 1429, 1432 (9th Cir. 1986) (Kennedy, J.) (certifying question where Idaho Supreme Court's cases did not provide guidance on specific application of doctrine of negligence or address applicable Restatement provision). "[Certification] saves time, energy, and resources and helps build a cooperative judicial federalism." *Id.* (quoting *Lehman Bros.*

*v. Schein*, 416 U.S. 386, 391 (1974) (cleaned up)). In cases of constitutional challenges to state law, certification plays a role similar to the "time-honored" doctrine of constitutional avoidance. *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1944).

By allowing the Court whose interpretation is controlling a chance to weigh in, this Court can avoid guesswork and obtain a definitive interpretation of the statute. *Id.* And, by resolving a case on state *statutory* interpretation grounds, rather than federal *constitutional* grounds, the Court correctly "avoid[s] 'pass[ing] on questions of constitutionality unless such adjudication is unavoidable.'" *City and Cnty. of San Francisco v. Garland*, 42 F.4th 1078, 1089 (9th Cir. 2022) (quoting *Spector*, 323 U.S. at 105). If instead, a Court guesses at a statute's meaning, the Court risks a "friction-generating error" that results in an avoidable clash between sovereigns. *Arizonans for Off. Engl. v. Arizona*, 520 U.S. 43, 79 (1997).

"[E]ven in cases involving First Amendment challenges to a state statute, [certification] may be required 'in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication.'" *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 510 (O'Connor, J., concurring) (quoting *Babbitt*, 442 U.S. at 306). "Where a state statute has never been construed or applied, it seems rather obvious that interpretation of the statute by a state court could substantially alter the resolution of any claim that the statute is facially invalid under the Federal Constitution." *Id.* at 509.

Here, Idaho caselaw shows the Idaho Supreme Court likely would take a different approach to construing the word "recruiting" than the Ninth Circuit panel did in this case. Certification is proper under both the Ninth Circuit case law and the relevant Idaho Appellate Rule.

***a. The Idaho Supreme Court would take a different view of "recruiting" under Idaho law than the Ninth Circuit did under federal law.***

The Idaho Supreme Court takes pains to avoid the facial invalidity of criminal statutes, including, if necessary, adopting saving constructions that cabin the reach of the text. Idaho courts "whenever possible, construe a statute so as to achieve a constitutional result." *Bradbury*, 136 Idaho at 68, 28 P.3d at 1011. "[I]t is the province of [the Idaho Supreme] Court, where possible, to apply a reasonable limiting construction to legislative measures in order to avoid facial unconstitutionality." *State v. Doe*, 148 Idaho 919, 933, 231 P.3d 1016, 1030 (2010) (citation omitted).

An on-point example of such a construction is *State v. Manzanares*, 152 Idaho 410, 272 P.3d 382, (2012). *Manzanares* concerned a criminal statute that prohibited gang "recruiting" by among other things "[k]nowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang." *Id.* at 422, 272 P.3d at 394 (citing Idaho Code § 18-8504). The Idaho Supreme Court considered whether the statute, which defined recruitment by causing "active[] participat[ion]" and lacked a specific intent requirement in that definition, was facially overbroad. The Court rejected the argument. *Id.* at 423–26, 272 P.3d at 395–98. In doing so, the Court did not rely on a plain text analysis of the word "recruiting" or its components taken to their broadest extent (i.e., defining recruiting as "encouraging or otherwise causing"), but instead construed the statute in its context, including a mens rea requirement elsewhere in that statutory scheme, and a sensible construction of "actively participate" to cabin its reach. *Id.* at 425, 272 P.3d at 397.

But here, the Ninth Circuit, while noting the presence of an express mens rea requirement, *Matsumoto*, 122 F.4th at 811, expressly declined to apply it to the whole statute to narrow its construction of "recruiting" in the manner of the Idaho Supreme Court in *Manzanares*, and failed

to take the word in its context by asking whether the Ninth Circuit's examples of "recruiting" would also be considered "procuring." Thus, the Ninth Circuit, instead of construing the recruiting prong in Idaho Code § 18-623 in a manner to achieve a constitutional result, adopted the broadest possible interpretation and then found the recruiting prong unconstitutional. This is not how the majority of the Idaho Supreme Court interprets statutes. *Compare Manzanares*, majority op. *with* dissenting op. of Horton, J (critiquing majority saving construction).

*State v. Doe*, 148 Idaho 919, 231 P.3d 1016 (2010), is similarly instructive. There, the Court construed the constitutionality of a curfew statute that a juvenile was accused of violating. In considering whether the statute was unconstitutionally vague, the Court did two things that the Ninth Circuit did not do on appeal in this case. First, unlike the Ninth Circuit, the Idaho Supreme Court considered the context of the language in construing the text of the statute, which lead to it *rejecting* the Ninth Circuit's interpretation of the words "loiter, idle, wander, stroll, or play" *in an analogous statute*. *Id.* at 932, 231 P.3d at 1029. Second, in determining whether exceptions to the curfew requirement were vague, the Court did not stop at plain meaning but "construed together" the exceptions with the rest of the statute and applied a construction of the text to avoid facial unconstitutionality. *Id.* at 933, 231 P.3d at 1030. As in *Doe*, here, the Idaho Supreme Court would likely look to the specific intent element of the abortion trafficking statute, and the requirement that an abortion (or drug) actually be procured, in determining whether conduct is properly considered "recruiting" under Idaho Code § 18-623.

The Ninth Circuit did not apply the methodology in *Manzanares* or *Doe*, or even more generally attempt to predict how the Idaho Supreme Court would rule in defining "recruiting." The Ninth Circuit did recognize that the "first step in the proper facial analysis is to assess the state laws' scope." *Matsumoto*, 122 F.4th at 806 (cleaned up). But rather than read the statute as a

composite whole, as the Idaho Supreme Court instructs, or say that it was predicting how the Idaho Supreme Court would rule on this question of state law,[8] the Ninth Circuit instead 1) applied "*standard*" methods of construction under *federal* law (*Matsumoto*, 122 F.4th at 807; quotation at 808), 2) searched *federal* case law and *statutory* definitions (*Matsumoto*, 122 F.4th at 808), and 3) ultimately stopped at a plain meaning analysis of the single word "recruit" and gave it an overbroad interpretation. *Id.* at 808–11. Because the Idaho Supreme Court is likely to adopt a different interpretation of the recruiting prong, certification before summary judgment is the appropriate course.

***b. Certification is appropriate under the Ninth Circuit standard governing certification to state supreme courts.***

Courts in the Ninth Circuit undertake a four-part inquiry to determine if certification is appropriate, asking "(1) whether the question presents 'important public policy ramifications' yet unresolved by the state court; (2) whether the issue is new, substantial, and of broad application; (3) the state court's caseload; and (4) 'the spirit of comity and federalism.'" *High Cntry. Paving, Inc. v. United Fire & Cas. Co.*, 14 F.4th 976, 978 (9th Cir. 2021) (quoting *Kremen v. Cohen*, 325 F.3d 1035, 1037–38 (9th Cir. 2003)). Three factors weigh in favor of certification, and one is neutral.

*First*, the scope of the "recruiting" prong of Idaho Code § 18-623 under Idaho law and Idaho canons of construction presents a question with important public policy ramifications yet unresolved by the Idaho Supreme Court. It has never interpreted Idaho Code § 18-623. The constitutionality of a state criminal statute is, per se, a question with important public policy

[8] *Compare Northwest Ass'n. of Indep. Schs. v. Labrador*, 166 F.4th 1148, 1157 (9th Cir. 2026) (expressly noting panel's analysis was "guided by the Idaho Supreme Court's approach to statutory interpretation" in interpreting scope of state law and applying limiting constructions) (citations omitted).

ramifications. *Cf. Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (quoting in parenthetical *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)) (noting on preliminary injunction that a state suffers irreparable injury "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people").

*Second*, the issue remains new, substantial, and of broad application. The issue of Idaho's application of its canons of construction to the statute is new: the Ninth Circuit did not try to predict how the Idaho Supreme Court would interpret the "recruiting" prong. The constitutionality of a state statute is unquestionably substantial, and the application of a criminal statute to the entire state is broad. Further, while an injunction in this case would only bind the Attorney General, who is only able to enforce the statute in situations when a county prosecutor has disavowed prosecution of the statute as a whole, an interpretation from the Idaho Supreme Court will control whether a county prosecutor may bring a "recruiting" charge in the first place.

*Third*, the Idaho Supreme Court's caseload does not weigh in either direction insofar as counsel is aware, and the Idaho Supreme Court may decline certification if its caseload cannot accommodate the question. I.A.R. 12.3.

*Fourth*, the "spirit of comity and federalism" heavily merits certification. Idaho courts, again, are obligated to construe statutes in a way to preserve their constitutionality under Idaho canons of construction—rather than the "standard" principles and broad construction that the Ninth Circuit applied in this case. *See Matsumoto*, 122 F.4th at 806–11. Given cases like *Manzanares* and *Poe*, the unique state interest in having its legislation preserved and enforced if the statute can be interpreted in a constitutional manner, and the interest in avoiding federal interruption in the development of Idaho state law, the Idaho Supreme Court deserves the opportunity to determine the proper scope of the recruiting prong under Idaho Code § 18-623.

As Justice O'Connor noted, it makes more sense to allow a state court to weigh in and interpret the statute under Idaho canons of statutory interpretation before federal courts weigh in and decide the question prematurely, potentially foreclosing opportunities for the state court to opine. *Brockett*, 472 U.S. at 510. And, again, resolution of a challenge to state law on a non-constitutional ground lessens any clash between sovereigns, and fulfills the Court's obligation to avoid constitutional questions if possible.

***c. Certification is proper under Idaho Appellate Rules.***

Under the applicable Idaho Appellate Rule, certification is proper. Idaho Appellate Rule 12.3 allows certification where the federal court finds "[t]he question of law certified is a controlling question of law in the pending action in the United States court as to which there is no controlling precedent in the decisions of the Idaho Supreme Court," and "[a]n immediate determination of the Idaho law with regard to the certified question would materially advance the orderly resolution of the litigation in the United States court." As the Idaho Supreme Court is the highest expositor of Idaho law, its interpretation of Idaho Code § 18-623 is controlling. The Idaho Supreme Court has not interpreted the statute before. Determination of the proper scope of the "recruiting" prong will also conclusively determine the scope of the statute for purposes of this litigation and avoid future adjudication in state courts that may reach different results.

Given the paramount importance of preserving valid acts of legislation, avoiding constitutional questions, avoiding conflict between sovereigns, and the harm that comes to the State from its inability to enforce its laws, this Court should certify the following proposed question to the Idaho Supreme Court for resolution by decree under Idaho Appellate Rule 12.3:

> In this facial challenge under the First Amendment to Idaho Code § 18-623, this Court must first "assess the statute's scope, because it is impossible to determine whether a statute reaches too far without knowing what the statute covers." *Matsumoto v. Labrador*, 122 F.4th 787, 806 (2024).

> What does "recruiting" mean within the context of Idaho Code § 18-623(1) under Idaho law, including applicable Idaho canons of construction? Put another way, what is criminalized by the statute's prohibition on "procur[ing] an abortion … or obtain[ing] an abortion inducing drug for the pregnant minor to use for an abortion by recruiting . . . the pregnant minor within this state," with the "intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor"?

As this Court has previously done in other cases, it should certify the above controlling question seeking a decree on the scope of the recruiting prong to the Idaho Supreme Court. *E.g., Blasch v. HP, Inc.*, No. 1:22-cv-00109-DKG, 2023 WL 10450307 at *8–9 (D. Idaho Apr. 18, 2023); *Duffin v. Idaho State Univ.*, No. 4:16-cv-00209-BLW, 2017 WL 6543873 at *7 (D. Idaho Dec. 21, 2017) (certifying question at summary judgment stage while granting and denying in part cross motions). A motion in compliance with Idaho Appellate Rule 12.3 is filed herewith.

## IV. Idaho's prohibition on abortion trafficking does not violate the right to interstate travel (Count II).

Idaho Code § 18-623 proscribes conduct taking place in Idaho—the interference in a parent's fundamental right to the care, custody and control of his or her child (particularly decision making about the health and wellbeing of the minor)—regardless of where the minor ultimately ends up. Nothing about Idaho's prohibition on abortion trafficking violates the right to interstate travel. To the contrary, the statute in question is a lawful aid to parents to assist in their exercise of authority over their children—authority that does not belong to busybodies and interlopers. Count II must be dismissed.

### A. Idaho's abortion trafficking law does not implicate the right to interstate travel.

The right to travel is the fundamental right "of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v. Roe*, 526 U.S. 489, 500

(1999); *accord Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 276-–77 (1993). "In reality, right to travel analysis refers to little more than a particular application of equal protection analysis," between in state and out-of-state persons. *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982). Idaho Code § 18-623 does not implicate any of these rights and does not discriminate between in-state and out-of-state citizens, and so it does not implicate the right to travel.

***1. Idaho's prohibition on abortion trafficking is a constitutional aid to parents' right to custody over minors who lack an independent right to travel.***

Idaho's abortion trafficking statute plainly does not implicate the right to travel. *Saenz* first describes the right to come and go from one state to another. *Saenz,* 526 U.S. at 500 (citing *Edwards v. California*, 314 U.S. 160 (1941)). But under Idaho Code § 18-623, Plaintiffs are not prevented from entering or leaving the state, nor prevented from entering or leaving the state with anyone who has themselves the right to travel, including parents who themselves (or delegating their authority to someone else) can take their own children out of state for an abortion. Because the law "impose[s] no obstacle to [Plaintiffs'] entry into [Idaho]" the law does not "directly impair the exercise of the right to free interstate movement." *Saenz,* 526 U.S. at 501.

Next, *Saenz* considered the "right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Id.* at 500. Put another way, this is the same as the federal privileges and immunities guarantee of Article IV, Section 2 of the United States Constitution, ensuring that citizens of one state have the same privileges and immunities of the states in which they visit. The same laws that prohibit abortion trafficking apply equally to both in and out-of-state residents, so long as the recruiting, harboring, or transporting is done within the State of Idaho. Thus, this prong is not implicated. *See generally id.* at 502 (discussing applications).

Last, the final prong is "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State." *Id.* at 502. Again, nothing about the statute prevents Plaintiffs—or anyone else—from moving to Idaho and enjoying the privileges and immunities of being Idahoan. No prong of the right to travel described by *Saenz* is at play.

Because the rights described in *Saenz* are not implicated, Count II fails. Laws that "evenhandedly disrupt[ ] both local and interstate travel" do not implicate the right to travel. *Bray*, 506 U.S. at 277 n.7 (quoting and addressing dissent of Stevens, J. at 337). Here, it does not matter whether the procedure is in Idaho or elsewhere, as long as the recruiting, harboring, or transporting occurs in Idaho. Because the prohibition on abortion trafficking impacts both in-state and out-of-state travel, it is even handed, and any impact on interstate travel, is at the very most incidental.

*Jones v. Helms*, 452 U.S. 412, 417–20 (1981) is instructive on both the question of whether a state may criminalize conduct—including conduct continuing into another state—and whether the right to travel can be bootstrapped onto otherwise criminal conduct to defeat a statute. In *Jones*, the Supreme Court considered a Georgia statute that turned a misdemeanor charge of child abandonment into a felony upon leaving the state. *Id.* at 413 n.1. As the Supreme Court held, this did not implicate the right to interstate travel for, among other reasons, the fact that the crime included underlying conduct that was otherwise punishable. *Id.* at 422. In such a case "the State may treat *the entire sequence of events*, from the initial offense to departure from the State, as more serious than its separate components." *Id.* at 422–23.

As with the felony child abandonment in *Jones*, it is true that the act of abortion trafficking may not be complete until after the pregnant minor, in some—but surely not all—conceivable cases, leaves the state and obtains an abortion. But this does not preclude the state from attaching consequences to conduct that occurs within the State of Idaho so as to protect the parent-child

relationship that may continue beyond state lines, any more than Georgia was precluded from attaching consequences to conduct that continued past its state line. This makes sense: plenty of crimes can be contemplated that involve a sequence of actions that can occur in two or more states, *i.e.*, kidnapping or a high-speed chase, etc. Idaho Code § 18-4502; 49-1404(2)(d).

The context in which this challenge comes, a statute enacted to protect the right of parents over their children, makes the interstate travel challenge an especially poor fit. Parents have the fundamental right to make medical decisions for their children, including medical decisions about which a child might disagree. *Parham*, 442 U.S. at 602–04; *Mirabelli*, 607 U.S. at ____, 146 S. Ct. at 803 (citing *Parham*). While the State, with its own interest in protecting the wellbeing of children, may "interfere with the right if they 'provide the parents with fundamentally fair procedure,'" *Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018) (quoting *Santosky v. Kramer*, 455 U.S. 745 (1982)), private parties have no right to make medical decisions for other people's children, or the decision to provide a minor with access to an abortion procedure—even when they perceive a conflict between the wishes of the parent and child. *See Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (noting states can legislate to aid parental authority).

Minors, in turn, do not have an unqualified right to interstate travel. In fact, minors have no fundamental right to travel without their parents, *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654–55 (1995). Under common law, "unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e., the right to come and go at will*. They are subject, even as to their physical freedom, to the control of their parents or guardians." *Id.* at 654 (citation omitted) (emphasis added). Idaho is free to adopt regulations to assist parents in their ability to make decisions related to the care of their children, including the control of children who would otherwise choose to get an abortion.

*Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997) (distinguishing between curfew law which constrained parents from parental consent law in *Bellotti v. Baird*, 443 U.S. 622, 638–39 and n.18 (1979) (plur. op) which was constitutional because it supported parents); *see also Parham*, 442 U.S. at 603–04 ("The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child."). The right of parents to make medical decisions for their children free of improper interference by busybodies, and the absence of any right of children to travel freely, result in one logical conclusion: because minors themselves have no right to travel without the consent of parents, Plaintiffs have no right to take them.

The U.S. Supreme Court recently reiterated the importance of the parental right to be involved in important decisions regarding their children when third parties seek to interfere with that right. In *Mirabelli*, 607 U.S. ____, 146 S. Ct. at 803, the Court granted interim relief to parents challenging a state's policy requiring schools to "shut out" parents from "participation in decisions regarding their children's mental health." The Court found that the parents had stated a substantive due process claim against the state, which, through its policy had improperly prioritized the right of privacy of the child over the medical decision-making authority of the parents. *See also op. below Mirabelli v. Olson*, ___ F. Supp. 3d ____, 3:23-cv-768-BEN-WVG, 2025 WL 3713588 at *23 (S.D. Cal. Dec. 22, 2025).

* * *

Statutory aids to parents in allowing them to make medical decisions for their children are plainly legitimate. *E.g.*, *Ginsberg*, 390 U.S. at 639; *Parham*, 442 U.S. at 603–04. The fact that Plaintiffs may disagree with some of those decisions about abortion, or that Plaintiffs would permit abortions when parents prohibit them is constitutionally irrelevant. Plaintiffs cannot bootstrap their

way into someone else's parent-child relationship by claiming that their interference continues across state lines. The right to interstate travel does not extend so far as to intrude into the rights of other parents and guardians to their children. Plaintiffs' claim fails.

***2. Legislative history, to the extent it isn't simply irrelevant, supports the statute's valid purpose.***

Idaho's abortion trafficking statute does not impair the right to interstate travel because it does not impair any of the rights described in *Saenz*. Plaintiffs nonetheless argue that the right to interstate travel includes a right against legislation passed with a bad motive, i.e., a mere intent to deter travel. *E.g.*, Dkt. 1 ¶¶ 69, 75; Dkt. 87 at 9. This is incorrect, but even if that proposition were a correct statement of the law, the statute here clearly passes muster.

***a. Legislative intent is irrelevant—the statute's text stands alone.***

Plaintiffs have asserted at various points that the right to interstate travel prohibits statutes whose primary objective is to impede travel. Their support for this proposition hinges on the plurality opinion in *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion). In passing, the plurality opinion[9] outlined a theory that the right to travel is implicated by a state law "when impeding travel is its primary objective." *Id.* This proposition is not the law, as a plurality opinion "d[oes] not represent the views of a majority of the [Supreme] Court." *United States v. Brobst*, 558 F.3d 982, 991 (9th Cir. 2009) (citation omitted).

To be sure, Ninth Circuit cases have mentioned *Soto-Lopez*, but to the extent cases like *Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999) or *Matsuo v. United States*, 586 F.3d 1180 (9th Cir. 2009) have mentioned *Soto-Lopez*'s "primary objective" dicta, they have merely mentioned it in passing while pointing out that such an issue had not been raised in the case before the Court.

[9] Chief Justice Burger and Justice White *expressly* rejected the necessity of the right to travel commentary, and joined on Equal Protection, *Soto-Lopez,* 476 U.S. at 912–13 (Burger, C.J. concurring), or failure to meet rational basis, *id.* at 916 (White, J., concurring) grounds.

*Miller*, 176 F.3d at 1205; *Matsuo*, 586 F.3d at 1182 n.2. Indeed, to the extent the Ninth Circuit *has* discussed the right to interstate travel in conjunction with *Soto-Lopez*, it has done so on grounds that are coterminous with the rights described by *Saenz*. *Compare Saenz*, 526 U.S. at 501, *with Miller*, 176 F.3d at 1205–06 (rejecting argument based on direct impairment theory through deprivation of driver's license) and *Matsuo*, 586 F.3d at 1184–85 (rejecting disparate impact claim arguing differential treatment between recipients of federal benefits based on state of residents). In fact, *Matsuo* notes that unless a purported infringement *also* falls within the bounds of the right enunciated in *Saenz*, a state act does not burden the right to travel. *Matsuo,* 586 F.3d at 1184–85. No binding precedent allows the Court to speculate as to legislators' motives in order to find a violation of the right to interstate travel.

Further, more recent decisions make *Soto-Lopez* anomalous in addition to being non-binding. Arguments based on legislative motives have been "long disfavored" and a "hazardous matter." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 253 (2022) (collecting cases) (first quote); *United States v. O'Brien*, 391 U.S. 367, 383 (1968) (second quote). Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, [the Court has] been reluctant to attribute those motives to the legislative body as a whole." *Dobbs*, 597 U.S. at 253–54. "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it." *Id.* at 254 (quoting *O'Brien*, 391 U.S. at 384); *cf. Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018) ("legislative history is not the law").

Even more dubious are arguments attempting to impugn the motives behind a piece of legislation based on statements from non-legislator supporters of the legislation. *Dobbs*, 597 U.S. at 254 (rejecting such an argument). Such statements can't even claim the imprimatur of a single actual decisionmaker who is democratically accountable for the legislation.

Plaintiffs effectively want to import an *Arlington Heights* style framework to the right to travel, despite the fact that no Supreme Court majority has ever commanded such a thing. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977). In the absence of such a warrant, the kinds of legislative history material that Plaintiffs attempt to use here are exactly the kind of "excerpts from committee hearings and scattered floor statements by individual lawmakers" that are "among the least illuminating forms of legislative history." *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 481 (2017) (second quote quoting *NLRB v. SW Gen., Inc.,* 580 U.S. 288, 307 (2017)). There is no need to "'muddy' the meaning of 'clear statutory language,'" with floor statements as the Supreme Court instructed in overruling a contrary D.C. circuit test applied to statutory interpretation. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436–37 (2019) (citation omitted). The statute applies to conduct that occurs in Idaho that results in the procurement of abortions for pregnant minors with the specific intent to conceal the abortions from the parents, and thereby harm the parent-child relationship—it isn't aimed at interstate travel, let alone the travel of a person with the constitutional right to travel.

* * *

Plaintiffs ask this Court to apply the harshest remedy—a declaration of facial unconstitutionality—against an act of representative government on the flimsiest of grounds, i.e., what *single representatives* and *non-legislators said in committee*. This is not the law, and the Court should decline the invitation.

***b. Evidence beyond the text of the statute supports Defendant.***

But supposing the Court is inclined to look to indicia of intent including *and* beyond the statute itself, Idaho's abortion trafficking statute does not implicate the "primary objective" test of *Soto-Lopez*. Section 18-623's "primary objective" is the protection of parental rights.

To the extent that committee hearings are any guide, they are pointed towards the statute's true intent: to support the right of parents to make medical decisions without the interference of private interlopers and strangers. House Bill 98 did not receive a committee hearing. But each of the occasions on which House Bill 242 received a hearing, the consistent presentation of the floor sponsors[10] and supportive legislators was clear: "this is a parental rights bill" intended to regulate conduct in Idaho. Stmt. of Rep. Ehardt, House Chambers, Mar. 7, 2023 [1:02:32]

- "[W]e have before us another parental rights bill . . . because once is far too often in Idaho where a minor has been trafficked across our state lines . . . to essentially get an abortion without the consent of a parent. This legislation is only dealing with the fact that a parent would not give consent." *Id.* [1:02:17 – 1:03:05]

- "Now let me just be very clear with this that this does not prohibit a parent who wants to give consent or a parent who takes their child across the border to receive an abortion. A parent can still do that and a parent can still give permission, say to an aunt or an uncle to do that. This is only dealing with those who would traffic minors without the consent of a parent." *Id.* [1:03:50-1:04:22]

- "This would deal with the actions that we're able to control within Idaho." *Id.* [1:05:48-1:05:52]

- "The section itself again applies to those that attempt to conceal with the intent to conceal from the parent." Stmt. of Sen. Lakey, Sen. State Affairs Comm. (Mar. 27, 2023) [33:01-33:09]

- "We're talking about the recruiting, harboring or transporting for the attempt to procure, or in the furtherance of the procurement of an abortion, which is unlawful in Idaho. But it's the activity that occurs within the state, not the transport across state lines. It says transporting the pregnant minor within the state commits the crime." *Id.* [35:13-37]

- "Abortion trafficking . . . covers an adult who, with the intent to conceal an abortion from the parent or guardian, procures an abortion or an abortion inducing drug to be used in the abortion for a pregnant minor by recruiting, harboring or transporting that pregnant minor *within the state* . . . . It focuses on an adult who acts to conceal this and then takes actions in furtherance of that while concealing it from the parent or guardian." Stmt. of Sen. Lakey, Senate Chambers (Mar. 30, 2023) [1:16:25-1:16:55]

[10] Sponsors of H.B. 242 were Representative Barbara Ehardt and Senator Todd Lakey.

To the extent that the statements of other supporters are legally relevant, they also made the meaning and intent plain: the bill was intended to protect the rights of parents to determine whether a minor can receive an abortion. As Megan Wold, a lobbyist on behalf of Idaho Right to Life, stated in the House State Affairs Committee, "the crime is performed by the individual who *within the state of Idaho* harbors, recruits or transports the minor for an abortion *wherever it would be*." Stmt. of Megan Wold, House State Affairs Comm. (Mar. 3, 2023) [1:07:47-57]. She specifically noted that circumstances like human trafficking writ large, where pregnancy is an impediment to prostitution, and the impregnation of an underage girl by an adult male seeking to conceal the statutory rape from parents are circumstances in which abortion trafficking would come into play. *Id.* at [58:00-1:00:33]. She reiterated in the Senate State Affairs Committee, "*it's really about the actions happening here in Idaho* to an underage individual." Stmt. of Megan Wold, Senate State Affairs Comm. (Mar. 27, 2023) [4:58-5:13]. Indeed, she identified specific instances of abortion trafficking, with their attendant harms—physical harm to the minor, concealment of the abortion, and potential additional pregnancies as the hidden abuse continues. Stmt. of Megan Wold House State Affairs Comm (Mar. 3, 2023) [59:05-1:03:33]; Senate State Affairs Comm (Mar. 27, 2023) [11:25-11:55].

Other witnesses testified about the harms of potentially coerced abortions when a stranger to the parent child relationship commits abortion trafficking and the need to ensure parents are involved. *See* Stmt. of Samantha Doty (ph.), Sen. State Affairs Comm. (Mar. 27, 2023) ("This law is especially designed to protect young women who are being abused or trafficked.") [14:34-38]; Stmt. of Dr. Katherine Aberle, Sen. State Affairs Comm. (Mar. 27, 2023) ("Human trafficking as well as statutory rape victims are also left out of the abortion discussion. These women are coerced into obtaining abortions to protect their traffickers and rapists. We know that human trafficking of

minors is happening in Idaho. House Bill 242 supports parental consent and protects vulnerable minors.") [17:21-17:35]

In context, references to interstate travel are prosaic—minors don't have the right to travel without their parents' consent, and the interference in the parent-child relationship is taking place *in Idaho*:

> "It's all about parental permission. Taking a minor from Idaho and trafficking that minor to another state to receive an abortion. *Now let me be clear* that if a parent wants to take that minor to another state because unfortunately their child ended up pregnant, that parent can do this . . . [i]f that parent wanted to cede their rights . . . that parent can do it. But somebody unbeknownst to that parent cannot do that . . . And this gives us the tools to go after those *who would subvert [ ] a parent's right to be able to make those decisions* in conjunction with their child."

Stmt. of Rep. Ehardt, Senate State Affairs Comm. (Mar. 27, 2023) [2:04-2:46] And again, as Senator Lakey emphasized in Senate Chambers, the intended target of the legislature was conduct (recruiting, harboring, and transportation) undertaken *in Idaho*. Stmt. of Sen. Lakey, Senate Chambers (Mar. 30, 2023). [1:16:00-1:16:47]

* * *

Ultimately, the aim of the law is clear from the text—but certainly emphasized by floor sponsors and committee speakers: whatever "misdirection" is attempted by opponents of the bill, "[t]his is a parental rights bill." Stmt. of Rep. Ehardt, House Chambers (Mar. 7, 2023) [1:15:15-1:16:00]. As Representative Ehardt correctly noted, minor rights are "limited" and "when you talk about the rights of the children, you're talking about who controls the rights of the children." *Id.* [1:16:18-1:16:25]; *accord Vernonia*, 515 U.S. at 654. The bill protects the rights of parents, and as to persons who actually have a right to interstate travel, i.e., adults or emancipated minors, the statute and its sponsors have nothing to say. Even if the Court looks beyond the text to evidence of intent, the right to interstate travel is not implicated.

Thus, even under Plaintiffs' proposed standard, Count II fails.

## CONCLUSION

For the foregoing reasons, the Court should grant the Attorney General's motion for summary judgment as to all claims and all Plaintiffs, and/or certify a question to the Idaho Supreme Court.

DATED: April 16, 2026

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT on April 16, 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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