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

MOTION FOR ENTRY OF PROTECTIVE ORDER

Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund, and Indigenous Idaho Alliance ("Plaintiffs") move the Court for entry of a protective order in the form submitted as **Exhibit A**. Federal Rule of Civil Procedure 26(c)(1) permits a court, upon a showing of good cause, to enter a protective order requiring that certain information be produced only in a specified way.[1] For the reasons set forth below, good cause exists for entry of the proposed protective order.

This case concerns abortion access and travel for reproductive care, issues that carry extraordinary privacy, safety, and reputational concerns. While Plaintiffs have had no responsive documents for the Defendant's initial interrogatories or requests for production, Defendant promulgated new written discovery after business hours on October 28, 2025, knowing that Plaintiffs were going to file this motion. And the discovery deadline is not until January 8, 2026. Due to the sensitive information within certain Plaintiffs' control—including information on policies and practices for assisting abortion patients and information about people who they assist to obtain lawful abortion care—and considering the stigma and violence that can be perpetrated toward those who assist people in fulfilling their reproductive health decisions, a protective order should be entered in this case.[2] Further, Defendant has been laser focused in discovery on seeking to acquire information that by its terms could be used to investigate criminal liability. This is an inappropriate use of the civil process, and the proposed order would prevent the use of documents obtained in this litigation for such purposes.

[1] Plaintiffs are filing two motions for protective orders in this case. This motion is limited to protecting documents and proceeds on the presumption that the second motion—seeking to shield Plaintiffs from disclosing the identities of young people they assist and from responding to discovery aimed at uncovering other potential criminal conduct—will be granted.

[2] *See* Cassie Miller, The Violent History of the Anti-Abortion Movement, Southern Poverty Law Center, June 13, 2024, available at https://www.splcenter.org/resources/reports/violent-history.

Generally, the public is permitted "access to litigation documents and information produced during discovery." *In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) (citations omitted). However, if good cause exists, a court may "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* (quoting Fed. R. Civ. P. 26(c)(1)). When considering a motion for a non-stipulated protective order, a court proceeds in two steps. *Health Freedom Def. Fund, Inc. v. US Freedom Flyers, Inc.*, No. 4:23-CV-00380-AKB, 2025 WL 1573525, at *6 (D. Idaho June 4, 2025). First, a court must determine if a "particularized harm will result from disclosure of information to the public." *Id.* (quoting *In re Roman Cath. Archbishop*, 661 F.3d at 424); *see also Moore v. Battelle Energy All., LLC*, No. 4:21-CV-00230-CRK, 2023 WL 1767391, at *4 (D. Idaho Feb. 3, 2023) ("party must demonstrate good cause that information to be produced in discovery is confidential or warrants protection"). Second, if such harm will result from disclosure, then the court proceeds to balance "the public and private interests to decide whether [maintaining] a protective order is necessary." *In re Roman Cath. Archbishop*, 661 F.3d at 424 (citation omitted). District courts "have broad discretion to determine whether a protective order is appropriate and, if so, what degree of protection is warranted." *Heitkoetter v. Domm*, No. 1:22-CV-0368-AWI-BAM, 2023 WL 122041, at *5 (E.D. Cal. Jan. 6, 2023) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Protection of nonparty personal information, including personally identifiable information and health information, is particularly important "because disclosure of sensitive and potentially embarrassing information would cause serious injury to the nonparty, whose conduct is not at issue in the case." *Moore*, 2023 WL 1767391, at *4 (citation omitted).

Here, Plaintiffs seek a protective order to maintain the confidentiality of its business records, which may include sensitive medical and personal information of nonparties to this litigation, i.e., information regarding the care of people seeking abortion. The purpose of the proposed protective order is to provide Defendant access with relevant information while protecting the significant privacy interests of these minors. Defendant apparently agrees that such a protective order is appropriate but does not agree to the scope of such a protective order or whether it precludes use of information acquired in discovery for purposes other than litigation of this case.

Information regarding the medical care of those who have been assisted by Plaintiffs is among the most sensitive kind of personal information—reproductive health care information—for which the individual's privacy interest is significant. Disclosure of personal medical information is well recognized as being particularly harmful. Courts routinely recognize the need for a protective order for medical records. *See e.g., Pizzuto v. Tewalt*, 2024 WL 4417419, at *3-4 (D. Idaho Oct. 4, 2024); *Polk v. Swift,* 339 F.R.D. 189, 196-97 (D. Wyo. 2021); *State Farm Mut. Auto. Ins. Co. v. Kugler*, 840 F. Supp.2d 1323, 1328 (S.D. Fla. 2011). Such information also is routinely protected by federal and state statutes. *See, e.g.*, RCW 7.115.020(1)("It is the public policy of Washington to protect the provision of protected health care services that are lawful in the state of Washington by a person duly licensed under the laws of the state of Washington . . . regardless of the location of the person receiving the services."); RCW 7.115.020(2) ("A law of another state that authorizes the imposition of civil or criminal liability related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington is against the public policy of this state."); ORS 192.553(1) ("It is the policy of

the State of Oregon that an individual has . . . the right to have protected health information of the individual safeguarded from unlawful use or disclosure."); Idaho Admin. Code r. 16.03.14.360.05 ("No release of medical information shall be made without written consent of the patient or by official court order except to legally authorized entities such as third party payors, peer review organizations, licensing agency, etc."). Plaintiffs' form of protective order specifically recognizes the importance of medical record privacy and identifies them as bases for designating such material as confidential or Attorney Eyes Only. The District of Idaho model protective order does not provide such specific guidance and does not include a designation of Attorney Eyes Only.

Moreover, such extra protection is warranted here, where the documents in certain Plaintiffs' possession may also relate to minors. Recognizing that public disclosure of sensitive information regarding juveniles is particularly harmful since it could follow them their entire lives, juvenile records generally are afforded extra protection under Idaho state law. Juvenile criminal records are exempt from disclosure under the Idaho Public Records Act. Similarly, Idaho juvenile criminal records and proceedings are closed to the public. Idaho Code § 74-105(2),(3). I.J.R. 52(a),(c). For the reasons set forth in Plaintiffs' second motion for protective order, the identity of any person whom Plaintiffs have assisted in obtaining abortion care should under no circumstances be disclosed. Moreover, to the extent any records contain medical information concerning a minor whom Plaintiffs have helped, that information should be designated Attorney Eyes Only, even if all identifying details are redacted.

Plaintiffs further seek a protective order to ensure that material produced in discovery is not used for purposes other than the litigation in this case, i.e., to investigate or prosecute persons for violation of 18 U.S.C. § 623 or other criminal statutes. Until recently, the use of reproductive

health information specifically was afforded extra protection by federal regulation. 45 C.F.R. § 164.502(a)(5)(iii) (prohibiting a covered health care entity from disclosing protected health information potentially related to reproductive health care information if the information will be used to conduct a criminal, civil or administrative investigation of any person for the mere act of seeking, obtaining, providing or facilitating reproductive health care). Such protection should nonetheless be applicable here because Defendant is not a health oversight agency and does not play a role in ensuring that health care was properly provided. *See U.S. ex rel. Kaplan v. Metropolitan Ambulance & First-Aid Corp.*, 395 F. Supp.2d 1 (2005) (rejecting a protective order that would have restricted the government's use of confidential patient records solely to the litigation, recognizing the federal government's broader role as a health oversight agency). Moreover, the at-issue health care—an abortion—would have been provided in a different state, where Defendant has no jurisdiction. Finally, because Defendant's interrogatories, directly ask Plaintiffs if they have violated criminal statutes—and Plaintiffs anticipate Defendant will attempt to directly ask those questions again in depositions—it is critical that Defendant not be able to use discovery directly or indirectly to pursue would-be criminal prosecutions. For that reason, the second protective order motion will seek to prohibit such direct questioning in depositions. However, protections are also necessary to prevent the use of indirect evidence obtained in this case for the same impermissible purposes.

Two provisions of the proposed protective order achieve these objectives. First, the end of the first numbered section, titled "Purposes and Limitations" provides that "Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose." Second, the section titled "Seeking Medical Records" provides that "the

parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes." This latter provision is particularly important where here, the parties dispute the scope and meaning of Idaho Code §18-623 and Plaintiffs simply seek assurances that they will not be prosecuted for the mere act of bringing their constitutional challenge.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the protective order attached as **Exhibit A**.

DATED: October 29, 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 October 29, 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