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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' MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
OR, IN THE ALTERNATIVE, A  
PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Idaho Rules of Civil Procedure, Plaintiffs Lourdes

Matsumoto, Northwest Abortion Access Fund, and Indigenous Idaho Alliance, by and through

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER, OR IN THE  
ALTERNATIVE, A PRELIMINARY INJUNCTION - 1

undersigned counsel, hereby move the Court for the entry of a temporary restraining order, or, in the alternative, a preliminary injunction, against Defendant Raúl Labrador. This motion is based on the accompanying memorandum, and the Declarations of Wendy J. Olson, Lourdes Matsumoto, tai simpson, and Megan Kovacs.

For the reasons set forth in the accompanying memorandum, Plaintiffs respectfully request that the Court enter a temporary restraining order or preliminary injunction prohibiting Defendant Raúl Labrador from enforcing Idaho Code § 18-623. A proposed order is provided herewith.

DATED: July 24, 2023.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 24, 2023, 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 person:

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MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
OR, IN THE ALTERNATIVE, A  
PRELIMINARY INJUNCTION

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Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund (“NWAAF”), and Indigenous Idaho Alliance (“IIA”) seek a Temporary Restraining Order, or, in the alternative, a Preliminary Injunction, enjoining Defendant Raúl Labrador from enforcing Idaho Code § 18-623.

## I. INTRODUCTION

Idaho has some of the most oppressive criminal abortion statutes in the United States. Under its Total Abortion Ban, “[e]very person who performs or attempts to perform an abortion . . . commits the crime of criminal abortion.” Idaho Code § 18-622(1). Understanding that many of its neighboring states recognize a person’s right to control their reproductive health, that Idahoans in need of reproductive health care services that might include abortion would travel to these states, and that other Idahoans and out-of-state reproductive health advocacy organizations would assist Idahoans obtain lawful abortion health care outside of Idaho, the Idaho Legislature acted again.

This time, through Idaho Code § 18-623, Idaho criminalized conduct by adults who assist pregnant minors in receiving abortion care. Apparently aware that they cannot control the availability of abortions (or receipt of medications used in medical abortions) in other states, Idaho instead made it unlawful to provide an unclear amount of undefined assistance to minors, including travel assistance within Idaho provided to help minors reach or cross Idaho’s borders to access legal health care. Ignoring that some minors may seek an abortion because they were sexually abused by a parent or guardian, that they have consulted with trusted adults who support their position, or that they are actual victims of human trafficking, Idaho instead seeks to stop pregnant minors from reaching or crossing state lines to receive legal abortion health care.

The statute is unconstitutional. It is poorly written. It is vague and unclear in the conduct it prohibits. It infringes on First Amendment rights to speak about abortion, and to associate and to engage in expressive conduct, including providing monies, transportation, and other support for

pregnant minors traveling within and outside of Idaho to access out-of-state legal abortion care. Plaintiffs are organizations that have in the past assisted pregnant Idaho minors obtain abortions in states where it is lawful and seek to continue assisting pregnant Idaho minors obtain abortion care, and an individual who works with minor survivors and the advocates that assist them and would like to provide that service in the future. This Court should enjoin the statute's enforcement.

## II. FACTUAL BACKGROUND

### A. Idaho Enacts Its Abortion Travel Ban.

The Abortion Travel Ban, House Bill 242 (“H.B. 242”), was signed into law on April 5, 2023. Governor Brad Little and Representative Barbara Ehardt attempted to justify H.B. 242 as a parental consent bill. Governor Little wrote that the law “seeks only to prevent unemancipated minor girls from being taken across state lines for an abortion without the knowledge and consent of her parent or guardian.”<sup>1</sup> During a March 27, 2023, Senate State Affairs Committee hearing, Representative Ehardt testified that “it’s all about parental permission, taking a minor from Idaho and trafficking that minor to another state to receive an abortion.” Declaration of Wendy J. Olson (“Olson Decl.”), ¶2, Ex. 1. Whether a parent, parents, or guardian of the pregnant minor consents to the activity is not an element of the offense under Idaho Code § 18-623, however. Parental consent is only an affirmative defense asserted by a person charged under the statute, after the charges are brought, just like any affirmative defense. I.C. § 18-623(2).

H.B. 242 went into effect May 5, 2023. It provides that:

(1) An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604, Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state

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<sup>1</sup> Ruth Brown, ‘Abortion trafficking’ bill signed, despite Washington governor’s plea, Idaho Reports (Apr. 5, 2023), <https://blog.idahoreports.idahoptv.org/2023/04/05/abortion-trafficking-bill-signed-despite-washington-governors-plea/> (citation omitted).

commits the crime of abortion trafficking. As used in this subsection, the terms “procure” and “obtain” shall not include the providing of information regarding a health benefit plan.

(2) It shall be an affirmative defense to a prosecution under subsection (1) of this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.

Idaho Code § 18-623.

Idaho Attorney General Raúl Labrador has the sole discretion to prosecute a person for a violation of the statute if the authorized prosecuting attorney refuses to do so. I.C. § 18-623(4). He has made clear that he is willing to enforce Idaho criminal abortion statutes even where an abortion occurs in another state. In a now “rescinded” legal opinion letter dated March 27, 2023, he stated that medical professionals who refer pregnant patients across state lines for abortions violate Idaho Code § 18-622(2), Idaho’s Total Abortion Ban. Olson Decl., ¶3, Ex. 2. He also opined that the Abortion Travel Ban is constitutional. *Id.*, ¶4, Ex. 3.

**B. Plaintiffs Are Unable to Exercise Their Fundamental Rights Because of Threat of Prosecution Under Idaho Code § 18-623.**

Plaintiffs are organizations with long histories of assisting pregnant persons seeking abortion care, including minors, and an individual with a long history of working with sexual violence survivors, including minors, and with advocates who assist pregnant minors. Declaration of Lourdes Matsumoto (“Matsumoto Decl.”), ¶¶22-24; Declaration of Megan Kovacs (“Kovacs Decl.”), ¶¶4-9; Declaration of tai simpson (“simpson Decl.”), ¶¶37, 38. They wish to continue providing these services to pregnant Idaho minors but are uncertain what conduct may run afoul of Idaho Code § 18-623. Matsumoto Decl., ¶¶26, 27, 39, 42, 53; Kovacs Decl., ¶30; simpson Decl., ¶¶58-59.

Plaintiff Matsumoto is an attorney who works for a non-profit that provides emergency assistance, counseling, and resources to victims of domestic and sexual violence. Matsumoto Decl., ¶¶8, 10, 11. She participates in trainings and provides advice on how pregnant people, including minors, can legally access abortions. *Id.*, ¶¶28, 30-33. She is a trusted adult whom others have turned

to with questions regarding how much help, advice, and support they can provide to pregnant minors in Idaho. *Id.*, ¶¶37, 38. Plaintiff Matsumoto would like to provide information and options counseling to pregnant people, including pregnant minors, about abortion. *Id.*, ¶¶11, 47. She would also like to assist minors obtain abortions in states where abortion is legal, including by transporting them or assisting them obtain transportation from Idaho to those states. *Id.*, ¶48. Plaintiff Matsumoto fears prosecution under the Abortion Travel Ban. *Id.* Due to the proximity of her residence to the Oregon border, Plaintiff Matsumoto would like to provide temporary shelter for pregnant minors within Idaho who are traveling to obtain reproductive counseling and abortion care in states where that care remains legal, whether those minors' parents know or do not know. *Id.*, ¶3, 49. Plaintiff Masumoto has contributed financially to organizations that practically support pregnant minors, including those in Idaho, access abortion care, whether or not those minors' parents or guardian are aware of those actions, and she would like to continue to provide this support. *Id.*, ¶50. Due to the lack of clarity in Idaho Code § 18-623, she is concerned that even this activity may subject her to criminal prosecution. *Id.* Plaintiff Matsumoto would also like to provide clear advice and support to organizations assisting pregnant minors who are domestic violence and sexual assault survivors and to minors themselves but is currently unable to do so. *Id.*, ¶51.

Plaintiff NWAAF is a non-profit organization composed of a working board, paid staff, and trained volunteers. Kovacs Decl., ¶4. NWAAF provides emotional, financial, logistical, practical, and informational assistance to pregnant persons who may need or choose to consider abortion. *Id.* NWAAF is the only independent abortion fund in the Pacific Northwest and covers the largest geographic area of any abortion fund in the United States. *Id.*, ¶7. Its work includes booking and paying for bus tickets, plane tickets, and ride shares, and providing volunteers to drive patients to abortion appointments in states where abortion is legal. *Id.*, ¶15. NWAAF also provides food

assistance, funding to abortion providers for their work, and lodging assistance. *Id.*, ¶¶16-17. NWAAF provides this assistance to adults and minors in Idaho. *Id.*, ¶17. These minors' parents or guardians may or may not know about or consent to these actions. *Id.*, ¶19.

IIA is an Idaho non-profit organization that is centered around asserting the sovereignty of all Indigenous people. IIA's work serves the five tribes whose traditional, usual, and accustomed lands encompass territory within Idaho, and whose traditional, usual, and accustomed lands are often recognized as transecting and incorporating land within the U.S. state/Canadian provincial boundaries of Washington, Idaho, Montana, Nevada, Utah, Wyoming, California, British Columbia, and Alberta ("the region"). simpson Decl., ¶¶9-11. IIA co-founder and organizer tai simpson and others affiliated with IIA have provided pregnant people, including minors, with reproductive health care information, including information about abortion. *Id.*, ¶38. They have coordinated the travel of pregnant people, including minors, from locations across the region, including Idaho, to and across state lines to access abortion, and have provided financial assistance. *Id.*, ¶¶41, 43. These minors' parents or guardians may or may not have been aware of these actions. *Id.*, ¶¶39, 50.

Both NWAAF and IIA are funded by donors committed to supporting their mission. Kovacs Decl., ¶¶24-26; simpson Decl., ¶45. All Plaintiffs associate with pregnant minors as a show of solidarity, communicating a message to minors who find themselves pregnant. That message is often that minors are not alone. Plaintiffs' support also communicates a message to those who may seek to isolate and abuse minors that these minors will have the support of trusted adults. Matsumoto Decl., ¶16; Kovacs Decl., ¶38; simpson Decl., ¶¶55-57.

**C. The Abortion Travel Ban Has Harmful Effects.**

Because of Idaho’s Total Abortion Ban, the number of in-state abortions has declined, but out-of-state health care providers who offer abortion care have seen a dramatic increase in patients coming from Idaho for abortions.<sup>2</sup> This places a strain on providers in states where abortion is legal.<sup>3</sup>

Plaintiff NWAAF likewise experienced an increase in demand for its assistance for those seeking out-of-state abortion care after the *Dobbs* decision. It has seen a 149% increase in its travel expenditures and a 46% increase in its abortion care funding expenditures, all of which help pay for the transportation and other support that pregnant people need to access safe and legal abortions. Kovacs Decl., ¶¶33, 35. NWAAF has seen a 146% increase in travel requests from Idaho residents in the last year. *Id.*, ¶34. As a result of these requests, in the last year, NWAAF provided assistance to 205 Idahoans, some of whom were minors. *Id.*, ¶18.

Since the Abortion Travel Ban went into effect on May 5, 2023, Plaintiff Matsumoto has received even more questions about what remains legal. This includes questions about what information can be given to minors or to those who want to assist pregnant minors, and she is uncertain what the statute prohibits. Matsumoto Decl., ¶¶33-36. If adults cannot assist pregnant minors access safe abortion care out of state, and if pregnant minors cannot access abortion care, the Abortion Travel Ban will force some minors to terminate their unwanted pregnancies outside a clinical setting. *Id.*, ¶44.

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<sup>2</sup> Danny Westneat, In the WA v. Idaho abortion wars, data shows Idaho is losing, *The Seattle Times* (June 28, 2023), <https://www.seattletimes.com/seattle-news/politics/in-the-wa-v-idaho-abortion-wars-data-shows-idaho-is-losing>; Andrew Baertlein, Planned Parenthood ‘soft opens’ Ontario clinic for staff training, *KTVB.com* (Mar. 10, 2023), <https://www.ktvb.com/article/news/health/planned-parenthood-ontario-oregon-clinic-soft-opens-for-staff-training/277-972e8464-89b1-4685-bd93-1e8c42c6d032>.

<sup>3</sup> *Id.*



Although many minors faced with an unintended pregnancy choose to involve their parents, others do not. Some minors do not have access to their parents, and some are afraid to anger or disappoint their parents. Others face the threat of violence in their homes. For many minors, it is best to seek help from an adult who is not a parent or guardian and who can provide the trust-based aid they need. simpson Decl., ¶51. *Requiring* parental involvement for abortion care can increase the risk of harm or delay care.<sup>4</sup> When abortion was a recognized constitutional right, Idaho had a judicial bypass that allowed pregnant minors to obtain abortions without parental consent to address these potential harms. I.C. § 18-609A(1)(b). If a pregnant minor in Idaho cannot go to a parent, cannot seek judicial bypass, and cannot seek help from a trusted adult (who fears prosecution), to whom can they turn? For these reasons, Plaintiffs, who wish to remain in positions of trust with the minors they serve, do not seek parental consent when they provide assistance to pregnant minors. Matsumoto Decl., ¶¶43, 46; Kovacs Decl., ¶19; simpson Decl., ¶39.

The risk of abuse is especially acute for Black, Indigenous, People of Color (BIPOC), and LGBTQ+ communities. *See* simpson Decl., ¶¶16, 17. The Abortion Travel Ban will disproportionately negatively impact these communities, which already face travel barriers to accessing health care. *Id.*, ¶¶22, 24, 26, 30, 32-34. Plaintiffs have provided, and wish to continue providing, assistance to pregnant Idaho minors in all communities, including historically marginalized communities. Matsumoto Decl., ¶45; Kovacs Decl., ¶37; simpson Decl., ¶40.

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<sup>4</sup> Sophia Naide, Guttmacher Institute, “Parental Involvement” Mandates for Abortion Harm Young People, But Policymakers Can Fight Back (Feb. 19, 2020), <https://www.guttmacher.org/article/2020/02/parental-involvement-mandates-abortion-harm-young-people-policymakers-can-fight-back#:~:text=Research%20also%20shows%20that%20most,people%20by%20delaying%20medical%20care.HYPERLINK> "https://www.reuters.com/article/us-health-teens-abortions/parental-notification-law-appears-to-limit-delay-abortions-dUSKBN1EJ0QO" "https://www.reuters.com/article/us-health-teens-abortions/parental-notification-law-appears-to-limit-delay-abortions-idUSKBN1EJ0QO;

The law also negatively and disproportionately impacts victims of Intimate Partner Violence (“IPV”), who are often the subject of “unwanted or coercive pregnancy.”<sup>5</sup> Reproductive coercion can involve using rape to force victims into unwanted pregnancies to increase dependency. It can involve interfering with a victim’s contraceptive use, removing prophylactics during sex without consent, forcibly removing internal-use contraceptives, or retaliating for contraceptive use.<sup>6</sup> IIA and NWAAF have experience working with pregnant minors, some of whom may be victims of IPV and coercive pregnancy, including by helping them access legal abortion care, but they will not be able to continue doing so for fear of prosecution. Kovacs Decl., ¶¶11, 14; Simpson Decl., ¶¶17, 19, 22, 40, 59. Others who work with this population, including domestic and sexual violence advocates, cannot reasonably be expected to provide critical victim support, especially when those services include providing practical and actionable advice to pregnant young victims, without fear of prosecution under Idaho Code § 18-623. Matsumoto Decl., ¶¶35, 40.

### III. ARGUMENT

Plaintiffs are entitled to a Temporary Restraining Order or, in the alternative, a Preliminary Injunction, which are governed by identical standards. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). For either, a moving party must show “(1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and

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<sup>5</sup> Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 *Contraception* 316–17; *see also ACOG Committee Opinion No. 554: Reproductive and Sexual Coercion*, 121 *Obstetrics & Gynecology* 411, 411–15 (2013 *reaffirmed* 2022), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion.pdf>.

<sup>6</sup> Ann L. Coker, *Does Physical Intimate Partner Violence Affect Sexual Health? A Systematic Review*, 8 *Trauma, Violence, & Abuse* 149, 151–53 (2007); *see also* Miller et al., *supra* note 6, at 319.

(4) that an injunction is in the public interest.” *Idaho v. Coeur d’Alene Tribe*, 49 F. Supp. 3d 751, 762 (D. Idaho 2014) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *Coffman v. Queen of Valley Med. Ctr.*, 895 F.3d 717, 725 (9th Cir. 2018). “Where, as here, ‘the government is a party, these last two factors merge.’” *Hecox v. Little*, 479 F. Supp. 3d 930, 971 (D. Idaho 2020) (quoting *Drakes Bay Oyster Co., v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The court may apply a sliding scale test, balancing the elements of the preliminary injunction standard “such that a stronger showing of one element may offset a weaker showing of another.” *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669 (9th Cir. 2017) (citation omitted). Injunctive relief is particularly important in cases, like this one, where later relief could not make Plaintiffs whole again, should they be prosecuted. *See Moses v. Lake*, No. 3:22-cv-0063, 2023 WL 4546242 (D.V.I. July 14, 2023).

**A. Plaintiffs Are Likely to Succeed on Their Claims That Idaho Code § 18-623 Is Void for Vagueness and Violates Their First Amendment Rights.**

Plaintiffs are likely to succeed on their claims that Idaho Code § 18-623 is void for vagueness and infringes on their First Amendment rights to associate freely with each other and with pregnant Idahoans; to engage in expressive conduct, including providing funding or practical support for pregnant minors traveling to access out-of-state services that are legal where rendered; and to receive and provide information on specific content – abortion care. Thus, this Court should enjoin Defendant from enforcing Idaho Code § 18-623 pending the outcome of this action.

**1. Plaintiffs Have Standing.**

To establish standing, a plaintiff must demonstrate “that (1) they have suffered an injury-in-fact” that is “‘concrete and particularized’ and ‘actual and imminent,’ (2) the alleged injury is ‘fairly traceable’ to the defendants’ conduct, and (3) it is ‘more than speculative’ that the injury is judicially redressable.” *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1265 (9th Cir. 2020) (quoting

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Organizations can assert standing on behalf of their own members or in their own right.” *Id.*

Plaintiffs easily satisfy these tests. Defendant’s enforcement of Idaho Code § 18-623 will effectively bar the Plaintiffs and their constituents from continuing to assist pregnant minors obtain lawful abortion care in Idaho’s neighboring states. They must choose between providing support, travel assistance, financial assistance, and information to pregnant minors in Idaho, and thereby risking criminal prosecution, and stopping these constitutionally protected activities altogether.

Thus, Plaintiffs will suffer imminent and concrete injuries to their rights protected by both the First Amendment and the Fourteenth Amendment’s Due Process Clause. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (recognizing loss of First Amendment freedoms as a cognizable harm). In addition, these injuries are fairly traceable to Defendant’s enforcement of Idaho Code § 18-623 and would be redressed by an order enjoining enforcement.

**2. Defendant’s Enforcement of § 18-623 Violates Plaintiffs’ First Amendment Rights of Free Speech and Association.**

The First Amendment to the U.S. Constitution, applied to the states through the Fourteenth Amendment, guarantees the rights to free speech, assembly, association, and petition. U.S. Const. amends. I, XIV; *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1193 (9th Cir. 2018). The “First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002)).

Plaintiffs have First Amendment rights to associate freely with each other and with pregnant Idahoans and to engage in speech and expressive conduct, including by providing information, funding, or practical support for pregnant Idahoans traveling to access out-of-state abortion care that is legal where rendered. The Abortion Travel Ban infringes on each of these First Amendment rights.

First, Plaintiffs' provision of information regarding abortion access to pregnant persons in Idaho, including pregnant minors, is speech and is protected by the First Amendment. *See Bigelow v. Virginia*, 421 U.S. 809, 824-25 (1975) (overturning conviction of Virginia newspaper editor for publishing advertisements for lawful abortion care in New York). The First Amendment does not permit Idaho to prohibit or criminalize speech providing information about conduct legal in another state just because it is illegal in Idaho. Plaintiffs provide, and wish to continue to provide, pregnant minors, and adults who help them, with information and advice regarding reproductive options, including abortion, where abortion is available, where it is legal, and how and from whom to obtain transportation and other support. Kovacs Decl., ¶¶12, 14-17, 21; Simpson Decl., ¶40; Matsumoto Decl., ¶43. They fear that continuing to do so could subject them to prosecution under Idaho Code § 18-623. Kovacs Decl., ¶¶20-23, 37; Simpson Decl., ¶¶58, 59; Matsumoto Decl., ¶¶54, 55. Banning speech on the basis of a legal intended purpose is a violation of all Plaintiffs' free speech rights.

Second, Idaho Code § 18-623 infringes on Plaintiffs' First Amendment expressive conduct rights, including their rights to express themselves through monetary support. In *Texas v. Johnson*, 491 U.S. 397 (1989), the U.S. Supreme Court recognized that "conduct may be 'sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments.'" *Id.* at 404 (quoting *Spence v. Washington*, 418 U.S. 405, 409 (1974)). To determine whether conduct is entitled to First Amendment protection, courts consider whether: (1) the actor intended to convey a particularized message, and (2) it was likely that the message would be understood by those who viewed it. *Id.* (citing *Spence*, 418 U.S. at 410-11).

Plaintiffs' activities are expressive conduct. Plaintiffs' assistance to pregnant minors by supplying travel money or providing direct assistance conveys a message of support for pregnant minors seeking to obtain lawful abortion care. Kovacs Decl., ¶¶9-11; Simpson Decl., ¶¶55-57;

Matsumoto Decl., ¶¶48, 50, 54. Plaintiffs' behavior in providing accommodations, transport or other support also conveys a clear message of support for abortion itself. That message is understood by those who observe the conduct, which is why the Idaho Legislature sought to punish it.

Third, § 18-623 infringes on Plaintiffs' First Amendment rights of association. The U.S. Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647-48 (2000). "This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Boy Scouts of Am.*, 530 U.S. at 647-48. As it is intended to do, § 18-623 chills Plaintiffs from associating with pregnant minors and with their own organizational volunteers.

Idaho Code § 18-623 has and will continue to have a chilling impact on NWAAF's and IIA's ability to uphold their missions. It may also undermine their relationships with donors and members and their ability to recruit and retain volunteers. Kovacs Decl., ¶¶27-29; Simpson Decl., ¶¶45-48. It prevents all Plaintiffs from associating with each other and with pregnant minors for the purpose of expressing their affirmation of every pregnant person's right of self-determination.

Fourth, Idaho Code § 18-623 is impermissibly content based. The government may not regulate speech because of its message, ideas, subject matter, or content, and laws that do so are presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). Indeed, speech restrictions that target specific views taken by speakers on a subject (rather than targeting all views on a given subject) are particularly egregious. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Idaho Code § 18-623(1) impermissibly regulates the content of the speech because it includes a carve out for certain speech related to abortion care. It states that "[a]s

used in this subsection, the terms ‘procure’ [an abortion] and ‘obtain’ [an abortion-inducing drug] shall not include the providing of information regarding a health benefit plan.” In other words, adults who discuss how to procure an abortion or obtain an abortion-inducing drug in the context of a health benefit plan are not subject to the statute. But that same adult could not provide that same information when discussing how to procure an abortion or obtain an abortion-inducing drug in a conversation that did not focus on a health benefit plan. Thus, Idaho Code § 18-623 impermissibly targets Plaintiffs’ speech and expressive conduct because of the message it communicates. It criminalizes Plaintiffs’ direct assistance in support of pregnant minors’ choice to have an abortion precisely because the expressive conduct supports abortions and abortion care.

Because of the fundamental nature of First Amendment rights, state-imposed restrictions on them are subject to strict scrutiny, which requires the government to prove that the restriction is narrowly tailored to serve a compelling state interest. This statute does not meet that test. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 27-28 (2010).

**3. Defendant’s Enforcement of Idaho Code § 18-623 Violates Plaintiffs’ Fourteenth Amendment Due Process Rights Because § 18-623 Does Not Provide Fair Notice of the Conduct It Prohibits and Invites Arbitrary Enforcement.**

The government violates the Fourteenth Amendment’s due process guarantee through a criminal law that is so vague that it “fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983)). “The operative question under the fair notice theory is whether a reasonable person would know what is prohibited by the law.” *Tingley v. Ferguson*, 47 F.4<sup>th</sup> 1055, 1089 (9<sup>th</sup> Cir. 2022)). “The terms of a law cannot require ‘wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings.’” *Id.* (quoting *Holder*, 561 U.S. at 20).

Vague statutes are particularly objectionable when, as here, they “involve sensitive areas of First Amendment freedoms” because “they operate to inhibit the exercise of those freedoms.” *Cal. Tchrs. Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)). Further, criminal laws receive the most exacting scrutiny because “[t]he essential purpose of the ‘void for vagueness’ doctrine is to warn individuals of the criminal consequences of their conduct.” *Jordan v. De George*, 341 U.S. 223, 230 (1951).

Idaho Code § 18-623 lacks clarity, fails to provide fair notice of the conduct it punishes, and invites arbitrary enforcement. It is vague in at least three respects. First, it is unclear what conduct it targets, and it appears to target only behaviors that are otherwise legal in the states where those behaviors occur. Second, it uses terms that are vague and for which no definitions are provided. Third, it is unclear what contact adults who help and mentor youth would need to have with a pregnant minor’s parent or guardian to avoid liability or avail themselves of the statute’s so-called affirmative defense. Adults who have been helping and mentoring youth will now be in the precarious position of navigating a confusing law while trying to help a pregnant minor who has nowhere else to turn and must make a decision in a short period of time.

First, it is unclear whether the statute is targeting behavior that occurs just before an abortion takes place or is targeting the abortion itself. Or perhaps the statute is attempting to punish behaviors that happen prior to the abortion, including legal behaviors that do not culminate in the procedure itself. One cannot tell. If the statute is attempting to criminalize abortion after the fact, it is attempting to punish adults for medical procedures obtained by others that are legal where the procuring or obtaining took place. Thus, a person of ordinary intelligence would be unable to identify how and exactly when she violated this aspect of the



statute, as at the time the minor she is helping has an abortion, she is in a jurisdiction where those actions violate no law.

And if the legislature meant to target the “attempt” of such procurement or obtaining, a person of ordinary intelligence would be hard-pressed to discern at what point ordinary counseling or mentoring a pregnant minor, or traveling with such a minor within Idaho, may cross a line into attempt. *See* I.C. § 18-306 (“[e]very person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof,” is punishable for the attempt). Does meeting with a pregnant minor in an office to discuss her options and provide information constitute “recruiting” or “harboring” only if the pregnant minor does in fact receive abortion care? Idaho Code § 18-623 also raises the specter of an arbitrary enforcement scheme that targets “attempt” conduct and casts a wide net, including traffic stops of reproductive age female minors, in an effort to stop pregnant minors traveling to another state from even reaching the border.

Second, it appears that in the Legislature’s rush to block persons in Idaho from traveling to states where abortions are lawful, it is attempting to prevent legal behaviors by criminalizing undefined actions such as “recruiting,” “harboring,” or “transporting.” Idaho Code § 18-623 does not contain or refer to a definitions section that would tell Plaintiffs when their conduct would constitute recruiting, harboring, or transporting. Does a person “recruit” a pregnant minor by telling the minor that the Planned Parenthood in Kennewick, Washington, provides abortion care? Or by letting the minor stay at a home in Fruitland before the minor travels to Ontario, Oregon, for abortion care? This statute does not make clear when lawful mentoring stops and unlawful conduct begins, or if the statute allows for mentoring at all. A person of ordinary intelligence must discern when helpful information regarding abortion becomes “recruiting” or when a meeting becomes “harboring.” And she must hope that the line she draws in her own mind is the same

line that law enforcement and prosecutors draw. This vagueness impacts Plaintiffs and their actions, their ability to advise others, and their ability to support the communities they serve. *See* Matsumoto Decl., ¶¶40-42.

Third, the statute fails to provide adequate notice regarding what culpability attaches to communication or the lack thereof with a minor’s parents and/or guardians. The statute fails to provide adequate notice regarding whether the intent to conceal must be directed at one or more parent, and whether there is an affirmative defense if one parent provided consent but the other did not. Does the intent to conceal mean affirmatively hide the fact of an abortion? Or apply only if the adult providing assistance knows that the pregnant minor has a parent? Here, for safety and privacy of the minors, Plaintiffs do not affirmatively seek consent, and do not wish to in the future. Matsumoto Decl., ¶¶43, 47; Kovacs Decl., ¶¶13, 19, 21; Simpson Decl., ¶¶39, 50.<sup>7</sup>

Even the Idaho legislators who sponsored H.B. 242 were unsure when a violation would occur, or even what a violation would be. In an exchange with another state senator, Senator Todd Lakey, who was responsible for the bill’s language as its co-sponsor, stated that “recruiting, harboring and transporting, those are descriptive words, I guess the court would have to decide if the conduct constitutes one of those three things.” Olson Decl., ¶5, Ex. 4. A law that requires a court to decide after the fact whether conduct violates the law is not one that puts an ordinary person on notice of what it prohibits.

In sum, Plaintiffs are unsure of what specific behavior Idaho Code § 18-623 prohibits. And they “should not have to guess at whether their conduct is on the right or the wrong side of the law.”

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<sup>7</sup> “An affirmative defense is an excuse, not an exception. The difference is not academic.” *United States v. Idaho*, 623 F. Supp. 3d 1096, 1109 (D. Idaho 2022). An affirmative defense under § 18-623 can only be raised by an adult after she has been investigated, charged, arrested, and suffered the indignity of publicity and community and employment consequences.

*Isaacson v. Brnovich*, 610 F. Supp. 3d 1243, 1254 (D. Ariz. 2022). But for the statute’s lack of clarity over whether she would be prosecuted, Plaintiff Matsumoto would assist minors in traveling to Oregon or Washington in getting abortions in states where abortion remains legal. Matsumoto Decl., ¶54. Plaintiffs NWAAF and IIA wish to continue assisting pregnant Idaho minors obtain abortions in states where abortion is legal but are uncertain whether they will be prosecuted for such actions. Kovacs Decl., ¶30; simpson Decl., ¶¶58, 59.

**B. Plaintiffs Will Be Irreparably Harmed by Violation of Their Constitutional Rights.**

To establish irreparable harm, injury need not be certain to occur. Rather “a strong threat of irreparable injury before trial is an adequate basis.” *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990) (citation omitted). “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Klein*, 584 F.3d at 1207-08 (9th Cir. 2009); *Farris v. Seabrook*, 677 F.3d 858, 868 (9th Cir. 2012). Here, in the absence of injunctive relief, Plaintiffs will suffer irreparable harm because they will be chilled from providing information about lawful abortion care, including options counseling, referrals to abortion providers in jurisdictions where abortion remains legal, and guidance on how and where to travel to obtain a lawful abortion. Matsumoto Decl., ¶¶55, 56; Kovacs Decl., ¶¶39, 40; simpson Decl., ¶¶60, 61.

Significantly, without injunctive relief, Plaintiffs, and others in the state, also face the very real threat of criminal prosecution, should any of their behaviors cross the unclear line that Defendant controls. Under the statute, Defendant has “the authority, at the attorney general’s sole discretion, to prosecute a person for a criminal violation of this section if the prosecuting attorney authorized to prosecute criminal violations of this section refuses to prosecute violations of any of the provisions of this section by any person without regard to the facts or circumstances.” I.C. § 18-

623(4). In other words, without relief from this Court, the Defendant in this case can choose to prosecute any Plaintiff for an alleged crime under this law. Even if the statute is later found to be unconstitutional, any Plaintiff, or other person, so prosecuted will be irreparably harmed. *McCormack v. Heideman*, 900 F. Supp. 2d 1128 (D. Idaho 2013).

Finally, absent injunctive relief, the ability of Plaintiffs NWAAF and IIA to accomplish their organizational mission will be irreparably damaged, as they cannot provide information and resources to pregnant minors to obtain out-of-state abortion care that they would otherwise recommend and provide. Kovacs Decl., ¶¶39, 40; Simpson Decl., ¶¶60, 61.

**C. The Balance of Equities and Public Interest Favors an Injunction.**

Finally, both of the remaining factors—the public interest and the balance of equities—fall strongly in the Plaintiffs’ favor. “[E]nforcement of an unconstitutional law is always contrary to the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013).

Allowing this law to remain in effect for any additional length of time presents significant harm to all Plaintiffs and, most critically, to the communities they seek to serve. As explained above, Plaintiffs serve as trusted adults for minors at a critical point in their lives, including minors who may be survivors of abuse and those who may not have a safe or trusted parent or guardian. While Plaintiffs regularly serve this role, other adults in the state may on occasion serve a similar purpose in the life of a minor. Allowing this law to stand during the pendency of this lawsuit would expose to criminal prosecution every adult in the state who wishes to speak about abortion with pregnant minors, wishes to logistically or practically support pregnant minors’ access to abortions, wishes to provide shelter for minors traveling to access legal abortion care, or wishes to provide transportation for pregnant minors. Every day this unconstitutional law remains in effect, the specter of prosecution, and prison time, looms over every adult in the state who may, during the course of this

lawsuit, find themselves in this position. Plaintiffs will most certainly be in this position. There is no doubt that the balance of equities weighs in favor of Plaintiffs.

Defendant will suffer no cognizable harm by injunctive relief in this case. Idaho's first-in-the-nation prohibition has been in effect barely 60 days. Thus, injunctive relief would simply preserve the status quo that this state has enjoyed for hundreds of years. *See All. for Wild Rockies v. Pierson*, 550 F. Supp. 3d 894, 898 (D. Idaho 2021), *vacated on other grounds*, 68 F.4th 475 (9th Cir. 2023). And, in the context of First Amendment claims like Plaintiffs', a likelihood of success on the merits "compels a finding that . . . the balance of the hardships tips sharply in Plaintiff[s]' favor." *Am. Beverage Ass'n v. City & County of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (internal quotation marks and brackets omitted; ellipsis in original).

Granting the injunction would allow Plaintiffs to continue to act in accordance with their organizational missions and continue to communicate fully with pregnant minors about their options. It would not harm the State's alleged public interest, as abortions would remain largely illegal in Idaho (a prohibition that Idaho apparently believes is in the public interest) and would permit Plaintiffs to continue providing support, travel assistance, financial assistance, and information to pregnant minors in Idaho seeking lawful medical care in other states.

#### IV. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' Motion and enter an Order preliminarily enjoining Defendant from enforcing Idaho Code § 18-623.

DATED: July 24, 2023.

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 July 24, 2023, 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 person:

Lincoln Davis Wilson  
Lincoln.wilson@ag.idaho.gov

/s/ Wendy J. Olson

Wendy J. Olson

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*Attorneys for Plaintiffs*

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

DECLARATION OF WENDY J. OLSON  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR A TEMPORARY RESTRAINING  
ORDER OR, IN THE ALTERNATIVE,  
PRELIMINARY INJUNCTION

DECLARATION OF WENDY J. OLSON IN SUPPORT OF PLAINTIFFS' MOTION  
FOR A TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, A  
PRELIMINARY INJUNCTION - 1



WENDY J. OLSON, being first duly sworn, declares and states:

1. I am a partner with the law firm of Stoel Rives LLP, counsel for Plaintiffs in the above-captioned matter. As such, I have personal knowledge of the facts and statements contained in this declaration.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an eight (8) second video recording of Representative Barbara Ehardt testifying before the Idaho Senate State Affairs Committee on March 27, 2023, on Idaho House Bill 242, obtained from the “Digital Media Archive” on the Idaho Legislature’s website.

3. Attached hereto as **Exhibit 2** is a true and correct copy of a letter dated March 27, 2023, written by Idaho Attorney General Raul Labrador to state Representative Brent Crane purporting to provide a legal opinion regarding Idaho House Bill 341, which appears in the public domain, and the authenticity of which has never been challenged by either the author or the recipient.

4. Attached hereto as **Exhibit 3** is a true and correct copy of a letter dated March 13, 2023, written by Idaho Attorney General Raul Labrador to state Representative Ilana Rubel purporting to provide a legal opinion regarding Idaho House Bill 242, which appears in the public domain, and the authenticity of which has never been challenged by either the author or the recipient.

5. Attached hereto as **Exhibit 4** is a true and correct copy of an eleven second video recording of Senator Todd Lakey testifying before the Idaho Senate State Affairs Committee on March 27, 2023 on Idaho House Bill 242, obtained from the “Digital Media Archive” on the Idaho Legislature’s website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: July 24, 2023.

/s/ Wendy J. Olson

Wendy J. Olson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 24, 2023, 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 person:

Lincoln Davis Wilson  
Lincoln.wilson@ag.idaho.gov

/s/ Wendy J. Olson  
Wendy J. Olson

# **EXHIBIT 1**

**Rep. Ehardt March 27, 2023 Testimony**

**Via Hand Delivery  
on Flash Drive**

# **EXHIBIT 2**



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
**RAÚL R. LABRADOR**

March 27, 2023

BY HAND DELIVERY

The Honorable Brent Crane  
Idaho House of Representatives  
Idaho State Capitol  
700 W. Jefferson Street, Rm. EW46  
Boise, Idaho 83702

Re: Request for AG Analysis

Dear Representative Crane:

This letter is in response to your recent inquiry regarding Idaho's criminal prohibitions on abortion. Specifically, you asked whether Idaho's abortion prohibitions preclude 1) the provision of abortion pills, 2) the promotion of abortion pills, and 3) referring women across state lines to obtain abortion services or prescribing abortion pills that will be picked up across state lines. Idaho law prohibits each of these activities.

1) Idaho's criminal prohibition on performing an abortion includes providing abortion pills. Idaho's criminal law defines abortion to mean "the use of *any means* to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child." Idaho Code § 18-604(1) (emphasis added). The criminal abortion statute, to which the statutory definition of "abortion" applies, does not distinguish between an abortion carried out as a medical procedure and an abortion carried out by pills or chemicals; the use of *any means* to carry out an abortion is prohibited. See Idaho Code § 18-622.

2) Two Idaho criminal statutes prohibit promoting abortion pills to the public. Idaho Code section 18-603 prohibits the promotion of abortion pills, unless the promoter is a licensed physician: "Every person, except licensed physicians . . . , who willfully publishes any notice or advertisement of any medicine or means for

producing or facilitating a miscarriage or abortion . . . is guilty of a felony.” Idaho Code § 18-603. Similarly, under Idaho Code section 18-607, “[a] person who . . . offers to sell, . . . advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor for that purpose, commits a misdemeanor.” The statute has several exceptions, but none of them apply to the promotion of abortion pills to the public.

3) Idaho law prohibits an Idaho medical provider from either referring a woman across state lines to access abortion services or prescribing abortion pills for the woman to pick up across state lines. Idaho law requires the suspension of a health care professional’s license when he or she “*assists* in performing or attempting to perform an abortion.” Idaho Code § 18-622(2) (emphasis added). The plain meaning of assist is to give support or aid. An Idaho health care professional who refers a woman across state lines to an abortion provider or who prescribes abortion pills for the woman across state lines has given support or aid to the woman in performing or attempting to perform an abortion and has thus violated the statute.

Please let me know if you have any additional questions.

Sincerely,



RAÚL R. LABRADOR  
Attorney General

RRL:kw

# **EXHIBIT 3**





**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
**RAÚL R. LABRADOR**

March 13, 2023

The Honorable Ilana Rubel  
Minority Leader  
Idaho House of Representatives  
700 W. Jefferson Street  
Boise, Idaho 83702

Dear Representative Rubel:

You have requested a legal opinion on three questions concerning House Bill 242. As relevant to your questions, House Bill 242 establishes a new criminal offense for adults who recruit, harbor, or transport pregnant minors within the State of Idaho under certain circumstances. House Bill 242 creates a new criminal statute, Idaho Code section 18-623.<sup>1</sup>

**QUESTIONS PRESENTED**

1. House Bill 242 provides it is not an affirmative defense to abortion trafficking if the abortion provider or the abortion-inducing drug provider is located in another state. Is Idaho permitted to prosecute an adult for abortion trafficking if the abortion occurs in another state where it is legal or the abortion-inducing drug provider is located within a state where he or she can legally dispense that drug?
2. Does this bill trigger problems under right to travel, other Constitutional protections insofar as it purports to criminalize actions that are to be legally conducted in other states?
3. Does this bill conflict with any executive orders in place to protect travel for the purpose of having abortions, or any other federal or constitutional provisions?

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<sup>1</sup> The bill also amends one section with the Fetal Heartbeat Preborn Child Protection Act, but that change is not relevant to this letter.

Representative Ilana Rubel  
March 13, 2023  
Page 2

## CONCLUSIONS

After reviewing House Bill 242, we answer your questions as follows.

1. Idaho law permits a defendant to be charged with a crime where elements of the crime occur both in Idaho and another state. House Bill 242 establishes a crime involving the recruiting, harboring, or transporting of a pregnant minor within this State. That crime's reference to an abortion, and Idaho Code section 18-623(3)'s note that the abortion provider or the abortion-inducing drug provider can be located in another state, mean that an adult who traffics a pregnant minor within Idaho can be charged with abortion trafficking, even if an abortion provider or an abortion-inducing drug provider is in another state where abortion is legal.
2. House Bill 242, which is an exercise of the State's police power to regulate conduct within its borders, does not offend the right to travel found in the U.S. Constitution. The bill does not block out-of-state citizens from entering this State and does not block citizens of Idaho from leaving this State. The bill does not discriminate against out-of-state citizens nor treat newly arrived citizens of Idaho differently from any other person.
3. House Bill 242's recognition of a crime incident to abortion—a specific form of human trafficking—is within Idaho's "police power." After *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), recognized that there is no federal constitutional right to abortion, the regulation of abortion involving acts incident to abortion is within the power of the states. House Bill 242 does not conflict with the President's two executive orders, as they do not prohibit states from regulating conduct within their borders.

## BACKGROUND

House Bill 242, if enacted, would add Idaho Code section 18-623, which concerns abortion trafficking. A person who commits abortion trafficking commits a felony subject to imprisonment for 2-5 years. Abortion trafficking is defined in Idaho Code section 18-623(1), which provides:

An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604, Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state commits the crime of abortion trafficking.

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House Bill 242 also adds two provisions relevant to this statute.<sup>2</sup> It establishes Idaho Code section 18-623(2), which provides an affirmative defense to the trafficking if the pregnant minor's parent or guardian consented to the trafficking of the minor. And, it also adds Idaho Code section 18-623(3), which says it is not an affirmative defense if the abortion provider or the abortion-inducing drug provider is located in another state.

## ANALYSIS

### **I. Idaho can prosecute an adult for abortion trafficking, even if the abortion provider or the abortion-inducing drug provider is in another state.**

Your first question asks about an abortion that occurs out of state. Idaho Code section 18-623(1) explains that the crime of abortion trafficking involves the following elements: (a) an adult; (b) who has the intent to conceal an abortion from the parents or guardians of a pregnant, unemancipated minor; (c) recruited, harbored, or transported the pregnant minor within this State; and (d) procured an abortion, as described in Idaho Code section 18-604, or obtained an abortion-inducing drug for the pregnant minor to use for an abortion. Idaho Code section 18-623(3) makes clear that the abortion provider or the abortion-inducing drug provider can be located in another state.

The fact that part of a crime occurs outside of Idaho is not an issue. Idaho has adopted a statute, Idaho Code section 18-202, which provides that “[a]ll persons who commit, in whole or in part, any crime within this state” are liable to punishment in Idaho. According to the Idaho Supreme Court, through this statute “the legislature intended to punish any person who should commit any portion of a crime within this state to the same extent and in the same manner as though all of the acts which constitute the crime had been committed here.”<sup>3</sup>

In a criminal prosecution, the prosecutor must establish criminal jurisdiction over the defendant. According to Idaho Code section 19-301, that can be shown by evidence “that a prosecutable act was committed within the State of Idaho.” A prosecutable act is “any essential element of a crime.”<sup>4</sup> Thus, Idaho's courts “have

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<sup>2</sup> House Bill 242 also adds Idaho Code section 18-623(4), which authorizes the Attorney General to prosecute violations of Idaho Code sections 18-622 or 18-623 if the local prosecuting attorney refuses to.

<sup>3</sup> *State v. Villafuerte*, 160 Idaho 377, 379, 373 P.3d 695, 697 (2016) (quoting *State v. Sheehan*, 33 Idaho 553, 196 P. 532 (1921)).

<sup>4</sup> *State v. Doyle*, 121 Idaho 911, 913, 828 P.2d 1316, 1318 (1992). In addition, Idaho provides for jurisdiction where the crime is commenced out-of-state but the result of the crime is “consummated

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subject matter jurisdiction over a crime if any essential element of the crime, including the result, occurs within Idaho.”<sup>5</sup>

One of the essential elements of Idaho Code section 18-623(1) is that an adult recruited, harbored, or transported a pregnant minor *within* Idaho. By establishing this, a prosecutor can establish criminal jurisdiction over a defendant. The prosecutor can meet its burden of proof regarding abortion trafficking by establishing beyond a reasonable doubt, in relevant part, that the adult procured an abortion for the pregnant minor out of state or obtained an abortion-inducing drug from an out-of-state provider.

## II. House Bill 242 does not offend the U.S. Constitution’s right to travel.

You next ask whether the crime established by House Bill 242 violates the U.S. Constitution’s right to travel. The U.S. Supreme Court’s most recent explication of the right to travel was in *Saenz v. Roe*, 526 U.S. 489 (1999). There, the Court identified “at least three different components” of the right to travel from its cases.

The first is the “right to go from one place to another.” The Court has not identified “the source of that particular right in the text of the constitution.”<sup>6</sup> The second component of the right to travel protects citizens of other states who temporarily enter a state from discrimination based on their out-of-state citizenship “where there is no substantial reason for discrimination.” This right originates from the Privileges and Immunities Clause of Article IV, § 2 of the U.S. Constitution. The third component protects “the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State.” The *Saenz* court held that this component is protected by the Privileges *or* Immunities Clause of the Fourteenth Amendment.

Clearly the second and third components of the U.S. Constitution’s right to travel are not at issue with Idaho Code section 18-623(1). Section 623(1) does not discriminate against out-of-state citizens over in-state citizens. And it does not treat newly arrived citizens of Idaho differently than any other citizen of Idaho.

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within Idaho.” Idaho Code § 19-302. The *Doyle* court explained that “consummated” meant “that the result of the crime must be an essential element of the offense.”

<sup>5</sup> *Doyle*, 121 Idaho at 914, 828 P.2d at 1319.

<sup>6</sup> The dissenting justices in *Saenz*, Chief Justice Rehnquist and Justice Thomas, acknowledged the first component’s existence and noted that “what the Court today calls the first ‘component’ of the right to travel, [citation], was the entirety of this right” for most of the United States’ history. *Saenz*, 526 U.S. at 512 (1999) (Rehnquist, C.J., dissenting).

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The first component of the right to travel—the right to go from one place to another—is also not implicated with Idaho Code section 18-623(1). The first component is concerned with “the erection of actual barriers to interstate movement.”<sup>7</sup> Idaho’s regulation of conduct within its State, a regulation applicable to all persons within the State, is not an attempt to block citizens of any state from entering Idaho or leaving Idaho.

The situations that implicate the first component of the right to travel are very different than the situation here. In *Edwards v. California*, 314 U.S. 160 (1941), the Court addressed whether a state could prohibit the transportation of indigent persons into the state. In *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867), the Court addressed whether a state could tax railroad passengers carried out of state—or as the Court described it, a tax imposed “upon the passenger for the privilege of leaving the State, or passing through it by the ordinary mode of passenger travel.” In *United States v. Guest*, 383 U.S. 745 (1966), the Court held that a criminal indictment could properly assert that defendants were conspiring to deny black citizens “the right to travel freely to and from the State of Georgia and to use highway facilities and other instrumentalities of interstate commerce within the State of Georgia.”

House Bill 242 does not place actual barriers to interstate movement. House Bill 242 represents an exercise of Idaho’s police power in an area touching on abortion—a right not protected by the U.S. Constitution.<sup>8</sup> It seeks to regulate the in-state recruiting, harboring, or transporting of a pregnant minor. House Bill 242 does not offend a right to travel in the U.S. Constitution.

### **III. House Bill 242 does not conflict with Executive Orders.**

You also asked about executive orders issued by the President and whether House Bill 242 conflicts with them. We have identified two executive orders issued by the President that concern “reproductive healthcare services.”

Executive Order 14076 of July 8, 2022, “Protecting Access to Reproductive Healthcare Services” in relevant part requested a report to the President from the Secretary of Health and Human Services and authorized the Attorney General of the United States and Counsel to the President to convene a meeting.<sup>9</sup> House Bill 242 does not conflict with this order.

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<sup>7</sup> *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 277 (quoting *Zobel v. Williams*, 457 U.S. 55, 60 n.6) (1982)).

<sup>8</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>9</sup> Exec. Order No. 14,076, 87 Fed. Reg. 42053-42055 (July 13, 2022).

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Executive Order 14079 of August 3, 2022, “Securing Access to Reproductive and Other Healthcare Services” in relevant part directed the Secretary of Health and Human Services to “consider actions to advance access to reproductive healthcare services, including, to the extent permitted by Federal law, through Medicaid for patients traveling across State lines for medical care.”<sup>10</sup> We have not located any published rulemaking from the U.S. Department of Health and Human Services in the Federal Register. As such, there is no existing conflict involving House Bill 242 and this executive order.

We also located a Presidential Memorandum, “Further Efforts to Protect Access to Reproductive Healthcare Services” which discussed the Food and Drug Administration’s recent changes to the Risk Evaluation and Mitigation Strategies (REMS) regarding Mifepristone.<sup>11</sup> That memorandum directed the Secretary of Health and Human Services, the U.S. Attorney General, and the Secretary of Homeland Security to consider issuing guidance and to take other action to educate individuals about access to Mifepristone. It also directed these officials to provide information to a task force regarding barriers concerning access to Mifepristone. House Bill 242 does not conflict with this memorandum.

We are not aware of any other federal law that preempts the abortion trafficking crime established in House Bill 242. In fact, states have broad authority to enact laws like this as part of their “police power,” something which the U.S. Congress does not have.<sup>12</sup> And because abortion is not a right protected within the federal constitution, abortion and crimes incident to abortion, are certainly within the State’s realm of regulation.

\* \* \* \*

Please feel free to contact me if you have any questions.

Sincerely,



RAÚL R. LABRADOR  
Attorney General

RRL:kw

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<sup>10</sup> Exec. Order No. 14,079, 87 Fed. Reg. 49505-49507 (Aug. 11, 2022).

<sup>11</sup> Mem. of Jan. 22, 2023, 88 Fed. Reg. 4895-4897 (Jan. 26, 2023).

<sup>12</sup> See *United States v. Morrison*, 529 U.S. 598, 617-619 (2000).

# **EXHIBIT 4**

**Sen. Lakey March 27, 2023 Testimony**

**Via Hand Delivery  
on Flash Drive**

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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

DECLARATION OF LOURDES  
ANNETTE MATSUMOTO



I, Lourdes Annette Matsumoto, declare and state as follows:

1. I am over 21 years of age. I have personal knowledge of the facts contained in this declaration, and I am competent to testify about them.
2. At all times pertinent to this Declaration, I have been a legal adult in the State of Idaho.
3. My workplace and primary place of residence is in Canyon County, State of Idaho.
4. I am proud to declare that I am a descendant of homesteaders, and a third generation Idahoan.
5. I am an American with direct heritage to immigrants who came to the United States from Mexico and from Japan.
6. In spite of my heritage of long-standing American citizenship, my own family were racially-targeted victims of Executive Order 9066 in 1942, which ordered establishment of concentration camps known as Japanese Internment Camps in Minnedoka, Idaho.
7. After graduation at Middleton High School in 2004, I attended college at the College of Idaho (then known as Albertson's College of Idaho), and then law school at Gonzaga University and the University of Idaho.
8. I became an Idaho attorney in 2016, and I remain a member in good standing of the Idaho State Bar.
9. I have been deputy general counsel in a position of high public trust in a highly technical environment.
10. I have also been an attorney in private practice, and simultaneously provide legal services and policy counsel to a local nonprofit that provides emergency assistance, counseling, and resources to victims of domestic and sexual violence.

11. I estimate that I have represented eleven private clients, in Idaho, in the past two years who were survivors of sexual violence. Several of these clients were Idaho minors.
12. I believe every person deserves to live their lives, according to their truth, with respect and dignity, and free of violence, including minors.
13. I have spent a majority of my legal career advocating for civil rights.
14. In 2017, I became a victim of egregious workplace harassment that escalated into gender-based violence.
15. I have been a visible face in Idaho, representing what would become the “#metoo movement”, even before the strength of numbers emerged from public celebrity cases.
16. Through my words and actions I have continually sought to communicate my solidarity with abuse survivors, including pregnant minor abuse survivors, and my belief in bodily autonomy for all, including minors, and that I am a trusted resource, both professionally and personally, for minors experiencing abuse.
17. I am also a parent of minor children.
18. I am also a trusted adult who friends and family come to with questions about how to respond to gender-based violence (GBV), intimate partner violence (IPV), domestic violence (DV) and sexual assault (SA).
19. I personally know the courage it takes to hold a sexually violent perpetrator to account in the face of a fear that your life is in danger and that you won't be believed.
20. Due to the publicity of my own case and the compelling nature of my survivorship, I have been a speaker for a statewide association of trial attorneys, to discuss the effort to change the tide of sexual harassment and hostile workplace environments.

21. I have also been asked to speak to this same statewide association of trial attorneys about how to identify abuse in minors, especially those minors who have been subjected to sexual abuse in kindergarten through Grade 12 in public schools.
22. I continue to represent private clients, and I keep my practice open especially for minors and other survivors of sexual violence resulting in pregnancy.
23. In my professional capacity I work with, and focus on, survivors between the ages of 11 and 24, many of whom are victims of sexual assault.
24. In my professional capacity I also work with other advocates who also focus on minor survivors between the ages of 11 and 24, and these advocates have turned to me with questions about how they can best assist minor survivors who have become pregnant as a result of their abuse.
25. In 2023, the Idaho Legislature created I.C. 18-623, resulting from House Bills 98 and 242. The short title of this new first-in-the-nation “crime” is “Abortion Trafficking”.
26. Even as a law trained person with years of knowledge, I believe this new code is so vague that it must be unenforceable.
27. The code has both a criminal and a civil enforcement section, and neither section is clear to me.
28. Advocates and domestic violence program professionals often reach out to me for expert advice on how to legally and properly advise survivors of gender-based violence and intimate partner violence who come to them for services.
29. Often, this expert advice is for minor Idahoans with unwanted pregnancies, which are the results of GBV and IPV.

30. In September 2022, during a training I participated in, I was unable to answer questions from other attendees who expressed confusion how to answer questions by survivors who were traveling in Idaho and then crossing state lines to access abortion in states where it is legal. Some of those questions involved how far they could go, whether they could use untraceable gas cards or financial assistance, whether law enforcement surveillance was an issue, and other similar questions. Among three well-trained and experienced attorneys at this training event, each had a different belief about what conduct would have the lowest legal risk.
31. After H.B. 242 was signed by Gov. Little in April 2023, I received several calls from domestic violence programs about best practices and what to do in specific circumstances. These calls came because program staff feared prosecution for disseminating correct information to adults and to minors. Idaho law does not recognize a legal advocate/client privilege, so many of these advocates are front-line navigators assisting survivors who may not be as protected as they hope when they share available resources. I had a difficult time advising them.
32. On April 24, 2023, I participated in a training open to the public and tailored for school administrators, related to an increase in sexual abuse and gender violence in children from kindergarten through 12<sup>th</sup> grade. This training went over what to identify, what to do, and who to talk with if you suspect that sexual abuse or gender violence are occurring. The training also focused on the survivors' right of autonomy to decide what reports they would like to make and whether they want to pursue the options they are given.

33. A similar training was given on May 8, 2023. Here I faced many questions from confused parents and school administrators. Participants expressed concern and unsurety over what behaviors were legal and which crossed the line.
34. I have continued to field questions and concerns regarding what conduct would be permitted by this statute.
35. Based on my knowledge and first-hand experience with DV response training, there remains great professional and general uncertainty and confusion about what I.C. 18-623 specifically allows or prohibits.
36. Some of the specific questions I have tried to field involve giving advice to pregnant people or minors; how to handle financial support or transportation for those seeking abortion; and after May 5, 2023, there have been even more questions about what information can even be given to minors or to those who want to help minors by transporting them through Idaho and into states where abortion is legal.
37. Because of my years of advocacy work in the field of domestic violence, I am known in the general community as an expert resource.
38. I have been asked specific questions from friends, family and acquaintances about what resources are available to handle an unwanted pregnancy resulting from IPV / GBV.
39. The vagueness of I.C. 18-623 has made it difficult to provide accurate legal advice to guide even professionally-trained advocates, whose mission, like mine, is to serve survivors.
40. The impact is that the professional community of domestic violence advocacy cannot reasonably be expected to provide critical victim support services, especially when those

services include providing practical and actionable advice to pregnant minor survivors of GBV / IPV.

41. I recognize the dangers of ambiguity in the law when I advise and advocate for DV/SA survivors. Survivors need to know specifically what actions can help them restore their lives.
42. I.C. 18-623 is a law that is fundamentally unfair and anti-American; but it is also infused with unworkable ambiguity.
43. I want to be able to provide reliable advice, including advice about abortion, to pregnant minors and to those who want to support them. I know that it is not always safe for minor survivors or for me to seek or obtain parental consent.
44. Without reliable legal advice, these pregnant minors may turn to less desired options, and will decrease their reliance upon trusted adults in their communities who want to help resolve these crises.
45. In traditionally marginalized communities, people are often taught, through unjust experiences, to not trust adults or the legal system or any “system” to help them out.
46. Survivors, especially minor survivors, who bravely leave abusive homes or relationships often have no one to turn to except specialized survivor resources like DV/SA coalitions or locally known resources like myself. Once an adult does not come through for a minor, the abused minor is less likely to trust another adult.
47. I have previously provided abortion information and options counseling through trainings and to advocates to better guide their work with pregnant minors. These minors parents may or may not have consented to this. I would like to continue to provide this

information and communicate my support, but I fear an imminent threat of criminal prosecution, from which I need relief from this Court.

48. I have not yet been asked to provide transportation for a pregnant minor seeking abortion, but if I were asked, I would like to, whether or not the minors parents or guardian consented. Unfortunately, if I did so, I fear I would face an imminent threat of criminal prosecution.

49. I would like to provide temporary shelter for pregnant Idaho minors traveling to obtain abortions in states where they are legal, regardless of parental or guardian consent, without the threat of criminal prosecution.

50. I have previously provided financial assistance to organizations and funds that support pregnant minors seeking abortions. I am unaware if the parents or guardians of the pregnant minor knew about the abortions that I helped to fund. In the future, I would like to continue to do this, but I fear an imminent threat of criminal prosecution, from which I need relief from this Court.

51. I have been asked to advise other programs as to how much information, support, and transportation given to pregnant minors seeking abortions is legal and when those behaviors become illegal under the law and I wish to be able to provide clear guidance.

52. Although I am a licensed attorney in Idaho, I remain unclear about what degree of communication or contact with parents I am required to provide or withhold under I.C. 18-623.

53. I have been willing to help pregnant minors obtain reproductive options counseling and healthcare, including abortion, without the consent of the minors' parents, and I want to be able to provide this kind of assistance in the future.

54. Based on my beliefs, I want to continue to support pregnant Idaho minors seeking abortion in all the ways detailed herein, but I am unsure about the exact reach of this law and fear criminal prosecution.

55. Without relief from this court, my ability to speak about legal abortion care in accordance with my personal beliefs and my professional obligations will be irreparably harmed.

56. Without relief from this court, my ability to act in accordance with my beliefs, including providing practical financial and logistical assistance to pregnant minors seeking legal abortions, and to the individuals and organizations that assist them, will be irreparably harmed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: July 24, 2023.

/s/ Lourdes Annette Matsumoto

Lourdes Annette Matsumoto



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 24, 2023, 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 person:

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/s/ Wendy J. Olson

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*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

Declaration of tai simpson

I, tai simpson (“tai simpson”), declare and state as follows:

1. I am over 21 years of age, I have personal knowledge of the facts contained in this declaration, and I am competent to testify about them.
2. At all times pertinent to this Declaration, I have been a legal adult in the boundaries and jurisdiction commonly described as Idaho.
3. At all times pertinent to this Declaration, I have been a resident of the State of Idaho, with a principal residence within the County of Ada.
4. I am a member of the Nimiipuu Nation, also called the Nez Perce Tribe of Idaho.
5. The traditional, usual, and accustomed lands of my people, like that of other tribes whose territory encompasses land within Idaho, are often recognized as transecting and incorporating land within the U.S. state/Canadian provincial boundaries of Washington, Idaho, Montana, Wyoming, British Columbia, and Alberta.
6. My life’s calling is to continue to serve the storied culture of my people through trust-based mutual care and aid.
7. To that end, I co-founded and helped organize Indigenous Idaho Alliance (IIA), under the laws of the state of Idaho, in order to facilitate that mutual care and aid.
8. I have been an officer or director of Indigenous Idaho Alliance, Inc., an Idaho 501(c)(3) non-profit organization, since 2012.
9. IIA’s work includes serving the five tribes whose traditional, usual, and accustomed lands encompass territory within Idaho, and whose traditional, usual, and accustomed lands are often recognized as transecting and incorporating land within the U.S. state/Canadian provincial boundaries of Washington, Idaho, Montana, Nevada, Utah, Wyoming,

California, British Columbia, and Alberta. In this declaration, I may occasionally refer to these lands as “the region.”

10. The region has one of the highest per capita populations of Indigenous people in the political boundaries of the United States. IIA’s work also includes serving Indigenous people from other tribes across the U.S. who are in this area and far from their reservations and homelands.
11. Our work at IIA is centered around asserting the sovereignty of all Indigenous people by focusing on education, community care, awareness, and collaboration in order to empower a healthy and just Indigenous community in Idaho.
12. Among our priorities and efforts is seeking justice for the Missing and Murdered Indigenous People (MMIP) and their families.
13. IIA also prioritizes the health and wellness of the Indigenous communities we serve.
14. My academic background is in Political Philosophy & Public Law at Boise State University, where I served as the vice president and president of the Intertribal Native Council student organization.
15. The assertions within this document are based upon my own experience, cultural knowledge, research, education, and study, of prevailing scholarship in these subjects.
16. I know that in the United States, Indigenous women and girls are the victims of gender-based violence at a statistical rate twice that of Anglo-American women and girls.
17. Gender-based violence perpetrated against Indigenous women and girls is almost always power-focused with the use of sexual assault and sexual battery including forcible intercourse, by male perpetrators.

18. Unwanted pregnancy or coercive pregnancy is often the result of this high rate of gender-based violence which includes rape.
19. Indigenous women and girls, facing unwanted or coerced pregnancy, are often victims of violence, including murder, in order to conceal the crimes of rape or to punish these pregnant people who seek protection, self-care, or reproductive healthcare including abortion.
20. This is the context that the IIA and I work in as we pursue justice for MMIP and their families.
21. Law enforcement investigation and criminal prosecution of gender-based violent crime against Indigenous women and girls is woefully lacking behind standard policing and prosecutorial standards that protect Anglo-American populations.
22. In my experience, abortions are often sought by the pregnant Indigenous victims of gender-based violence.
23. Since abortion is also sought by other victims of gender-based violence, my organization has and will continue to serve non-Indigenous people, including non-Indigenous minors.
24. With Idaho's 2022 restrictions on abortion care, many people working to make ends meet, especially Black people, Indigenous people, Asian people, Latinx ("Hispanic") people, young people, Lesbian-Gay-Bisexual-Trans-Queer-and nonbinary ("LGBTQ+") people, immigrant people, disabled people, and gender-nonconforming people, have been denied a fundamental aspect of their own bodily autonomy, including the right to make personal and individualized decisions about their own healthcare.

25. Indigenous people everywhere, including in Idaho, suffer from systemic racism and chronic economic insecurity, which are massive barriers to all health care, but especially abortion care, even in jurisdictions where it is legal.
26. Abortion bans, like those which exist in Idaho, cause even greater harm to those already subject to systemic racism and economic injustice, like the Indigenous people I serve.
27. Pregnancy is less safe for some than for others because of historic and ongoing racism and discrimination in healthcare settings, and people of color face two to three times the risk of dying from pregnancy-related causes, including maternal mortality and fetal, newborn and infant mortality.
28. States like Idaho that ban or severely restrict access to abortion care also have worse maternal health outcomes.
29. Forced pregnancy is always unconscionable, and particularly so for individuals facing heightened risk of maternal mortality and morbidity, where pregnancy is less safe for some than for others because of historic and ongoing racism and discrimination in healthcare settings.
30. The criminalization of abortion care in Idaho forces people to travel hundreds of miles out of their communities to try to get care, and studies show that longer travel distances are associated with lower abortion rates, forcing people to seek other options.
31. As in other forms of criminalization, the systemic result is that people targeted for pregnancy loss and self-managed abortion prosecution are disproportionately people of color and people experiencing economic insecurity, especially including the Indigenous communities where I live and serve.
32. Many of the communities where I live and serve are on or near “Indian Reservations”.

33. “Indian Reservations” are a population-concentration system designed to restrict free movement of Indigenous people and to limit the reach of our cultural expression under the guise of tribal self-determinism, and are typically located in rural or isolated areas.
34. Indigenous women and girls who are victims of gender-based violence including rape resulting in unwanted or coercive pregnancy are further restricted from basic reproductive healthcare, including abortion, due to the remote nature of reservation life, where independent modes of travel, coercion through domestic abuse and violence, complicit tribal or nontribal law enforcement officials, or sheer cost and distance make access to healthcare extremely difficult.
35. Abortion needs to be safe and accessible where people live, and where they access other forms of healthcare.
36. Abortion is almost entirely unavailable in Idaho.
37. In order to serve my people and others in the communities where I live and work, I and the IIA have in the past assisted pregnant people, including minors, access abortions. I want to keep doing this throughout the region in which we work, including in Idaho, without fear of imprisonment.
38. IIA has provided pregnant people, including minors, with information regarding reproductive health care options, including abortion.
39. The parents and guardians of the minors to whom we provide information about abortion may or may not be aware of, or consent to, the provision of information regarding abortions.
40. I and my organization wish to continue providing pregnant people, including minors, throughout the region with information regarding reproductive health care options,

including abortion, without the legal requirement of seeking or obtaining parental consent and without fear of imprisonment.

41. In order to provide the mutual assistance IIA supports, through my organization, I have in the past also coordinated the transportation of pregnant women and girls from locations across the region, including locations within Idaho, to and across state lines and provincial borders, where abortion care can be lawfully obtained in neighboring jurisdictions.
42. As a founder and organizer of IIA, I can attest that our organizational mission includes this kind of mutual assistance, and that I and members of IIA wish to continue to provide this type of assistance to both adults and minors.
43. In addition to transporting and coordinating transport of pregnant people, including pregnant minors, into states where abortion is legal, it is even more common for IIA to support pregnant people, including minors, with “rapid response” financial assistance, which can be used to pay for travel, meals, and medical care expenses incurred in the process of obtaining abortions where they are legal.
44. The most common way IIA distributes “rapid response” financial assistance is with prepaid debit cards.
45. The ability to provide these types of financial assistance comes through the receipt of unsolicited donations from individuals, as well as from local, regional, and national organizations who, through “word-of-mouth,” have become aware of the work we do to ensure abortion care access by members of my community.
46. A majority of our donors are anonymous.



47. Several times per year, IIA can expect to receive tens of thousands of dollars in donations, many of which are from first-time donors.
48. IIA sometimes applies for and receives funding through federal and non-governmental grant programs, but unsolicited gifts and donations through “word-of-mouth” are the primary sources of the financial assistance we provide to pregnant people and girls seeking abortion.
49. IIA distributes the funding we receive in accordance with our commitment to trust-based mutual care and aid. This has included providing funding and other support to pregnant women and girls seeking abortions.
50. Sometimes, in the past, when we have provided direct or financial assistance to a pregnant minor seeking an abortion, the parents or guardians may or may not have been aware about the minor’s intent to seek an abortion.
51. While we are not always aware of how a minor became pregnant, our focus is always on the pregnant minor and getting them the trust-based aid that they need.
52. IIA is also in the practice of obtaining and distributing “Plan B” to pregnant minors, in some cases transmitting Plan B through overnight couriers or through clandestine drop-offs, when that is more convenient or appropriate.
53. IIA distributes Plan B to all community members who request it, including to minors. I do not know whether all of the parents or guardians of these minors were aware of the minors’ receipt of Plan B.
54. I and IIA have taken all of these actions as part of our community commitment to trust-based mutual care and aid. All of these actions are in furtherance of our goals and traditions.

55. I and IIA also undertake these actions as a visible sign of support and solidarity with our community.
56. I and IIA also undertake these actions as a visible sign of support and solidarity with the pregnant people, including the pregnant minors, that we serve, that they are not alone and have community support.
57. We also undertake these actions as a visible sign of support to others, that we serve as trusted community members supporting and centering the needs of our people, including the needs of pregnant minors seeking abortion care in places where that care is legal.
58. While I and other members of the IIA wish to continue to support pregnant girls, including providing information and support to help them access abortion care where it is legal, I am uncertain of the line the law draws between legal and illegal conduct.
59. I and my organization wish to continue providing pregnant people, including minors, throughout the region with practical, financial, and other support in order to help them access abortions, including transportation, monies and gift cards, and accommodation, without fear of imprisonment.
60. Without relief from this court, my ability to speak about legal abortion care for minors in accordance with the mission of IIA and my own personal beliefs will be irreparably harmed.
61. Without relief from this court, my ability, and the ability of IIA, to act in accordance with our missions and beliefs, will be irreparably harmed. These actions include, but are not limited to, providing financial, transportation and logistical assistance to pregnant minors within the region seeking legal abortions, with or without the knowledge or consent of their parents or guardians.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: July 24, 2023.

/s/ tai simpson

tai simpson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 24, 2023, 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 person:

Lincoln Davis Wilson  
Lincoln.wilson@ag.idaho.gov

/s/ Wendy J. Olson  
Wendy J. Olson

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*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

DECLARATION OF MEGAN KOVACS

I, Megan Kovacs, declare and state as follows:

1. I am over 21 years of age. I have personal knowledge of the facts contained in this declaration, and I am competent to testify about them. The statements within this Declaration are within my personal knowledge, and are true and correct.
2. At all times pertinent to this Declaration, I have been a resident of the State of Oregon.
3. I am a board member of the Northwest Abortion Access Fund (“NWAAF”).
4. NWAAF is a non-profit entity comprised of a working board, paid staff, and trained volunteers. NWAAF provides emotional, financial, logistical, practical, and informational assistance to those who may become pregnant and need or choose to consider abortion as an option.
5. NWAAF’s assistance includes the provision of information, travel funds, travel logistics and organization, and actually driving patients, to abortion providers.
6. NWAAF’s work, and travel assistance, extends to minors. We provide information, travel funds, travel logistics, travel organization, and actually drive minor patients, to abortion providers.
7. NWAAF operates in Idaho as well as in Washington, Oregon and Alaska. NWAAF is the only independent abortion fund serving the Pacific Northwest and covers the largest geographic area of any abortion fund in the United States.
8. NWAAF has always provided its services, which include the provision of information and travel related needs, to minors, including to minors in the state of Idaho.
9. NWAAF provides these services as part of its commitment and support of reproductive justice, which recognizes and supports the human right to maintain personal bodily autonomy, to have children, to not have children, and to parent children in safe and

sustainable communities. NWAAF's actions are all taken in support of these commitments and beliefs.

10. NWAAF provides these services as part and parcel of our mission, which includes letting pregnant minors know that we are here to support them in their decision to have, or not to have, an abortion.
11. NWAAF also provides these services as a way to let the community know that all pregnant persons, including minors in abusive situations, will have the support of trusted adults.
12. NWAAF regularly provides pregnant people, including minors, with information regarding reproductive health care options, including abortion.
13. The parents and guardians of the minors to whom we provide information about abortion may or may not be aware of, or consent to, the provision of information regarding abortions.
14. I and my organization wish to continue providing pregnant people, including minors, throughout the region with abortion information regarding reproductive health care options, including abortion, without fear of imprisonment.
15. NWAAF's work also includes booking and directly paying for bus tickets, plane tickets and ride shares, as well as providing adult volunteers to drive patients, including minor patients, to abortion appointments in states where abortion is legal. This travel assistance is provided for pregnant people, including minors, for travel within the state of Idaho in order to reach neighboring states where abortion remains legal.
16. NWAAF also provides funding to abortion providers for their work, in states where that work is legal.

17. NWAAF also provides food and lodging assistance to persons seeking abortions.

NWAAF provides this assistance to both adults and minors in the state of Idaho.

18. In the last year, NWAAF provided practical abortion assistance, including travel assistance and lodging when necessary, to 205 individuals living in Idaho, including minors who live in Idaho.

19. When transporting or facilitating transportation for minors, NWAAF has not sought parental consent. Parents and guardians may or may not have known about or approved of NWAAF's support of these minors.

20. I.C. 18-623, the so-called "Abortion Trafficking" statute in Idaho directly impacts the mission and the work of NWAAF.

21. NWAAF, including myself, wish to continue funding legal, out-of-state abortions for pregnant minor Idahoans (i.e., including directly paying and/or reimbursing out-of-state licensed providers of abortion services and providing financial aid to pregnant Idahoans for that purpose) without seeking or obtaining consent from any parent or guardian.

22. NWAAF, including myself, wish to continue providing informational materials and planning assistance (such as organizing and funding transportation and lodging) to pregnant minor Idahoans for obtaining legal, out-of-state abortions.

23. NWAAF, including myself, wish to continue transporting pregnant minor Idahoans to out-of-state licensed providers of safe, legal abortion.

24. All of the actions we have taken, and wish to continue taking, rely on the financial support we receive from donors.



25. NWAAF's donors contribute to our organization because they believe in and want to support our work ensuring that individuals in our region, including minors, are able to access abortion care, if that is the choice they make.
26. Our donors contribute to our organization with the knowledge that when we have supported pregnant minors, including pregnant minors in Idaho, access abortions, we have not sought parental consent. Parents and guardians may or may not have know about or approved of NWAAF's support of these minors.
27. NWAAF's continued ability to fulfill our mission and attract donors depends on our continued ability to support (financially, logistically and otherwise) pregnant people to access abortion care, including pregnant minors in Idaho, even if others disagree with their choice.
28. Our work also relies on the support we have from volunteers, who work with us specifically to support our mission of ensuring that all persons, including minors in Idaho, are able to access the full range of reproductive options, including abortion care.
29. This law, I.C. 18-623, violates NWAAF's constitutional and statutory rights. The state of Idaho, through this law and through the actions of its actors, is threatening criminal prosecution of myself, Idaho state staff, our board members, and volunteers, and out of state staff, board members, and volunteers if we continue to do the work of our organization.
30. I.C. 18-623 is a law so vague that neither NWAAF, nor I, are certain of which of our usual activities and statements would run afoul of the law.
31. NWAAF, including myself, seek to enjoin Defendant from applying this law for the legal exercise of our rights.

32. Pregnant people, including pregnant minors, seeking abortion care in the Northwest rely upon NWAAF to provide necessary assistance to access safe and legal abortion care.
33. Since the Dobbs decision in June 2022, NWAAF has seen a 149% increase in its travel expenditures, which help pay for the transportation that pregnant people need to access safe and legal abortion care.
34. We have seen a 146% increase in travel expenditures in the last year from Idaho residents.
35. Since the Dobbs decision in June 2022, NWAAF has seen a 46% increase in its abortion care funding expenditures that pregnant people need to access safe and legal abortion.
36. Due to NWAAF's public statements and actions, we expect that minors, including minors in Idaho, will continue to seek our information and our support for help obtaining abortions.
37. Because we are committed to this and believe strongly in this mission, we want to continue to provide all of our usual services to pregnant people and minors, including pregnant people and minors in the state of Idaho without the threat of criminal prosecution.
38. We have done this, and want to continue to do so, as a show of support and solidarity with pregnant minors; to let them and to let the community at large know that they are not alone.
39. Without relief from this court, NWAAF's ability to speak about abortions, including speaking with Idaho minors who contact us, in accordance with our mission and with my own personal beliefs, will be irreparably harmed.

40. Without relief from this court, the ability of NWAAF to act in accordance with our missions and beliefs, will be irreparably harmed. These actions include, but are not limited to, providing financial, transportation and logistical assistance to pregnant Idaho minors seeking legal abortions, with or without the knowledge or consent of their parents or guardians.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: July 24, 2023.

/s/ Megan Kovacs

Megan Kovacs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 24, 2023, 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 person:

Lincoln Davis Wilson  
Lincoln.wilson@ag.idaho.gov

/s/ Wendy J. Olson

Wendy J. Olson