RAÚL R. LABRADOR
ATTORNEY GENERAL

JAMES E. M. CRAIG, ISB #6365
Chief, Civil Litigation and
Constitutional Defense

BRIAN V. CHURCH, ISB #9391
Lead Deputy Attorney General
AARON M. GREEN, ISB #12397
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
james.craig@ag.idaho.gov
brian.church@ag.idaho.gov
aaron.green@ag.idaho.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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

Plaintiff,

v.

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

Defendant.

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

DEFENDANT'S RESPONSE TO MOTION *IN LIMINE* SEEKING JUDICIAL NOTICE OF STATE GOVERNMENT DOCUMENTS [DKT. 70]

INTRODUCTION

Nobody contests that the Court can cite the legislative history of Idaho Code § 18-623, if it turns out to be relevant,[1] but Federal Rule of Evidence 201 is the wrong vehicle. The Court should deny the motion *in limine* and simply cite those sections of legislative history it finds useful, as it has previously done in this case.

ARGUMENT

Three principles govern this motion.

First, documents pertaining to the law-making process contain legislative, not adjudicative facts. "Adjudicative facts are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or *in the enactment of a legislative body.*" Fed. R. Evid. 201(a) adv. comm. note (1972) (emphasis added). The bases for legislative judgment and legislative purpose, for instance, in a challenge to a statute under the equal protection clause, are legislative facts. *See Allied Concrete and Supply Co. v. Baker*, 904 F.3d 1053, 1061 (9th Cir. 2018) (quoting *Vance v. Bradley*, 440 U.S. 93, 111 (1979)). While adjudicative facts are established (outside of Rule 201) by the introduction of evidence, including testimony, legislative facts are not. *Id.* The documents at issue describe the legislative process behind Idaho Code § 18-623, and so contain legislative facts.

[1] Plaintiffs preview that they will ask this Court to depart from a plain text interpretation of Idaho Code § 18-623 in determining the primary objective of the statute. Dkt. 70-1 at 2–3 (citing plurality opinion test under *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898 (1986)); *but see Hawkins v. Chandler*, 88 Idaho 20, 30, 396 P.2d 123, 128 (1964) and *In re Lieberman*, 245 F.3d 1090, 1092 (9th Cir. 2001). Among other problems with this, Plaintiffs omit in their citation that *Soto-Lopez* was a plurality opinion. Dkt. 70-1 at 2. Chief Justice Burger and Justice White joined the judgment on equal protection grounds alone, not the right to interstate travel. *See* 476 U.S. at 912–16 (Burger, C.J. concurring), (White, J. concurring).

Second, Rule 201's scope section notes, "[t]his rule governs judicial notice of an adjudicative fact only, not a legislative fact." Fed. R. Evid. 201(a). Put another way, "no rule deals with judicial notice of 'legislative' facts." *Id.* (adv. comm. notes 1972). As it happens, "[j]udicial notice of legislative facts . . . is unnecessary." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). This includes the legislative history of the statute. *See e.g.*, *Blumenthal Distrib., Inc. v. Herman Miller, Inc.*, 811 Fed. App'x. 421, 422 (9th Cir. 2020); *Mollaei v. Otonomo Inc.*, 651 F.Supp.3d 1135, 1139 (N.D. Cal. 2023); *Carey v. J.A.K.'s Puppies, Inc.*, 763 F.Supp.3d 952, 971–72 (C.D. Cal. 2025). To be sure, Courts have been imprecise in associating the term "judicial notice" with their citation of legislative history, *see e.g.*, *Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015), *Chaker v. Crogan*, 428 F.3d 1215 (9th Cir. 2005). But in both *Arce* and *Chaker* (and most of the other cases cited by Plaintiffs) the Court conducted only a perfunctory analysis and referred generally to Rule 201(b) without determining whether the fact was adjudicative or not. *Arce*, 793 F.3d at 975 n.3, 978 n.4; *Chaker*, 428 F.3d at 1223 n.8. Other requests cited by Plaintiffs are simply unopposed motions with similarly brief analysis. *See Montera v. Premier Nutrition Corp.*, 111 F.4th 1018, 1040 n.11 (9th Cir. 2024).

The instant motion rightly recognizes that courts will just *cite* the relevant history. Dkt. 70-1 at 3 (citing *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024)). But Plaintiffs never explain why "formal judicial notice" is necessary here when the Court can simply cite to the legislative documents it has cited previously when it is convenient to do so. The court can properly consider such information "[as] legislative facts, albeit pursuant to its inherent authority to consider such facts rather than pursuant to Rule 201." *Port of Portland v. Monsanto Co.*, No. 3:17–CV–15–PK, 2017 WL 909807 at *8 (D. Or. Apr. 18, 2017).

Third, the instant motion fails to identify specific facts that the Court should notice. "The Ninth Circuit has clarified that if a court takes judicial notice of a document, it must specify what facts it judicially noticed from the document." *In re Lyft Inc. Sec. Litig.*, 484 F.Supp.3d 758, 763–64 (citing *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 999 (9th Cir. 2018)). "Succinctly put, judicial notice is taken of facts, not documents." § 5104 Facts Judicially Noticeable; Indisputability, 21B Fed. Prac. & Proc. Evid. § 5104 (2d ed.). But the motion asks that the Court notice documents without specifying what the adjudicative facts are within those documents that the Court should notice. Dkt. 70-1 at 3–4. A request for judicial notice that "dump[s] large swaths of material into a request" may be "commonplace[]" but "[t]his catch-all approach to requesting judicial notice . . . is not consistent with the law's requirements." *Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F.Supp.3d 139, 146 (N.D. Cal. 2020); *see also Capaci v. Sports Research Corp.*, 445 F.Supp.3d 607, 617 (C.D. Cal. 2020); *Crawford v. Countrywide Home Loans, Inc.*, 647 F.3d 642, 649 (7th Cir. 2011) (affirming denial of judicial notice requested "not of . . . discrete facts, but of a number of whole documents"). Even if the motion was properly grounded in Rule 201, it is insufficiently specific because it fails to specify the facts to be noticed.

CONCLUSION

For the foregoing reasons, the motion should be denied.

DATED: October 24, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on October 24, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Cristina Sepe
cristina.sepe@atg.wa.gov

Emily A MacMaster
emacmaster07@gmail.com
emily@macmasterlaw.com

Emma Grunberg
emma.grunberg@atg.wa.gov

Wendy Olson
wendy.olson@stoel.com
docketclerk@stoel.com
emina.hasonovic@stoel.com
hillary.bibb@stoel.com
karissa.armbrust@stoel.com
kelly.tonikin@stoel.com
tracy.horan@stoel.com

Counsel for Plaintiffs

Jamila Asha Johnson
jjohnson@lawyeringproject.org

Kelly O'Neill
koneill@lagalvoice.org

Paige Butler Suelzle
psuelzle@lawyeringproject.org

Wendy S. Heipt
wheipt@legalvoice.org

/s/ *Aaron M. Green*
AARON M. GREEN