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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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

Plaintiff,

v.

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

Defendant.

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

MEMORANDUM IN RESPONSE TO NON-PARTY IDAHO RIGHT TO LIFE'S MOTION TO QUASH [DKT. 72]

INTRODUCTION

This is a case about statutory interpretation, no matter how many times Plaintiffs profess interest in the subjective motivation of individual legislators. But even if subjective motives *in* legislation matter in the final analysis, the subjective thoughts and opinions of third parties *about* legislation surely do not matter. The Attorney General takes the position that the Court should grant the motion to quash brought by non-party Idaho Right to Life.

ARGUMENT

Plaintiffs have argued that they need discovery relating to the subjective motives of individual legislators in order to pursue their claims, and that to do this they need discovery from third parties. Dkt. 87 at 4. This is false.

First, controlling precedent does not require consideration of legislative motives on the merits of a right to travel claim. *Attorney-General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion) is a plurality opinion, with the majority obtaining its votes on equal protection grounds. *See id.* at 912 (Burger, C.J., concurring in the judgment) and 916 (White, J., concurring in the judgment). Plaintiffs have now, multiple times, cited *Soto-Lopez* as a controlling opinion when it is only a plurality, without disclosing it represents less than the full Supreme Court. Dkt. 87 at 9 (citing without parenthetical); *see also* Dkt. 76 at 2 n.1. Bootstrapping *Soto-Lopez* with *United States v. Guest*, 383 U.S. 745 (1966) is unavailing—*Guest* involved an appeal from the dismissal of an indictment on the grounds that the stated conspiracy to deprive a right to interstate travel did not fall under 18 U.S.C. § 241, and the dicta cited by Plaintiffs notes that when *a conspiracy* has the predominant purpose of impeding or preventing interstate travel it appropriately falls under the proscribing *statute*. 383 U.S. at 760. *Guest* said nothing about how to determine whether legislation is unconstitutional, or what evidence is proper under such a

challenge: "[w]e deal here with issues of statutory construction, not with issues of constitutional power." *Id.* at 749.

Second, putting the merits of their right-to-travel claim aside for a moment and assuming that some subjective legislative motive is pertinent, they cannot obtain the information that the Supreme Court considers useful from a third party. As Plaintiffs freely admit, "Movant's communications with legislators are not part of the official legislative history of the Abortion Travel Ban." Dkt. 87 at 14. So why is it that Plaintiff believes that these documents are relevant? Apparently from the cited cases, it is because they confuse the inquiry that Courts use in considering claims of racial animus with ordinary questions of legislative intent. Nearly all of Plaintiffs cases on this point are *Arlington Heights* cases that claim a legislature is engaged in action motivated by invidious discrimination under either the Fourteenth Amendment (or the equivalent standard under the Voting Rights Act). *Id.* at 9–10; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 254 (1977).[1] They cite no case that applies the *Arlington Heights* framework to the right to travel and makes no effort (despite recognizing that *Arlington Heights* is an Equal Protection case, Dkt. 87 at 13) to connect the dots between their cited cases on relevant legislative history and the right to interstate travel.

Courts use four factors outlined by the Supreme Court in determining whether a legislature has an improper purpose under *Arlington Heights*:

> First, the historical background of the decision is one evidentiary source. Second, the specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes. Third, significant departures from the normal procedural sequence or substantive departures from the factors usually considered important by the decisionmaker might afford evidence that improper

[1] Plaintiffs also cite this Court, observing legislative history, in passing, in deciding the motion to dismiss. Dkt. 87 at 10 (citing *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069, 1077 (D. Idaho 2023)). Plaintiff also cites the Ninth Circuit decision which cited legislative testimony as background. 122 F.4th at 795.

> purposes are playing a role. Fourth, whether the effect of the action bears more heavily on one race than another' may provide evidence of animus.

United States v. Machic-Xiap, 552 F. Supp. 3d 1055, 1062–63 (D. Ore. 2021) (quoting and summarizing *Arlington Heights* framework) (cleaned up).

To state the test is to refute its application to the constitutionality of a statute under the right to travel. *Arlington Heights* and cases like it under the Voting Rights Act probe the question of race-based animus, with its uniquely villainous history in our constitutional order. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991). Whatever searching inquiry is appropriate in such cases, applying the test elsewhere is to try to force a round peg into a square hole, and in this case to burden a bystander to the litigation in the process. In our case, the only questions are ones of statutory construction that courts ordinarily discern in applying a statute.

Third, to the extent that courts consider legislative motive under *Arlington Heights* at all, courts look to the motives and intentions of the whole legislature, not individuals. "Inquiries into [legislative] motives or purposes are a hazardous matter." *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *accord Hunter v. Underwood*, 471 U.S. 222, 228 (1985). "Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the 'dominant' or 'primary' one." *Arlington Heights*, 429 U.S. at 265. More to the point,

> [t]he "cat's paw' theory" presuming that the legislature plays servant to someone other than the people "has no application to legislative bodies. The theory rests on the agency relationship that exists between an employer and a supervisor, but the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents. Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools."

Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 689–90 (2021). Even under *Arlington Heights*, the Supreme Court has rejected the premise that the motives of the public in starting a

debate imbues the legislature with an improper motive. *Id.* at 689. What somebody somewhere thought of the legislation is not relevant.

* * *

Ultimately, what other third parties subjectively thought about the bill that became Idaho Code § 18-623 is not germane to its construction, and Plaintiffs' attempt to justify their subpoena reflect an incorrect view of the governing law.

CONCLUSION

The Court should grant Non-Party Idaho Right to Life's Motion to Quash.

DATED: November 13, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on November 13, 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:

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