

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

ORDER

INTRODUCTION

Before the Court is Plaintiffs' Motion for Entry of a General Protective Order governing the disclosure of documents. (Dkt. 78). The matter is fully briefed and ripe for consideration. (Dkt. 80, 82, 85). The facts and legal arguments are adequately presented in the record. Accordingly, in the interest of avoiding delay, and because the decisional process would not be significantly aided by oral argument, the motion will be decided on the record. For the reasons that follow, the motion will be granted in part and denied in part.

BACKGROUND

This case involves challenges to the constitutionality of Idaho Code Section 18-623, “which criminalizes ‘abortion trafficking’ defined as ‘[a]n adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion,...or obtains an abortion-inducing drug...by recruiting, harboring, or transporting the pregnant minor within’ the state of Idaho.” *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024) (quoting I.C. § 18-623(1)). Plaintiffs are an individual and two advocacy organizations who seek to counsel pregnant minors in Idaho and provide material support to access legal abortion in other states. *Id.* at 795. Defendant is the Idaho Attorney General. Plaintiffs assert claims alleging Idaho Code Section 18-623 is void for vagueness under the Fourteenth Amendment, infringes on their First Amendment rights to speak and associate, and infringes on their right to interstate travel. (Dkt. 1, 41). Defendant asserts affirmative defenses, including: immunity, lack of standing, failure to state a claim, lack of jurisdiction, relief inconsistent with state law, and unclean hands. (Dkt. 65).

The parties have been engaged in discovery for some time, with a current discovery deadline of March 16, 2026. (Dkt. 64, 69, 80, 92). The Court has conducted an informal conference and held a status conference, to address discovery matters. (Dkt. 71, 81). The parties have conferred in good faith, but are unable to agree on certain discovery disputes and the terms of a protective order. Consequently, Plaintiffs filed the instant

motion seeking entry of a general protective order governing the disclosure of documents. (Dkt. 78).¹

STANDARD OF REVIEW

“[D]iscovery is ‘presumptively public.’” *Fierro Cordero v. Stemilt AG Servs., LLC*, 142 F.4th 1201, 1207 (9th Cir. 2025) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Ct.-N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999)). Despite this presumption, the court may, for good cause, issue an order to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” resulting from public disclosure of information obtained during discovery. *Id.* (quoting Fed. R. Civ. P. 26(c)(1)). “The Supreme Court has interpreted this language as conferring ‘broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.’” *Phillips ex. rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Indeed, Rule 26(c) provides a variety of methods for the district court to protect a party or a person from discovery. *Moore v. Battelle Energy Alliance, LLC*, 2023 WL 1767391, at *3, n. 4 (D. Idaho Feb. 2, 2023) (listing Rule 26(c)(1)(A)-(H)).

Where, as here, a party seeks a blanket protective order for a category of information or materials the party believes in good faith is confidential or otherwise

¹ Plaintiffs filed a separate motion for entry of a protective order regarding disclosure of nonparties’ identities and inquiries about alleged criminal conduct. (Dkt. 79). The Court will address that motion in a separate order.

subject to protection, the party seeking a protective order has the burden of establishing good cause. *Id.* at *4.² Good cause is shown when a party sets forth the specific harm or prejudice that will result in the absence of a protective order. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Id.* (citation omitted). “If a court finds particularized harm will result from disclosure of information to the public, then it balances the public and private interests to decide whether a protective order is necessary.” *Phillips*, 307 F.3d at 1211. Courts making this determination consider the following non-mandatory, non-exhaustive factors:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.

In re Roman Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 424 n. 5 (9th Cir. 2011) (citing *Glenmede Tr. Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)).

² Blanket protective orders themselves do not determine good cause for protecting any particular document or information. *Vineyard Investigations v. E. & J. Gallo Winery*, 2024 WL 4882891, at *2 (E.D. Cal. Nov. 25, 2024). Rather, a party may designate a document or material for protection and the opposing party may or may not contest the designation. The party seeking protection must establish good cause for the designation as to a specific document. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003). The Court makes no determination at this time concerning the designation of any particular document or information.

DISCUSSION

On this motion, Plaintiffs request entry of a general protective order governing the disclosure of documents - such as documents containing private medical and personal information of nonparties, including minors, and confidential business records. (Dkt. 78, 85). The parties agree that a general protective order should be entered, but disagree on certain terms. (Dkt. 78, 82, 85).

Plaintiffs propose that the general protective order incorporate regulatory and statutory provisions related to protections for medical and personal information, include an “Attorney Eyes Only” designation, and limit certain discovery and the use of all materials produced during discovery to this litigation. (Dkt. 78, 85). Defendant argues the model protective order for this District is appropriate to address Plaintiffs’ concerns, and that Plaintiffs have failed to demonstrate good cause for including the additional requested terms. (Dkt. 82). As discussed below, the Court finds good cause has been shown to enter a general protective order governing the disclosure of documents.

Public disclosure of documents containing sensitive, private medical and personal information of nonparties, especially of the nature involved in this litigation, will result in a particularized harm. *Moore*, 2023 WL 1767391, at *4-5 (discussing cases protecting privacy of nonparty personal information, including medical information, as particularly important because nonparty’s conduct is not at issue in the case and listing cases in support). Such documents involve nonparty individuals’ highly sensitive, medical and private information concerning reproductive choices, including abortion. There is a

strong privacy interest in the confidentiality of this information, the public disclosure of which will cause nonparties who have not injected themselves in this litigation to be subject to embarrassment, harassment, and retaliation. *See e.g., Planned Parenthood of S. Ariz. v. Lawall*, 307 F.3d 783, 790 (9th Cir. 2002) (recognizing privacy protections for information regarding an abortion decision); *Moore*, 2023 WL 1767391, at * 4-5 (discussing the importance of protecting privacy of nonparties, particularly with sensitive, nonpublic, medical, and potentially embarrassing information).

Balancing the public and private interests using the factors set forth in *In re Roman Catholic Archbishop of Portland*, the Court finds a general protective order under the terms discussed herein is necessary to protect the strong privacy interests of nonparties in their sensitive medical and private information, which outweighs the public interests in such information. In particular, the first and third factors weigh heavily in favor of a protective order. The public disclosure of records containing sensitive information of the nature involved in this case is likely to cause embarrassment and subject nonparties to harassment. As to factors five and seven, the Court finds entry of a general protective order, under the terms described herein, will allow for discoverable information to be exchanged among the parties using appropriate designations so that the important public issues in this case can be litigated, while still protecting the compelling privacy interests of nonparties.

The motion and proposed protective order also include terms relevant to business records, including policies and procedures, proprietary and trade secret information, and

confidential research or development. (Dkt. 78, 78-1). Considering factors one, three, five, and seven, the Court finds there are strong private interests in preserving confidential, proprietary, or trade secret information from public disclosure, that outweighs the public interests. These types of confidential business records are commonly protected during litigation. *Carpenter v. United States*, 484 U.S. 19, 26 (1987) (recognizing corporations' right and benefit to protect its confidential business information); Fed. R. Civ. P. 26(c)(1)(G). The model protective order's provisions concerning such records, with the addition of an Attorney Eyes Only designation as discussed below, are appropriate and necessary at this stage to protect the private interests while still allowing for the information to be shared among litigants. The Court makes no determination at this time as to whether any particular information or records fall within this category of documents, or warrant designation as Confidential or Attorney Eyes Only.

For the reasons stated herein, the Court finds, in its discretion, that good cause has been shown to enter a general protective order under the following terms and conditions.

1. Other Regulations and Statutes

Plaintiffs have not demonstrated good cause to include the proposed language of and citations to other regulations and statutes defining or protecting certain materials and information as contained in their proposed protective order. (Dkt. 78-1). If any discoverable materials or information are subject to other regulations or statutes, those provisions apply regardless of any protective order entered in this case. Absent agreement

of the parties, including references to and language from the other provisions in the general protective order, as proposed, would be broader than necessary to address the particularized harms Plaintiffs have established for entering the general protective order in this case. If certain information or material sought in discovery is subject to protection, Plaintiffs' may designate it as such under the relevant terms of the forthcoming general protective order, may object to disclosure of the material, or may otherwise seek to protect the material under the applicable discovery rule, statute, or regulation.

2. Attorney Eyes Only Designation

Plaintiffs have demonstrated good cause to include terms and provisions for an "Attorney Eyes Only" designation in the protective order. On balance, the Court finds the private interests involved here and potential for retaliation, harassment, embarrassment, and disclosure of confidential information, significantly outweigh the public interests in such information. Fed. R. Civ. P. 26(c)(1). As discussed above, the materials and information in this litigation involve nonpublic highly sensitive matters of nonparties and business records, which may warrant protection beyond a Confidential designation. For these reasons, the Court will exercise its discretion and include an Attorney Eyes Only designation in the protective order. *Seattle Times*, 467 U.S. at 36. Again, whether any particular information or documents warrant this designation is not decided here. Rather, the Court finds only that good cause has been shown to include this designation in the protective order in addition to a Confidential designation given the highly sensitive nature of the documents and information involved in this case. That being said, use of the

Attorney Eyes Only designation should be reserved for instances where a designation beyond Confidential is truly justified. The parties are ordered to confer and propose a protective order that includes this designation, using language distinguishing between Confidential and Attorney Eyes Only documents.

3. Limitation on Use and Other Terms

Good cause has been shown to include terms in the protective order governing and limiting the use of certain discovery consistent with the language of the model protective order, including terms restricting the use of materials designated as Confidential and/or Attorney Eyes Only to use in this case only; regarding inadvertent disclosure of materials; and requiring return/destruction of materials following litigation. Fed. R. Civ. P. 26(c)(1). These routine terms provide necessary protections for the sensitive, non-public materials upon which good cause has been found to enter a protective order in this case. Notably, the model protective order includes these terms and Defendant does not object to entry of the model protective order or to any of its terms. (Dkt. 82 at 1).

However, Plaintiff has not shown good cause to include terms in the general protective order precluding the parties from seeking certain discovery and from using, directly or indirectly, all discovery obtained in this case for purposes other than this litigation. Again, discovery is presumed public. *In re Roman Cath. Archbishop of Portland*, 661 F.3d at 424; *San Jose Mercury News*, 187 F.3d at 1103. Plaintiffs' concerns, while understandable and a particularized harm, do not warrant warrant blanket provisions in the general protective order prohibiting discovery on certain matters and

limiting the use of all discovery to only this litigation. In balancing the private and public interests, the Court finds such proposed blanket terms are simply too broad to include in the general protective order given the strong presumption in favor of public access and the important issues in this case. *Id.* Plaintiffs’ concerns are more appropriately addressed in the contexts of whether certain discovery requests are relevant and proportional to the needs of the case, whether materials are discoverable, whether materials should be designated as Confidential or Attorney Eyes Only, and the like – as Plaintiffs have done in the separate motion for protective order.

That being said, the model protective order includes the following provision: the “[u]se of any information or documents labeled ‘Confidential’ and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose.” For the reasons stated herein, the Court finds good cause has been shown to include this provision in the general protective order in this case with the modification that the provision also applies to discovery designated as Attorney Eyes Only.

4. Conclusion

Based on the foregoing, the Court finds in its discretion that good cause has been shown to enter a general protective order that includes terms as discussed herein. Fed. R. Civ. P. 26(c)(1). The parties are ordered to confer and make every effort to reach agreement on a joint proposed protective order that is consistent with this ruling. The parties are encouraged to use the model protective order as a starting place, but are not

limited to the model protective order if they reach agreement otherwise. If the parties are unable to agree on a joint protective order, the parties may each submit their own proposed protective order consistent with this ruling, and the Court will consider the same before issuing the final general protective order.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Motion for Entry of a General Protective Order (Dkt. 78) is **GRANTED IN PART AND DENIED IN PART**, as stated herein. No later than **December 19, 2025**, the parties are **ORDERED** to confer and submit a joint proposed general protective order or, if unable to agree, the parties may each submit their own proposed general protective order, which must be consistent with the ruling stated herein.³



DATED: December 5, 2025

A handwritten signature in black ink, appearing to read "Debora K. Grasham".

Honorable Debora K. Grasham
United States Magistrate Judge

³ The parties may jointly request an extension of this deadline if additional time is needed to confer.