John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, P.C.
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and **INDIGENOUS IDAHO ALLIANCE,** *Plaintiffs*, v. **RAÚL LABRADOR**, in his official capacity as in his capacity as the Attorney General for the State of Idaho, *Defendant*.	Case No.: 1:23-cv-00323-DKG **Rule 72 Motion of Non-Party Right to Life of Idaho, Inc., Objecting to Order Denying in Part Motion to Quash Subpoena**

Pursuant to Federal Rule of Civil Procedure 72(a) and L.R. Civ. 72.1(b)(1), non-party Right to Life of Idaho, Inc. ("**RLI**") hereby moves and objects to the Order of the magistrate judge, D. 108 ("**Order**"), denying in part RLI's Motion to Quash Subpoena, D. 72 ("**Motion**"). As explained in the memorandum filed herewith, the Order clearly errs and is contrary to law in several respects. *See* Fed. R. Civ. P. 72(a). These include, but are not limited to, the Order's findings that a privilege log is required to assert First Amendment privilege, while the Ninth Circuit has held precisely the opposite; that the Declaration of Emily Naugle, D. 93-1, was insufficient because it was purportedly conclusory, despite the fact that it is more specific than the declaration found sufficient in *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010), and that it otherwise satisfies the Ninth Circuit's clear guidance concerning what sort of declarations may be deemed conclusory; and that the subjective motivations of individual legislators are relevant and discoverable, despite Ninth Circuit precedent declaring that the general rule is that they are *not* except in specific, limited cases that are not like the present case.

For these reasons and the additional reasons explained in the accompanying memorandum, the present motion should be granted, the Order should be overruled, and the subpoena served on RLI should be quashed.

Dated: January 2, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, PC
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, P.C.
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and **INDIGENOUS IDAHO ALLIANCE,** *Plaintiffs*, v. **RAÚL LABRADOR**, in his official capacity as in his capacity as the Attorney General for the State of Idaho, *Defendant*.	Case No.: 1:23-cv-00323-DKG **Memorandum in Support of Rule 72 Motion of Non-Party Right to Life of Idaho, Inc., Objecting to Order Denying in Part Motion to Quash Subpoena**

Introduction

Both the Supreme Court and the Ninth Circuit have been clear that all that is required to demonstrate a prima facie case of First Amendment privilege is not a privilege log, but simply a factual showing that "disclosure of the information will have a deterrent effect on the exercise of protected activities." *Perry v. Schwarzenegger*, 591 F.3d 1147, 1162 (9th Cir. 2010) (citing *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460–61 (1958) (noting that First Amendment privilege is present where a "possible deterrent effect" on First Amendment freedoms has been shown); additional citation omitted). The magistrate judge therefore clearly erred in finding that, under *Perry*, a privilege log is required for a prima facie case. *See* Order, D. 108, 7 ("**Order**"). Nor does the magistrate judge's determination that the factual declaration submitted by the president of non-party[1] Right to Life of Idaho, Inc., ("**RLI**") was conclusory, *id.* at 8, negate the error since, under clear Ninth Circuit precedent, the factual statement of someone with personal knowledge of those facts is, by definition, *not* conclusory. Additionally, the magistrate judge erred in finding that Plaintiffs Northwest Abortion Access Fund (RLI's policy opponent), Lourdes Matsumoto, and Indigenous Idaho Alliance (collectively, "**Challengers**"), satisfied their burden under the "heightened relevance" standard of the second part of the Balancing Test,[2]

[1] Under Rule 72, "[i]n general, . . . when a non-party has a concrete interest which may be adversely affected by a magistrate's report or a magistrate's report compels . . . a non-party's participation in discovery, courts consider the non-party's objection to the report." *Carroll v. TheStreet.Com, Inc.*, No. 11-CV-81173-RYSKAMP/HOPKINS, 2013 U.S. Dist. LEXIS 189028, at *4 (S.D. Fla. Oct. 1, 2013) (citing cases); *see also, e.g.*, *Thomas v. Hickman*, No. CV F 06-0215 AWI SMS, 2008 U.S. Dist. LEXIS 111960, at *4 (E.D. Cal. Mar. 18, 2008) (considering non-party objections under Rule 72); *Waymo LLC v. Uber Techs., Inc.*, No. C 17-00939 WHA, 2017 U.S. Dist. LEXIS 99519 (N.D. Cal. June 27, 2017) (same).

[2]This refers to test conducted to determine whether a party demanding discovery has met its burden to overcome First Amendment privilege, whereby courts "balance the burdens imposed on individuals and associations against the significance of the interest in disclosure, to determine whether the interest in disclosure outweighs the harm," in which the discovery must be

Perry, 591 F.3d at 1164. Accordingly, the Order should be reversed to the extent it denied RLI's Motion to Quash Subpoena, D. 72 ("**Motion**").

Legal Standard

"District courts review magistrate judges' pretrial orders under a 'clearly erroneous or contrary to law' standard." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (quoting Fed. R. Civ. P. 72(a)). "The district judge in the case must consider timely objections and modify or set aside any part of the order that" fails that standard. Fed. R. Civ. P. 72(a).

Argument

I. The Order errs in requiring a privilege log to assert First Amendment privilege.

RLI submitted the Declaration of Emily Naugle, D. 93-1 ("**Naugle Declaration**"), which clearly and plainly explained the First Amendment chill that would result from enforcement of the operative demands of the subpoena served on RLI ("**Narrowed Requests**"). The Naugle Declaration recognized the fact that the Narrowed Requests sought "*private* communications with legislators or their staff" as well as purely internal documents, D. 93-1, ¶ 7 (emphasis added), and stated plainly that "these private conversations . . . lie at the heart of [RLI's] strategy" and that disclosure thereof "would [] gravely harm[RLI] in numerous ways," *id.* at ¶ 8, which it then listed explicitly, *id.* at ¶¶ 9–14.

One such harm, for example, was the critical fact that "[l]egislators would be less willing to communicate with RLI, gravely harming RLI by hindering its ability to advance legislation favorable to its cause, one of its most essential purposes." *Id.* at ¶ 9. The declaration also highlighted, *inter alia*, the facts that donors would be deterred if the RLI Subpoena's demands

---

highly relevant and must not impose an undue burden, but must be obtained by other sources if available with less burden. *Perry*, 591 F.3d at 1161 (internal quotation marks and citations omitted); *see also* Mem. Supp. Mot., D. 72-1, 13–16 ("**Mem.**").

for "RLI's private strategic communications" with legislators were enforced and that, in such an event, RLI's opponents would plainly gain an advantage by being permitted to comb through "RLI's private, strategic communications." *Id.* at ¶¶ 10, 13. The declaration also made clear the pressing, manifest reality of the chill at issue (thus making it plain that these concerns are not at all speculative), noting that internal discussions have already taken place "concerning the fact that, if RLI is compelled to comply with the RLI Subpoena, RLI's ability to conduct essential communications will be stifled and addressing the ways in which it would need to change its communications." *Id.* at ¶ 14. These clear statements of chill show a certainty of chill, easily surpassing the Supreme Court's requirement of mere *arguable*, *possible* First Amendment chill for a prima facie case, Mem., D. 72-1, 11.

Perry proves this conclusion. Under *Perry*'s precedent, the magistrate judge clearly erred in finding that such sworn statements were merely "broad allegations and conclusions of" deterrence and chill, "conclusory assertions . . . [that] do not demonstrate an arguable First Amendment infringement as to all of the requested discovery," and that RLI therefore made "no prima facie showing of a First Amendment privilege . . . as to external communications, documents, and materials provided to or with Idaho legislators and legislative staff about H.B. 98 or H.B. 242." Order, D. 108, 8–9. While the Order reasons that under *Perry*, a privilege log is required to make a prima facie case of First Amendment privilege, *id.* at 7, that reasoning is clearly erroneous and contrary to law for the simple reason that *Perry*, binding precedent, says precisely the opposite. The *Perry* court found that a declaration even less specific than the one submitted by RLI sufficed not only to raise a prima facie case of First Amendment privilege, but to require a protective order against discovery of certain documents, *when no privilege log had been submitted*. 591 F.3d at 1163–64.

Specifically, in *Perry*, ProtectMarriage.com - Yes on 8 ("**ProtectMarriage**") (an actual party to the case as a defendant-intervenor, unlike non-party RLI, to whom even greater protection applies, Mem., D. 72-1, 15–16), a proponent of California's Proposition 8, was demanded to produce "[a]ll versions of any documents that constitute communications referring to Proposition 8, between you and any third party," which the parties understood to encompass "internal campaign communications concerning strategy and messaging." *Id.* at 1153. ProtectMarriage submitted a declaration from one of its executives stating that compelled disclosure of his "non-public communications" concerning the ballot initiative would "drastically alter" how he communicated and that he would "be less willing to engage in such communications knowing that . . . disclos[ure] [may be forced] simply because of my involvement in a ballot initiative campaign." *Id.* at 1163. The *Perry* court found that that declaration "create[d] a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression" and that ProtectMarriage "ha[d] therefore made a prima facie showing that" its First Amendment activities could be chilled by disclosure of its private, strategic communications. *Id.* at 1163–64, 1165 n.12. Additionally, it found that the discovery proponents had failed to overcome the prima facie case and thus found discovery barred by First Amendment privilege. *Id.* at 1164–65.

As one might expect in a case that found a prima facie case of First Amendment privilege when no privilege log had been submitted, *Perry* did *not* hold that "'some form of privilege log is required'" merely to "assert the First Amendment privilege," *contra* Order, D. 108, 7 (citing *Perry*, 591 F.3d at 1153 n. 1), but only that, *in that case*, "producing any privilege log would [not] impose an unconstitutional burden" where "some of Proponents' internal campaign

communications may be discoverable" upon a more "carefully tailored request for the production of highly relevant information[3] that is unavailable from other sources." 591 F.3d at 1165 n.13.

That critical point cannot be overlooked. It shows that *Perry* found a prima facie case over the whole category of "internal campaign communications" even though *some* of those communications might have ultimately been discoverable (unlike this case, *supra* n.3). In short, the question is whether compliance with the *request* will result in chill—not whether compliance with some *aspect* of the request would (or would not) do so. The magistrate judge therefore clearly erred in finding that "in the cases RLI relies on to support its contention, the parties asserting the First Amendment privilege made a prima facie case by submitting . . . privilege logs" and therefore declining to quash the RLI Subpoena. Order, D. 108, 7. Accordingly, that ruling should be reversed.

II. The Naugle Declaration was not only more specific than the declaration found sufficient in *Perry*, but was not conclusory at all.

A. *Perry* found a less specific declaration sufficient and thus requires a finding that the Naugle Declaration was sufficient.

Not only did the *Perry* court find that a privilege log is *not* required before a party may be protected by First Amendment privilege, but it also found that a declaration of precisely the sort RLI submitted—but *less* specific—was sufficient to entitle a party to such protection. *See supra* Part I (quoting brief *Perry* declaration); *Perry*, 591 F.3d at 1163 (noting that declaration was "lacking in particularity"). The magistrate judge therefore additionally clearly erred by finding RLI's declaration insufficient. The Naugle Declaration, signed by the president of RLI, D. 93-1,

[3]The Order requires production of only *one* category of information, and that category is not highly relevant. *Infra* Part IV.A. Accordingly, the need for a privilege log recognized in *Perry* is not present in this case, as explained further below. *Infra* Part III. Nor, in any event, does *Perry*'s dicta stating that a privilege log was needed in that case negate the court's finding of First Amendment privilege or provide a basis for any court to reverse *Perry*'s analysis by requiring a privilege log in order to sufficiently assert First Amendment privilege.

¶ 2, who is well aware of the effects that enforcement of the RLI Subpoena would have on RLI and those with whom it associates, *id.* at ¶ 4, sets forth precisely the same types of harm that the *Perry* court found sufficient to create a prima facie case, and more. *Id.* at ¶ 6–14. The *Perry* court did not doubt as "general" or "conclusory" the declaration's assertion that the discovery demand at issue encompassed "personal, non-public communications." 591 F.3d at 1163; *contra* Order, D. 108, 8. It is therefore difficult to discern how the magistrate judge found the Naugle Declaration insufficient to make a prima facie case, which finding was contrary to the law of *Perry*. The Order should be reversed on that basis, and the Motion granted.

B. The Naugle Declaration is not general or conclusory.

The Order's error of failing to apply the binding precedent of *Perry* concerning the Naugle Declaration is sufficient to warrant reversal. However, RLI further notes that the Order's description of RLI's contentions as "conclusory," D. 108, 8, is not correct and thus cannot negate the error. Setting aside, *arguendo*, then, the fact that the Naugle Declaration is more specific and contains more descriptions of chill than the snippet that the *Perry* court found sufficient for a prima facie case (including that declaration's statement that the communications at issue were "personal" and "non-public," 591 F.3d at 1163), it simply is not the case that its contentions *were* conclusory. For a highly pertinent example, the Order characterizes the Naugle Declaration's references to the communications at issue as "general references to 'private,' 'internal,' and 'strategic' communications and documents" that "do not demonstrate an arguable First Amendment infringement," D. 108, 8, but this description makes no sense in light of the clear, specific descriptions of chill found throughout the Naugle Declaration, D. 93-1, ¶¶ 9–14.

More fundamentally, "[w]here the facts contained in an affidavit are 'neither in the form of legal conclusions nor speculative, but are material facts based on [the affiant's] personal

recollection of the events,' *the affidavit is not conclusory.*" *United States v. $223,178.00 in Bank Account Funds*, 333 F. App'x 337, 338 (9th Cir. 2009) (quoting *Orsini v. O/S Seabrooke O.N.*, 247 F.3d 953, 960 n.4 (9th Cir. 2001)) (emphasis added). Accordingly, the Order's characterizations cannot, consistent with Ninth Circuit precedent, be read as indicating that the declaration does not establish the documents in question are private. First, there can be little question whether the president of a small organization, who verifies personal knowledge under oath, knows whether its communications with legislators are "private" or not. *See* D. 93-1, ¶¶ 4–5, 7–8 (asserting "personal knowledge," describing the communications sought as "private" and "at the heart of [RLI's] strategy"). Indeed, if no one else, the president of an organization whose strategy largely revolves around its communications with lawmakers would have clear knowledge of such matters. The magistrate judge thus clearly erred under Ninth Circuit precedent by finding factual statements, which were not legal conclusions or mere speculation but were made with personal knowledge, to be merely conclusory.[4]

Second, Challengers tacitly conceded the private nature of these communications in two ways. One, they framed a key part of their argument around their contention that RLI's communications with legislators were not public, arguing that they could not obtain them via public records request because "Idaho's public records law is not coextensive with . . . Rule 26." Pls.' Opp'n to Mot. and Mem., D. 87, 11 ("**Opp'n**"). Two, after RLI submitted the Naugle

[4] *Orsini*, which employs the ordinary definition of "conclusory," thereby simply verifies that the Order's "conclusory" assertion is perplexing on its face when we recall that definition, which is "[e]xpressing a factual inference without stating the underlying facts on which the inference is based." Black's Law Dictionary 351 (10th ed. 2014). A declaration is a statement of facts, and the Naugle Declaration does not stray from that, so it is difficult to understand how the magistrate judge found its statements conclusory. There is nothing merely inferential about a statement from the president of an organization asserting that that organization's communications with legislators concerning legislation are "private," *see* Naugle Decl., D. 93-1, ¶ 7, or that they "lie at the heart of its strategy," *id.* at ¶ 8.

Declaration, Challengers did not challenge it or even seek leave to do so, as they easily could have, *e.g.*, *Green Tech. Lighting Corp. v. Insure Idaho, Ltd. Liab. Co.*, No. 1:17-cv-00432-DCN, 2023 U.S. Dist. LEXIS 58520, at *40 (D. Idaho Mar. 31, 2023). The Naugle Declaration's descriptions of the private nature of the communications at issue therefore remain unchallenged.[5]

Nor is there any basis for such a conclusion independent of Challengers' arguments. The brief nature of the Naugle Declaration's statement that RLI's communications with legislators concerning legislation are private, Naugle Decl., D. 93-1, ¶ 7, does not render it "general." *Contra* D. 108, 8. First, as noted, RLI's president plainly has knowledge of how RLI conducts specific communications at the heart of its strategy, which knowledge was verified in the declaration. Second, what further explanation could be needed? "Private" means "private"—between RLI and the legislator in question.[6] There is nothing further that needs to be specified, and non-profit RLI should not be required to waste its limited resources by spending pages explaining what is more clearly stated in a single sentence.

In short, the statements of the Naugle Declaration are the opposite of general or conclusory. The magistrate judge's Order, based on clearly erroneous conclusions to the contrary, which are contrary to Ninth Circuit precedent, should accordingly be reversed.[7]

---

[5] Additionally, the Order's "conclusory" assertion cannot reasonably be read as an indication that the communications at issue might not in fact be strategic. Challengers have not contended that RLI's communications with legislators are not strategic. *See generally* Opp'n, D. 87.

[6] RLI does not concede that privacy is required to invoke First Amendment privilege. It is not, since the test established by the Supreme Court is simply a "*possible* deterrent effect of disclosure" of speech at the core of the First Amendment and the Supreme Court has never suggested that external documents cannot satisfy that criteria—certainly not private documents like those sought here. Mem., D. 72-1, 9–11 (quoting *Bonta*, 594 U.S. at 616). Nor did the Order find privacy is required. *See generally* D. 108.

[7] Even if there were some reason to find the Naugle Declaration insufficient to establish the private nature of all of the documents at issue, under *Perry* the magistrate judge nonetheless

III. The magistrate judge erred by importing protective order analysis into a motion to quash case.

Even if *Perry* had required a privilege log before First Amendment privilege could be found, the magistrate judge would nonetheless have erred by importing that *protective order* analysis—which by its nature does not apply to motions to quash—into a case concerning a motion to quash. The *Perry* court required a privilege log in *that* case for a simple reason: a protective order was the relief sought, *not* an order quashing the subpoena. 591 F.3d at 1153. That protective order would apply only to very specific documents sought, not the whole trove. *Id.* at 1165 n.12. A privilege log was therefore necessary to assert which documents fell under those protections.

However, if a subpoena is quashed, as the RLI Subpoena should have been, no documents may be sought, so logging privilege would simply be redundant—an *added* burden in an analysis meant to *relieve* burden. *See id.* at 1161 ("The request must also be carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable"). The privilege log requirement applies only when a person is "withholding subpoenaed information"; a wholly different subsection of Rule 45 governs requests for a court to quash a subpoena altogether such that no information remains subpoenaed. *Compare* Fed. R. Civ. P. 45(e)(2)(A) *with* Fed. R. Civ. P. 45(d)(3). *Perry* tacitly recognized this distinction when it found a prima facie case of First Amendment privilege even without a privilege log.

---

should not have found that a prima facie case had not been established, but should instead have found that the First Amendment *does* protect any documents that were shared only between RLI and legislators or legislative staff, while potentially permitting discovery of documents distributed more broadly. *Supra* Part I (noting that *Perry* found First Amendment privilege applied even though "*some* of . . . [the] communications may" have been discoverable upon a more "carefully tailored request for the production of highly relevant information[] that is unavailable from other sources" (emphasis added)). Accordingly, even if the district court had not erred in finding the Naugle Declaration conclusory, it still would have erred in failing to provide such relief.

The same logic—i.e., that a privilege log is not necessary in order to grant a motion to quash a demand that categorically infringes privilege—is a judicial commonplace. Indeed, the fact that a privilege log is not necessary when "it is apparent from the face of the subpoena" that privileged or protected information is sought, is recognized explicitly by district courts within the Ninth Circuit, by other circuit courts, and regularly by other district courts. *See Jordan v. Comm'r, Miss. Dep't of Corr.*, 947 F.3d 1322, 1328 n.3 (11th Cir. 2020); *see also Broadband iTV, Inc. v. Hawaiian Telecom*, No. 15-mc-80053 HRL, 2015 U.S. Dist. LEXIS 51131, at *9 (N.D. Cal. Apr. 17, 2015); *see also, e.g.*, *Hall v. Balt. Police Dep't*, No. 1:24-1137-RDB, 2025 U.S. Dist. LEXIS 26704, at *30-31 (D. Md. Feb. 13, 2025) (quoting *Garrity v. Governance Bd. of Cariños Charter Sch.*, No. 20-340-MV/KK, 2021 U.S. Dist. LEXIS 133760, at *5 (D.N.M. July 19, 2021)) (a party may sufficiently demonstrate privilege "without a privilege log where the challenged request is, by its terms, overbroad or necessarily seeking privileged information. . . . '[A] document-by-document privilege log is not'" needed in such cases); *Williams v. Dave Wright BGH, Inc.*, No. 19-300-SMR-SBJ, 2020 U.S. Dist. LEXIS 261876, at *6 (S.D. Iowa Dec. 23, 2020) ("Rule 45(e)(2) does not mandate [a privilege] log must be provided in all cases," but instead a "declaration . . . combined with [a party's] presentation of authority suffices to meet the burden to establish the applicability of . . . privilege," particularly when the burden of compliance would fall on a non-party (citation omitted)); *Bresler v. Wilmington Tr. Co.*, No. PJM 09-2957, 2013 U.S. Dist. LEXIS 201311, at *8 (D. Md. Aug. 8, 2013) (finding that judge did not err in quashing subpoena without ordering a privilege log when the party opposing discovery had "objected to the subpoenas *in toto*," as "[t]here is no requirement that a privilege log be produced as a condition precedent to ruling that . . . privilege

shields certain information from discovery" and the judge determined "that *all of the categories isolated in the subpoenas* were protected by the privilege." (emphasis added)).[8]

In short, RLI is "seeking to quash the subpoenas; [it is] not producing documents. A privilege log is inapplicable here." *Broadband iTV*, 2015 U.S. Dist. LEXIS 51131, at *9. *Perry* found First Amendment privilege applicable to the whole category of private, strategic documents sought therein. While other documents were sought in *Perry*, and relief was therefore appropriately requested in the form of a protective order, the *only* documents at issue here are those that lie at the heart of RLI's strategy, as the Naugle Declaration established. *Supra* Part II. A motion to quash was therefore the proper avenue for relief and the magistrate judge erred in requiring a privilege log. That requirement should be reversed.

IV. Challengers do not satisfy their burden to overcome the First Amendment privilege.

Despite finding no prima facie case, the magistrate judge "proceed[ed] to discuss relevance . . . [under] the heightened relevancy standard of the First Amendment privilege test" and "whether less intrusive means of obtaining information exist," Order, D. 108, 9–10. While the magistrate judge correctly found that "certain aspects of the Plaintiffs' proposed narrowed subpoena requests are overbroad and include materials that are not relevant," *id.* at 11, it otherwise clearly erred as to both relevance and undue burden.

A. The documents sought are not relevant under any analysis.

First, the magistrate judge erred in finding that "[c]ommunications and materials provided to Idaho legislators and legislative staff concerning H.B. 242 or H.B. 98" are relevant and

[8] *Accord United States v. Coburn*, No. 2:19-cr-00120 (KM), 2022 U.S. Dist. LEXIS 21429, at *12–13 (D.N.J. Feb. 1, 2022) (finding "categorical" privilege log "sufficient" as "a reasonable and less burdensome approach"; noting that in some cases it is not "reasonable to put the subpoenaed party to the burden of a document-by-document description" and that when a subpoena's demands, "on their face, . . . would naturally yield a large volume of privileged documents," privilege claim need not be presented "document-by-document").

discoverable because they "bear directly on the issue of whether the passage of the legislation at issue was motivated or intended to impede interstate travel," *id.* at 12, which constitutes error both as to the First Amendment privilege analysis and the relevance analysis under Federal Rule of Civil Procedure 26. The question is whether, in a case where no invidious discrimination is alleged, such documents may be used to show legislative purpose; quite simply, they may not. Mem., D. 72-1, 13–15; Reply Supp. Mot., D. 93, 5–7 ("**Reply**"); *see also* Def.'s Mem. Resp. Mot., D. 88, 2–5 ("**Labrador Memorandum**"). The "general rule" is that "discovery of a legislator's subjective motivations" is prohibited. *Las Vegas v. Foley*, 747 F.2d 1294, 1298 (9th Cir. 1984). The Order asserts that the Ninth Circuit has found evidence of lobbyists' role in passing legislation to be relevant. Order, D. 108, 13 (citing *Mi Familia Vota v. Fontes*, 129 F.4th 691, 727–28 (9th Cir. 2025). But rather than discussing, even minimally, the fact that RLI had already shown that such evidence is relevant only in cases where invidious discrimination is alleged (as it was in *Mi Familia Vota*, 129 F.4th at 724–25), but *not* in simple right to travel cases, the Order simply ignores those arguments—and the binding precedent adduced therein. *See generally* D. 108.

Challengers also failed to adduce even a single case finding that an interstate travel claim is somehow comparable to cases involving invidious discrimination and therefore requires inquiry into subjective motivations. *See* Opp'n, D. 87, 9–11; *see also* Labrador Mem., D. 88, 3 (noting that Challengers "cite no case that applies the *Arlington Heights* framework to the right to travel and make[] 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"). So there was no basis for the Order to overlook this

distinction.[9] The Order's acknowledgment that "evidence of legislative motives has bounds," D. 108, 12–13, only serves to highlight the error since this case is precisely where those bounds apply. The magistrate judge's Order overlooking that fact was clear error.

Moreover, even *if* evidence of invidious discrimination were relevant here, the magistrate judge adduced no basis for declining to apply the "general rule," *Foley*, 747 F.2d at 1298. Indeed, while the Order cites *Foley* for the proposition that "particularly in First Amendment challenges" "evidence of legislative motives has bounds," it ignores the fact that this limitation applies not only in First Amendment cases, but often "[e]ven where a plaintiff must prove invidious purpose or intent, as in racial discrimination cases[.]" *Foley*, 747 F.2d at 1298. The Order's failure to deal with this aspect of *Foley* is particularly problematic since this is *not* a case in which invidious legislative motive must be proven and thus is nowhere near the high bar required to make subjective motivations of individual legislators relevant. As *Foley* clearly explains, it is *not* true

[9] *Attorney Gen. of N.Y. v. Soto-Lopez* (a plurality opinion based on equal protection grounds, 476 U.S. 898, 912, 916 (1982) (Burger, C.J., concurring in the judgment; White, J., concurring in the judgment)), cited in the Order, D. 108, 11, 13, surely cannot provide such a basis, since it shows only that the "primary objective" of a law implicating the right to travel may be relevant when equal protection issues are also raised, and does not show that the subjective motives of individual legislators are relevant even in those cases. *Id.* at 903 (citing *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982)); *see also* Labrador Mem., D. 88 (further explaining inapplicability of *Soto-Lopez*). Similarly, the case from which *Soto-Lopez* drew this proposition was fundamentally concerned with equal protection: "As is clear from our cases, the right to travel achieves its most forceful expression in the context of equal protection analysis." *Zobel*, 457 U.S. at 67. Furthermore, *Zobel* was clear that the "purposes" it considered were the *legislature's* purposes—and only those that were objectively explicit—not the subjective motivations of individual legislators. *Id.* at 61 n.7 ("These purposes were enumerated in the first section of the Act . . . . Thus we need not speculate as to the objectives of the legislature."). So *Soto-Lopez* does not change the "general rule" prohibiting "discovery of a legislator's subjective motivations." *Foley*, 747 F.2d at 1298. Nor does the remaining case cited in the Order, which the Order explicitly recognized as concerning equal protection claims. D. 108, 13 (citing *DoorDash, Inc. v. City of New York*, 754 F.Supp.3d 556, 567-568 (S.D. N.Y. 2024). The fact that equal protection cases, in some circumstances, avoid the general rule against discovery of subjective motives of legislators, does not change the fact that there is *no precedent* for breaking that rule in *this* case, which does not involve an equal protection claim. *See generally* Compl., D. 1.

that a law serving appropriate governmental interests "will be invalidated if those who voted for it had illicit motives." 747 F.2d at 1298. So "the general rule" applies here, *id.*, and it was clear error for the Order to find otherwise, contrary to *Foley* and the other law cited by RLI.

True, Challengers allege that "the intent behind the passage of the statute was to impermissibly restrict such travel." Order, D. 108, 13 (citing D. 1, ¶¶ 75, 105–07). But that is not tantamount to an allegation of invidious intent. To hold that inquiry into the subjective motivations of individual legislators is permissible in *any* case involving some allegation of an inappropriate legislative motive is to totally hollow out the binding precedent clearly prohibiting same *except* in very particular types of cases with very particular circumstances. The magistrate judge's holding, however, does just that. That holding was error, and should be reversed both under the First Amendment privilege analysis and independently under Rule 26.

B. Both the Narrowed Requests and the Order's demand impose an undue burden.

The Order's cursory examination of the burden on RLI was also erroneous. The Order contends that Challengers "have shown that other possible means of obtaining the information are not more efficient or less intrusive." D. 108, 13–14 (citing D. 87 at 11–12, 15; D. 98–104).[10]

[10]RLI will primarily address Challengers' arguments posited in the Opposition, D. 87, for two reasons. First, that is Challengers' only brief directly addressing the Motion. Second, the Order's citation to D. 98–104 is difficult to understand. Most of the docket entries in that range have nothing to do with Challengers' attempt to show other sources of information. *E.g.,* D. 102 (Non-Party Right to Life of Idaho, Inc.'s, Request for Oral Argument on Motion to Quash); D. 103 (incorrectly filed entry). The only docket entry containing argument directly on point, Pls.' Opp'n to Non-Party Idaho State Representative Barbara Ehardt's Mot. Quash, D. 101, merely acknowledges the then-pending Motion and does not address RLI's arguments. *Id.* at 10–11. But even setting aside RLI's arguments, such as the availability of public records requests, it is critical to note that Challengers admit in that brief that the subpoena to Representative Ehardt "requests some information that would not be in the possession of the Right to Life of Idaho and the National Right Life." *Id.* at 11. That demonstrates that Challengers are capable of seeking the information that they claims to be relevant (communications showing *legislator's* intent) from the actual source, which shows that they should *not* seek it from RLI, since RLI's personal thoughts on the abortion trafficking law cannot possibly be relevant.

That is not the case. Challengers' attempt to demonstrate burden relied on a misunderstanding of Idaho's Public Records Act, alleging that Challengers would have been required to "mak[e] 105 public records requests" in order to obtain from legislators the information sought, D. 87, 11, while in reality only one request would have been required, Reply, D. 93, 7–8.[11] That aside, Challengers' argument is not even relevant to the inquiry, which is whether there is an alternative means of obtaining the information that would impose a lesser burden. Because responding to public records requests is an integral part of legislators' job, which is not done under compulsion, it cannot be considered a burden at all. *Id.* at 7. Compared with the undue burden of *compelling* a small, non-profit organization to comb through years of its records, it is plain that through public records requests, Challengers could have obtained the records sought without imposing any burden at all on non-party RLI.[12] The Order clearly errs in finding no undue burden despite these two facts, which render Challengers' arguments weightless.

Challengers argued as well that "[t]he scope of disclosure required by Idaho's public records law is not coextensive with that required by Rule 26." D. 87, 11. But again, RLI showed the problem with this argument. Reply, D. 93, 8. Challengers' contention that some of the records it seeks may not be available via public records request constitutes an admission that those records are, in fact, not public but private. *Id.* As noted above, this makes RLI's prima facie

[11]RLI additionally pointed out that, even if 105 public records requests *were* required, the simple copy-and-pasting of the same request 105 times would be far less burdensome than for a small, non-profit entity to comb through years of records. *Id.* at 8.

[12]Challengers also argued that the "timeframe" of receiving responses to public records requests might be too slow. D. 87, 11. RLI showed that Challengers presented no basis for assuming the general requirement of a three-day response time would create any problems, particularly in light of Challengers' own delay. Reply, D. 93, 8, 8 n.8. The Order does not specifically address this point and therefore provides no reason to think that the public records request timeframe could prove burdensome to Challengers.

case of First Amendment privilege all the more clear.[13] And to the extent Challengers' assertion may be read as a claim that *some* (but not all) of the documents sought may be subject to a public records request, then the Balancing Test requires that they obtain these via the non-burdensome process of simply submitting a public records request, rather than imposing such a relatively gargantuan burden on non-party RLI. The Order fails to address these problems. Because these problems clearly show that Challengers fail to meet their burden, that is clear error.

Finally, the Order errs in finding that "RLI's engagement with Idaho legislators and legislative staff concerning the challenged legislation, lessens the weight of RLI's status as a nonparty given the direct relevance of" the documents sought. D. 108, 14. This constitutes error, first, because the documents are *not* relevant, as explained.[14] It constitutes error, second, because it misapprehends the basis for protecting non-parties. Non-parties are not afforded special protections simply because they have nothing to do with the underlying facts of the litigation. Such a rule would be meaningless since the only reason non-parties ever become involved with litigation is because they *do* have something to do with the litigation. The magistrate judge erred by finding that RLI is not subject to protection as a non-party simply because it had something to do with the legislation at issue.

V. The Revised Demand does not fix the overbreadth of the Narrowed Requests.

Although the Order narrows Challengers' demands by requiring production of "materials that were actually made with and provided to Idaho legislators and legislative staff concerning H.B. 242 and H.B. 98," D. 108, 15 ("**Revised Demand**"), it does not sufficiently remedy their

[13] While RLI does not concede that privacy is required for First Amendment privilege to apply, *supra* n.6, Challengers' admission that the documents at issue *are*, in fact, private, eviscerates any contention that there is no First Amendment privilege on the basis that they are not.

[14] As such, they are not "important to the litigation," *contra* Order, D. 108, 12, 14.

overbreadth. RLI showed that Challengers' demands were overbroad not only because they sought purely internal documents, but also because they go far beyond the actual issues that even Challengers claim to be relevant and are plainly temporally overbroad. As RLI pointed out, the "overbreadth doctrine prohibits a party from demanding all communications with a given party that may relate in some remote way to an actual claim or issue . . . in hopes of then perusing the documents at its leisure in hopes of finding something relevant." D. 72-1, 19–20. For example, RLI noted, in *Defreitas v. Tillinghast*, No. 2:12-CV-00235-JLR, 2013 U.S. Dist. LEXIS 7429, at *8 (W.D. Wash. Jan. 17, 2013), a district court found a request for "all communications" between certain individuals and concerning a certain topic to be overbroad. The Order does not fix this overbreadth. The Order's demand still requires production of "[all] [c]ommunications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98[.]" D. 108, 15. This plainly encompasses documents that have nothing to do with the intent of the abortion trafficking law. For example, an invitation stating, "You are invited to a reception concerning H.B. 242," would have nothing to do with said intent. Yet the Order's demand would clearly encompass such an invitation if sent to a legislator or legislative staff. This is precisely the sort of overbreadth that is prohibited. The magistrate judge clearly erred in issuing a revised demand continuing to suffer from such subject-matter overinclusiveness.

RLI also noted that Challengers' demands suffered from temporal overbreadth, a problem the Order does not address at all. *See generally* D. 108. RLI noted that the temporal scope of those demands encompassed communications occurring as much as more than two years earlier than "even the earliest version of the abortion trafficking law at issue, H.B. 98," was introduced. D. 72-1, 20. Rather than defend this two-plus year overbreadth, Challengers simply alleged that *NRLC* (not RLI) proposed legislation earlier than the law was passed, but even that allegation left

a year-and-a-half of overbreadth even if it *had* been RLI who proposed the legislation. Reply, D. 93, 11. Yet it was not, so the two-plus year overbreadth remains, which Challengers did not even attempt to justify as to *RLI*. The magistrate judge simply ignored this issue. To ignore overbreadth for which no meaningful justification is offered is clear error.

The temporal overbreadth of Challengers' demands—and the Order's revised demand—results not only from its requirement of producing communications far earlier than the allegedly relevant timeframe, but also documents *after* that time had passed. The RLI Subpoena demanded documents "to the present," i.e., the date the subpoena was served, September 12, 2025. D. 72-3, 1, 7. But H.B. 242 (the "amended and re-introduced" version of H.B. 98) was passed on March 30, 2023. Compl., D. 1, ¶ 11. While RLI has already shown that individual legislators' communications are not relevant in this case at all, it is also true that there is no conceivable basis by which *post-enactment* statements could affect the legislative intent of the abortion trafficking law: "post-passage remarks of legislators, however explicit, cannot serve to change the legislative intent[.]" *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974); *see also Schlothan v. Alaska*, 276 F.2d 806, 815 (9th Cir. 1960) (citing 2 Sutherland Statutory Construction, 3d ed., 505, § 5013) (affirming that only "[u]nder certain circumstances" is actual "legislative history" even relevant; noting that even the actual "*testimony* of legislators given subsequent to the enactment is not legislative history" and upholding district court decision to deny discovery of legislator's subjective motives (emphasis added)). Accordingly, the Order clearly errs by entering a Revised Demand that requires production of documents whose production would not be justified even if the erroneous relevance standard invoked in the Order were correct.

All of these forms of overbreadth demonstrate that the Narrowed Requests were overbroad and the Revised Demand remains overbroad, meaning that the Order should be reversed, and the RLI Subpoena quashed, on that independent ground. Notably, this overbreadth adds to the undue burden imposed on RLI and thus constitutes, additionally, a further reason to reverse the Order and quash the RLI Subpoena on First Amendment privilege grounds.

Conclusion

The Order contains numerous clear errors and is contrary to law. Accordingly, for all of the foregoing reasons, it should be reversed to the extent it denied the Motion. The Motion should be granted and the RLI Subpoena quashed.

Dated: January 2, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, PC
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, P.C.
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and **INDIGENOUS IDAHO ALLIANCE,** *Plaintiffs*, v. **RAÚL LABRADOR**, in his official capacity as in his capacity as the Attorney General for the State of Idaho, *Defendant*.	Case No.: 1:23-cv-00323-DKG **Non-Party Right to Life of Idaho, Inc.'s, Motion to Stay Order Denying in Part Motion to Quash Subpoena**

Non-party Right to Life of Idaho, Inc., ("**RLI**") has filed Rule 72 objections ("**Objections**") to the magistrate judge's Order, D. 108 ("**Order**"), denying in part RLI's motion to quash the subpoena served on RLI by Plaintiffs Northwest Abortion Access Fund, Lourdes Matsumoto, and Indigenous Idaho Alliance (collectively, "**Challengers**"), D. 72; and now hereby moves for a stay of the Order pending the Court's ruling on the Objections. Absent a stay, the deadlines imposed in the Order, requiring RLI to be burdened in the exercise of its First Amendment rights by discovery that it has objected to, will likely pass before the Objections can be fully briefed and ruled upon. *E.g.*, L.R. Civ. 72.1(b)(1) (providing 14 days for opposing party to respond to Rule 72 objections).

Accordingly, because, as explained in the memorandum accompanying this motion, RLI will likely succeed on the merits of its Objections and will be irreparably harmed absent a stay, and because a stay will not result in harm to any other party and will serve the public interest, a stay should be granted. *See Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG, 2020 U.S. Dist. LEXIS 173253, at *5 (S.D. Cal. Sep. 21, 2020).

Dated: January 2, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, PC
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, P.C.
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and **INDIGENOUS IDAHO ALLIANCE,** *Plaintiffs*, v. **RAÚL LABRADOR**, in his official capacity as in his capacity as the Attorney General for the State of Idaho, *Defendant*.	Case No.: 1:23-cv-00323-DKG **Memorandum in Support of Non-Party Right to Life of Idaho, Inc.'s, Motion to Stay Order Denying in Part Motion to Quash Subpoena**

Non-party Right to Life of Idaho, Inc., ("**RLI**") has moved for a stay of the magistrate judge's Order, D. 108 ("**Order**"), denying in part RLI's motion to quash the subpoena served on RLI by Plaintiffs Northwest Abortion Access Fund, Lourdes Matsumoto, and Indigenous Idaho Alliance (collectively, "**Challengers**"), D. 72, pending the Court's ruling on RLI's Rule 72 objections ("**Objections**"). For the reasons explained below, a stay should be granted.

Legal Standard

Because a "motion to stay the effect of the magistrate judge's order pending resolution of Rule 72 objections 'is akin to a motion for stay pending appeal,'" courts have typically "applied the same four-factor test that applies to the stay of a district court order pending appellate review[.]" *Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG, 2020 U.S. Dist. LEXIS 173253, at *5 (S.D. Cal. Sep. 21, 2020) (quoting *In re Republic of Ecuador*, No. 11-mc-80171 CRB (NC), 2012 U.S. Dist. LEXIS 207374, at *7 (N.D. Cal. Mar. 30, 2012); citing various cases). That test considers "(1) whether the movant has made a showing of likelihood of success on the merits [("**Merits Factor**")]; (2) whether the movant has made a showing of irreparable injury if the stay is not granted [("**Injury Factor**")]; (3) whether the granting of the stay would substantially harm the other parties [("**Other Party Factor**")]; and (4) whether the granting of the stay would serve the public interest [("**Public Interest Factor**")]." *Id.* at *5-6.

Argument

RLI easily satisfies the four-factor test. Accordingly, the requested stay should be granted.

I. Merits Factor

The Merits Factor "does not require the petitioners to show that it is more likely than not that they will win on the merits." *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (internal

quotation marks and citation omitted). Instead, the threshold showing has been "interchangeabl[y]" described as a showing of "reasonable probability, fair prospect, [or] substantial case on the merits," or that "serious legal questions" are raised. *Id.* (internal quotation marks and citation omitted); *see also Canchola v. Allstate Ins. Co.*, No. 8:23-cv-00734-FWS-ADS, 2025 U.S. Dist. LEXIS 91483, at *7 (C.D. Cal. Apr. 17, 2025) (applying these interchangeable descriptors in case concerning motion for stay pending Rule 72 ruling). Under any of these formulations, the minimum showing required is that the movant has a "'substantial case for relief on the merits.'" *Lair*, 697 F.3d at 1204 (quoted source omitted).

In any event, RLI's Objections not only raise serious questions, but carry a high likelihood of success. Accordingly, however the Merits Factor is described, it is satisfied. RLI has clearly shown that many of the Order's determinations were directly contrary to law. To highlight just four of these many showings:

1. RLI showed that under *Perry v. Schwarzenegger*, a privilege log plainly is not required before First Amendment privilege may be found. Objections at Part I. Accordingly, the magistrate judge clearly erred in holding exactly the opposite, viz., that under *Perry*, "'some form of privilege log is required' to assert the First Amendment privilege," a holding on which the denial of the RLI's motion to quash was based. *See* Order, D. 108, 7 (quoting *Perry*, 591 F.3d 1147, 1160 (9th Cir. 2010)); Objections at Part II.

2. RLI showed that under *Perry*, the Declaration of Emily Naugle, D. 93-1 ("**Naugle Declaration**"), was clearly sufficient to establish a prima facie case of First Amendment privilege, and that the magistrate judge clearly erred in holding that it

was not, a holding on which the denial of RLI's motion to quash was based. Objections at Part II.

3. Alternatively, RLI showed that under *United States v. $223,178.00 in Bank Account Funds*, 333 F. App'x 337, 338 (9th Cir. 2009) and *Orsini v. O/S Seabrooke O.N.*, 247 F.3d 953, 960 n.4 (9th Cir. 2001), a declaration's statements are "not conclusory" if they are factual (i.e., neither legal conclusion nor speculation) and based on personal knowledge. Objections at Part II. Because the Order found statements in the Naugle Declaration to be conclusory although they were factual and based on personal knowledge—a holding on which the denial of RLI's motion to quash was based—the magistrate judge clearly erred. Objections at Part II.

4. RLI showed that the subjective motivations of individual legislators, in general, are not relevant and may not be discovered; that only in cases concerning invidious discrimination may they *potentially* be discovered; and that Challengers have made no attempt to show why that bar on discovery and relevance should be lifted in this right to travel case, in which no invidious discrimination has been alleged, nor any claim raised that might make charges of invidious discrimination relevant. Objections at Part IV. Accordingly, by finding that documents concerning the subjective motivations of individual legislators are both relevant and discoverable, a holding on which the denial of RLI's motion to quash was based, the magistrate judge clearly erred. *Id.*

Because these four showings of error highlight aspects of the Order that are plainly and directly contrary to well-established law, RLI has demonstrated a very high likelihood of success.

However, even if this Court finds that RLI has demonstrated only "serious legal questions," that is still sufficient for the Merits Factor to weigh in favor of granting a stay. *Lair*, 697 F.3d at 1204.

II. Injury Factor

RLI will be irreparably injured absent a stay, so the Injury Factor is also satisfied. Where a movant has objected to an order imposing discovery burdens and would, absent a stay, be subjected to those discovery burdens "prior to the court's decision on the [objections]," the movant is irreparably harmed as a result of being "effectively deprived of its ability to seek review of the [challenged] Order." *Canchola*, 2025 U.S. Dist. LEXIS 91483, at *8 (citing various cases).

The Order requires RLI to provide its "objections to the discovery request allowed [t]herein" to Challengers by January 9, 2026, seven days after the present date (January 2, 2026). D. 108, 16. By the Order's terms, a privilege log is necessary to preserve such objections. *Id.* at 7. Absent a stay, RLI would therefore be required, at the very least, to comb through several years worth of documents, Objections at Part V, and to produce a privilege log sufficiently "describ[ing] the nature of the documents, communications, or tangible things not produced or disclosed" before this Court rules on the motion to quash, since briefing on the present motion will likely not even be completed by January 9, 2026. *See* L.R. Civ. 72.1(b)(1) (providing 14 days for opposing party to respond to Rule 72 objections). RLI would also likely be forced, prior to such decision, to "confer regarding the objections . . . by January 16, 2026," to "file an [additional] motion" concerning its objections to the discovery required in the Order, "before January 23, 2026," and to file a reply brief "by February 4, 2026." Order, D. 108, 16.

Accordingly, RLI easily satisfies the Injury Factor. However, the particular facts of this case make that injury even more egregious. "It is axiomatic that '[t]he loss of First Amendment

freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694 (9th Cir. 2023) (en banc) (alteration in original) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)). Because the Order denies RLI's claim of First Amendment privilege even though that claim was plainly sufficient under *Perry*, it imposes on RLI the burden of engaging in compelled discovery procedures from which it should be shielded under the First Amendment. Under the Supreme Court's binding precedent, such a burden, even if it were temporally "minimal," "*unquestionably* constitutes irreparable injury." *Roman Cath. Diocese*, 592 U.S. at 19 (emphasis added). This factor therefore weighs with immense gravity in RLI's favor.

III. Other Party Factor

The Other Party Factor also favors RLI. A stay would not harm Challengers. The current date for completion of fact discovery is March 16, 2026. Order [Granting Joint Motion to Extend Deadlines], D. 92. Accordingly, even if a stay is granted but the Order is ultimately upheld, there will still likely be ample time for the discovery at issue to be completed. Alternatively, even if the March 16, 2026 discovery deadline would not leave enough time, the parties have demonstrated willingness to agree to amendments to the case schedule. *See, e.g.*, Second Joint Motion to Extend Deadlines, D. 91. These facts demonstrate that Challengers do not have a need to receive the discovery at issue with particular haste. Instead, if the Objections are overruled, there will remain ample time for Challengers to receive and review same.

Furthermore, Defendant Raul Labrador supported RLI's motion to quash. D. 88. Accordingly, he would not be harmed by a stay issued to ensure correction of errors made in the Order denying same.

Therefore, no party would be harmed by a stay—especially not "substantially." *See Alvarez*, 2020 U.S. Dist. LEXIS 173253, at *6. Accordingly, the Other Party Factor strongly favors RLI.

IV. Public Interest Factor

Finally, the Public Interest Factor also favors RLI because of the First Amendment interests at stake. Notably, *Perry* itself observed the "heightened public interest" in safeguarding "the First Amendment privilege." 591 F.3d at 1156. Of course, "it is always in the public interest to prevent the violation of a party's constitutional rights." *De Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks and citation omitted). Accordingly, because the Objections seek to preserve RLI's First Amendment rights, and a stay is necessary to effectuate that goal, this factor weighs heavily in favor of RLI.

Conclusion

For all of the foregoing reasons, this Court should stay the Order pending the Court's ruling on the Objections.

Dated: January 2, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr.*
Joseph D. Maughon*
THE BOPP LAW FIRM, PC
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
Tel: (812) 232-2434
Fax: (812) 235-3685
Email: jboppjr@aol.com
jmaughon@bopplaw.com

Attorneys for Non-Party Right to Life of Idaho, Inc.
*Admitted *pro hac vice*

John C. Keenan
Keenan Law Firm, P.C.
Marcus Law Bldg.
733 North 7th Street
Boise, Idaho 83702
Tel: (208) 375-2532
Email: law@keenan.org
Idaho State Bar No.: 3873
Designated Local Counsel