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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, Emergency Motion to Stay**

Non-party Right to Life of Idaho, Inc., ("**RLI**") filed Rule 72 objections ("**Objections**") to the magistrate judge's Order, D. 108 ("**Order**"), which Order denied 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; RLI moved for a stay of the Order pending the Court's ruling on the Objections, D. 110. On January 5, 2026, this Court denied the Objections and the stay. D. 111.

As a result, absent a stay, the deadlines imposed in the Order, D. 108 at 16, will require, among other things, that RLI and its counsel locate, gather, review, and address for privilege hundreds of pages and years' worth of communications by January 9, 2026. This schedule is not only practically unreasonable, but its imposition effectively denies appellate review of RLI's claim that the same discovery violates RLI's rights under the First Amendment. And Challengers have never shown a cognizable injury to them that will ensue absent proceeding on the expedited schedule.

The Stay Order observed that "[t]he parties may jointly request to extend the dates stated," and, in pursuit of such an extension, RLI contacted Challengers' Counsel yesterday, January 7, 2026, advising that it will seek mandamus relief from the Ninth Circuit Court of Appeals and a stay from this Court by Friday, January 16, 2026. RLI sought agreement with Challengers to extend the dates provided in the Order until either the writ for mandamus is resolved or to allow two weeks after the motion to stay is resolved to either comply with the schedule or seek a stay from the Ninth Circuit. Challengers' Counsel advised that they "do not agree to any extensions and will not agree to any stays."

Accordingly, as explained in the memorandum accompanying this motion, and for the reasons stated here and therein, the Court should now grant a stay of the discovery schedule until either RLI's petition for writ of mandamus is resolved or until two weeks after this Court rules on the anticipated motion for stay accompanying that petition.

Dated: January 8, 2026

Respectfully submitted,

/s/ Joseph D. Maughon

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Non-party Right to Life of Idaho, Inc., ("**RLI**") has moved for a stay of the magistrate judge's Order, D. 108 ("**Order**"), setting a schedule that, *inter alia*, requires RLI to file its objections to discovery requests, including a privilege log, by January 9, 2026. For the reasons explained below, a stay should be granted.

Legal Standard

Even when discovery does not, as here, threaten a cognizable constitutional injury, "under Federal Rule of Civil Procedure 26(c)(1), a court may limit the scope of . . . discovery on certain matters, including . . . specifying when it will occur, upon a showing of 'good cause or where justice so requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense.'" *Waterkeeper v. J.R. Simplot Co.*, No. 1:23-cv-00239-DCN, 2023 U.S. Dist. LEXIS 158902, at *5 (D. Idaho Sep. 6, 2023) (citation omitted). And even if staying a discovery deadline effects a stay on proceedings, the Court may do so, after weighing

> the competing interests which will be affected by the granting or refusal to grant a stay . . . ." Among these . . . are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.

CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). These considerations weigh heavily in favor of the stay that RLI requests.

Argument

I. RLI Would Bear All the Damage, Hardship, Undue Burden, and Expense of Proceeding.

RLI will be irreparably injured absent a stay of the Order requiring it to proceed according to the discovery schedule, while any actual hardship to Challengers is minor and temporary. RLI objects to an order imposing discovery burdens and intends to proceed with a petition for a writ

of mandamus on those objections but will, absent a stay, be subjected to the very discovery burdens it challenges, and so would be "effectively deprived of its ability to seek review of the [challenged] Order." *Canchola v. Allstate Ins. Co.*, No. 8:23-cv-00734-FWS-ADS, 2025 U.S. Dist. LEXIS 91483, at *8 (C.D. Cal. Apr. 17, 2025) (citing various cases). Challengers[1] have never shown how any delay in the discovery schedule with RLI, a nonparty, harms them.

The Order denying RLI's Motion to Quash requires it to provide its "objections to the discovery request allowed [t]herein" and a privilege log to Challengers by January 9, 2026, D. 108, at 16,[2] a date seven days after an Order denying RLI's motion for relief from the denial, D. 111, allowing counsel and RLI four business days before its objections and privilege log were due. As before, then, absent a stay, RLI will therefore be required, at the very least, to comb through several years worth of documents, Mem. Supp. R. 72 Mot. RLI, D. 109-1, 18–19, and to produce a privilege log sufficiently "describ[ing] the nature of the documents, communications, or tangible things not produced or disclosed," by January 9, 2026—now in itself an impossible task—and devote time and resources to confer, file additional motions, and a reply. Order, D. 108, 16. On its own, the schedule is per se oppressive, and because the constitutional propriety of the discovery is itself unequivocally at issue, a stay is further justified because the discovery is "an unnecessary burden and expense before threshold, dispositive issues . . . [are] resolved." *Clardy v. Gilmore*, 773 F. App'x 958, 959 (9th Cir. 2019). In short, the hardship and inequity to RLI of being required to go forward pursuant to the schedule stands in stark contrast to any possible damage to Challengers.

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[1]The Defendant has supported RLI's motion to quash, and so cannot be said to be harmed by a stay issued for an appeal to correct any error made by denying it.

[2]By the Order's terms, a privilege log is necessary to preserve such objections. *Id.* at 7.

Put plainly, the schedule effectively precludes review of the RLI's core First Amendment claim, and requires RLI to submit to the exact injury of which it complains, *without the opportunity for appellate review*. 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)). 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). The Court's denial imposed on RLI the burden of submitting to the very compelled discovery from which it claims it is shielded under the First Amendment. The Order's schedule negates RLI's claim of First Amendment privilege, and is an effective holding subject to appellate review. *See*, *e.g.*, *Perry v. Schwarzenegger*, 591 F.3d 1147, 1156–59 (9th Cir. 2010).

On the other hand, Challengers have not shown and can not show how the discovery of RLI, a nonparty, is required to advance the proceedings—let alone any injury that will ensue absent the expedited schedule now in effect.[3] This factor therefore weighs with immense gravity in RLI's favor.

II. The Grant of a Stay Will Simplify Issues, Proof, and Questions of Law.

RLI's petition and motion are the equivalent of a challenge to subject matter jurisdiction or other dispositive motion; resolving the question in its favor would effectively remove RLI

[3]Indeed, the weight and relevance of discovery of RLI to the dispute between the parties is itself at issue, and Challengers cannot bootstrap the issue into a claim that the discovery is needed for the orderly course of justice in the case itself.

from the case entirely. A stay of discovery is well advised where, as here, the disposition of such a motion would moot the need for discovery of RLI and any delay in proceeding would be of little impact. *See Stock v. C.I.R.*, 2000 U.S. Dist. LEXIS 20032, 2000 WL 33138102, at *2 (D. Idaho Dec. 20, 2000). Moreover, measured in terms of simplifying or complicating issues, proof, and questions of law which could be expected to result from a stay, *CMAX*, 300 F.2d at 268, resolving RLI's First Amendment privilege claim will reverse the needless complication of issues, proof, and questions of law that Challengers have brought to the case by seeking discovery of RLI. *See Ministerio Roca Solida v. U.S. Dep't of Fish and Wildlife*, 288 F.R.D. 500, 507 (D. Nev. 2013) (holding the interests of a just, speedy, and inexpensive resolution of the case justified temporarily staying discovery pending resolution of jurisdictional and immunity issues raised in motions to dismiss).

Conclusion

For all of the foregoing reasons, this Court should stay the discovery schedule until either RLI's petition for writ of mandamus is resolved or until two weeks[4] after this Court rules on the anticipated motion for stay accompanying that petition.

[4]Two weeks will allow time for RLI to bring its motion for stay before the Ninth Circuit and potentially receive a decision on same.

Dated: January 8, 2026

Respectfully submitted,

/s/ Joseph D. Maughon

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