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

Before the Court is a Motion to Quash Subpoena Duces Tecum, for a Protective Order, and for Expenses filed by Barbara Ehardt, a member of the Idaho State House of Representatives not named as a party in this action. (Dkt. 98). The parties filed expedited briefing and the motion is fully submitted. (Dkt. 99, 101, 104). 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 challenges 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)); (Dkt. 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, violates their First Amendment rights, and infringes on their right to interstate travel. (Dkt. 1, 41).

On November 30, 2025, Plaintiffs served a subpoena duces tecum on Representative Ehardt seeking twelve categories of documents and testimony. (Dkt. 98, Ex. 1, 2). On December 10, 2025, Representative Ehardt submitted objections to the subpoena, and filed the motion presently before the Court seeking to quash the subpoena, for protective order, and for expenses under Federal Rules of Civil Procedure 26(c), 37(a)(5)(B), and 45(d)(3). (Dkt. 98). The Court stayed enforcement of the subpoena pending a ruling on the motion to quash. (Dkt. 100).

STANDARD OF LAW

Federal Rule of Civil Procedure 45 permits a party in a lawsuit to serve on any person, including a non-party, a subpoena requiring the recipient to present testimony and to produce documents, electronically stored information, or tangible things in that person's possession, custody, or control. Fed. R. Civ. P. 45(a)(1)(A)(iii). Upon a timely

motion, the Court must quash or modify a subpoena under Rule 45(d), where the subpoena requires disclosure of privilege or other protected matter, or subjects the recipient to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv). The party moving to quash a subpoena bears the burden of persuasion, and the party issuing the subpoena must demonstrate the relevance of the discovery sought. *Canning v. Washington Cnty.*, 2024 WL 4381122, at *1 (D.Or. Oct. 2, 2024).

DISCUSSION

On this motion, Representative Ehardt seeks to quash the subpoena issued by Plaintiffs on the basis of legislative immunity and privilege, and asks for a protective order and an award of expenses. (Dkt. 98, 104). Plaintiffs oppose the motion, arguing the privilege does not apply. (Dkt. 101). The Court finds as follows.

1. Motion to Quash Subpoena

A. Application of the Legislative Privilege

"Legislative privilege is a qualified privilege that shields legislators from the compulsory evidentiary process." *Doe v. Horne*, 737 F.Supp.3d 758, 764 (D. Ariz. 2024) (citing *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d 769, 782 (D. Ariz. 2023); *Lee v. City of Los Angeles,* 908 F.3d 1175, 1187 (9th Cir. 2018); and *City of Las Vegas v. Foley*, 747 F.2d 1294, 1299 (9th Cir. 1984)); *see also Mi Familia Vota v. Fontes*, 129 F.4th 691, 731 (9th Cir. 2025). Under the privilege, state legislators "enjoy protection from criminal, civil, or evidentiary process that interferes with their 'legitimate legislative activity.'" *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 669 (D. Ariz. 2016) (quoting *Tenney v.*

Brandhove, 341 U.S. 367, 376 (1951)).[1] The party asserting the privilege bears the burden of establishing that it applies to the information in question. *Id. at* 667.

Here, Representative Ehardt broadly argues that the legislative privilege applies to all documents and areas of testimony sought by Plaintiffs because the materials pertain to bona fide legislative activity, including her communications with third parties about legislation or legislative strategy. (Dkt. 98, 104). Plaintiffs assert the subpoena does not seek privileged information but, rather, external communications and third party materials. (Dkt. 101).

The Court finds Representative Ehardt's legislative privilege applies to the information requested in the subpoena. Generally speaking, the subpoena seeks "all documents" and "all materials" concerning the potential or conceptual state-level legislation relating to interstate abortion trafficking legislation and H.B. 242 and H.B. 98, including notes, memoranda, or minutes as well as materials exchanged between any lawmaker, certain named entities and individuals, and any Idaho state agency or government employee, including the Idaho Attorney General's Office. (Dkt. 98, Ex. 1,

[1] In contrast, legislative immunity is a corollary to legislative privilege that protects lawmakers from suit or liability for "actions taken 'in the sphere of legitimate legislative activity.'" *Kaahumanu v. County of Maui*, 315 F.3d 1215, 1219-1220 (9th Cir. 2003) (quoting *Tenney*, 341 U.S. at 376). Legislative immunity is not implicated here as Representative Ehardt is not subject to suit or liability in this litigation. For this reason, legislative privilege is discussed herein. Nevertheless, the Court is mindful that the concepts underlying legislative immunity are relevant to the consideration of legislative privilege and that caselaw sometimes use the two terms interchangeably. *See e.g. Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 777-780 (discussing the legislative immunity and privilege, noting both "involve the core question of whether a lawmaker may be made to answer – either in terms of questions or in terms of defending from prosecution.").

2).[2] The requested materials concern state-level legislation for interstate abortion trafficking laws, including exchanges between lawmakers and third parties regarding the same. Communications and documents exchanged between legislators, staff, and third parties concerning potential legislation are within the scope of legitimate legislative activity, as drafting and proposing legislation are regular legislative functions. *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 777-782; *Puente Arizona*, 314 F.R.D. at 670.[3] Because the information requested in the subpoena relates to legitimate legislative activity, the privilege applies.

B. Waiver of the Legislative Privilege

Plaintiffs argue the privilege has been waived to the extent the subpoena requests materials involving communications between Representative Ehardt and third parties. (Dkt. 101 at 15-16). "Legislative privilege is a personal one and may be asserted or waived by each individual state legislator." *Doe v. Horne*, 737 F.Supp.3d at 764 (citation omitted). "A waiver of legislative privilege need not be explicit or unequivocal, rather, waiver can occur when a party testifies as to otherwise privileged matters, shares privileged communications with outsiders, or through a party's litigation conduct in a civil case." *Id*. (citations omitted); *see also Puente Arizona*, 314 F.R.D. at 671.

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[2] H.B. 242 and H.B. 98 were the pieces of legislation introduced during the 2023 Idaho legislative session that became Idaho's Abortion Trafficking law, codified as Idaho Code Section 18-623.

[3] Use of the term "legitimate" in this context "connotes only that the legislator was engaged in a bona fide attempt to enact legislation, and does not suggest that the legislation was constitutional or otherwise proper." *Puente Arizona*, 314 F.R.D. at 669 n. 3.

Having reviewed the differing caselaw on this point, the Court finds instructive the reasoning of the cases holding that the privilege extends to communications between state legislators and third parties so long as those communications were part of the formulation of legislation. *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 778-779; *Puente Arizona*, 314 F.R.D. at 670-671 (discussing cases finding the privilege applies to legislators' communications with third parties about proposed legislation). Applying that reasoning here, the Court concludes that Representative Ehardt did not waive her legislative privilege to the extent the information requested involved communications with third parties about formulating legislation. As discussed above, the subpoena seeks materials concerning the formation of legislation and legislative activities related to state-level abortion trafficking laws. (Dkt. 98, Ex. 1, 2). That the requested materials were exchanged with or provided by third parties does not constitute a waiver of Representative Ehardt's legislative privilege. *Id.*

C. Excepting the Legislative Privilege

Plaintiffs argue that if the privilege is found to apply, it is qualified and must yield to the important public rights at issue in this case when balancing the relevant interests. (Dkt. 101). Defendant disputes the use of a balancing test and argues the evidentiary privilege is "absolute" and overcome only in more than "extraordinary circumstances." (Dkt. 104 at 3, 5-6). The Court finds as follows.

The legislative privilege is a qualified privilege, not an absolute one. *Mi Familia Vota v. Fontes*, 129 F.4th at 731 (stating the legislative privilege is a "qualified

privilege"); *DoorDash, Inc. v. City of New York*, 780 F.Supp.3d 434, 443 (S.D.N.Y. 2025) ("[I]n some extraordinary instances, some discovery may be warranted.") (quoting *Citizens Union of City of N.Y. v. Att'y Gen. of N.Y.*, 269 F.Supp.3d 124, 155 (S.D.N.Y. 2017)); *S.C. State Conf. of NAACP v. McMaster*, 584 F.Supp.3d 152, 161-162 (D.S.C. 2022); *Puente Arizona*, 314 F.R.D. at 671–72. Discovery may be warranted where extraordinary instances justify an exception to the privilege. *Lee*, 908 F.3d at 1187-1188 (discussing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977)).

"Whether privileged material must be disclosed is determined by balancing the legislator's interest in non-disclosure with the movant's interest in obtaining the material." *Puente Arizona*, 314 F.R.D. at 671-672 (citation omitted). Many courts making this determination apply the *Bethune–Hill* five-factor balancing test, weighing "(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the seriousness of the litigation and the issues involved; (iv) the role of government in the litigation; and (v) the purposes of the privilege." *Id*. (quoting *Bethune-Hill v. Virginia State Bd. of Elections*, 114 F.Supp.3d 323, 336 (E.D.Va. 2015)); *see also DoorDash, Inc.*, 780 F.Supp.3d at 443 (applying the same first four factors, and a substantially similar fifth factor); *S.C. NAACP*, 584 F.Supp.3d at 161-163. Other courts ask whether abrogating the legislative privilege is necessary to vindicate important federal interests given the context of a particular case. *In re Georgia Senate Bill 202*, 2023 WL 3137982, at *6 (N.D.Ga. April 27, 2023).

While not binding, the Court finds the factors in the *Bethune-Hill* balancing test are a useful framework for analyzing whether the circumstances here justify an exception to the privilege, consistent with the several other courts weighing the interests and considerations relevant to this determination. *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 782; *Puente Arizona*, 314 F.R.D. at 671-672; *DoorDash, Inc.*, 780 F.Sup.3d at 443; *Virginia State Conf. NAACP v. Cnt. Sch. Bd. of Shenandoah*, 2025 WL 2585686, at *3 (W.D.Va. Sept. 5, 2025); *S.C. NAACP*, 584 F.Supp.3d at 163.[4] Accordingly, the Court will discuss below the factors relevant to its determination.

To prevail on their right to interstate travel claim, Plaintiffs must establish that Idaho Code Section 18-623 was enacted for the purpose of prohibiting or deterring interstate travel. *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986). While the motivations of an individual legislator may not necessarily reflect the intentions of the entire Legislature, certain of the materials requested in the subpoena here are relevant to determining the Legislature's purpose for enacting the challenged statute. *Doe v. Horne*, 737 F.Supp.3d at 764 ("Of course 'courts must use caution when seeking to glean a legislature's motivations from the statements of a handful of lawmakers,' but 'that does not mean evidence of an individual legislator's motive is irrelevant to the question of the

[4] The Court disagrees with Defendant's contention that a balancing test is inapplicable or contrary to Ninth Circuit authority. (Dkt. 104). Determining whether extraordinary instances are present that might justify an exception to the privilege necessarily involves evaluating relevant considerations to inform that determination. Utilizing a set of delineated factors does not run afoul of binding caselaw or lessen the burden needed to except the privilege. Just the opposite, as Defendant recognizes, courts balancing these factors often uphold the privilege. (Dkt. 104 at 5-6).

legislature's motive.'") (quoting *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 88 (D. Ariz. 2022)); *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 785 ("[T]hat statements by individual lawmakers may alone be insufficient to establish the motivation of the legislature does not eliminate the relevance of such statements."); *Bethune-Hill*, 114 F. Supp. 3d at 339–40 ("[I]t may be true that 'the individual motivations' of particular legislators may be neither necessary nor sufficient for Plaintiffs to prevail," but "that does not mean that the 'evidence cannot constitute an important part' of the case presented.").

The scope of discovery under Rule 45 is the same as permitted under Rule 26(b), that is, "a party may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 45 advisory committee note (1970) ("[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules."). For the reasons discussed in the Court's Order dated December 19, 2025, communications or materials provided to Idaho legislators or legislative staff concerning H.B. 98 and H.B. 242 are relevant to the right to travel claim asserted in this case. (Dkt. 108). The twelve categories of documents requested in the subpoena served on Representative Ehardt include such relevant materials, but also encompass materials the Court has found are not relevant. (Dkt. 98, Ex. 1, 2; Dkt. 108). For instance, the requests for "[a]ll documents sent to and received from any lawmaker concerning potential or conceptual state-level legislation relating to interstate 'abortion trafficking'" in general are not relevant, but materials relating to H.B. 242 and H.B. 98 are relevant. (Dkt. 98, Ex.

1, 2: Dkt. 108). This factor weighs in favor of disclosure to the extent the materials are relevant, and weighs against disclosure as to the materials that are not relevant. The Court need not parse through each of the subpoena requests to determine relevancy because, for the reasons that follow, the present circumstances do not warrant abrogating Representative Ehardt's legislative privilege.

Many of the materials sought in the subpoena can be obtained from third parties or by other means. As noted above, the legislative privilege is personal to the legislator, not the information or material itself. *Doe v. Horne*, 737 F.Supp.3d at 764; *Puente Arizona*, 314 F.R.D. at 671. The "rationale for the privilege [is] to allow duly elected legislators to discharge their public duties without concern of adverse consequences outside the ballot box." *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 777 (quoting *Lee*, 908 F.3d at 1186-1187). The privilege is intended to protect legislators from distractions and diversions of their time, energy, and attention from their legislative tasks to defend the litigation; and maintain legislative independence. *Lee*, 908 F.3d at 1186-1187. Thus, the third parties from whom Plaintiffs may seek to obtain the materials do not share the same legislative privilege as Representative Ehardt.

Plaintiffs acknowledge that the materials are "third party information" and have requested some of the materials from at least two of the third party entities. (Dkt. 108). Plaintiffs argue this subpoena is necessary because their attempts to secure the materials from third parties have been unsuccessful thus far. (Dkt. 101). The Court finds the third parties' challenges to Plaintiffs' discovery requests do not justify intrusion on the

legislative privilege given the present circumstances and the purpose underlying the legislative privilege. Notably, the Court denied a motion to quash by one of the third parties and ordered production of the requested discovery. (Dkt. 108). While the third party is contesting that decision, the ruling that it must produce discovery remains in place unless and until overturned. (Dkt. 113, 114).[5] Additionally, there are other materials available to Plaintiffs that are similarly indicative of the purpose underlying the challenged legislation including legislative history, records and minutes from legislative hearings, and the like. (Dkt. 1, 70, 112). For these reasons, the Court finds this factor weighs against disclosure.

Next, the Court finds the federal interest at issue in this litigation is significant, as the right to interstate travel is a long-recognized fundamental constitutional right. *Soto-Lopez*, 476 U.S. at 901-902; *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 944 (9th Cir. 1997). "[I]t is one of our most fundamental constitutional rights" as it "cultivates national citizenship and curbs state provincialism." *Yellowhammer Fund v. Marshall*, 776 F.Supp.3d 1071, 1096 (M.D. Ala. 2025). "The right to travel includes both the right to move physically between two States and to do what is legal in the destination State." *Id.* at 1098. Threatened prosecutions of individuals who seek to travel interstate and "State restrictions with the primary objective of preventing specific lawful out-of-state conduct"

[5] The Court has granted a limited stay of the discovery schedule for the third party's production of the discovery until January 26, 2026, to allow the third party to pursue a petition for writ of mandamus or other relief. (Dkt. 114).

are "constitutionally impermissible." *Id.* at 1101. Given the significance of the right at issue, the Court finds this factor weighs in favor of disclosure.

Regarding the government's role in this litigation, this factor is neutral. Representative Ehardt was a co-sponsor of the challenged legislation that was ultimately enacted by the Idaho Legislature and, therefore, both had central roles in effecting the constitutional violations alleged in this litigation. Yet, this case does not seek relief from any individual legislator or even the Idaho Legislature as a whole. Indeed, Representative Ehardt is not a party to this litigation. Rather, the remedy sought here is a declaration that the statute is unconstitutional and an injunction prohibiting enforcement of Idaho Code Section 18-623. (Dkt. 1). The involvement and roles of Representative Ehardt and the Idaho Legislature with the legislation at issue in this case weigh both for and against upholding the privilege.

As to the final factor, the purpose of the legislative privilege, the Court finds this factor weighs in favor of non-disclosure. The requested materials are communications and documents exchanged between lawmakers and third parties regarding proposed legislation. The materials relate to legitimate legislative activities. Compelling Representative Ehardt to testify about and/or produce the materials on the current record would "undermine the purposes of the privilege." *Mi Familia Vota v. Hobbs*, 682 F.Supp.3d at 788. As discussed above, the legislative privilege protects confidential intra-legislative communications between legislators and their staff, and also "shield[s] legislators from distraction and harassment and [promotes] legislative independence." *Id.*

Requiring testimony and disclosure of communications and documents related to legitimate legislative activities by a non-party, current member of the Legislature is "the precise sort of interference that the state legislative privilege was designed to prevent." *Id.* (citing *Lee*, 908 F.3d at 1187).

On whole, the Court finds the factors discussed above weigh in favor of upholding the legislative privilege. While some of the materials sought are relevant and the federal interest is significant, the availability of other evidence and the purposes underlying the privilege both weigh heavily in favor of not compelling Representative Ehardt to produce the requested discovery. In conclusion and for all of the foregoing reasons, the Court finds the legislative privilege asserted by Representative Ehardt applies to the materials requested in the subpoena, the privilege has not been waived, and the present circumstances do not warrant abrogating the privilege. Accordingly, the motion to quash will be granted.

2. Motion for Protective Order

The motion requests entry of a protective order precluding the discovery sought by the subpoena in favor of Representative Ehardt pursuant to Rule 26(c)(1)(A). (Dkt. 98). The parties conferred on December 4, 20205, but were unable to reach resolution of the disputed issues. (Dkt. 98 at 4; Dkt. 101 at 7 n. 1).

A party or person from whom discovery is sought may move for a protective order, after conferring in good faith to resolve the dispute. Fed. R. Civ. P. 26(c)(1). A court may, for good cause, issue an order to "protect a party or person from annoyance,

embarrassment, oppression, or undue burden or expense." 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)). Under Rule 26(c), the district court may protect a party or person from discovery by forbidding discovery, disclosure, or inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters. Fed. R. Civ. P. 26(c)(1)(A), (D); *Moore v. Battelle Energy Alliance, LLC*, 2023 WL 1767391, at *3 n. 4 (D. Idaho Feb. 2, 2023).

The party seeking a protective order bears the burden of establishing good cause for why a protective order is necessary. *Phillips*, 307 F.3d at 1210-1211. Good cause is shown when a party sets forth the specific harm or prejudice that will result in the absence of a protective order. *Id.* "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (citation omitted).

Given the ruling stated herein, the Court finds in its discretion that good cause has not been shown to enter a protective order. The subpoena served on Representative Ehardt will be quashed. Representative Ehardt is therefore not subject to the subpoena's discovery requests and has not identified any specific harm or prejudice that will result in the absence of a protective order. Indeed, Representative Ehardt has not proposed any terms for the requested protective order. The broad, non-specific allegations and concerns

regarding Plaintiffs' discovery efforts are insufficient to warrant a protective order. *Id.* For these reasons, the Court will deny without prejudice the motion for a protective order. The Court will however entertain a new motion for a protective order or other appropriate relief if additional discovery efforts are pursued that are contrary to the ruling stated herein or other circumstances arise that may warrant a protective order.

3. Motion for Expenses

Representative Ehardt moves for an award of expenses incurred in opposing the subpoena, including attorney fees under Rules 26(c)(3) and 37(a)(5)(B). (Dkt. 98 at 5). For the reasons that follow, the request for expenses will be denied.

Expenses under Rule 37(a)(5)(B) are awardable in relation to requests for a protective order. Fed. R. Civ. P. 26(c)(3). Here, as discussed above, no protective order will be entered. Accordingly, the motion for expenses and attorney fees under Rule 37 is denied as it relates to the request for a protective order under Rule 26.

To the extent Rule 37(a)(5)(B) applies to the motion to quash under Rule 45, the Court finds that Plaintiffs' position was substantially justified and that other circumstances make an award of expenses unjust. *See e.g. Industrial Systems & Fab., Inc. v. Western Nat. Assurance Co.*, 2014 WL 12634305, at * 2 (E.D. Wash. July 18, 2014) (finding Rule 45 does not expressly provide for the award of expenses under Rule 37, unlike Rule 26(c)(3)); *but see Rodriguez v. AmericanWest Bank*, 2017 WL 11470636, at *3 (C.D. Cal. April 20, 2017) (applying Rule 37 fee-shifting to motions to quash under Rule 45). Rule 37(a)(5)(B) provides for payment of expenses and attorney fees to the

prevailing party on a motion to compel discovery, unless the non-prevailing party's position was substantially justified or other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(B). Here, Plaintiffs' issued the subpoena in good faith and after having reasonably pursued other avenues for obtaining the discovery sought. Additionally, there has been little, if any, burden or expense incurred by the recipient of the subpoena. For these reasons, the Court will deny the motion for attorney fees and expenses under Rule 37.

The Court further finds expenses are not warranted under Rule 45(d)(1). "A court may ... impose sanctions [under Rule 45] when a party issues a subpoena in bad faith, for an improper purpose, or in a manner inconsistent with existing law." *Briggs v. Yi*, 2024 WL 5456340, at *5 n. 63 (D. Alaska May 1, 2024) (quoting *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013)). "[A]bsent undue burden imposed by an oppressive subpoena, a facially defective subpoena, or bad faith on the part of the requesting party, Rule 45[(d)](1) sanctions are inappropriate." *Id.* at n. 64 (quoting *Mount Hope Church v. Bash Back!*, 705 F.3d 418, 428-429 (9th Cir. 2012) ("[B]ad faith is a sufficient ground for sanction, but it is not a necessary ground if Rule 45[(d)](1) is otherwise violated in good faith.")). "The Ninth Circuit has emphasized that Rule 45 'sanctions should not result from normal advocacy.'" *Ferguson v. Smith*, 2023 WL 8868815, at *1-2 (D. Or. Dec. 22, 2023) (quoting *Mount Hope Church*, 705 F.3d at 426, 429-30 ("The scope of permissible sanctions under Rule 45[d](1) should not be so broad as to chill or deter the vigorous advocacy on which our civil justice system depends."); citing *Legal Voice*, 738 F.3d at

1185 ("Merely losing a motion to compel does not expose a party to Rule 45 sanctions.") and *United States v. Rico*, 619 F.App'x 595, 601 (9th Cir. 2015) ("Not every overbroad subpoena is an occasion for sanctions; we have said that in general, 'sanctions should be reserved for the 'rare and exceptional case.'") (citations omitted).

Here, Representative Ehardt does not allege the subpoena was issued in bad faith, for an improper purpose, or in a manner inconsistent with existing law. Nor does the record reflect the same. Rather, Plaintiffs issued the subpoena in good faith and, when doing so, state that they narrowed the subpoena to request only external third party materials that Plaintiffs argue were not privileged. (Dkt. 101). While the Court has found contrary to Plaintiffs position, sanctions under Rule 45 are not warranted given the record and circumstances presented here. *Ferguson*, 2023 WL 8868815, at *1 (Courts enforcing Rule 45(d)(1) have discretion over the type and degree of sanctions where subpoena was issued in bad faith, for improper purpose, or in a manner inconsistent with existing law).

ORDER

THEREFORE IT IS HEREBY ORDERED that the Motion to Quash, for Protective Order, and for Sanctions (Dkt. 98) is **GRANTED in part and DENIED in part** as stated herein.

DATED: January 14, 2026

Honorable Debora K. Grasham
United States Magistrate Judge