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IN THE 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

PLAINTIFFS' OPPOSITION TO NON-PARTY RIGHT TO LIFE IDAHO'S MOTION TO STAY PENDING DISPOSITION OF PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

Non-party Right to Life Idaho ("RLI"), along with its national partner National Right to Life Committee ("NRLC"), offered model legislation to create a new crime of "abortion trafficking" for states to adopt. Idaho took that offer and, using that model, was the first state in the nation to introduce this new crime. This law was intended to, and does, restrict the right of Idahoans to travel freely, even when the purpose of that travel is perfectly legal. Plaintiffs' lawsuit challenging that law seeks, among other things, to prove that the law unconstitutionally restricts their right to travel. In support of that claim, Plaintiffs seek a narrow class of relevant documents from RLI that were already externally shared. And yet RLI asks this Court, again, to indefinitely delay proceedings in this case so that it can pursue a meritless writ of mandamus before the Ninth Circuit. As explained below, such a stay is not warranted because RLI is unlikely to succeed on the mandamus petition, because granting a stay would prejudice Plaintiffs and not serve the public interest, and because denying a stay would not irreparably harm RLI.

BACKGROUND

On September 12, 2025, Plaintiffs served RLI with a subpoena duces tecum to advance their claim that Idaho Code § 18-623 unconstitutionally infringes on their constitutional right to interstate travel. Dkt. 72-3.[1] After Plaintiffs agreed to an extension of time for RLI to respond to the subpoena, RLI objected, and Plaintiffs narrowed their request from five categories of documents to two categories. In addition, Plaintiffs made clear that these narrowed requests asked only for materials related to communications RLI had with outside parties. Dkt. 72-4. Despite this narrowing, after another extension of time, RLI filed a Motion to Quash, on which

[1] Plaintiffs also served a subpoena duces tecum on the NRLC, and litigation regarding that subpoena is currently being heard in the District Court for the District of Columbia. Dkt. 72-1; Dkt. 87. The district court there has not yet issued a decision.

this Court ruled on December 19, 2025. Dkt. 108 ("the Order"). In the Order, the Court acknowledged that Plaintiffs' narrowed requests expressly did not seek membership or internal information. The Court also narrowed the subpoena further to ensure that only external communications were at issue. The Order then analyzed RLI's motion under the relevant standard and, as further discussed below, correctly concluded that RLI had not met part I of its burden under the prevailing test. *Id.* at 8-9. The Order noted that even had this obligation been met, and the burden shifted to Plaintiffs, the narrowed request was central to the issue of Plaintiffs' right to interstate travel (*id.* at 12) and that RLI, unlike more typical nonparties, had long been involved in the issue central to the case. *Id.* at 14.

RLI filed a Motion for Relief and a Motion to Stay (Dkts. 109, 110), which were denied by this Court on January 5, 2025. Dkt. 111. RLI then filed an Emergency Motion to Stay. Dkt 113. Although this Court properly noted that RLI had been aware of the discovery requests at issue for some time (indeed, for nearly four months), the Court granted the two-week stay that RLI requested, moving the deadline for compliance to January 26, 2026. Dkt. 114. On January 16, 2026, RLI filed a Writ for Mandamus to the Ninth Circuit Court of Appeals, requesting that Court issue a writ reversing the Order and quashing the subpoena duces tecum. Dkt. 118. That same day, RLI filed the instant motion, asking this Court for a "stay of the Order pending resolution of the Petition." Dkt. 119.

Because RLI does not meet the criteria for a stay, this motion should be denied.

STANDARD OF REVIEW

Filing a mandamus petition with the Ninth Circuit does not stay a trial court order. *Arabian Gas & Oil Dev. Co. v. Wisdom Marines Lines, S.A.*, No. 16-cv-03801-DMR, 2017 WL 2378060, at *2 (N.D. Cal. June 1, 2017) ("The taking of an appeal does not by itself

suspend the operation or execution of a district-court judgment or order during the pendency of the appeal." (quoting 16A Wright & Miller's Federal Practice & Procedure § 3954 (4th ed.)). Thus, RLI's decision to seek an extraordinary remedy via a Mandamus Petition to the Ninth Circuit Court of Appeals in order to evade a legitimate discovery request does not divest this Court of jurisdiction or automatically stay this Court's proceedings. *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001).

When deciding whether to exercise its discretion to grant a stay, a court looks at whether the party seeking the stay can "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of relief, that the balance of equities tip in his favor, and that a stay is in the public interest." *Morgan Tire of Sacramento, Inc. v. Goodyear Tire & Rubber Co.*, No. 2:15-CV-00133-KJM-AC, 2015 WL 3623369, at *1 (E.D. Cal. June 9, 2015) (citation omitted). This is a high burden. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). In evaluating whether RLI has met this burden, the first two factors are the most critical. *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012). In fact, "[a] movant's failure to satisfy the stringent standard for demonstrating a substantial likelihood of success on the merits is an arguably fatal flaw for a stay application." *Doe v. Horne*, No. CV-23-00185-TUC-JGZ, 2024 WL 3640623, at *1 (D. Ariz. July 12, 2024) (citation omitted).

ARGUMENT

RLI cannot meet any of the factors governing granting of a stay in this context.

A. RLI Is Unlikely to Succeed on the Merits.

On a petition for a writ of mandamus, an appellate court "reviews the district court's order for clear error and grants the writ only where the district court has usurped its power or clearly abused its discretion." *Plata v. Brown*, 754 F.3d 1070, 1076 (9th Cir. 2014); *In re Walsh*,

15 F.4th 1005, 1007 (9th Cir. 2021). Mandamus is an extraordinary remedy, generally reserved for extraordinary cases. *Nken*, 556 U.S. at 433-34; *Perry v. Schwarzenegger*, 591 F.3d 1147, 1154 (9th Cir. 2010). In cases involving discovery issues, mandamus is granted only when the issue is both particularly important and of first impression. *Id.* at 1157. In the Ninth Circuit, there is a particular high bar for writs of mandamus, which require the appellate court "to have a 'firm conviction' that the district court misinterpreted the law or committed a 'clear abuse of discretion,'" making "availability of the writ especially difficult" in the context of discovery disputes. *In re Walsh*, 15 F.4th at 1010 (citation omitted); *see also Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654 (9th Cir. 1977) (recognizing that "cases and authorities bristle with language likewise suggesting that mandamus will issue only in 'drastic,' 'exceptional' and 'extra-ordinary' circumstances") (citation omitted). In this case, the Order narrowing the subpoena and requiring compliance was clearly supported by the facts and the law, and RLI is highly unlikely to succeed on the merits of its claim.

1. The Narrowed Subpoena Does Not Infringe on RLI's First Amendment Rights.

RLI relies on *Perry v. Schwarzenegger*, a case that dealt with a far different situation. That reliance is misplaced and does not warrant a stay. In *Perry*, the request for production of documents sought was much broader than in the instant case, specifically seeking, "[a]ll versions of any documents that constitute communications referring to Proposition 8, between you and any third party, including, without limitation, members of the public or the media." 591 F.3d at 1153. The parties in *Perry* understood this request to encompass drafts and other internal communications never shared outside their organization. *Id.* In the instant case, however, not only did Plaintiffs narrow their original requests, but this Court further restricted the subpoena to only allow "Communications with Idaho legislators or legislative staff concerning H.B. 242 or

H.B 98, including any attachments, talking points or materials *actually disseminated* to Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98." Dkt. 108 at 15 (emphasis added).

This distinction between internal and external communications has been recognized by numerous other courts. *See, e.g., Youth 71Five Ministries v. Williams*, 160 F.4th 964 (9th Cir. 2025) (acknowledging *Perry* involved "compelled disclosure of ballot-measure campaign's internal communications"); *La Union Del Pueblo Entero v. Abbott*, No. SA-21-CV-00844-XR, 2022 WL 17574079, at *8 (W.D. Tex. Dec. 9, 2022) ("*Perry* and its progeny have all dealt with the disclosure of either the identity of association members or internal communications—not communications with third parties."); *Whole Woman's Health v. Smith*, 896 F.3d 362, 372 (5th Cir. 2018), *as revised* (July 17, 2018) (recognizing that *Perry* exempted from discovery the *internal* communications of a citizens' group). Thus, RLI's claims that it has a high likelihood of success at the Ninth Circuit based on *Perry* is unfounded.

Plaintiffs also note that in *Perr*y, the Ninth Circuit made clear that it is the moving party's burden to make "a *prima facie* showing of arguable first amendment infringement" before the burden shifts to the party seeking discovery. 591 F.3d at 1160 (citation omitted). In the instant case, RLI has failed to do so as there is no legitimate First Amendment interest in the discovery materials Plaintiffs seek. In fact, to find a First Amendment interest in public materials related to a public concern would make little sense. *See Sol v. Whiting*, No. CV-10-01061-PHX-SRB, 2013 WL 12098752, at *2 (D. Ariz. Dec. 11, 2013) ("Movants do not cite, and the Court is unaware of, any law that protects from public view communications with public officials in their official capacity about a matter of public concern.").

Nevertheless, RLI submitted a single declaration that it alleged made it "common sense" that there was a First Amendment infringement. But as the Order sets out, the "First Amendment

privilege requires more than stating one engages in political activity[.]" Dkt. 108 at 7. And it distinguished the cases RLI relied on, noting that the parties asserting the First Amendment privilege in those cases "made a *prima facie* case by submitting declarations and privilege logs. *LeGrand v. Abbott Labs.*, 2024 WL 4469099, at *1 (N.D. Cal. Oct. 9, 2024); *Apple Inc. v. Match Group, Inc.*, 2021 WL 3727067 (N.D. Cal. Aug. 19, 2021). Here, no privilege log was submitted describing the nature of the documents and communications that RLI contends fall within the First Amendment privilege. Fed. R. Civ. P. 26(b)(5)(A), 45(e)(2)(A)(ii); *Perry*, 591 F.3d at 1153 n. 1 (stating "some form of privilege log is required" to assert the First Amendment privilege)." Dkt. 108 at 7. Thus, despite clear precedent requiring a privilege log in addition to one self-serving statement, in its petition for a writ of mandamus, RLI offers the Ninth Circuit nothing more than it offered this court: one conclusory declaration. Conclusory statements alone do not establish a *prima facie* showing of First Amendment infringement. *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 84-85 (D. Ariz. 2022).

RLI's reliance on *Orsini v. O/S Seabrooke O.N.*, 247 F.3d 953 (9th Cir. 2001), a case involving the Jones Act and the validity of a seaman's release, does not change this. In a footnote, the *Orsini* court noted only that the seaman's affidavit in that particular case met his burden under Federal Rule of Civil Procedure 56 because it contained "material facts based on [his] personal recollection." *Id.* at 960 n.4. In this case, as this Court has already recognized, the Naugle Declaration offered by RLI offers only "broad allegations and conclusions," that primarily focus on RLI's internal and private communications. Dkt. 108 at 8. They do not make a *prima facie* showing of First Amendment infringement.

Given the limited discovery sought by Plaintiffs here and the applicable Ninth Circuit precedent, this Court properly denied non-party RLI's Motion to Quash. Repeating the same

evidence more stridently does not merit the Ninth Circuit's time, and neither *Perry* nor *Orsini* command a different outcome. Thus, it is unlikely RLI will succeed on the merits.

2. Plaintiff's Subpoena, as Narrowed by the Court, Seeks Discovery That Is Relevant and Narrowly Tailored.

Additionally, even if RLI had made the required *prima facie* showing, which it has not, the inquiry would not conclude. At that point, the burden would shift to the Plaintiffs, to show that the request is relevant and carefully tailored. *Perry*, 591 F.3d at 1161. Mindful of this, this Court has already limited Plaintiffs' request to ensure that the subpoena is "carefully tailored to avoid unnecessary interference with any protected activities and to produce discovery that is directly relevant" to the Plaintiffs' claim of unconstitutional interference with their right to engage in interstate travel. Dkt. 108 at 14-15. In other words, this Court followed the instructions of the *Perry* court in the second step of the analysis, which is "meant to make discovery that impacts First Amendment associational rights available only after careful consideration of the need for such discovery, but not necessarily to preclude it." *Perry*, 591 F.3d at 1161.

3. RLI Has Not Shown That Its Petition Raises a "Serious Legal Question."

To the extent RLI relies on the argument that its writ of mandamus raises a "serious legal question," RLI misunderstands the requirements of that term. RLI must show that the question at hand is "'so serious, substantial, difficult, and doubtful, as to make the issues ripe for litigation and deserving of more deliberate investigation,' one that 'concerns constitutionality,' one that 'raises genuine matters of first impression within the Ninth Circuit,' or one that 'may otherwise address a pressing legal issue which urges that the Ninth Circuit hear the case.'" *Arabian Gas & Oil Dev. Co.*, 2017 WL 2378060, at *8 (citation omitted). As detailed above, RLI meets none of these requirements.

In short, nothing RLI has alleged indicates that it will succeed on the merits of its claim.

B. A Stay Would Substantially Injure Plaintiffs.

Granting a stay would substantially injure Plaintiffs in this case and likely substantially delay resolution of the important issues at stake.

One of Plaintiffs' claims is that Idaho Code § 18-623 unconstitutionally restricts their right to interstate travel. Plaintiffs allege that one of the State of Idaho's primary objectives for enacting the statute was to do just this: restrict the ability of Idahoans to exercise their right to travel. *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986)("'[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.'")(citations omitted).[2] The information sought in the narrowed subpoena squarely addresses this issue. It seeks only evidence of external communications between RLI and Idaho legislative personnel bolstering Plaintiffs' claim that the law was passed to deter and to prohibit interstate travel.

Further, Plaintiffs served the subpoena on RLI more than four months ago and narrowed their request in response to RLI's concerns. In that time, discovery has continued to proceed and is currently scheduled to conclude on March 16, 2026. In contrast, the Ninth Circuit is under no deadline to rule on RLI's petition for a writ of mandamus, either under Federal Rule of Appellate Procedure 21 or Circuit Court Rule 21-1. Therefore, granting a stay may leave Plaintiffs in the position of proceeding without information critical to proving their right to interstate travel claim, or seeking a significant delay in the litigation to the detriment of both Plaintiffs and the public interest.

[2] Despite RLI's claims to the contrary, the Order's reliance on *Soto-Lopez* for the proposition that the objective of a law implicating the right to travel is relevant was correct.

Moreover, Plaintiffs do not have other avenues to obtain the subpoenaed information, which weighs against this Court granting a stay. *See Perry,* 591 F.3d at 1164 ("Plaintiffs can obtain much of the information they seek from other sources[.]"). Not only are RLI (and NRLC) the entities most likely to have this information, but Plaintiffs have also already unsuccessfully served a subpoena duces tecum on the law's co-sponsor and it is not reasonable to assume that continuing to pursue information from other Idaho legislators would be any more successful. Nor is the scope of disclosure required by Idaho's public records law coextensive with that required by Rule 26. *Compare* Idaho Public Records Act, Idaho Code §§ 74-101 to 74-127, *with* Fed. R. Civ. P. 26. In short, a stay would injure Plaintiffs by delaying or preventing them from acquiring narrowly tailored information that is highly relevant to their right to travel claim.

C. RLI Has Not Shown Irreparable Harm.

In its motion, RLI summarily relies on *Perry* to assert that because the Ninth Circuit has "demonstrated its willingness to grant mandamus" in these types of cases, denying a stay would cause them "a real injury." However, as set forth above, *Perry* is inapposite. It provides no support for a writ that does not identify a First Amendment violation and challenges only a discovery order seeking external documents. Nor should this Court stay this case on the unlikely possibility that the Ninth Circuit might grant mandamus relief. Both RLI and NRLC have been publicly involved with the legislative process that resulted in this law from the start, making the claims of injury even less meritorious. *See* Memorandum from James Bopp, Jr. et al. on NRLC Post-*Roe* Model Abortion Law Version 2 to NRLC et al. (July 4, 2022), available at https://nrlc.org/uploads/files/NRLCPost-RoeModelAbortionLaw.pdf; *see also* Press Release, NRLC, National Right to Life Committee Proposes Legislation to Protect the Unborn Post-Roe (June 15, 2022), available at https://nrlc.org/communications/national-right-to-life-committee-

proposes-legislation-to-protect-the-unborn-post-roe/; *Matsumoto v. Labrador*, 122 F.4th 787, 795 (9th Cir. 2024) (noting that RLI used time ceded by the legislation's co-sponsor during a hearing on the bill to argue for its passage).

RLI further argues that in the absence of a stay it will "be required, at the very least, to comb through several years' worth of documents, and produce a privilege log[.]" Dkt. 119-1 at 6. However, the effort required to comply with legitimate discovery requests is not irreparable harm. "The Supreme Court has stressed that the '[t]he key word in this consideration is irreparable,' and so '[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.'" *Arabian Gas & Oil Dev. Co.*, 2017 WL 2378060, at *4 (citation omitted); *see also Juliana v. United States*, No. 6:15-cv-01517-AA, 2024 WL 1695064, at *3 (D. Or. Apr. 19, 2024) (denying a stay pending mandamus and noting that costs expended in litigation do not equal irreparable harm as they are the regrettable, yet normal, features of our imperfect legal system.) (citation omitted)).[3]

D. The Public Interest Weighs Heavily Against a Stay.

The claim for which Plaintiffs subpoenaed external communications from RLI involves an important public issue: whether a state can restrict its citizens' ability to travel freely from one state to another under the guise of shoring up parental rights and restricting Idaho residents from

[3] It also bears noting that even if there was a document that RLI could credibly claim was subject to a privilege, it could have withheld the document and submitted a privilege log. Despite RLI's argument that "under *Perry*, a privilege log plainly is not required before First Amendment privilege may be found," *Perry* stands for no such proposition. The *Perry* court held that "[t]he district court also observed that Proponents had failed to produce a privilege log required by [Fed. R. Civ. P. 26(b)(5)(A)(ii)]. We agree that some form of a privilege log is required and reject Proponents' contention that producing any privilege log would impose an unconstitutional burden." 591 F.3d at 1153 n.1. Other courts have recognized the appropriateness of such a showing. *La Union Del Pueblo Entero*, 2022 WL 17574079, at *9 (assertions of privilege must "be specifically asserted" on a document-by-document basis (citation omitted)); *see also Whole Woman's Health*, 896 F.3d at 366.

obtaining lawful abortion care outside of Idaho. As this Court observed, "The Supreme Court has long-recognized the right to interstate travel. *United States v. Guest*, 383 U.S. 745, 757-58, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966); *Shapiro v. Thompson*, 394 U.S. 618, 629-30, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Ninth Circuit has further confirmed that '[t]he constitution guarantees the fundamental right to interstate travel.' *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 944 (9th Cir. 1997) (citing *Shapiro*, 394 U.S. at 629, 89 S.Ct. 1322)." *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069, 1076 (D. Idaho 2023).

The law at the center of this litigation was suggested by RLI and NRLC in July 2022, when they offered model legislation. Idaho was the first state in the country to accept the invitation by passing Idaho Code § 18-623. This unprecedented intrusion into Idahoans' fundamental rights needs resolution so that the citizens of the state can establish that their right to interstate travel remains unimpeded. RLI's attempts to delay the process is against the interest of all Idahoans.

CONCLUSION

All factors this Court is to consider on a motion to stay, and this Court's own reasoning in denying the Motion to Quash and narrowing the subpoena served on RLI, weigh heavily in favor of Plaintiffs obtaining the subpoenaed evidence and against RLI's motion. This Court should deny the motion to stay.

DATED: January 21, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 21, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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