WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000

JAMILA A. JOHNSON
(admitted pro hac vice)
jjohnson@lawyeringproject.org
LAWYERING PROJECT
900 Camp St., 3rd Fl., No. 1197
New Orleans, LA 70130
Telephone: (347) 706-4981

WENDY S. HEIPT
(admitted pro hac vice)
wheipt@legalvoice.org
LEGAL VOICE
907 Pine St., No. 500
Seattle, WA 98101
Phone: (206) 954-6798

PAIGE SUELZLE
(admitted pro hac vice)
psuelzle@lawyeringproject.org
LAWYERING PROJECT
300 Lenora St., No. 1147
Seattle, WA 98121
Phone: (347) 515-6073

KELLY O'NEILL, Bar No. 9303
koneill@legalvoice.org
LEGAL VOICE
P.O. Box 50201
Boise, ID 83705
Phone: (208) 649-4942

RONELLE TSHIELA
(admitted pro hac vice)
rtshiela@lawyeringproject.org
LAWYERING PROJECT
1525 S. Willow St., Unit 17, No. 1156
Manchester, NH 03103
Phone: (347) 429-9834

Attorneys for Plaintiff

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 SECOND MOTION OF NON-PARTY RIGHT TO LIFE OF IDAHO, INC., TO QUASH SUBPOENA AND MEMORANDUM IN SUPPORT**

INTRODUCTION

Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund ("NWAAF"), and Indigenous Idaho Alliance ("IIA") seek narrowly tailored information from the Right to Life of Idaho, Inc. ("Movant") that this Court already determined is highly relevant to their claims. In particular, the information will help show that the objectives of Idaho Code § 18-623 are unconstitutional. The information sought is not subject to the First Amendment privilege because Plaintiffs are seeking external communications with public officials and their staff about active legislation and Movant has again failed to show any chilling effect on its First Amendment activities. As this Court recognized, the information is highly relevant because it bears directly on Plaintiffs' interstate travel claim. And the information sought, especially as narrowed by this Court, is neither overbroad nor unduly burdensome. Plaintiffs respectfully request that this Court deny Movant's motion to quash.

BACKGROUND

In 2022, Movant, along with its national partner the National Right to Life Committee ("NRLC"), offered model legislation to the states to create a new crime of "abortion trafficking." Idaho took that offer and, using that model, was the first state in the nation to introduce this new crime when it adopted Idaho Code § 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 Idaho Code § 18-623(1)); Dkt. 1. Plaintiffs, 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, brought a

lawsuit against the Idaho Attorney General challenging §18-623. That lawsuit seeks, among other things, to prove that the law unconstitutionally restricts their right to travel. *Matsumoto*, 122 F.4th at 795.[1] Discovery is scheduled to end on March 16, 2026. Dkt. 92.

On September 12, 2025, Plaintiffs served a subpoena *duces tecum* on Movant, requesting certain documents relating to Movant's involvement in the drafting and passage of the Abortion Travel Ban. Dkt. 72-3. By agreement of the parties, Movant's compliance deadline was extended twice. Counsel for Movant sent objections to counsel for Plaintiffs, and in response, counsel for Plaintiffs narrowed the discovery requests in a good-faith attempt to resolve the dispute. Dkt. 72-4. Still, Movant moved to quash the subpoena, Dkt. 72, and this Court denied that motion in part, Dkt. 108. In doing so, the Court further narrowed Plaintiffs' subpoena to request only the following: "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 12. The Court found that "the limited discovery allowed herein is highly relevant to the right to travel claim." *Id.* Movant then sought Rule 72 relief from the Court's order, Dkt. 109, which the Court denied, Dkt. 111. Next, Movant sought an emergency motion to stay the Court's order, Dkt. 113, which the Court granted for two weeks to allow it time to file a petition for a writ of mandamus in the Ninth Circuit Court of Appeals, Dkt. 114. Movant filed its petition for a writ of mandamus in the Ninth Circuit, Dkt. 118, and simultaneously asked this Court to issue another stay while the mandamus was pending, Dkt. 119, which this Court denied, Dkt. 124. Movant then filed an

[1] In addition to their right to travel claim, Plaintiffs also assert claims alleging Idaho Code § 18-623 is void for vagueness under the Fourteenth Amendment and violates their First Amendment rights. Dkt. 1, 41.

emergency motion to stay in the Ninth Circuit. Dkt. 126. The Ninth Circuit denied Movant's petition for a writ of mandamus because it had not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus and dismissed the emergency stay motion as moot. Dkt. 128.

In light of the Ninth Circuit's dismissal, Plaintiffs and Movant proceeded with the deadlines as set forth in this Court's order denying Movant's second stay motion. Dkt. 124. Movant sent Plaintiffs its objections and privilege log, and counsel for Movant and counsel for Plaintiffs met and conferred on February 4, 2026. Declaration of Wendy J. Olson ("Olson Decl.") ¶¶ 2–4. During the meet and confer, counsel for Movant asserted that he could not narrow down the categories of documents that Movant claims the First Amendment privilege applies to, *id.* ¶ 5, essentially asserting a blanket privilege to the request as a whole. Counsel for Plaintiffs and Movant could not reach an agreement, *id.* ¶ 6, and Movant filed its second motion to quash. Dkt. 129. Plaintiffs now oppose.

LEGAL STANDARD

Federal Rule of Civil Procedure 45 governs the issuance of subpoenas. "Where a non-party possesses potentially relevant information, the party seeking discovery may obtain a subpoena for the evidence pursuant to Rule 45." *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014). "The same broad scope of discovery set out in Rule 26 applies to the discovery that may be sought pursuant to Rule 45." *Id.* (citation omitted). "Under the general relevance requirements set forth in Rule 26(b), the subpoena may command the production of documents that are 'nonprivileged' and are 'relevant to any party's claim or defense.'" *Dale Evans Parkway 2012, LLC v. Nat'l Fire & Marine Ins. Co.*, No. EDCV15979JGBSPX, 2016 WL 7486606, at *3 (C.D. Cal. Oct. 27, 2016) (citing Fed. R. Civ. P.

26(b)(1)). "The party seeking to quash a subpoena has the 'burden of persuasion.'" *Soto v. Castlerock Farming & Transp., Inc.*, 282 F.R.D. 492, 504 (E.D. Cal. 2012) (citation omitted).

ARGUMENT

I. Movant Has Again Failed to Show the First Amendment Privilege Applies.

The party asserting the First Amendment privilege must first "demonstrate a prima facie showing of arguable First Amendment infringement." *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010) (citation modified). This showing requires the party asserting the privilege to "demonstrate that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights." *Id.* (citation omitted). If the party asserting the privilege makes such a showing, the evidentiary burden shifts to the party seeking disclosure "[to] demonstrate that the information sought" is rationally related to a compelling interest "[and] the 'least restrictive means' of obtaining the desired information." *Id.* at 1161 (citation omitted). "The question is . . . whether the party seeking the discovery 'has demonstrated an interest in obtaining the disclosures it seeks . . . which is sufficient to justify the deterrent effect . . . on the free exercise . . . of [the] constitutionally protected right of association.'" *Id.* (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 463 (1958)).

A. Movant Has Again Failed to Demonstrate a Prima Facie Showing of Arguable First Amendment Infringement.

Movant has again failed to demonstrate a prima facie showing of arguable First Amendment infringement and instead essentially asserts that it is entitled to blanket protection from any discovery.

First, Movant has again not shown that "enforcement of the [discovery requests] will result in . . . harassment, membership withdrawal, . . . discouragement of new members, or . . . other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights." *Perry*, 591 F.3d at 1160–61 (citation omitted). Movant has filed a declaration in support of its motion to quash, but that declaration again contains conclusory statements about the "strategic" nature of each document at issue and mere speculation about the chilling effect of having to disclose "*any* of the private communications sought by the Limited Demand." Dkt. 129-2 at 4. For example, the declaration claims that "[i]f RLI were required to comply with the Limited Demand, communication in and with RLI would be deterred, as would participation in and with RLI. RLI wishes to continue pursuing its purposes without being impeded by such deterrence." *Id.* at 2. It further claims, without explanation, "Every one of the responsive documents is also strategic." *Id.* at 3. "[C]onclusory 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) (holding that the Republican Party of Arizona did not make a prima facie showing of arguable First Amendment infringement regarding its communications with lawmakers because it made "no effort to explain why such communications could be considered privileged from disclosure under the First Amendment"). Like the declaration that Movant filed with its first motion to quash, this declaration "does no more than make the same broad allegations and conclusions of the deterrent and chilling impacts that compelled disclosure would have on RLI's association rights, participation, and effectiveness, as set forth in RLI's briefing." Dkt. 108 at 8. Movant has not explained how or why disclosure of its external communications with public officials will subject it to harassment

or otherwise chill its First Amendment activities.[2] Instead, Movant distorts the First Amendment privilege by claiming it is exempt from any discovery whatsoever because it engages in political advocacy regarding topics that are the subject of this litigation. *See* Dkt. 129-1 at 6. As this Court has noted, "[w]hile political speech, advocacy, and association are important First Amendment rights, asserting the First Amendment privilege requires more than stating one engages in political activity and therefore disclosure of communications and materials will result in an unconstitutional chilling or other infringement on First Amendment rights." Dkt. 108 at 7.

Second, Movant has provided a privilege log, but the privilege log does not adequately "describ[e] the nature of the withheld documents or communications 'in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.'" *Mi Familia Vota*, 343 F.R.D. at 83 (citing *Karnoski v. Trump*, 926 F.3d 1180, 1195 (9th Cir. 2019)). As far as Plaintiffs can discern, the privilege log generally covers four categories of documents: (1) logistical/scheduling communications; (2) communications regarding the purported need for and/or purpose of the legislation; (3) communications regarding feedback from the public and other legislators; and (4) communications that refer to pure facts, such as website links. Movant has made no effort to explain why the privilege applies to each of these categories other than a blanket desire to shield their communications with public officials from

[2] Movant again cites *Toering v. EAN Holdings LLC*, No. C15-2016-JCC, 2016 WL 11626756 (W.D. Wash. July 22, 2016), to support its position that the First Amendment privilege applies, but in that case, the organizations moving to quash the subpoena that sought internal and external communications had submitted "numerous declarations . . . demonstrat[ing] the chilling effect that disclosure of such information would have." *Toering*, 2016 WL 11626756, at *3. The party seeking the information also failed to show that it was highly relevant. *Id.* Similarly, in *Legrand v. Abbott Lab'ys*, No. 22-CV-05815-TSH, 2024 WL 4469099 (N.D. Cal. Oct. 9, 2024), which Movant also cites, the communications were between industry groups and their members, not between a group and public officials, and the party seeking discovery did not demonstrate a need for the information. *Legrand*, 2024 WL 4469099, at *1. Here, Movant asserts it is entitled to blanket protection from disclosure of communications with public officials based only on speculation regarding the chilling effect on its First Amendment activities, and Plaintiffs have demonstrated a need for the information, as it is highly relevant to their right to travel claim.

public view. *See Sol v. Whiting*, No. CV-10-01061-PHX-SRB, 2013 WL 12098752, at *2 (D. Ariz. Dec. 11, 2013) (explaining that no law "protects from public view communications with public officials in their official capacity about a matter of public concern"). For example, the subject matter column of the privilege log contains extremely broad descriptions such as: "Noting email concerning articles about bill," Dkt. 129-3 at 4; "Discussing article and interview concerning H.B. 242," *id.* at 7; "Opposition to H.B 242," *id.*; "Messages from public concerning abortion trafficking bill, *id.* at 10; "Factual background demonstrating need for bill," *id.* at 11; and "Strategy for R.S.'ing bill," *id.* at 30, to name a few. It is unclear from these vague descriptions how and why the First Amendment privilege is implicated.

Third, Movant cannot succeed in establishing a *prima facie* showing of arguable First amendment infringement because Plaintiffs are seeking communications between Movant and public officials or their staff about a matter of public concern. *See* Dkt. 108 at 14. The information sought in the narrowed request is remarkably similar to the information sought in *Sol*. In that case, groups challenged an Arizona immigration law. *Sol*, 2013 WL 12098752, at *1. At the district court, the plaintiffs issued subpoenas to two non-parties, the Federation for American Immigration Reform and the Immigration Reform Law Institute. *Id.* Like the requests at issue here, the subpoenas in *Sol* sought each organization's communications with Arizona state officials concerning immigration, the passage of the challenged law, and other related topics. *Id.* For example, one of the document requests in that case requested: "All DOCUMENTS, including but not limited to any COMMUNICATIONS, between you and any ARIZONA STATE OFFICIAL since January 1, 2005 RELATING TO proposed, needed, or enacted legislation REGARDING immigration or immigrants, including but not limited to the following introduced Bills and Resolutions: [listing eight bills over three legislative sessions]."

Id. This request is even broader than the request as narrowed by this Court, which does not allow for discovery of legislation regarding "abortion trafficking" generally and allows only for discovery related to two bills in particular. Dkt. 108 at 12. The non-parties in *Sol* filed motions to quash the subpoenas and made an argument similar to the First Amendment argument that Movant is making in this case. *Id.* at *2. The district court in *Sol* rejected this argument and denied the motions to quash, explaining: "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." *Id.* The same is true in the instant case—there is no blanket rule, as Movant would have it, that communications with public officials affecting matters of great public concern can be made in secrecy and shielded from scrutiny. The court in *Sol* distinguished *Perry*, which is also applicable here: "*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, let alone public officials." *Id.* at *3; *see also La Union Del Pueblo Entero v. Abbott*, 2022 WL 17574079, at *8 (W.D. Texas Dec. 9, 2022) ("The Court will not presume that a protected associational relationship exists between a party and every other person or entity with whom they share common beliefs or goals . . . such an expansive view of the associational privilege would swallow the discovery process altogether."). Thus, there has been no showing that the First Amendment is implicated in the information sought by Plaintiffs here.

Fourth, and as highlighted in *Sol*, the information sought is not akin to the "membership list" line of cases. *See, e.g.*, *Alabama ex rel. Patterson*, 357 U.S. at 458–59. Compelled disclosure of the names of individuals who are affiliated with an organization may offend the First Amendment because "privacy in group association may in many circumstances be

indispensable to preservation of freedom of association." *Id.* at 462. But Plaintiffs are not seeking membership lists or to uncover the identities of those who are privately affiliated with Movant. Indeed, the privilege log reflects that the communications are between only public officials or their staff and individuals who are already publicly affiliated with Movant or the National Right to Life Committee. Dkt. 129-3 at 1. Disclosure of communications with public officials about prospective legislation does not pose the same risk of chilling First Amendment activity that disclosure of the names and contact information of an organization's members or affiliates does. Among other things, the disclosing party has no reasonable expectation of privacy in those communications in the first place.

Next, Movant makes the breathtakingly broad claim that all of the documents at issue are strategic and therefore subject the First Amendment privilege. Dkt. 129-1 at 7. To the extent documents responsive to the narrowed request reflect internal strategy, Movant has already made that strategy public by communicating it to public officials. *See Sol*, 2013 WL 12098752, at *3 ("Movants, through their own actions, have already disclosed the contents of their communications to the public. As a result, upholding the subpoenas would not force Movants to disclose information that is otherwise secret."); *In re Motor Fuel Temperature Sales Pracs. Litig.*, 707 F. Supp. 2d 1145, 1165 (D. Kan. 2010) ("When information is already publicly available, compelled disclosure will presumably have much less of a chilling effect—if any—on First Amendment rights."). And such a blanket rule would allow any party at any time to claim that all of its communications or documents contain "strategy" in order to avoid discovery.

Additionally, Movant heavily emphasizes the "private" nature of the communications it had with public officials and their staff. *See, e.g.*, Dkt 129-1 at 7, 8, 9. Yet, Movant essentially concedes that the information is public by suggesting Plaintiffs could obtain it through a public

records request. *See Sol*, 2013 WL 12098752, at *3. There is nothing private about external communications with public officials about matters of public concern, *see Sol*, 2013 WL 12098752, at *3, and even if there was, the First Amendment privilege does not turn on only whether the party claiming the privilege describes its communications as "private." Again, Movant cannot claim this information is protected from Plaintiffs' view when it has already communicated it to others outside of its organization, especially when those communications were made to public officials about legislation affecting matters of public concern.

Lastly, Movant claims, with little explanation, that the privilege applies because NWAAF is its "public policy opponent." Dkt. 129-1 at 6. In the case Movant cites for this proposition, *Apple Inc. v. Match Grp., Inc.*, No. 21MC80184YGRTSH, 2021 WL 3727067 (N.D. Cal. Aug. 19, 2021), Apple sought documents that pertained to an organization called the "Coalition for App Fairness," which was "engaged in a media and political campaign against Apple's policies," *id.* at *7, and "issue-related public advocacy [was] essentially all that the Coalition [did]," *id.* at *8. The Coalition engaged in federal and state lobbying efforts, and Apple even claimed that the Coalition was formed specifically to oppose Apple's control over the app distribution landscape. *Id.* at *2. Under these circumstances, Apple and the Coalition were "public policy opponent[s]." *See id.* at *8. By contrast, NWAAF is not a registered lobbyist in the state of Idaho, nor has it ever testified in front of the Idaho legislature. Declaration of Iris Alatorre ("Alatorre Dec.") ¶¶ 8–9. Unlike the lobbying and advocacy coalition at issue in *Apple*, NWAAF is a service provider that is directly regulated by the challenged law. *Id.* at 5. While Movant and NWAAF have different positions on the topic of abortion, that does not mean discovery is foreclosed any time parties have differing ideological viewpoints.

Movant has not made a prima facie showing of First Amendment infringement, and the First Amendment privilege does not protect the requested information from disclosure.

B. Even If Movant Can Make a Prima Facie Showing, the Balancing of Interests Favors Disclosure.

Even if the Court determines that the First Amendment is implicated, the Court has already found that the information sought is highly relevant to Plaintiffs' interstate travel claim. Dkt. 108 at 12. In determining whether the interest in disclosure outweighs the harm, courts consider whether "the information sought is highly relevant to the claims or defenses in the litigation." *Perry*, 591 F.3d at 1161. Courts may also balance "the importance of the litigation, . . . the centrality of the information sought to the issues in the case, . . . the existence of less intrusive means of obtaining the information, . . . and the substantiality of the First Amendment interests at stake." *Id.* (citations omitted).

First, the information sought is highly relevant to the needs of the case. Plaintiffs are asserting that the Abortion Travel Ban violates their right to interstate travel. Idahoans' right to travel is a fundamental one, long protected by the Constitution. *Saenz v. Roe*, 526 U.S. 489, 503 (1999). This right includes "the right to go from one place to another, including the right to cross state borders while en route." *Id*. at 500 (citing *Edwards v. California*, 314 U.S. 160 (1941)). This right to freely cross interstate borders for lawful purposes is a vital one that has transformed our "many States into a single Nation." *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality).

A violation of the right to travel can be demonstrated by showing that the primary objective of the law was to impede travel. *Soto-Lopez*, 476 U.S. 898, 903; *Yellowhammer Fund v. Marshall*, 776 F. Supp. 3d 1071, 1101 (M.D. Ala. 2025); *see also United States v. Guest*, 383

U.S. 745, 760 (1966). "RLI's communications and materials provided to Idaho legislators and legislative staff about that legislation are highly relevant to that issue, as it is evidence of the primary objective for enacting the statute." Dkt. 108 at 13. The narrowed request seeks information about what legislators were responding to when they passed the challenged law and may shed light on whether the passage of the Abortion Travel Ban was motivated by the desire to impede travel across state lines. *See Mi Familia Vota*, 343 F.R.D. at 90 (finding that Republican Party of Arizona communications were relevant in a voting rights lawsuit, "given the RPA's close relationship with relevant lawmakers and advocacy in support of the bill, materials bearing on whether the RPA knew (or expected) that S.B. 1485 would affect particular racial groups more than others could provide circumstantial evidence that lawmakers (some of whom are members of the RPA) possessed the same knowledge or opinion"); *id.* at 90–91 (finding that communications between the Republican Party of Arizona and various government officials were relevant "contemporary statements" for demonstrating animus); *In re Kincaid*, No. 22-MC-0067-JEB-RMM, 2023 WL 5933341, at *7 (D.D.C. Aug. 9, 2023), *report and recommendation adopted*, No. 22-MC-0067-JEB-RMM, 2023 WL 6459801, at *1 (D.D.C. Oct. 4, 2023) (finding that communications between lawmakers and the National Republican Redistricting Trust were not subject to the First Amendment privilege because the plaintiffs were alleging that Texas redistricting was motivated by intentional discrimination, and that it was "clear that testimony from NRRT about its internal and external communications and activities may shed light on any potential discriminatory motives involved in the drawing of those congressional maps").

Each category of information identified in the privilege log contains information that is relevant to the right to travel claim. The first category, logistical/scheduling communications, could contain information regarding the frequency of the contacts between legislators and

Movant. This information could, at the discovery stage, assist in further bolstering Plaintiffs' claims that this legislation was drafted and forwarded by Movant and NRLC for the purpose of limiting Plaintiffs' constitutional rights. The second, third, and fourth categories, *see supra* at 7, clearly could shed light on whether the primary objective of the law was to impede travel. As this Court has explained:

> Communications and materials provided to Idaho legislators and legislative staff concerning H.B. 242 or H.B. 98 bear directly on the issue of whether the passage of the legislation at issue was motivated or intended to impede interstate travel. The information is therefore important to the litigation and central to the issues presented in this case.

Dkt. 108 at 12.

This Court also previously acknowledged that evidence relating to legislators may be relevant to the right to travel claim when it ruled on the Attorney General's motion to dismiss. *See Matsumoto v. Labrador*, 701 F. Supp. 3d 1069, 1077 (D. Idaho 2023) ("The legislative materials quoted in the Complaint are evidence going to show that Idaho Code Section 18-623 was enacted for the purpose of prohibiting and deterring interstate travel."). Movant (and the NRLC) may have had a role in the Abortion Travel Ban's passage. *See Matsumoto v. Labrador*, 122 F.4th 787, 795 (9th Cir. 2024) (explaining that during a hearing on the Abortion Travel Ban, "the legislation's sponsor ceded his time to a lobbyist from Right to Life of Idaho"); *National Right to Life Committee Proposes Legislation to Protect the Unborn Post-Roe*, National Right to Life Committee (June 15, 2022), https://nrlc.org/communications/national-right-to-life-committee-proposes-legislation-to-protect-the-unborn-post-roe/ (last accessed Feb. 13, 2026); James Bopp, Jr. et al., *NRLC Post-Roe Model Abortion Law Version 2*, The Bopp Law Firm, PC, at 16 (July 4, 2022), https://nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-Version-2-1.pdf (last accessed Feb. 13, 2026) (recommending language that is nearly identical to

Idaho's Abortion Travel Ban as a strategy to prevent travel to states with more favorable abortion laws). The information sought is highly relevant and central to the issues in the case. *See Perry*, 591 F.3d at 1161.

Movant's reliance on *Mi Familia Vota* and *La Union del Pueblo Entero* to insist the legislative privilege applies overstates both the holdings of those cases and their applicability here. Although *Mi Familia Vota* acknowledged that a legislator may in some circumstances assert legislative privilege when not the subpoenaed party, the court expressly declined to decide whether state legislative privilege extends to subpoenas served on third parties for communications with legislators because that issue had not been briefed, and prior cases concerned subpoenas directed to legislators themselves. *Mi Familia Vota v. Noble*, No. CV-21-01423-PHX-DWL, 2024 WL 4371943, at *1 (D. Ariz. Oct. 2, 2024). Movant also omits the procedural steps that drove the result: the plaintiffs first subpoenaed legislators directly, the legislators produced a privilege log identifying 38 third-party communications withheld under legislative privilege, and only after the motion to compel failed did plaintiffs attempt to obtain those same documents from the third parties. *Id.* at *6. The court then conducted an in-camera review and applied a balancing test before permitting limited withholding. *Id.*

Likewise, *La Union* held only that a third party may assert privilege where it acts "at the direction of, instruction of, or for the legislator," analogous to a legislative aide. *La Union del Pueblo Entero v. Abbott*, 93 F.4th 310, 322 (5th Cir. 2024). Nothing in the record establishes that Movant functioned as an entity akin to a legislative aide rather than an outside advocacy organization engaged in lobbying activity. This distinction is dispositive because legislative privilege protects legislative acts, not private advocacy designed to influence them.

Nor does this Court's prior order regarding Representative Ehardt's subpoena foreclose Plaintiffs' subpoena on Movant. The Court emphasized the breadth of the Ehardt subpoena, which sought "all documents" and "all materials" relating to conceptual legislation and included communications among "any lawmaker," state agencies, and multiple outside actors. Dkt. 115 at 4. On that basis, the Court concluded the subpoena squarely targeted core legislative functions—drafting and proposing legislation—falling within legitimate legislative activity. *Id.* at 5 (citing *Mi Familia Vota v. Hobbs*, 682 F. Supp. 3d 769, 777–82; *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 670 (D. Ariz. 2016)). The subpoena to Movant, by contrast, does not seek the universe of legislative activity but communications in the possession of a private organization who advocated for the enactment of the law. *See* Dkt. 108 at 12. Specifically, the subpoena now seeks only "[c]ommunications 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 12. Legislative privilege does not automatically attach merely because a legislator appears somewhere in the chain of communication; otherwise, any lobbying organization could make its advocacy immune from discovery by routing its communication through elected officials. Thus, any legislative privilege—combined with Movant's First Amendment interests—cannot outweigh Plaintiffs' demonstrated need for evidence concerning the law's purpose and operation.

Additionally, this Court agreed that requiring Plaintiffs to file numerous public records requests is not a more efficient or less intrusive means of obtaining the information: "Plaintiffs have attempted to obtain the discovery through other sources and have shown that other possible means of obtaining the information are not more efficient or less intrusive." Dkt. 108 at 13–14. As explained in Plaintiffs' previous opposition, Dkt. 87 at 11–12, the scope of disclosure

required by Idaho's public records law is not 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. But there is no guarantee that such an action would be resolved in a timeframe that accommodates a requestor's needs in an already pending lawsuit. That is likely why the law expressly provides that "[n]othing contained in this chapter shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and discovery governing such proceedings." *Id.* § 74-115(3). There is also no other source that can provide the level of relevant information about Movant's communications beyond Movant itself. *In re Kincaid,* 2023 WL 5933341, at *7 ("NRRT played a distinct role in the Texas redistricting, and there are no sources that can provide the level of relevant information about NRRT's communications and activities beyond NRRT itself.").

Finally, the factors involving "the importance of the litigation" and the substantiality of the First Amendment interests at stake also weigh in favor of disclosure. *See Perry*, 591 F.3d at 1161. This litigation is about important matters of public concern bearing upon a number of constitutional rights. *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, No. 16-CV-00236-WHO(DMR), 2018 WL 2441518, at *12 (N.D. Cal. May 31, 2018) (finding, under the second step of the Perry framework, that the First Amendment privilege did not apply to certain communications because they were highly relevant to the plaintiffs' RICO claims and because "[t]his litigation is unquestionably important, given the 'strong public interest on the issue of abortion on both sides of that debate'"). And the First Amendment interests at stake are insubstantial given that Plaintiffs are seeking communications with public officials, and Movant has shown no chilling of its First Amendment activities. *See supra* at 10.

Even if the Court finds that Movant has made out a prima facie showing, the information sought is nevertheless highly relevant—as this Court has recognized—and the balancing of interests favors disclosure.

II. The Information Sought in the Narrowed Request is Relevant.

Even if the First Amendment privilege does not apply, Movant continues to make the sweeping claim that *none* of the documents at issue are relevant in any way. Dkt. 129-1 at 15. As this Court found and as discussed *supra* at 14-15, the information Plaintiffs are seeking from Movant is relevant to the case. The scope of discovery under the Federal Rules is extremely broad. A relevant matter is "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). "[T]he question of relevancy should be construed 'liberally and with common sense' and discovery should be allowed unless the information sought has no conceivable bearing on the case." *Id.* at 610 (citation omitted). "District courts have broad discretion to determine relevancy." *Cleaver v. Transnation Title & Escrow, Inc.*, No. 1:21-CV-00031-BLW, 2022 WL 623251, at *2 (D. Idaho Mar. 2, 2022) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

As discussed *supra* at 13-15, the information sought is relevant, particularly in light of Plaintiffs' right to travel claim. Plaintiffs intend to prove that the "primary objective" of the Abortion Travel Ban was to impede travel, specifically the travel of trusted adults who help young people who are seeking lawful abortion care in another state. *Supra* at 12-14. Plaintiffs point to the equal protection context by way of example, as did this Court, which was "unpersuaded by the arguments of RLI and Defendant that legislative motive, and that of

individual legislators, is irrelevant to the right to travel claim and that the issues here are only ones of statutory construction." *See* Dkt. 108 at 13.[3] In the equal protection context, "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Thus, "[t]he legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 268. The inquiry in the right to travel context is similar—Movant may have circumstantial and direct evidence of the primary purpose of the law being to restrict travel. For these reasons and those discussed above, there can be no doubt the discovery is relevant.

III. Plaintiffs' Requests are Not Overbroad or Unduly Burdensome.

If there were any concern regarding the overbreadth of the previous requests sent to Movant, that concern has been alleviated by this Court further narrowing and carefully tailoring the request to only require Movant to produce those communications between itself and Idaho legislators or legislative staff concerning the legislation that would become the Abortion Travel Ban. Dkt. 108 at 12. Additionally, the temporal scope of the request is not overbroad because, as the privilege log demonstrates, communications between Movant and Idaho legislators or their staff were occurring as early as 2022. *See* Dkt. 129-3 at 2–3, 8–10. Additionally, "[s]tatements

[3] Movant urges this Court to reject its own previous reasoning and adopt the reasoning of the District Court for the District of Columbia, which granted the National Right to Life Committee's motion to quash a subpoena that was similar to the previous iteration of the subpoena here. *In re: Subpoena Served on National Right to Life Committee, Inc.*, Case No. 25-mc-159 (RJL) (D.D.C. Jan. 30, 2026). This Court and the D.C. Court have reached different conclusions about the relevance of the particular documents at issue. But this Court is the one deciding the ultimate issues in the case, not the D.C. District Court. Additionally, Plaintiffs intend to appeal the decision of the D.C. District Court.

made after the law's enactment can also be evidence of the legislators' intentions in drafting and supporting the bill to the extent that they may reveal past thoughts and feelings." *Sol*, 2013 WL 12098752, at *4. The narrowed request is not overbroad or unduly burdensome.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court deny Movant's motion to quash and order Movant to provide the requested documents within seven days of the date of this Court's order. P

DATED: February 13, 2026.

STOEL RIVES LLP

/s/ Wendy J. Olson
Wendy J. Olson

LEGAL VOICE

/s/ Wendy S. Heipt
Wendy S. Heipt
Kelly O'Neill

THE LAWYERING PROJECT

/s/ Jamila A. Johnson
Jamila A. Johnson
Paige Suelzle
Ronelle Tshiela

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 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:

James E.M. Craig
james.craig@ag.idaho.gov

Aaron M. Green
aaron.green@ag.idaho.gov

Brian V. Church
brian.church@ag.idaho.gov

/s/ *Wendy J. Olson*
Wendy J. Olson

WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: 208.389.9000

WENDY S. HEIPT (admitted pro hac vice)
wheipt@legalvoice.org
LEGAL VOICE
907 Pine Street, #500
Seattle, WA 98101
Telephone: 206.954.6798

KELLY O'NEILL, Bar No. 9303
koneill@legalvoice.org
LEGAL VOICE
P.O. Box 50201
Boise, ID 83705
Telephone: 208.649.4942

JAMILA A. JOHNSON (admitted pro hac vice)
jjohnson@lawyeringproject.org
THE LAWYERING PROJECT
900 Camp St., 3rd Floor, No. 1197
New Orleans, LA 70122
Telephone: 347.706.4981

PAIGE SUELZLE (admitted pro hac vice)
psuelzle@lawyeringproject.org
THE LAWYERING PROJECT
300 Lenora St., No. 1147
Seattle, WA 98121
Telephone: 347.515.6073

RONELLE TSHIELA
(admitted pro hac vice)
rtshiela@lawyeringproject.org
THE LAWYERING PROJECT
1525 S. Willow St., Unit 17 No. 1156
Manchester, NH 03103
Telephone: 347.429.9834

Attorneys for Plaintiffs

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

DECLARATION OF IRIS ALATORRE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO SECOND MOTION OF NON-PARTY RIGHT TO LIFE OF IDAHO, INC., TO QUASH SUBPOENA

I, Iris Alatorre, declare and state as follows:

1. I am over 21 years of age. I have personal knowledge of the facts contained in this declaration, and I am competent to testify about them. The statements within this Declaration are within my personal knowledge and are true and correct.
2. At all times pertinent to this Declaration, I have been a resident of the State of New Mexico.
3. I am a staff member of the Northwest Abortion Access Fund ("NWAAF"), where I serve as the Program Manager.
4. NWAAF is a non-profit entity comprised of a working board, paid staff, and trained volunteers. NWAAF provides emotional, financial, logistical, practical, and informational assistance to those who may become pregnant and need or choose to consider abortion as an option.
5. NWAAF functions as a service provider to the callers who contact us.
6. NWAAF operates in Idaho as well as in Washington, Oregon and Alaska. NWAAF is the only independent abortion fund serving the Pacific Northwest and covers the largest geographic area of any abortion fund in the United States.
7. As part of our commitment to reproductive autonomy, NWAAF provides our services to adult and minor callers, including minors in the state of Idaho.
8. NWAAF is not a registered lobbyist in the state of Idaho.
9. NWAAF has never testified before the Idaho legislature.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: February 13, 2026.

/s/ Iris Alatorre
Iris Alatorre

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 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:

James E.M. Craig
james.craig@ag.idaho.gov

Aaron M. Green
aaron.green@ag.idaho.gov

Brian V. Church
brian.church@ag.idaho.gov

/s/ *Wendy J. Olson*
Wendy J. Olson

WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000

WENDY S. HEIPT
(admitted pro hac vice)
wheipt@legalvoice.org
LEGAL VOICE
907 Pine St., #500
Seattle, WA 98101
Telephone: (206) 954-6798

KELLY O'NEILL, Bar No. 9303
koneill@legalvoice.org
LEGAL VOICE
P.O. Box 50201
Boise, ID 83705
Telephone: (208) 649-4942

JAMILA A. JOHNSON
(admitted pro hac vice)
jjohnson@lawyeringproject.org
LAWYERING PROJECT
900 Camp St., 3rd Fl., No. 1197
New Orleans, LA 70122
Telephone: (347) 706-4981

PAIGE SUELZLE
(admitted pro hac vice)
psuelzle@lawyeringproject.org
LAWYERING PROJECT
300 Lenora St., No. 1147
Seattle, WA 98121
Telephone: (347) 515-6073

RONELLE TSHIELA
(admitted pro hac vice)
rtshiela@lawyeringproject.org
LAWYERING PROJECT
1525 S. Willow St., Unit 17, No. 1156
Manchester, NH 03103
Phone: (347) 429-9834

Attorneys for Plaintiffs

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

DECLARATION OF WENDY J. OLSON IN SUPPORT OF PLAINTIFFS' OPPOSITION TO SECOND MOTION OF NON-PARTY RIGHT TO LIFE OF IDAHO, INC., TO QUASH SUBPOENA

I, Wendy J. Olson, declare as follows:

1. I am a partner at the law firm of Stoel Rives LLP and I am one of the attorneys representing Lourdes Matsumoto, Northwest Abortion Access Fund, and Indigenous Idaho Alliance ("Plaintiffs") in the above-captioned matter. As such, I have personal knowledge of the facts and statements contained in this declaration. I submit this declaration in support of Plaintiffs' Opposition to the Second Motion of Non-Party Right to Life of Idaho, Inc., to quash the subpoena served on it.
2. On January 30, 2026, counsel for Right to Life of Idaho, Inc., ("Movant") sent counsel for Plaintiffs Movant's objections to the subpoena demand permitted by this Court's order in Dkt. 108.
3. By agreement of the parties, counsel for Movant sent counsel for Plaintiffs Movant's privilege log on February 2, 2026.
4. On February 4, 2026, counsel for Movant and counsel for Plaintiffs met and conferred about Movant's objections.
5. Counsel for Movant, Joseph Maughon, represented to counsel for Plaintiffs that he could not narrow down the categories of documents that Movant claims the First Amendment privilege applies to.
6. Counsel for both Movant and Plaintiffs acknowledged that they could not reach an agreement and that Movant would proceed to file its motion pursuant to the Court's scheduling order.
7. On February 6, 2026, counsel for Movant sent counsel for Plaintiffs' an updated privilege log that corrected some minor errors.

I declare under penalty of perjury and the laws of the State of Idaho that the foregoing is true and correct to the best of my knowledge.

DATED: February 13, 2026

/s/ *Wendy J. Olson*
Wendy J. Olson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 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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/s/ Wendy J. Olson
Wendy J. Olson