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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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT [DKT 136]

INTRODUCTION

Plaintiffs have extensively briefed the legal and factual issues presented in this case through the motion to dismiss proceedings, preliminary injunction litigation, discovery disputes, Plaintiffs' motion for summary judgment, and Plaintiffs' opposition to Defendant's motion for summary judgment. Rather than restate those arguments, Plaintiffs submit this reply to address several discrete points raised in Defendant's opposition to Plaintiffs' motion for summary judgment that warrant limited additional response. Many of Defendant's arguments simply repackage positions this Court and the Ninth Circuit have already considered and rejected. Others mischaracterize Plaintiffs' claims, the evidentiary record, or the governing legal standards. The existing record and prior briefing readily resolve those issues. Plaintiffs focus this reply on the disconnect between the narrow law Defendant attempts to defend and the broader law Idaho actually enacted; the unrebutted record evidence demonstrating that Idaho Code § 18-623 fails strict scrutiny and chills protected interstate travel and expression; and Defendant's repeated attempts to recast both the statute and the factual record in ways unsupported by the text of § 18-623 or the evidentiary record.

ARGUMENT

I. There Is a Disconnect Between the Law Idaho Passed and the Law Defendant Seems to Defend.

Defendant's opposition repeatedly reframes Idaho Code § 18-623 as a narrow parental-rights measure regulating custodial interference with minors. But that is not the law Idaho enacted. Section 18-623 does not prohibit kidnapping, coercion, abuse, or removing a child from parental custody. It instead criminalizes speech, advocacy, expressive support, funding, accompaniment, and travel assistance connected to lawful out-of-state abortion care. The statute reaches adults who provide truthful information about lawful abortion, help arrange travel *requested* by a minor, provide temporary lodging *requested* by a minor, accompany a minor *requesting* accompaniment

across state lines, or otherwise support lawful medical care. The constitutional defects in § 18-623 arise from the activity the statute reaches,[1] not the narrower law Defendant now defines for purposes of this litigation. Defendant cannot resolve the statute's constitutional problems by describing a materially narrower law than the Legislature enacted. In context, Plaintiffs' accompaniment and support convey solidarity, safety, and assistance to vulnerable young people navigating reproductive decisions. Dkt. 136-2 at 17–22. The State recognizes the expressive significance of those acts: Identical transportation, lodging, or accompaniment provided to support childbirth or prenatal care would not trigger criminal liability. *Id.* at 8–10. Liability attaches only when the speech and expression facilitate abortion access. *Cf. Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002) ("[T]he policy does not merely prohibit the discussion of marijuana; it condemns expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient."). That content-based distinction confirms that § 18-623 regulates expression and expressive activity because of the message and association it embodies.

II. The Only Record Evidence Shows § 18-623 Is Not Narrowly Tailored to Advance Defendant's Asserted Interests.

Defendant is forced to argue that Plaintiffs' experts support his position because he failed to generate evidence supporting his own position during discovery. Dkt. 141 at 15. But, as demonstrated below, he cannot find support in Plaintiffs' experts' opinions because the evidentiary record overwhelmingly demonstrates that § 18-623 does not materially advance the State's asserted interests and instead predictably harms the very minors Defendant claims to protect. Critically, Defendant produced no expert testimony, empirical analysis, or factual evidence

[1] Plaintiffs extensively walk through the conduct criminalized with citations to the Ninth Circuit opinion in their Memorandum in Support of Plaintiffs' Motion for Summary Judgment 4–8, Dkt. 136-2.

showing that criminalizing trusted adults who assist minors in accessing lawful out-of-state abortion care improves parental relationships, protects minors from abuse, reduces coercion, or otherwise advances the State's asserted interests. Defendant instead relies on generalized appeals to parental authority while Plaintiffs' unrebutted experts—Dr. Amanda Stevenson and Dr. Rae Taylor—as described in the following paragraphs, demonstrate the opposite: Laws like § 18-623 isolate vulnerable young people, exacerbate abuse dynamics, delay care, and increase the risk of violence and harm. They are not equivalent to the parental notification or consent laws of the *Roe* era, which at least included judicial bypass procedures recognizing the harm parental involvement laws can cause to some minors. Section 18-623 lacks any such mechanism.

Dr. Stevenson, a demographer and sociologist who specializes in abortion policy and parental involvement laws, explains that decades of research directly undermine the State's core premise. Dkt. 136-21 ¶ 1. She concludes that "criminalizing adults who help minors access abortion care will hurt Idaho minors by severely restricting and delaying abortion care, causing them emotional harm, and ultimately preventing some young people from obtaining an abortion at all." *Id.* ¶ 4. Importantly, Dr. Stevenson explains that the overwhelming majority of adolescents already voluntarily involve a parent in abortion decision-making regardless of whether the law requires it. *Id.* ¶ 4, 11. The State, therefore, cannot show that § 18-623 meaningfully increases parental involvement because the unrebutted evidence demonstrates that most minors who can safely involve a parent already do so voluntarily.

Even more damaging to Defendant's tailoring argument, Dr. Stevenson explains that the minority of adolescents who do not involve parents generally have "rational and well-supported reasons" for that decision. *Id.* ¶¶ 4, 12–16. Those reasons include "fears of rejection, causing irreversible damage to their relationship with their parents, physical or emotional abuse, or being

forced to carry a pregnancy to term against their will." *Id.* ¶ 4. Each of these reasons is counter to the State's alleged interest. The literature she surveys repeatedly demonstrates that adolescents accurately predict parental reactions, and those who do not involve a parent frequently avoid disclosure because they reasonably fear abuse, abandonment, or coercion. *Id.* ¶ 14. Some adolescents reported parents explicitly threatening to "kick them out if they ever become pregnant." *Id.* ¶ 12. The evidentiary record shows that § 18-623 targets precisely those minors who seek trusted adults because they cannot safely involve their parents and may *destroy* the parent-child relationship. Defendant offers no evidence, and certainly no evidence to the contrary.

Dr. Stevenson further explains that parental involvement mandates do not achieve the benefits their proponents have claimed in the past, even when past laws had processes to bypass such requirements. Research spanning "multiple states over the last three decades" has found that parental involvement laws "do not change or improve parent-child relationships, decisional certainty or satisfaction, or parental support." *Id.* ¶ 16. Instead, forced parental involvement "exposes [adolescents] to harm, including abuse and abandonment." *Id.* ¶¶ 16–24. That conclusion is fatal to strict scrutiny. The State cannot satisfy narrow tailoring where the undisputed expert evidence shows the law does not actually advance the asserted interest and instead worsens outcomes for vulnerable minors. And while judicial bypass too causes problems for young people, Idaho does not even have a bypass mechanism for § 18-623. *Id.* ¶¶ 25–40.

Nor does the evidence support Defendant's theory that § 18-623 protects minors from coercion or exploitation. Dr. Rae Taylor's report demonstrates the opposite. Dr. Taylor is a criminologist and a sociologist with more than 26 years of experience working with victims and survivors of domestic violence. Dkt. 136-22, Ex. 1 at 1. Dr. Taylor explains that § 18-623 "will have a negative and disproportionate impact on minor victims of Intimate Partner Violence

("IPV") and Domestic Violence ("DV"), in part by enabling and exacerbating 'reproductive coercion.'" Dkt. 136-22, Ex. A ¶ 2. According to Dr. Taylor, the law "restrict[s] access to resources, sever[s] connections to community support, and deepen[s] the isolation of minor victims," thereby increasing the likelihood and severity of violence. *Id.*

Dr. Taylor identifies isolation as "a core tactic of abusers to exert power and control over their victims." *Id.* ¶ 7. Critically, isolation "silences or blocks affirming messages victims might receive from loved ones, their community, and—particularly relevant here—trusted adults who could help them escape an abusive situation." *Id.* Section 18-623 does precisely that: It criminalizes trusted adults who provide transportation, assistance, information, accompaniment, or logistical support to minors seeking lawful abortion care. Rather than disrupting abusive dynamics, the statute strengthens them by cutting minors off from outside support systems.

Dr. Taylor further explains that "[r]eproductive coercion is a frequent component of coercive control." *Id.* ¶ 8. Such coercion includes "sabotaging or preventing an abortion—for example, by restricting a victim's access to travel, money, or medical care." *Id.* ¶ 9. Yet Defendant seeks to criminalize precisely the individuals who might help minors overcome those barriers. Dr. Taylor expressly concludes that § 18-623 "increases the power of abusers." *Id.* ¶ 11. By "restricting trusted adults from traveling with young people or assisting them in obtaining lawful abortion care," the law "fortifies the control abusers already exert" and "erects additional barriers for victims attempting to escape or resist coercive relationships." *Id.*

Dr. Taylor cites emerging post-*Dobbs* research demonstrating increased IPV and homicide associated with abortion restrictions. One study found "rates of IPV against women and girls of childbearing age have increased by 7–10% with the rise linked to their distance from abortion care." *Id.* ¶ 12. Another study documented "a 3.4% increase in IPV-perpetrated homicides of

pregnant girls and women since Dobbs." *Id.* Dr. Taylor explains that pregnancy itself increases the risk of violence and that, "[f]or roughly one-third of pregnant women who experience IPV or DV, the abuse begins with pregnancy." *Id.* ¶ 13. Some young people can "reduce or prevent such violence by covertly obtaining abortion care," but Idaho's law "is likely to foreclose that option." *Id.* The unrebutted record therefore demonstrates that the statute does not protect vulnerable minors from violence; it increases their exposure to it.

Defendant's asserted interest in protecting "unborn life" does not salvage the statute under strict scrutiny. Idaho may prohibit abortions within Idaho to advance that interest, and it already does. But § 18-623 specifically targets assistance connected to *lawful* abortions obtained in *other* states.[2] Plaintiffs' assistance concerns information, support, transportation, accompaniment, housing, and logistical aid connected to interstate travel for lawful out-of-state medical care. Defendant identifies no evidence demonstrating that criminalizing such assistance materially advances Idaho's asserted interest in unborn life, particularly where Idaho cannot prohibit the underlying out-of-state procedure itself.

The statute's breadth further confirms the absence of narrow tailoring. Section 18-623 applies regardless of whether the trusted adult is a counselor, advocate, family friend, relative, clergy member, or survivor-support provider. It applies even where a minor reasonably fears abuse or abandonment from their parent. It applies even where the assistance concerns lawful medical care in another state. And it operates despite the existence of numerous less restrictive laws already

[2] Defendant states: "Plaintiffs do not address how their theory applies where an abortion would take place in a state, such as Idaho, where the abortion, in addition to the interference, is illegal." Dkt. 141 at 19 (citing abortion laws in Utah and Tennessee). Plaintiffs have made abundantly clear throughout this litigation that their speech and assistance support only lawful abortion care, and that a substantial number of the law's applications are unconstitutional because they cover expressive activities that favor lawful abortion.

addressing abuse, coercion, kidnapping, assault, trafficking, custodial interference, and exploitation. Defendant produced no evidence explaining why those laws are insufficient or why criminalizing trusted adults who help minors obtain lawful out-of-state medical care is necessary.

Most importantly for summary judgment, Defendant did not submit any expert testimony disputing Dr. Stevenson's or Dr. Taylor's conclusions. Nor did Defendant identify empirical evidence showing that laws like § 18-623 improve family relationships, reduce abuse, protect minors from coercion, or otherwise materially advance the State's asserted interests. Defendant cannot manufacture a genuine dispute of material fact through attorney argument alone. *Turner Broad. Sys., Inc. v. F.C.C.*, is instructive. 512 U.S. 622 (1994). In *Turner,* the Supreme Court explained that although legislative judgments may be entitled to deference, courts must still exercise "independent judgment of the facts bearing on an issue of constitutional law" and ensure that the government "has drawn reasonable inferences based on substantial evidence." *Id.* at 666 (citation omitted). The Court emphasized that this obligation is particularly important where First Amendment rights are implicated, because the government must be able to "adduce either empirical support or at least sound reasoning on behalf of its measures." *Id.* (quoting *Century Commc'ns Corp. v. F.C.C.*, 835 F.2d 292, 304 (D.C. Cir. 1987)). Here, Defendant offers neither. On this record, no reasonable fact-finder could conclude that § 18-623 survives strict scrutiny.

Defendant's arguments also reflect flawed reasoning in their use of legal citations. First, *Mirabelli* does not alter the strict scrutiny analysis here. The parental-rights cases, like *Mirabelli*, on which Defendant relies concern limits on *governmental interference* with the parent-child relationship, particularly in schools and other state-controlled settings. *See Mirabelli v. Bonta*, 146 S. Ct. 797, 802 (2026) (challenging *state* policies that limited what state teachers could tell parents about a child's gender identity expressions in the classroom); *Stanley v. Illinois*, 405 U.S. 645, 647

(1972) (involving *state* discrimination against unwed fathers in dependency proceedings); *Calabretta v. Floyd*, 189 F.3d 808, 810–12 (9th Cir. 1999) (involving *state's* warrantless entry into a home during child abuse investigation). These cases do not give carte blanche to the State to infringe the speech of private actors on behalf of parents. And Section 18-623 certainly does not regulate state actors supervising children on the State's behalf or involve other "state" intrusions. The challenged law instead imposes criminal liability on private individuals, despite Idaho already having less restrictive laws addressing abuse, coercion, kidnapping, and custodial interference that would serve the State's alleged interests while leaving Plaintiffs free to engage in constitutionally protected speech, expressive conduct/association, and travel.

Parham v. J.R. is also easily distinguishable. 442 U.S. 584 (1979). While *Parham* involved a system designed to facilitate medical care through neutral professional review in circumstances often involving well-meaning parents seeking treatment, § 18-623 imposes criminal penalties that broadly deter third parties from assisting vulnerable minors in circumstances where it is more likely that forced parental involvement may itself be dangerous. *See id.* at 603. Here, unlike in *Parham*, the unrebutted evidence demonstrates that minors often decline to involve parents precisely because of abuse, coercion, violence, abandonment, or fear of serious harm, and that the majority of minors who can do involve parents. *Bellotti v. Baird* likewise does not support § 18-623. 443 U.S. 622 (1979). *Bellotti* addressed whether a state could require parental involvement before a minor obtained an abortion, while also recognizing that some minors cannot safely or reasonably involve a parent and therefore required parental involvement laws to contain a judicial bypass procedure. *Id.* at 643–44. Here, there is no bypass option for a law that particularly targets those with unsafe relationships with parents.

III. The Only Record Evidence Shows Plaintiffs' Travel Has Already Been Chilled.

Supreme Court precedent supports Plaintiffs' right-to-travel claim. *Edwards v. California*, 314 U.S. 160 (1941). On January 3, 1940, Fred Edwards drove across the California-Arizona border with a passenger in his car—his down-on-his-luck brother-in-law Frank Duncan. *Id.* at 170–71. Duncan had entered Edwards' car in Spur, Texas, with $20. *Id*. at 171. By the time they reached California, it had all been spent. *Id.* For the first 10 days Duncan resided in California, he secured no employment. *Id.* No one could deny that Duncan was indigent, or that Duncan's indigency would become a big problem for Edwards. *Id.* On Duncan's 10th day as a new California resident, Edwards became the subject of a complaint for violating a California law that provided no person could "bring[] or assist[] in bringing" into California any indigent person who was not already a resident of California if he knew that person was indigent. *Id.* Following trial, a court sentenced Edwards to six months' imprisonment. *Id.* On appeal, the Supreme Court rejected California's attempt to criminalize Edwards' assistance. *Id.* at 177. Idaho's effort to criminalize Plaintiffs' assistance to individuals traveling interstate for lawful medical care should fare no better. The case is well-analogized by Plaintiffs already. Dkt. 139 at 35. But it bears repeating that like the California law invalidated in *Edwards*, § 18-623 criminalizes the person providing the assistance to engage in interstate movement. Just as the statute at issue in *Edwards* did not criminalize Duncan for crossing state lines, only Edwards, § 18-623 does not prohibit a minor from crossing state lines but could lead to imprisonment for Plaintiffs.

The parallel is especially striking because both statutes single out assistance tied to a disfavored category of travelers or travel purposes. California sought to exclude indigent migrants entering the state during the Depression era. Idaho seeks to impede interstate travel connected to lawful out-of-state abortion care. In each instance, the statute operates by attaching criminal consequences to otherwise ordinary acts of assistance—driving, accompanying, housing, or

helping another person cross state lines—because of the identity, condition, or purpose associated with the traveler. Had Edwards driven his brother-in-law into California for a socially approved reason, no prosecution would have followed. Likewise, if Plaintiffs provided transportation, lodging, or accompaniment to assist a minor seeking prenatal care, childbirth services, or another lawful medical appointment, § 18-623 would not apply.

The undisputed record demonstrates that § 18-623 has already chilled *Plaintiffs'* exercise of constitutionally protected interstate travel-related activities. Plaintiffs presented evidence that they altered, suspended, or abandoned planned assistance connected to interstate travel because of the statute's threat of criminal liability. Dkt. 136-1 ¶¶ 21–22, 39–49. That chilling effect constitutes a cognizable constitutional injury. Plaintiff Matsumoto testified that, after Idaho's abortion laws changed, she began taking concrete steps toward assisting pregnant Idaho minors, including preparing materials, coordinating with advocates, and planning to provide transportation, accompaniment, and logistical support to minors traveling out of state for lawful abortion care. *Id.* ¶¶ 20–21. But after Idaho enacted § 18-623, she stopped those efforts because of the threat of prosecution. *Id.* ¶ 22. Similarly, NWAAF presented undisputed evidence that it previously drove with Idaho minors seeking abortion care and accompanied minors who requested assistance across state lines to obtain medical care. *Id.* ¶ 44. Likewise, IIA presented evidence that it crosses the border for medical care with adults and would like to do with minors. *Id.* ¶¶ 43, 46. Plaintiffs curtailed, suspended, or have not started these activities because § 18-623 exposes them to criminal liability for engaging in them. This constitutes a cognizable injury and infringes *their* right to travel. This Court need not reach the issue of whether young people have travel rights.

The Court also need not reach the question of whether minors have a constitutional right to travel under the predominant purpose test. The purpose of the statute is well-documented. *See*

Dkt. 136-2 at 30–32; Dkt. 136-1 ¶¶ 1–10. It is clear to Plaintiffs, and likely to this Court, that the travel § 18-623 seeks to interfere with is that of the minor *and* the adult who travels with the minor.[3]

IV. Defendant's Misunderstanding of Pre-Enforcement Standing Does Not Create A Credibility Dispute Precluding Summary Judgment.

As Plaintiffs seek to litigate the scope of the restrictions imposed by § 18-623 and challenge the statute's effects on their First Amendment rights, Fourteenth Amendment rights, and right to travel, Defendant has publicly characterized them as "radicals," "strange adults," and kidnappers. *See* Dkt. 136-1 ¶ 74; Dkt. 7-1 at 8, 10, 37 (Appellant's Opening Br. (9th Cir. Dec. 20, 2023)); Dkt. 43-1 at 13, 15 (Appellant's Reply Br. (9th Cir. Feb. 7, 2024)). Defendant repeatedly portrays Plaintiffs as ideological actors while simultaneously faulting them for exercising caution before they engage in expressive activities that may expose them to criminal penalties under a disputed and actively litigated statute. Defendant's disparagement of Plaintiffs demonstrates why they may need to approach activity arguably prohibited by the statute with caution. There is nothing "sheepish" about that. Dkt. 141 at 4. Plaintiffs have already been required to seek protection from this Court in response to Defendant's repeated efforts to chill their activities through suggestions of additional, unsupported criminal exposure. *See* Dkt. 79-2 at 12–17. Plaintiffs' caution is therefore unsurprising and entirely reasonable.

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[3] To the extent that the Court follows Defendant's arguments that the inferences between the National Right to Life Committee documents and the predominant purpose of the law are too speculative—a position Plaintiffs find unsupported—Plaintiffs remind the Court that several forms of discovery were limited to Plaintiffs, but the Court reserved its ability to reconsider its rulings if sufficient evidence could not be obtained through other means. If the Court finds that Plaintiffs' evidence of primary objective is insufficient on their right-to-travel claim, Plaintiffs renew their request to depose the legislation's sponsor, Rep. Barbara Edhardt, or to obtain an order compelling Right to Life, Idaho to produce its correspondence with lawmakers. Additionally, Plaintiffs have separately proven that § 18-623 has "actually deterred" their travel, which is another way of demonstrating a right-to-travel violation, independent of the primary objective test.

But Plaintiffs' caution is not legally relevant to standing. Plaintiffs are not required to violate the statute, admit an intent to violate it, or subject themselves to prosecution before seeking pre-enforcement review. Defendant incorporated by reference the standing arguments from his own summary judgment motion in opposing Plaintiffs' motion. Dkt. No. 141 at 4. As Plaintiffs explained in opposing Defendant's motion, Defendant advances a theory of standing far more demanding than Article III permits. Dkt. 139 at 3. This Court has already rejected Defendant's position:

> Plaintiffs are not required to establish that they have or will violate the challenged law. *Arizona v. Yellen*, 34 F.4th 841, 849 (9th Cir. 2022) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014) ("Nothing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law."); *MedImmune, Inc. v. Genentech*, Inc., 549 U.S. 118, 129 (2007); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd*., 561 U.S. 477, 490 (2010)); *see also Matsumoto*, 122 F.4th at 797–802.

Order 8, Dkt. 95.

The Supreme Court's decision in *303 Creative LLC v. Elenis* further illustrates how Defendant demands far too high of a standard for pre-enforcement standing. 600 U.S. 570 (2023). In *303 Creative LLC*, the plaintiff was a Colorado business owner who offered website and graphic design services. *Id.* at 579. She intended to expand her business to include creating wedding websites for couples, but she did not carry out her plans because she was worried, under Colorado's Anti-Discrimination Act ("CADA"), that if she entered into the wedding website business, the state would force her to convey messages inconsistent with her belief that marriage should be reserved to unions between one man and one woman. *Id.* at 580. In other words, if asked, she wished to refuse to create wedding websites for gay couples if she were to launch that part of her business, but she was concerned CADA prohibited her refusal. *See* Compl., *303 Creative LLC v. Elenis*, No. 1:16-cv-02372-PAB (Sept. 20, 2016) ¶¶ 144–45, 173, 175, Dkt. 1. As a result, the

plaintiff brought a pre-enforcement action against CADA, claiming the law violated her First Amendment rights. Notably, the plaintiff in *303 Creative* had not yet begun providing wedding website services, did not allege that any gay couples had specifically requested that she create a website for them, and had not yet refused services to anyone in violation of CADA. 600 U.S. at 581–83; *see generally* Compl., *303 Creative LLC*, No. 1:16-cv-02372-PAB. Yet, the U.S. Supreme Court did not question her standing. *See* 600 U.S. at 583. The plaintiff in *303 Creative* exercised similar caution that Defendant condemns Plaintiffs for exercising here.

Like the plaintiff in *303 Creative*, Matsumoto has concrete plans to assist pregnant minor Idahoans seeking abortion care and would like to expand her legal practice to include advising individuals on their reproductive options but has been thwarted from acting on these plans for fear of violating the challenged law. Dkt. 136-1 ¶¶ 20–24. Similarly, IIA's organizer has driven adults across state lines and would like to start helping minors obtain abortion care across state lines, but IIA is unable to start doing so because of § 18-623. *Id.* ¶ 46 (citing Dkt. 136-18 ¶ 28). And there is no question that NWAAF has helped Idaho minors in the past and would like to continue doing so in the future. Dkt. 136-1 ¶¶ 33, 44–45. Just as the plaintiff in *303 Creative* did not need to await a same-sex couple's request to challenge Colorado's law, Plaintiffs here need not wait for a specific minor's request to challenge § 18-623. If standing existed there, it exists here.

Even after this Court clarified that Plaintiffs need not violate the statute to establish standing, Defendant continued to frame discovery around whether Plaintiffs could definitively establish that their conduct would trigger criminal liability, rather than around the statute's chilling effects on Plaintiffs' speech, association, and travel. Plaintiffs seek to continue, resume, or commence activities that may implicate § 18-623 while avoiding prosecution under a criminal statute whose scope Defendant himself continues to litigate. Plaintiffs' caution does not create a

genuine dispute of material fact. If anything, it underscores the existence of a credible threat of enforcement sufficient to establish standing. *See* Dkt. 139 at 3–12.

V. Plaintiffs' Statement of Facts Properly Summarizes and Cites the Record Evidence.

Defendant's objection to Plaintiffs' Statement of Facts is somewhat perplexing. A statement of facts is a roadmap to the evidence, not the evidence itself. Plaintiffs' Statement of Facts (Dkt. 136-1) summarizes and cites admissible evidence in the record, including sworn declarations, expert reports, exhibits, and deposition testimony. *See* Fed. R. Civ. P. 56(c)(1)(A). Defendant's disagreements with Plaintiffs' factual assertions from the evidence do not justify disregarding the underlying record evidence itself and do not create genuine disputes of material fact where Defendant offers no contrary evidence. Defendant's evidentiary objections (*see* Dkt. 141-1) are deeply misplaced, incomplete and incomprehensible at best, and a quick review will show that they are unfounded.[4] Take, for instance, Defendant's repeated assertion that much of Plaintiffs' evidence constitutes hearsay. *See* Dkt. 141-1 at 1–4. There is no basis for this objection, as Plaintiffs testified from their own knowledge and experience regarding what they have done in the past and what they would like to do in the future but for § 18-623. Moreover, where Defendant objects based on what Plaintiffs assert others have told them and that then forms the basis for Plaintiffs' conduct or desired conduct, those statements are nonhearsay offered for impact on the listener and basis for subsequent action. *See, e.g., United States v. Lopez*, 913 F.3d 807, 826 (9th Cir. 2019) (citing *United States v. Payne*, 944 F.2d 1458, 1472 (9th Cir. 1991)).

Defendant also makes several "speculation" objections, but, as discussed above, Plaintiffs are allowed to state what they intend to do in the future but are prevented from doing under § 18-

[4] Defendant also makes a disparaging mischaracterization of NWAAF's deposition testimony regarding the term "procure." *See* Dkt. 141 at 7–8. If anything, NWAAF's testimony describing its confusion with the term "procure" only further underscores the word's vagueness. *See id.*

623—that is the entire purpose of pre-enforcement standing. Nor is this speculation. Plaintiffs are setting out their present intent to act depending on the constitutionality and enforceability of § 18-623. Finally, Defendant objects on foundation grounds to citations to Plaintiffs' experts' opinions and to Plaintiffs' use of the term "trusted adult." Dkt. 141-1 at 1–4. These objections are unclear and argumentative rather than proper objections. Each Plaintiff sets forth the foundation for its statements that it interacts with minors, and, based on their experience, what others they interact with understand about their conduct.[5] It is based on their personal experience. Moreover, where pregnant minors or community advocates reach out to Plaintiffs, or Plaintiffs make known that they are available for such outreach, the only reasonable inference is that those who reach out to them are "trusted" for the purpose of the outreach. And Plaintiffs' experts set forth the foundation for their statements, as is made clear by the Statement of Fact citations to which Defendants object. The Court can review the record evidence and properly determine whether such foundation exists. It does. Defendant's evidentiary objections lack merit.

CONCLUSION

For the reasons stated above, as well as those set forth in Plaintiffs' Motion for Summary Judgment and Plaintiffs' Opposition to Defendant's Motion for Summary Judgment, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Summary Judgment.

[5] Defendant makes several objections with the phrase "[h]earsay and Foundation as to how this is understood." Dkt. 141-1 at 2–3. This is plainly a cut-and-paste objection, including in many (un-numbered) entries where the word "understood" does not appear in the Undisputed Fact. *See* Dkt. 136-1 ¶¶ 34, 38–42.

DATED: May 21, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 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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