

WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
ALAINA HARRINGTON, Bar No. 11879
alaina.harrington@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: 208.389.9000

LINDSAY C. HARRISON (*admitted pro hac vice*)
lharrison@jenner.com
JESSICA RING AMUNSON (*admitted pro hac vice*)
jamunson@jenner.com
SOPHIA W. MONTGOMERY (*admitted pro hac vice*)
smontgomery@jenner.com
RUBY C. GIAQUINTO (*admitted pro hac vice*)
rgiaquinto@jenner.com
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
Telephone: 202.639.6000

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ST. LUKE’S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General of the
State of Idaho,

Defendant.

Case No. 1:25-cv-00015-BLW

**PLAINTIFF’S MOTION FOR ENTRY
OF PROTECTIVE ORDER**

St. Luke’s Health System, Ltd. (“Plaintiff”) moves the Court for entry of a protective order in the form submitted as **Exhibit 1**. Federal Rule of Civil Procedure 26(c)(1) permits a court, upon a showing of good cause, to enter a protective order requiring that certain

information be produced only in a specified way. For the reasons set forth below, good cause exists for entry of the proposed protective order.

INTRODUCTION

This case concerns a federal law mandating the provision of emergency stabilizing health care to pregnant patients in need, and the Idaho state law that conflicts with that mandate by prohibiting a wide swath of pregnancy terminations. These issues carry extraordinary privacy, safety, and reputational concerns. Defendant, meanwhile, seeks discovery related to St. Luke's history of providing pregnancy terminations. Because the central dispute in this case is over the breadth of Idaho law, and because Idaho officials maintain the right to second guess medical providers' good faith judgment about whether a pregnancy termination is necessary, producing the discovery sought raises liability concerns for the medical professionals who provide this care. Many are employed by St. Luke's Health System or provide services at their emergency rooms throughout Idaho. While the parties agree that entry of a protective order in this case is appropriate, they disagree with respect to the degree of protection to be provided to these providers and their patients.

St. Luke's seeks a protective order with a provision agreeing that the parties will not use discovery provided in this case to investigate or impose liability on those involved in providing health care where termination of the pregnancy is the appropriate treatment. It reads:

Moreover, the Parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.

Ex. 1 at § 11.

The Defendant objects to that provision. For the reasons set forth below, such a provision is proper in this case.

BACKGROUND

St. Luke's filed this action on January 14, 2025, seeking to enjoin enforcement of § 18-622 insofar as it prohibits the stabilizing care that the Emergency Medical Treatment and Labor Act ("EMTALA") requires. St. Luke's brought equitable and Declaratory Judgment Act claims against Idaho Attorney General Raúl Labrador, in his official capacity. ECF No. 1. This Court entered a preliminary injunction in this case on March 4, 2025. ECF No. 33. Per this Court's May 7, 2025, Order, Plaintiff proposed a protective order on May 21, 2025. *See* ECF No. 58. The parties have negotiated and exchanged multiple drafts since that time, but have been unable to agree on a protective order. Declaration of Wendy J. Olson ("Olson Decl."), Exs. A-D. While the parties have narrowed their disputes, they are not in agreement on one term. St. Luke's has proposed that the protective order include a provision that the parties agree they will not seek or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for those purposes. Defendant has objected to that provision. *Id.*, Ex. C, Ex. D at 1, 2.

ARGUMENT

Generally, the public is permitted "access to litigation documents and information produced during discovery." *In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) (citations omitted). However, if good cause exists, a court may "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* (quoting Fed. R. Civ. P. 26(c)(1)). When considering a motion for a non-stipulated protective order, a court proceeds in two steps. *Health Freedom Def. Fund, Inc. v. US*

Freedom Flyers, Inc., No. 4:23-CV-00380-AKB, 2025 WL 1573525, at *6 (D. Idaho June 4, 2025). First, a court must determine if a “particularized harm will result from disclosure of information to the public.” *Id.* (quoting *In re Roman Cath. Archbishop*, 661 F.3d at 424); see also *Moore v. Battelle Energy All., LLC*, No. 4:21-CV-00230-CRK, 2023 WL 1767391, at *4 (D. Idaho Feb. 3, 2023) (“party must demonstrate good cause that information to be produced in discovery is confidential or warrants protection”). Second, if such harm will result from disclosure, then the court proceeds to balance “the public and private interests to decide whether [maintaining] a protective order is necessary.” *In re Roman Cath. Archbishop*, 661 F.3d at 424 (citation omitted). District courts “have broad discretion to determine whether a protective order is appropriate and, if so, what degree of protection is warranted.” *Heitkoetter v. Domm*, No. 1:22-CV-0368-AWI-BAM, 2023 WL 122041, at *5 (E.D. Cal. Jan. 6, 2023) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Protection of nonparty personal information, including personally identifiable information and health information, is particularly important “because disclosure of sensitive and potentially embarrassing information would cause serious injury to the nonparty, whose conduct is not at issue in the case.” *Moore*, 2023 WL 1767391, at *4 (citation omitted).

Here, the parties agree that a protective order is appropriate to allow Plaintiff to maintain the confidentiality of its business records, which may include sensitive medical and personal information of nonparties to this litigation, i.e., information regarding the care of people seeking emergency medical treatment for pregnancy complications. The purpose of the proposed protective order therefore includes providing Defendant access with relevant information while protecting the significant privacy interests of patients and providers who are not party to this litigation and to protect other confidential and proprietary business information of St. Luke’s.

Defendant apparently agrees that such a protective order is appropriate but does not agree on the scope of that protective order or whether it should preclude use of information acquired in discovery for purposes other than litigation of this case. Thus, as to the second step, the Court must balance the public and private interests and determine what degree of protection is warranted.

The protective order Plaintiff seeks would ensure that material produced in discovery is not used for purposes other than the litigation in this case, i.e., to investigate or prosecute persons for violation of Idaho Code §18-622 or other criminal statutes. There is significant public interest in protecting third parties from collateral criminal or administrative consequences where information is disclosed solely in litigation in which they are not involved. *See, e.g., United States v. Heine*, 314 F.R.D. 498 (D. Or. 2016) (the State generally cannot use civil discovery to build a criminal case).

In addition, until recently, reproductive health information was afforded extra protection by federal regulation. 45 C.F.R. § 164.502(a)(5)(iii) (prohibiting a covered health care entity from disclosing protected health information potentially related to reproductive health care information if the information will be used to conduct a criminal, civil or administrative investigation of any person for the mere act of, inter alia, providing or facilitating reproductive health care). This regulation was declared invalid in *Purl v. HHS*, 787 F.Supp.3d 284 (N.D. Tex. June 18, 2025), not because its premise was flawed, but because the court determined that HHS acted in excess of its statutory jurisdiction when promulgating the regulation. *Id.* at 306.

This Court should order such protection here because of the important privacy interests at stake and because it is necessary to prevent the use of indirect evidence obtained in this case for impermissible purposes. Two provisions of the proposed protective order achieve these

objectives. First, the end of the first numbered section, titled “Purposes and Limitations,” provides that “Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose.” After considerable negotiation, the Defendant agreed to this provision. Olson Decl., Ex. C at 2.¹

Second, the section titled “Seeking Medical Records” provides that “the parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.” Defendants do not agree to this provision. *Id.*, Ex. A at 2-3; Ex. C at 2; Ex. D. But this latter provision is particularly important because the parties dispute the scope and conflict between EMTALA and Idaho Code § 18-622, which provides both criminal and administrative liability for medical professionals who violate—or attempt to violate—the statute. I.C. § 18-622(1). Plaintiff simply seeks assurances that its providers will not be prosecuted or be subject to administrative liability merely because St. Luke’s has brought this constitutional challenge.

Those concerns are not speculative or hypothetical. Defendant has propounded very broad discovery seeking, for example, information about every instance since June 24, 2022, the date of the United States Supreme Court decision in *Dobbs v. Jackson Women’s Health*

¹ The Court should not hesitate to approve this agreed-upon provision, which protects significant patient privacy interests. Disclosure of personal medical information is well recognized as being particularly harmful; courts thus routinely recognize the need for a protective order for medical records. *See e.g., Pizzuto v. Tewalt*, 2024 WL 4417419, at *3-4 (D. Idaho Oct. 4, 2024); *Polk v. Swift*, 339 F.R.D. 189, 196-97 (D. Wyo. 2021); *State Farm Mut. Auto. Ins. Co. v. Kugler*, 840 F. Supp.2d 1323, 1328 (S.D. Fla. 2011). And the privacy interests at stake here are particularly weighty, as the information regarding medical care covered by this provision is among the most sensitive kind of personal information—reproductive health care information.

Organization, 597 U.S. 215 (2022), in which a patient sought treatment from St. Luke’s and received an abortion to stabilize their emergency medical condition. Olson Decl., Ex. E. Setting aside the overbreadth, vagueness and ambiguity of this request, responsive documents would potentially identify providers whose conduct Defendant believes is proscribed by Idaho Code § 18-622. Whether or not the deputy attorneys general assigned to this case would prosecute or administratively handle license revocations, they should not be allowed to even provide the identity of providers involved or language from St. Luke’s medical records describing termination of a pregnancy that could be considered an abortion under Idaho Code § 18-622. Further, absent the sought protection, providers may be chilled from participating in the litigation.

Finally, Plaintiff’s proposed limitation on the use of information disclosed in this litigation for investigation or enforcement does not prevent the Attorney General’s office from independently investigating or enforcing Idaho law against anybody if it has an independent basis for such action. It merely vindicates institutions’ ability to bring constitutional claims like those involved in this suit without facing the chill of retaliatory enforcement action, which is plainly within the public interest.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the protective order attached as **Exhibit 1**.

DATED: November 11, 2025

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

Alaina Harrington

JENNER & BLOCK LLP

/s/ Lindsay C. Harrison

Lindsay C. Harrison

Jessica Ring Amunson

Ruby C. Giaquinto

Sophia W. Montgomery

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of November, 2025, I served a full, true, and correct copy of the foregoing on the parties hereto in the manner set forth below:

Brian V. Church
Office of the Attorney General, Civil Litigation
Division
954 W. Jefferson St., 2nd Floor
P.O. Box 83720
Boise, ID 83702-0010

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery
 Via Email
brian.church@ag.idaho.gov

David J. Myers
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery
 Via Email
david.myers@ag.idaho.gov

/s/ Wendy J. Olson
Wendy J. Olson

Exhibit 1

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WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
ALAINA HARRINGTON, Bar No. 11879
alaina.harrington@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: 208.389.9000

LINDSAY C. HARRISON (*admitted pro hac vice*)
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JESSICA RING AMUNSON (*admitted pro hac vice*)
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SOPHIA W. MONTGOMERY (*admitted pro hac vice*)
smontgomery@jenner.com
RUBY C. GIAQUINTO (*admitted pro hac vice*)
rgiaquinto@jenner.com
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
Telephone: 202.639.6000

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PROTECTIVE ORDER

One or more of the parties in this matter anticipates the production of documents or information that at least one party or a third-party from whom documents have been or will be subpoenaed, considers to be, or to contain, confidential, proprietary, trade secret, or commercially or personally sensitive information, including medical records and that may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c) and the Health Insurance Portability and Accountability Act and its implementing regulations, 45 C.F.R. § 164.512(e)(1).

Good cause exists to protect the confidential nature of the information contained in certain documents, interrogatory responses, responses to requests for admission, or deposition testimony. Entry of this Protective Order is warranted to protect against disclosure of such documents and information.

Good cause being shown, **IT IS HEREBY ORDERED** as follows:

1. PURPOSES AND LIMITATIONS

This Protective Order does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

This Protective Order applies to discovery, pre-trial, trial, and post-trial proceedings in this action, whether the Documents are produced by a party or a person or entity who is not a party to this Action (a “non-party”). It also binds the Parties and their respective agents, successors, personal representatives, and assignees. However, this Protective Order does not govern the use by the Parties of Protected Material (“Confidential” or Attorney Eyes Only” material) in open court at any hearing or trial, but the Parties reserve the right to seek relief from the Court in connection with the intended use of Protected Material in any such hearing or trial. Notwithstanding the foregoing, all information produced or disclosed in the above captioned

action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose.

2. “CONFIDENTIAL” AND “ATTORNEY EYES ONLY” MATERIAL

“Confidential” material shall include the following documents and tangible things (regardless of how generated, stored, or maintained) produced or otherwise exchanged which contain: (1) “protected health information,” which shall have the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and 164.501¹; (2) documents discussing treatments; (3) information protected by the provisions of the Privacy Act of 1974, 5 U.S.C § 552a; (4) information protected by the Internal Revenue Code, 26 U.S.C. § 6103; (5) proprietary information; (6) trade secret information; (7) confidential research or development; (8) financial information that is commercially sensitive or that otherwise is entitled to protective treatment under Federal Rule of Civil Procedure 26(c); (9) information subject to non-disclosure or other confidentiality agreements, whether between the parties or with third parties; and (10) personal information that is protected from disclosure by other statute, regulation, or otherwise entitled to protection from public disclosure. Such confidential and/or proprietary information shall be referred to herein as “Confidential.”

“Attorney Eyes Only” materials shall include documents and tangible things (regardless of how generated, stored, or maintained) that qualify as “Confidential” and that the designating party reasonably believes contain highly sensitive business or personal information, the disclosure of which to another party or non-party would create a risk of competitive or commercial

¹ Protected health information includes, but is not limited to, health information, including demographic information relating to either: (a) the past, present, or future physical or mental condition of an individual; (b) the provision of care to an individual; or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

disadvantage, or highly sensitive personal disadvantage, to the designating party, or a person for whom the designating party provides personal services, that could not be avoided by less restrictive means. Such information and materials shall be referred to herein as “Attorney Eyes Only.”

It is the parties’ intent that material will not be designated “Confidential” or “Attorney Eyes Only” without a good faith belief that it has been maintained in a confidential, non-public manner, there is good cause why it should not be part of the public record in this case, and, with respect to “Attorney Eyes Only” materials, there is a significant risk of competitive or commercial disadvantage or highly sensitive personal disadvantage to the designating party, or a person for whom the designating party provides personal services, if such materials are disclosed to another party or non-party.

The parties agree that third parties from whom documents are subpoenaed may also designate materials as “Confidential” or “Attorney Eyes Only” and the parties will observe those designations consistent with all terms of this Protective Order.

3. SCOPE

The protections conferred by this Protective Order cover not only Confidential and Attorney Eyes Only material (as defined above), but also (1) any information copied or extracted from Confidential or Attorney Eyes Only material; (2) all copies, excerpts, summaries, or compilations of Confidential or Attorney Eyes Only material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential or Attorney Eyes Only material.

The parties are authorized to produce personally identifying information contained within electronically stored information or hard copy documents. Any electronically stored information or hard copy documents containing such personally identifying information will be deemed

Confidential Information, regardless of whether the electronically stored information or hard copy documents are marked with a “Confidential” legend designating the information as Confidential Information. The parties may further designate this information as Attorney Eyes Only information if appropriate under the definition set forth above.

4. ACCESS TO AND USE OF CONFIDENTIAL AND ATTORNEY EYES ONLY MATERIAL

4.1 Basic Principles. A receiving party may use Confidential or Attorney Eyes Only material that is disclosed or produced by another party or by a non-party in connection with this case solely for purposes of prosecuting, defending, or attempting to settle this litigation. Confidential and Attorney Eyes Only material may be disclosed only to the categories of persons and under the conditions described in this Protective Order. Prior to disclosing Confidential or Attorney Eyes Only material to the categories of persons and under the conditions described in this Protective Order, counsel shall inform each such person that Confidential and Attorney Eyes Only material may not be used or disclosed for any purpose other than this litigation and provide a copy of this Protective Order, and for certain categories of persons, must ensure they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), as stated below. Counsel shall take all other reasonable steps to ensure that persons receiving Confidential and Attorney Eyes Only material and health information do not use or disclose such information for any purpose other than this litigation. Confidential and Attorney Eyes Only material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may disclose any Confidential material only to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in-house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”;

(d) the Court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of Confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Confidential material to third parties and to immediately return all originals and copies of any Confidential material;

(f) witnesses in the action to whom disclosure is reasonably necessary, including during their depositions, and who have signed the “Acknowledgment and Agreement to Be Bound”, unless otherwise agreed by the designating party or ordered by the Court;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) mediators and arbitrators.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

4.3 Disclosure of Attorney Eyes Only Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may only disclose Attorney Eyes Only material to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) in-house counsel of the receiving party to whom disclosure is reasonably necessary for this litigation;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”;

(d) the Court, court personnel, and court reporters and their staff once appropriate measures have been taken for protection of the information;

(e) copy or imaging services retained by counsel to assist in the duplication of Attorney Eyes Only material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Attorney Eyes Only material to third parties and to immediately return all originals and copies of any Attorney Eyes Only material;

(f) witnesses in the action to whom disclosure is reasonably necessary, including during their depositions, and who have signed the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the designating party or ordered by the Court: and

(g) the author or recipient of a document containing the information.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Attorney Eyes Only material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement.

4.4 Filing Confidential or Attorney Eyes Only Material. Before filing Confidential or Attorney Eyes Only material or discussing or referencing such material in court filings, the filing party shall provide advance notice to the designating party. Any Confidential or Attorney Eyes Only information, or any document incorporating Confidential or Attorney Eyes Only information, that is filed with the Court shall be filed in accordance with the Court’s CM/ECF procedures and shall be filed provisionally under seal according to District of Idaho Local Civil Rule 5.3(b). The

designating party shall have the burden and responsibility of filing a motion to seal with the Court under Local Civil Rule 5.3 to determine whether or not the record designated as Confidential or Attorney Eyes Only will in fact be sealed or redacted. “Compelling reasons,” as set forth in *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006), must be shown to seal records attached to a dispositive motion, and “good cause” must be shown to seal records attached to a non-dispositive motion.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Protective Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party’s attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Protective Order (*see, e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this Protective Order must be clearly so designated before or when the material is disclosed or produced.

(a) Information in Documentary Form. To designate information in documentary form (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings) for protection under this agreement, the designating party must affix the word “CONFIDENTIAL” or “ATTORNEY EYES ONLY” to each page that contains Confidential or Attorney Eyes Only material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) by making appropriate markings in the margins and, if desired, by separately addressing in an appendix which parts are protected.

(b) Testimony Given in Deposition or in Other Pretrial Proceedings. To designate testimony given in a deposition or in other pretrial proceedings for protection under this agreement, any party may, within thirty days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Confidential or Attorney Eyes Only. If a party desires to protect Confidential or Attorney Eyes Only information at trial, the issue should be addressed during the pre-trial conference. Unless otherwise agreed, all deposition transcripts shall be treated as “CONFIDENTIAL” until the expiration of the thirty-day period.

(c) Other Tangible Items. To designate other tangible items for protection under this agreement, the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “ATTORNEY EYES ONLY.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s

right to secure protection under this Protective Order for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this Protective Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party may challenge a designation of Confidential or Attorney Eyes Only at any time up until and including sixty (60) days prior to trial. Unless a prompt challenge to a designating party's Confidential or Attorney Eyes Only designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge the designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute regarding Confidential or Attorney Eyes Only designations without Court involvement. Any motion regarding Confidential or Attorney Eyes Only designations, or for a protective order, must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court intervention, the designating party may file and serve a motion to retain the Confidentiality or Attorney Eyes Only designation. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party

to sanctions. All parties shall continue to maintain the material in question as Confidential or Attorney Eyes Only until the Court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

7.1 If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “ATTORNEY EYES ONLY,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential or Attorney Eyes Only material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential or Attorney Eyes Only material to any person or in any circumstance not authorized under this Protective Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or order that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) and absent any order, to be bound by the non-waiver terms of Fed. R. Evid. 502(d).

10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all Confidential and Attorney Eyes Only material to the producing party, including all copies, extracts, and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential or Attorney Eyes Only material.

11. SEEKING OF MEDICAL RECORDS

Nothing in this Protective Order authorizes counsel for St. Luke's or the Defendant to obtain medical records or information through means other than formal discovery requests, subpoenas, depositions, or pursuant to a patient authorization. Moreover, the Parties' agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.

This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. .

12. NO WAIVER OF OBJECTIONS

This Protective Order shall not constitute a waiver of any party's or non-party's right to oppose any discovery request or object to the admissibility of any document, testimony, or other information.

13. MODIFICATION

Nothing in this Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to, and use of, Protected Material, or other modifications, subject to order by the Court.

The Court has reviewed the reasons offered in support of entry of this Protective Order and finds that there is good cause to protect the confidential nature of certain information and to limit its use beyond this litigation. Accordingly, the Court adopts the above Protective Order in this action.

IT IS SO ORDERED.

DATED: _____

Honorable B. Lynn Winmill

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____, have been advised by counsel of record for
_____ in _____
of the protective order governing the delivery, publication, and disclosure of confidential
documents and information produced in this litigation. I have read a copy of the protective
order and agree to abide by its terms.

Signed

Printed

Date

WENDY J. OLSON, Bar No. 7634
wendy.olson@stoel.com
ALAINA HARRINGTON, Bar No. 11879
alaina.harrington@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: 208.389.9000

LINDSAY C. HARRISON*
lharrison@jenner.com
JESSICA RING AMUNSON*
jamunson@jenner.com
SOPHIA W. MONTGOMERY*
smontgomery@jenner.com
RUBY C. GIAQUINTO*
rgiaquinto@jenner.com
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
Telephone: 202.639.6000
*admitted pro hac vice

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ST. LUKE'S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General of the
State of Idaho,

Defendant.

Case No. 1:25-cv-00015-BLW

**DECLARATION OF WENDY J. OLSON
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

I, Wendy J. Olson, declare as follows:

1. I am a partner at Stoel Rives LLP and an attorney of record for Plaintiff St.

Luke's Health System, Ltd. in the above-entitled matter. As such, I have personal knowledge of

DECLARATION OF WENDY J. OLSON IN SUPPORT OF PLAINTIFF'S MOTION FOR
EXTENSION OF UNEXPIRED SCHEDULING ORDER DEADLINES - 1

the facts and statements contained in this Declaration. I submit this Declaration in support of Plaintiff St. Luke's Health System, Ltd.'s Motion for Protective Order.

2. Attached hereto as **Exhibit A** is a true and correct copy of an email chain between myself and Defendant's counsel exchanging draft versions of a protective order over the course of several months. The emails show that drafts were exchanged on: May 21, 2025 (Plaintiff); June 2 (Defendant); June 5 (Plaintiff); July 17 (Defendant); and August 4 (Plaintiff). The emails show that the parties had not reached agreement on the protective order by August 4, 2025.

3. Attached hereto as **Exhibit B** is a true and correct copy of an email chain between myself and Defendant's counsel regarding the protective order.

4. Attached hereto as **Exhibit C** is a true and correct copy of an email chain between myself and Defendant's counsel regarding the protective order. The emails show that the parties exchanged further edits on the protective order as follows: October 14 (Plaintiff); October 15 (Defendant); and October 15 (Plaintiff).

5. Attached hereto as **Exhibit D** is a true and correct copy of an email chain between myself and Defendant's counsel through October 29, 2025, showing our communications on the protective order. Defendant's counsel agreed that an informal conference with the Court's staff attorney would not be necessary.

6. Attached hereto as **Exhibit E** are true and correct excerpts from written discovery served on St. Luke's by the Defendant.

I certify under penalty of perjury pursuant to the law of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: November 11, 2025

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

Exhibit A

Exhibit A

Giaquinto, Ruby C.

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Monday, August 4, 2025 12:20 PM
To: Brian Church; James Craig; David Myers
Cc: Harrison, Lindsay C.; Giaquinto, Ruby C.; Montgomery, Sophia W.; Amunson, Jessica Ring; Harrington, Alaina P.
Subject: RE: St. Luke's v. Labrador -- proposed protective order.
Attachments: St. Lukes_EMTALA - Stipulated Protective Order (08.03.2025 SR Redline)(150000620.1).docx

External Email - Do Not Click Links or Attachments Unless You Know They Are Safe

Good morning Brian,

Attached is our proposed revised protective order. We have agreed to take out reference to the HIPAA rule in Section 11, and replaced it with language that meets our objective of ensuring that any patient records produced are only used in this litigation. We added a sentence in Section 1 to further that objective as well.

We cannot agree to include “attorneys assisting counsel of record” in Sections 4.2 and 4.3. We have no objection to any attorney within the AG’s office having access to confidential or AEO material, but our concern is that this would give you the freedom to share with an outside law firm that has not appeared in the case. We would consider language that addresses this concern.

Given the likelihood that the AG’s office will produce very few, if any, documents in this case, we do not think it is a hardship to mark the actual documents confidential or AEO. The concern with having only an index is that the record of what is confidential or AEO is separate from the actual document and could lead to mistakes.

The attached version is in redline so you can see our proposed changes.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Monday, July 21, 2025 3:43 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Wendy,

Please see the attached. Note that this redline was generated via the comparison function of the draft St. Luke’s provided to us on June 5 and the draft we sent. I note

this because, for example, in Sections 4.2(a) and 4.3(a), even though the comparison is showing that the “attorneys assisting counsel of record” language has been added, we simply rejected your deletion of the language from the June 5 version.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Monday, July 21, 2025 1:14 PM

To: Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Hi Brian,

Can you send a redline version of the changes you made to the protective order?

From: Brian Church <brian.church@ag.idaho.gov>

Sent: Thursday, July 17, 2025 5:12 PM

To: Olson, Wendy J. <wendy.olson@stoel.com>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Wendy:

Following up on the protective order, I wanted to send it back your way given the developments with the now invalid HIPPA reproductive health care privacy rule. As the Department of Health and Human Services notes, the relevant parts of that rule have been “declar[ed] unlawful and vacat[ed]”. <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html>. As such, I am deleting the reference to that rule and Exhibit B.

Here is our summary of the other changes:

- Sections 4.2(a) and 4.3(a): We have rejected your deletion of “attorneys assisting counsel of record”. We want to ensure that attorneys who are assisting us, but may not have entered a formal appearance, may receive confidential documents.

- Section 5.2(a): Our discovery software is unable to make marks in the margins for portions of documents that are protected. Given that an index/appendix will clearly mark which parts are protected, and your changes have been rejected.
- Section 10: We are okay with move to Section 14 of a portion of Section 10. We have accepted the deletion of the paragraph.
- Section 11: We cannot agree to the deletion of language, which comes from the Model Protective Order, regarding our ability to use materials lawfully obtained, and so we have rejected your change. We have removed any reference to the HIPAA Reproductive Health Care Privacy Rule and the attestation form, given the *Purl* court's ruling.
- Section 13: We accepted your wording change.
- Section 14: We accepted this Section.

We look forward to finalizing this soon.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Thursday, June 5, 2025 9:36 PM

To: Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Hi Brian,

Thank you for sending over your proposed revisions. We have had an opportunity to review and discuss at our end. We've attached the draft stipulated protective order with our redlines to your revisions. If we were fine with your changes, we accepted them, so we think the redlines reflect the places where we have not yet reached agreement. With respect to the language reciting your position concerning the HIPAA Privacy Rule to Support Reproductive Health Care Privacy, the proposed language conveys just that—your position. We do not think that your legal position does not belong in the body of a protective order, so we cannot agree to it. We are happy to set up a time to discuss the remaining differences between the parties.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>

Sent: Monday, June 2, 2025 3:43 PM

To: Olson, Wendy J. <wendy.olson@stoel.com>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia

W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Hi, Wendy,

We've reviewed the proposed stipulated protective order. We've incorporated a few provisions from the model protective order (e.g., paragraphs 12-13) and made a couple other minimal edits in section 4.

Regarding paragraph 11, we've noted our position with respect to the "HIPAA Privacy Rule to Support Reproductive Health Care Policy." We've also modified Exhibit B to make it like the model attestation currently available from HHS.

Thanks,

Brian

U.S. District Courts, District of Idaho model protective order:
https://id.uscourts.gov/district/forms_fees_rules/Civil_Forms.cfm

Department of Health and Human Services model attestation:
<https://www.hhs.gov/sites/default/files/model-attestation.pdf>

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Monday, June 2, 2025 3:09 PM

To: Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Hi Brian,

Just following up on the below.

From: Brian Church <brian.church@ag.idaho.gov>

Sent: Thursday, May 29, 2025 7:49 PM

To: Olson, Wendy J. <wendy.olson@stoel.com>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Wendy,

We're close on getting something back to you. There is one additional topic that I need researched. I'm out of the office tomorrow, and so it's possible David or Jim will get back to you, but more likely you will hear from me Monday morning.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Brian Church

Sent: Wednesday, May 28, 2025 3:30 PM

To: Olson, Wendy J. <wendy.olson@stoel.com>; James Craig <James.Craig@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- proposed protective order.

Wendy:

Thanks for following up on this. We should be able to get back to you tomorrow with our suggestions.

Brian

P.S. I've swapped David's email address, since I'm assuming you received a bounce-back email from your email this morning.

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Wednesday, May 28, 2025 8:28 AM

To: Brian Church <brian.church@ag.idaho.gov>; david.meyers@ag.idaho.gov; James Craig <James.Craig@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P.

<alaina.harrington@stoel.com>

Subject: St. Luke's v. Labrador -- proposed protective order.

Hi Brian and team,

We are checking to see if you have had a chance to review the proposed protective order we sent over last Wednesday.

Thanks,
Wendy

Wendy Olson | Partner

STOEL RIVES LLP | 101 S. Capitol Boulevard, Suite 1900 | Boise, ID 83702

Direct: (208) 387-4291 | Mobile: (208) 484-5279

wendy.olson@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Exhibit B

Exhibit B

Giaquinto, Ruby C.

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Thursday, October 9, 2025 1:53 PM
To: Brian Church; David Myers; James Craig; Harrison, Lindsay C.; Giaquinto, Ruby C.
Cc: Harrington, Alaina P.; Montgomery, Sophia W.; Amunson, Jessica Ring; Schwei, Daniel S.
Subject: RE: St. Luke's - follow up on outstanding issues

External Email - Do Not Click Links or Attachments Unless You Know They Are Safe

Hi Brian and David,

I received out of office messages from both of you, one indicating that David is out until October 13, and one from you indicating you are out until October 14. Because that causes a problem with the October 13 deadline, we are going to go ahead and reach out to Marci Smith now.

Best,
Wendy

From: Olson, Wendy J.
Sent: Thursday, October 9, 2025 10:21 AM
To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>
Cc: Harrington, Alaina P. <alaina.harrington@stoel.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Schwei, Daniel S. <dschwei@jenner.com>
Subject: RE: St. Luke's - follow up on outstanding issues

Hi Brian,

Thanks for getting back to us. We are still reviewing your proposed changes to the protective order and need to discuss it with our client. We would agree to a three month extension rather than four, but we cannot agree to your conditions, particularly since with respect to one you are asking us to forego the relief the Court already provided after the parties briefed the issue. As you know, resolving this by October 13 is critical to us. If you maintain your position, we need to reach out to the Court, through Marci Smith, to see if this is a discovery dispute that the law clerks will set an expedited briefing schedule for, or if we should just file a motion. Please let us know your position by the close of business today, at which point we will get in touch with the Court given the time sensitivity.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 8, 2025 4:39 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C.

<rgiaquinto@jenner.com>

Cc: Harrington, Alaina P. <alaina.harrington@stoel.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>

Subject: St. Luke's - follow up on outstanding issues

Wendy:

Thanks for meeting with David and me last week. Here's Defendant's position on the two outstanding issues.

Protective Order

We are still agreeable to the model protective order; it is unclear what St. Luke's believes is unaddressed by the model protective order. The model protective order is presumptively reasonable for cases before the District of Idaho.

However, if St. Luke's still insists on a protective order based on what it sent last time, I've attached here the redline version that my client would be agreeable to along with a comparison of your file and mine.

Request to shift the deadlines

Given that Idaho's law protecting life is enjoined at this time, we can't agree to a four-month shift of the deadlines.

We will agree to a three-month shift of non-expired deadlines (we're only agreeing to three months because of the difficulties with the deadlines falling in the holiday season, otherwise we would suggest two months) *if* Plaintiff agrees to (1) either the model protective or the version sending today; and (2) agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke's Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho).

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

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Exhibit C

Exhibit C

Giaquinto, Ruby C.

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Wednesday, October 15, 2025 4:36 PM
To: Brian Church; David Myers; James Craig
Cc: Harrison, Lindsay C.; Giaquinto, Ruby C.; Montgomery, Sophia W.; Amunson, Jessica Ring; Harrington, Alaina P.
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

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Hi Brian,

Thanks for your email.

It looks like we are very close on the protective order. Turning only to the two remaining items:

- Item 3. We are fine with that language from the Model Protective Order but it of course needs to include the reference to AEO material: “Use of any information or documents labeled “Confidential” or “Attorney Eyes Only” or “AEO” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.”
- Item 4. It is important to our client to include the language we have proposed in Section 11. We do not think it is superfluous. It looks like we will have to litigate this issue.

On the motion for extension, we still cannot agree to your condition. As you know, we already have litigated this issue. We will file our motion for an extension of time. We appreciate your consideration of our request.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 15, 2025 1:27 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

Protective Order

- Item 1 (identification of confidential material): Thanks for agreeing to that.
- Item 2 (sections 4.2 and 4.3): We are fine with “all deputies attorney general, including special deputies attorney general,”
- Item 3: The model protective order has the following language. Instead of the language you suggest, we would be fine incorporating the model protective order’s language into the suggested protective order, section 1
 - Use of any information or documents labeled “Confidential” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.
- Item 4 (section 11): It looks to me that the concern about how we use confidential information or confidential documents is already addressed as part of the general language from the model protective order, which I am suggesting we include for item 3. We can’t agree to include the superfluous language in Section 11.

Motion for Extension

- Wendy, we will agree to a three-month shift of the deadlines, so long as St. Luke’s agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke’s Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho). We don’t see the need for anything more than a brief shift of deadlines and we have good reason not to want this case to take longer than necessary, but we’re willing to be accommodating and agree to a longer extension than we otherwise would if it will save us the unnecessary expenditure of time and resources to generate a privilege log that will not help either party.

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Tuesday, October 14, 2025 12:40 PM

To: David Myers <David.Myers@ag.idaho.gov>; Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia

W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Good afternoon David and Brian,

We are reaching out on two issues: (1) the protective order; and (2) our request to extend the unexpired deadlines in the Scheduling Order.

First, we agree that there are four remaining issues on the protective order. Our position on them is as follows:

1. We agree to your request that you be allowed to identify documents you are designating as AEO or confidential with an appendix.
2. With respect to your change of the language regarding who you can share AEO/confidential material with, we propose the following slight modification:

“the receiving party’s counsel of record in this action including for Defendant all deputies attorney general, **including special deputies attorney general, however denominated**, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;”

3. We continue to believe it is appropriate to include the sentence at the end of section 1 limiting the use of such information, “Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose.” We cannot agree to remove it.
4. We continue to believe it is appropriate to include the sentence at the end of section 11, “Moreover, the Parties’ agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.” We cannot agree to remove it.

Please let us know if you agree to our revision on issue #2 above and if you still insist on removing the sentences described in issues #3 and #4 above.

Second, as you know we have until Thursday to file our briefing regarding the extension of the scheduling order we previously proposed. As we explained in our email on Thursday, Oct. 9, to which we received out of office replies from Brian and David, we cannot agree to your two conditions. We can agree to a three-month rather than a four month extension, which would make the various deadlines: (1) Plaintiff’s expert disclosures due on January 23, 2026; (2) Defendant’s expert disclosures due on February 23, 2026; (3) Plaintiff’s rebuttal experts disclosed by March 9, 2026; (4) discovery related to experts completed by May 11, 2026; (5) completion of fact discovery by April 13, 2026; and (6) dispositive motions filed by May 26, 2026. Please let us know if you agree to this three-month extension of the above deadlines so that we can avoid motions practice.

Best,
Wendy

Wendy Olson | Partner

STOEL RIVES LLP | 101 S. Capitol Boulevard, Suite 1900 | Boise, ID 83702

Direct: (208) 387-4291 | Mobile: (208) 484-5279

wendy.olson@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Exhibit D

Exhibit D

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 29, 2025 6:17 PM
To: Olson, Wendy J.; David Myers; James Craig
Cc: Harrison, Lindsay C.; Giaquinto, Ruby C.; Montgomery, Sophia W.; Amunson, Jessica Ring; Harrington, Alaina P.
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

I don't expect either side's position will change following an informal conference, and the Court has already been made aware of the protective order issue. I think St. Luke's can proceed with its motion, noting the single disagreement remaining with the protective order.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Tuesday, October 28, 2025 8:30 AM
To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Thanks Brian. Is this something you want to confer with Marci Smith about? She may be able to tell us what way the judge is leaning. We also are fine with just filing our motion for the protective order we have proposed. Please also let us know if you want to discuss an expedited briefing schedule for this.

Thanks,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Monday, October 27, 2025 3:11 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia

W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

We're not able to agree to what your client wants to include in Section 11:

- "Moreover, the Parties' agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes."

This language follows in the path of language in the invalid "HIPAA Privacy Rule to Support Reproductive Health Care," something which Congress has not authorized. *Purl v. U.S. Dep't of Health & Human Servs.*, No. 2:24-cv-00228-Z (N.D. Tex. June 18, 2025).

This language is also overbroad. Plus, we do not think it appropriate for a court to grant blanket criminal, civil, administrative, investigative, or discovery immunity to a plaintiff simply because that plaintiff brings a civil lawsuit.

The existing language in the model protective order (with the addition of Attorney Eye Only) represents an appropriate limitation on the *use* of confidential information.

Please let us know how you are proceeding.

Thanks,

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Wednesday, October 15, 2025 2:36 PM

To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Hi Brian,

Thanks for your email.

It looks like we are very close on the protective order. Turning only to the two remaining items:

- Item 3. We are fine with that language from the Model Protective Order but it of course needs to include the reference to AEO material: “Use of any information or documents labeled “Confidential” or “Attorney Eyes Only” or “AEO” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.”
- Item 4. It is important to our client to include the language we have proposed in Section 11. We do not think it is superfluous. It looks like we will have to litigate this issue.

On the motion for extension, we still cannot agree to your condition. As you know, we already have litigated this issue. We will file our motion for an extension of time. We appreciate your consideration of our request.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>

Sent: Wednesday, October 15, 2025 1:27 PM

To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

Protective Order

- Item 1 (identification of confidential material): Thanks for agreeing to that.
- Item 2 (sections 4.2 and 4.3): We are fine with “all deputies attorney general, including special deputies attorney general,”
- Item 3: The model protective order has the following language. Instead of the language you suggest, we would be fine incorporating the model protective order’s language into the suggested protective order, section 1
 - Use of any information or documents labeled “Confidential” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such

information or document was lawfully obtained through means and sources outside of this litigation.

- Item 4 (section 11): It looks to me that the concern about how we use confidential information or confidential documents is already addressed as part of the general language from the model protective order, which I am suggesting we include for item 3. We can't agree to include the superfluous language in Section 11.

Motion for Extension

- Wendy, we will agree to a three-month shift of the deadlines, so long as St. Luke's agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke's Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho). We don't see the need for anything more than a brief shift of deadlines and we have good reason not to want this case to take longer than necessary, but we're willing to be accommodating and agree to a longer extension than we otherwise would if it will save us the unnecessary expenditure of time and resources to generate a privilege log that will not help either party.

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>

Sent: Tuesday, October 14, 2025 12:40 PM

To: David Myers <David.Myers@ag.idaho.gov>; Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>

Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>

Subject: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Good afternoon David and Brian,

We are reaching out on two issues: (1) the protective order; and (2) our request to extend the unexpired deadlines in the Scheduling Order.

First, we agree that there are four remaining issues on the protective order. Our position on them is as follows:

1. We agree to your request that you be allowed to identify documents you are designating as AEO or confidential with an appendix.
2. With respect to your change of the language regarding who you can share AEO/confidential material with, we propose the following slight modification:

“the receiving party’s counsel of record in this action including for Defendant all deputies attorney general, **including special deputies attorney general, however denominated**, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;”

3. We continue to believe it is appropriate to include the sentence at the end of section 1 limiting the use of such information, “Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose.” We cannot agree to remove it.
4. We continue to believe it is appropriate to include the sentence at the end of section 11, “Moreover, the Parties’ agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.” We cannot agree to remove it.

Please let us know if you agree to our revision on issue #2 above and if you still insist on removing the sentences described in issues #3 and #4 above.

Second, as you know we have until Thursday to file our briefing regarding the extension of the scheduling order we previously proposed. As we explained in our email on Thursday, Oct. 9, to which we received out of office replies from Brian and David, we cannot agree to your two conditions. We can agree to a three-month rather than a four month extension, which would make the various deadlines: (1) Plaintiff’s expert disclosures due on January 23, 2026; (2) Defendant’s expert disclosures due on February 23, 2026; (3) Plaintiff’s rebuttal experts disclosed by March 9, 2026; (4) discovery related to experts completed by May 11, 2026; (5) completion of fact discovery by April 13, 2026; and (6) dispositive motions filed by May 26, 2026. Please let us know if you agree to this three-month extension of the above deadlines so that we can avoid motions practice.

Best,
Wendy

Wendy Olson | Partner
STOEL RIVES LLP | 101 S. Capitol Boulevard, Suite 1900 | Boise, ID 83702
Direct: (208) 387-4291 | Mobile: (208) 484-5279
wendy.olson@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Exhibit E

Exhibit E

RAÚL R. LABRADOR
ATTORNEY GENERAL

JAMES E. M. CRAIG, ISB #6365
Chief, Civil Litigation
and Constitutional Defense

BRIAN V. CHURCH, ISB #9391
Lead Deputy Attorney General
DAVID J. MYERS, ISB #6528
Deputy Attorney General
Office of the Attorney General
P. O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
james.craig@ag.idaho.gov
brian.church@ag.idaho.gov
david.myers@ag.idaho.gov

Attorneys for Defendant

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ST. LUKE'S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General
of the State of Idaho

Defendant.

Case No. 1:25-cv-00015-BLW

**DEFENDANT'S FIRST SET OF
INTERROGATORIES AND RE-
QUESTS FOR PRODUCTION TO
PLAINTIFF**

Defendant propounds the following First Set of Interrogatories and Requests for
Production to Plaintiff.

INTERROGATORY NO. 4: Identify all occasions after June 24, 2022, in which a patient sought treatment from St. Luke’s for an emergency medical condition (as defined) and St. Luke’s performed an abortion (as defined) to stabilize (as defined) the emergency medical condition.

RESPONSE:

INTERROGATORY NO. 5: In your Complaint ¶ 51, you describe your treatment of “six pregnant St. Luke’s patients with medical emergencies” during the “two short periods of time when Idaho’s new abortion law was in effect without any limiting injunction.” For those same “two short periods of time,” identify all other occasions in which pregnant patients who presented to St. Luke’s with medical emergencies were transferred out of state by any means *other* than airlift “for care that could include termination of their pregnancy,” *id.*, because such transfer “was the medically appropriate course of action to avoid a conflict between the stabilizing treatment required by federal law and Idaho’s law” (Complaint ¶ 54).

RESPONSE:

INTERROGATORY NO. 6: For each of the years 2015-2025, state the number of pregnant patients who presented to St. Luke’s with a medical emergency related to their pregnancy who were transferred out of state, whether by airlift or any other method, for care that could include termination of their pregnancy.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: All documents supporting your response to Interrogatory No. 2, including all medical and insurance records of the patients involved.

REQUEST FOR PRODUCTION NO. 25: All documents supporting your response to Interrogatory No. 3, including all medical and insurance records of the patients involved.

REQUEST FOR PRODUCTION NO. 26: All documents supporting your response to Interrogatory No. 4, including all medical and insurance records of the patients involved.

Idaho law and EMTALA

REQUEST FOR PRODUCTION NO. 27: All documents containing or reflecting your communications to your personnel—including employees and contractors—regarding your guidance, instructions, analysis, interpretation, or construction of DOLA, EMTALA, or regarding transfers of pregnant patients for abortions ostensibly in compliance with EMTALA.

REQUEST FOR PRODUCTION NO. 28: All documents—including internal and external correspondence/emails, public statements, written statements/emails to employees, and internal memoranda—mentioning or discussing DOLA; S.L. 2020, ch. 284, § 1; S.L. 2023, ch. 298, § 2; Idaho’s Fetal Heartbeat Preborn Child Protection Act; or any Idaho law related to abortion.

REQUEST FOR PRODUCTION NO. 29: All documents containing or discussing any communications between you and any Idaho legislator, including his/her staff, regarding *United States v. Idaho*, *Adkins v. Idaho*, or DOLA; S.L. 2020, ch. 284, § 1; S.L. 2023, ch. 298, § 2; Idaho’s Fetal Heartbeat Preborn Child Protection Act; or any Idaho law related to abortion.