

No. _____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RIGHT TO LIFE OF IDAHO, INC.,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO,

Respondent,

and

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and
INDIGENOUS IDAHO ALLIANCE,

Real Parties in Interest.

On Petition for a Writ of Mandamus to the United States District Court for the
District of Idaho (No. 1:23-cv-00323-DKG)

IN RE: RIGHT TO LIFE OF IDAHO, INC.

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Introduction

Right to Life of Idaho, Inc. (“**RLI**”), a non-party dragged into the underlying case by its ideological opponent’s demand for its private, strategic, political advocacy documents, is entitled to mandamus relief from the district court’s order upholding the demand. That opponent, Northwest Abortion Access Fund, and the other plaintiffs, Lourdes Matsumoto and Indigenous Idaho Alliance (collectively, “**Challengers**”), served a subpoena on RLI (“**RLI Subpoena**”), seeking private communications that lie at the heart of both RLI’s strategy and the First Amendment; RLI moved to quash (“**Motion**”). Although this Court’s precedent, *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010), required the district court to grant the motion, protecting RLI’s First Amendment rights in light of RLI’s clear factual showing of First Amendment chill—an even clearer showing than that made in *Perry*—the district court declined to do so. *See* Order, D.¹ 108 (Ex. 1) (“**Order**”). Accordingly, mandamus relief is necessary.²

“[A] particularly injurious or novel privilege ruling” warrants a “petition . . . for a writ of mandamus.” *Mohawk Indus. v. Carpenter*, 558 U.S. 100, 101 (2009)

¹RLI uses “D.” to refer to entries in the district court’s docket.

²Because the Order was issued by the magistrate judge, D. 108 (Ex. 1), 15, RLI moved for Article III judge review under Federal Rule of Civil Procedure 72(a). Although that rule does not limit its application to cases in which the parties have not consented to the magistrate judge, the district court denied Rule 72 relief on the basis of consent. D. 111. Accordingly, this matter is ripe for review.

(citing *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367, 380 (2004)).

Because the district court’s refusal to protect RLI’s First Amendment rights is gravely injurious, RLI so petitions this Court.

When a traditional appeal is unavailable, mandamus is a mechanism by which appellate courts may prevent “a clear abuse of discretion.” *Cheney*, 542 U.S. at 380. The “extraordinary” nature of such writs, *Kerr v. United States Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 402 (1976), does not require “an unduly narrow and technical understanding” of when they should issue, *Will v. United States*, 389 U.S. 90, 95 (1967). Instead, this Circuit uses five simple factors (“**Mandamus Factors**”) to determine when they should issue.

This Court found that it was appropriate to issue a writ of mandamus in *Perry*, a remarkably similar case. 591 F.3d at 1159. The Mandamus Factors remain present here. Accordingly, this Court should grant a writ of mandamus.

Statement of Jurisdiction

This Court has jurisdiction over this Petition pursuant to the All Writs Act, 28 U.S.C. § 1651, and Rule 21 of the Federal Rules of Appellate Procedure.

Relief Sought

RLI requests that this Court issue a writ of mandamus reversing the Order and requiring the district court to grant the Motion and quash the RLI Subpoena.

Issues Presented

1. Whether the district court erred in requiring a privilege log to assert First Amendment privilege.
2. Whether the district court erred in finding RLI's declaration insufficient to establish First Amendment privilege when this Court previously found a less specific declaration sufficient.
3. Whether the district court erred in dismissing RLI's declaration as conclusory.
4. Whether the district court erred in requiring a privilege log, in this motion to quash case, because privilege logs are required in protective order cases.
5. Whether the district court erred in finding the subjective motivations of individual legislators relevant and discoverable in an interstate travel claim.
6. Whether the district court erred in finding no undue burden is imposed by discovery demands that (1) are overbroad both temporally and in subject matter, and (2) seek documents that could be obtained elsewhere with no burden; and in issuing a revised demand with the same problems.

Underlying Facts and Procedural History

On July 11, 2023, Challengers filed their Complaint, suing Idaho Attorney General Raúl Labrador ("**Idaho**") to challenge Idaho Code § 18-623 ("**abortion**

trafficking law”), first introduced on February 7, 2023 (Idaho House Bill 98 (“**H.B. 98**”)), and later re-introduced as House Bill 242 (“**H.B. 242**”). Compl., D. 1 (Ex. 2), ¶ 11. Challengers alleged that the law (1) violates due process as a result of vagueness (Claim I), *id.* at ¶¶ 90–101, (2) burdens interstate and intrastate travel (Claims II and III), *id.* at ¶¶ 102–121, and (3) infringes on First Amendment rights (Claim IV), *id.* at ¶¶ 122–132.

The district court granted in part and denied in part Idaho’s motion to dismiss and granted a preliminary injunction. *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024). Idaho appealed. *Id.* This Court reversed certain findings and affirmed others, *id.* at 816, but declined to review the “denial of the motion to dismiss as to the interstate travel claim,” *id.* at 796 n.6, which is the claim to which Challengers contend the RLI Subpoena is relevant, *e.g.*, Opp’n, D. 87, 13.

RLI is not a legislative agency; it does not employ legislators. Instead, it is a non-profit, volunteer organization dedicated to advocating for the unborn through education and legislation. Mem. Supp. Mot. of RLI Quash Subpoena, D. 72-1, 5 (“**Mem.**”). It is the Idaho affiliate of National Right to Life Committee, Inc. (“**NRLC**”), the nation’s largest pro-life organization, which also works through education and legislation to advance the rights of the unborn. *Id.* The issues raised have nothing to do with RLI, a stranger to the case. Nonetheless, RLI’s policy opponent dragged RLI into the case in order to peruse its internal documents and

private, confidential communications—documents that, as explained below, lie at the heart of the First Amendment. Specifically, Challengers demanded two categories of documents (“**Narrowed Requests**”):³

1. Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials prepared *for dissemination to* legislators; and
2. Documents created for the purpose of communicating with legislators about those “abortion trafficking” bills like H.B. 242 and H.B. 98—such as drafts of model language, position summaries, or legislative fact sheets—to the extent such materials were shared externally or intended for legislative audiences.

D. 72-4 (“**Narrowing Letter**”), 1 (emphases in original).

RLI moved to quash these demands on the basis of First Amendment privilege, lack of relevance, overbreadth, and undue burden. Mot. of RLI Quash Subpoena, D. 72 (“**Motion**”); Mem. Supp. Mot., D. 72-1 (“**Mem.**”). It explained that under well-established precedent, where compliance with a demand for documents would arguably chill First Amendment speech or association, the documents are protected by First Amendment privilege. *Id.* at 4–8 (citing, *inter alia*, *Perry*, 591 F.3d at 1160; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 602, 616 (2021)). It also demonstrated that this privilege can apply to external documents, as district courts within this circuit and other circuit courts have recognized. *Id.* at 9–11

³ The RLI Subpoena, D. 72-3 (Ex. 3), contained broader and more demands, but counsel for Challengers proposed the Narrowed Requests after RLI sent its letter of objections to the RLI Subpoena.

(citing various cases). Finally, it explained that speech like RLI’s—advocacy about a major legal issue—is “core political speech” at the heart of the First Amendment and thus easily merits First Amendment protection. *Id.* at 6 (citing, *inter alia*, *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995)).

Where a party has shown “arguable” First Amendment chill, there is a *prima facie* case of First Amendment privilege and the burden shifts to the discovery proponent to show that the need for the discovery outweighs the burden it would impose (“**Balancing Test**”). *Perry*, 591 F.3d at 1160–61. To satisfy this burden, the discovery must be highly relevant, must not impose an undue burden, and must be obtained by other sources if available with less burden. *Id.*; *see also* Mem., D. 72-1, 13–16. Challengers did not persuasively dispute the applicability of First Amendment privilege or meet their Balancing Test burden to overcome RLI’s *prima facie* case of privilege. *Infra*. Nonetheless, rather than granting the Motion, the district court simply set forth a narrowed demand (“**Revised Demand**”) that suffers from the same problems, and demanded either production of the documents subject to same or, alternatively, for RLI to submit objections and a privilege log. Order, D. 108 (Ex. 1), 15–16; *id.* at 7.

This Court should grant mandamus, reverse the Order, and require the district court to quash the RLI Subpoena for the following reasons.

Argument for Issuance of Writ

The Mandamus Factors are:

(1) whether the petitioner has no other means . . . to obtain the desired relief [(“**Other Means Factor**”)]; (2) whether the petitioner will be damaged . . . in any way not correctable on appeal [(“**Harm Factor**”)]; (3) whether the district court’s order is clearly erroneous as a matter of law [(“**Clear Error Factor**”)]; (4) whether the district court’s order is an oft repeated error [(“**Repeated Error Factor**”)] . . . ; and (5) whether the district court’s order raises new and important problems or issues of first impression [(“**New Problem Factor**”)]. The factors serve as guidelines, a point of departure Not every factor need be present at once. However, the absence of the third factor, clear error, is dispositive.

Perry, 591 F.3d at 1156 (quotation marks, citations omitted).⁴ All five factors are present here.

I. The Order contains numerous clear errors.

Because the Clear Error factor is dispositive, RLI begins there.

The district court’s Order contains numerous clear errors. The district court clearly erred, *inter alia*, in finding that a privilege log is required for a prima facie case, in finding that the declaration submitted by RLI’s president was conclusory, and in finding that Challengers satisfied their burden under the “heightened

⁴The fourth factor may also exist where repetition of the error is *likely*: “the fourth and fifth factors can both be present when a procedural rule is being applied in a new context” when the error is “likely to be oft-repeated.” *Kirkland v. United States Bankr. Court for the Cent. Dist. of Cal. (In re Kirkland)*, 75 F.4th 1030, 1051 (9th Cir. 2023) (quotation marks and citations omitted) (emphasis added).

relevance” standard of the Balancing Test, *Perry*, 591 F.3d at 1164. Accordingly, mandamus should be granted and the Order’s denial of the Motion reversed.

A. The Order errs in requiring a privilege log to assert RLI’s privilege.

All that is required to demonstrate a prima facie case of First Amendment privilege is a factual showing that compelled disclosure will *possibly* “have a deterrent effect on . . . protected activities.” *Perry*, 591 F.3d at 1162 (citing, *inter alia*, *NAACP*, 357 U.S. at 460–61). RLI submitted the Declaration of Emily Naugle, D. 93-1 (Ex. 4) (“**Naugle Declaration**”), which clearly explained the First Amendment chill that would result from enforcement of the Narrowed Requests. The Naugle Declaration stated plainly that the Narrowed Requests sought “*private* communications with legislators or their staff” as well as purely internal documents, *id.* at ¶ 7 (emphasis added), that “these private conversations . . . lie at the heart of [RLI’s] strategy”⁵ and that disclosure thereof “would [] gravely harm[RLI] in numerous ways,” *id.* at ¶ 8, which it listed explicitly, *id.* at ¶¶ 9–14.

One of the listed harms was the critical fact that “[l]egislators would be less willing to communicate with RLI, gravely harming RLI” in this essential purpose.

Id. The declaration also noted, *inter alia*, that donors would be deterred, and opponents advantaged, if demands for “RLI’s private strategic communications”

⁵It can be no surprise that private communications with legislators, by an entity dedicated to “advanc[ing] legislation favorable to its cause, one of its most essential purposes,” *id.* at ¶ 9, are strategic. This satisfies *Perry*’s limited holding applying to private, strategic communications. *Infra* n.19.

with legislators were enforced. *Id.* at ¶¶ 10, 13. And it made clear the non-speculative nature of the chill, noting that discussions had already occurred to address not only how it “would need to change its communications,” but also the basic fact that compelled disclosure would “stifle[]” its “ability to conduct essential communications.” *Id.* at ¶ 14. Those statements showed a certainty of chill, easily surpassing the Supreme Court’s requirement of mere *arguable*, *possible* First Amendment chill for a prima facie case, Mem., D. 72-1, 11.

Perry proves this conclusion. Under *Perry*, the district court clearly erred in finding that such statements were not sufficient to show First Amendment privilege over “communications . . . with Idaho legislators[.]” Order, D. 108 (Ex. 1), 8–9. While the Order reasoned *Perry* requires a privilege log to make a prima facie case, *id.* at 7, that is clearly erroneous for a simple reason: *Perry* says the opposite. The *Perry* Court found that there *was* a prima facie case of First Amendment privilege as a result of a declaration even less specific than the one submitted by RLI *when no privilege log had been submitted*. 591 F.3d at 1163–64.

Specifically, in *Perry*, ProtectMarriage.com-Yes on 8 (“**ProtectMarriage**”) (an actual party to the case as a defendant-intervenor, unlike non-party RLI, to whom even greater protection applies, Mem., D. 72-1, 15–16), a proponent of California’s Proposition 8, was demanded to produce “[a]ll . . . communications referring to Proposition 8,” which the parties understood to encompass “internal

campaign communications[.]” *Id.* at 1153. ProtectMarriage submitted a declaration stating that compelled disclosure of “personal, non-public communications” would “drastically alter” communications and chill “willing[ness] to engage in such communications[.]” *Id.* at 1163. The *Perry* court found that that declaration established “a prima facie showing” of First Amendment chill resulting from disclosure of private, strategic communications. *Id.* at 1163–64, 1165 n.12.⁶

Perry clearly, then, did *not* hold that ““some form of privilege log is required”” merely to “assert the First Amendment privilege,” *contra* Order, D. 108 (Ex. 1), 7 (citing 591 F.3d at 1153 n.1), but only that doing so *there* “would [not] impose an unconstitutional burden” where “some of [the documents] may be discoverable” upon a more “carefully tailored request for the production of highly relevant information^[7] that is unavailable from other sources.” 591 F.3d at 1165 n.13.

The critical fact that *Perry* found a prima facie case over the whole category of “internal campaign communications” even though *some* might have ultimately been discoverable (unlike this case, *supra* n.7) cannot be overlooked. In short, the

⁶It also found that the prima facie case had not been overcome and thus found discovery barred by First Amendment privilege. *Id.* at 1164–65.

⁷The Order requires production of only *one* category of information, and that category is not relevant *at all*. *Infra* Part I.D.1. Accordingly, the need for a privilege log in *Perry* is not present here. *Infra* Part I.C. Nor does *Perry*’s dicta stating that a privilege log was needed in that case negate its finding of First Amendment privilege or provide a basis for any court to reverse its analysis.

question is whether compliance with the *request* will result in chill—not whether compliance with some *aspect* thereof would (or would not) do so. Put another way, the fact that *some* documents at the fringes of a poorly-tailored request may “not implicate First Amendment associational interests” does *not* prevent a prima facie case.⁸ That is only logical. If parties seeking privileged documents were relieved of the burden of overcoming a prima facie case by simply drafting their demands in a way that could be construed to encompass some nonprivileged materials, the privilege would be meaningless. Proper application of *Perry*’s analysis prevents such absurdity. Accordingly, the district court clearly erred in finding that *Perry* requires a privilege log to assert First Amendment privilege and therefore declining to grant the Motion. Order, D. 108 (Ex. 1), 7.

B. RLI’s declaration was more specific than that in *Perry*, was not conclusory.

1. *Perry* found a less specific declaration sufficient.

Perry also found that a declaration of precisely the sort RLI submitted—but *less* specific—was sufficient to merit such protection. *See supra* Part I.A (quoting the brief snippet considered in *Perry*, including non-detailed statement that the communications at issue were “personal” and “non-public”); *Perry*, 591 F.3d at 1163 (noting declaration was “lacking in particularity”). The Naugle Declaration,

⁸RLI does not concede that *any* of the documents demanded by the Revised Demand do not implicate the First Amendment, but instead notes this simply to demonstrate the district court’s error.

signed by RLI's president, D. 93-1 (Ex. 4), ¶ 2, who is well aware of the effects that enforcement of the RLI Subpoena would have on RLI and those with whom it associates, *id.* at ¶ 4, sets forth precisely the same types of harm that the *Perry* Court found sufficient to create a prima facie case, and more. *Id.* at ¶ 6–14. The *Perry* Court did not doubt as “general” or “conclusory” the declaration’s assertion that the discovery demand encompassed “personal, non-public communications.” 591 F.3d at 1163; *contra* Order, D. 108 (Ex. 1), 8. The ruling that the Naugle Declaration was insufficient for a prima facie case was therefore clearly erroneous under *Perry*.

2. The Naugle Declaration is not general or conclusory.

While the Order’s error under *Perry* concerning the Naugle Declaration warrants reversal, the Order’s description of RLI’s contentions as “conclusory,” D. 108 (Ex. 1), 8, is also itself erroneous. The Order asserts that the Naugle Declaration’s statements are “general references to ‘private,’ ‘internal,’ and ‘strategic’ communications and documents” that “do not demonstrate an arguable First Amendment infringement,” *id.*, but this description makes no sense in light of the clear, specific descriptions of chill found throughout that declaration, D. 93-1 (Ex. 4), ¶¶ 9–14. More fundamentally, when a declaration’s statements “are neither in the form of legal conclusions nor speculative, but are material facts based on . . . personal recollection,” the statements *are not* “conclusory.” *Orsini v.*

O/S Seabrooke, 247 F.3d 953, 960 n.4 (9th Cir. 2001) (finding claim that declaration was conclusory “without merit”); *see also United States v. \$223,178.00 in Bank Account Funds*, 333 F. App’x 337, 338 (9th Cir. 2009).

Accordingly, the Order’s characterizations cannot, consistent with Ninth Circuit precedent, establish that the declaration fails to show the documents are private. There can be little question whether the president of a small organization whose strategy revolves around its communications with lawmakers, who verifies knowledge under oath, knows whether its communications with legislators are “private.” *See* D. 93-1 (Ex. 4), ¶¶ 4–5, 7–8 (asserting “personal knowledge,” describing the communications sought as “private” and “at the heart of [RLI’s] strategy”). The district court thus clearly erred by finding factual statements that were not legal conclusions or mere speculation, but were made with personal knowledge, to be conclusory.

Additionally, Challengers tacitly conceded the private nature of these communications in two ways. One, they argued that RLI’s communications with legislators were *not* public, claiming they could not obtain them via public records request because “Idaho’s public records law is not coextensive with . . . Rule 26.” Pls.’ Opp’n to Mot. and Mem., D. 87, 11 (“**Opp’n**”). Two, after RLI submitted the Naugle Declaration, Challengers did not attempt to rebut it, as they easily could have, *e.g.*, *Green Tech. Lighting Corp. v. Insure Idaho, Ltd. Liab. Co.*, No.

1:17-cv-00432-DCN, 2023 U.S. Dist. LEXIS 58520, at *40 (D. Idaho Mar. 31, 2023). The Naugle Declaration’s descriptions of the private nature of the communications at issue therefore remain unchallenged.⁹

Nor was there any basis for such a conclusion independent of Challengers’ arguments. The brevity of the Naugle Declaration’s statement that RLI’s communications with legislators concerning legislation are private, Naugle Decl., D. 93-1 (Ex. 4), ¶ 7, does not render it overly “general.” *Contra* Order D. 108 (Ex. 1), 8. *See Shimko v. Goldfarb*, 246 F. App’x 525, 527 (9th Cir. 2007) (affidavit “lacking in detail” was not conclusory); *Perry*, 591 F.3d at 1163 (declaration was “lacking in particularity”). First, as noted, RLI’s president plainly knows how RLI conducts communications at the heart of its strategy, which knowledge was sworn. Second, what further explanation could be needed? “Private” means “private”—between RLI and the legislator in question.¹⁰ There is nothing further to specify.

⁹ Additionally, the Order’s “conclusory” assertion cannot reasonably be read as an indication that the communications might not in fact be strategic. Challengers never contended that RLI’s communications with legislators are not strategic. *See generally* Opp’n, D. 87.

¹⁰ RLI does not concede that privacy is required to invoke First Amendment privilege. To the contrary, the Supreme Court has said a “*possible* deterrent effect” is all that is required, and has never suggested external documents cannot satisfy that criteria—certainly not private documents like those sought here. Mem., D. 72-1, 9–11 (quoting *Bonta*, 594 U.S. at 616) (citing various cases finding external communications to be privileged).

In short, the statements of the Naugle Declaration are the opposite of general or conclusory. The district court’s Order, based on clearly erroneous conclusions to the contrary, should be reversed.¹¹

C. The lower court imported protective order law into a motion to quash case.

Even if *Perry* had required a privilege log to assert First Amendment privilege, the district court would nonetheless have erred by importing that *protective order* analysis—which by its nature does not apply to motions to quash—into this case. A privilege log was necessary in *Perry* for a simple reason: a protective order was the relief sought, *not* an order quashing the subpoena. 591 F.3d at 1153. That protective order would apply only to very specific documents sought, not the whole trove. *Id.* at 1165 n.12. A privilege log was therefore necessary to assert which documents fell under those protections.

However, if a subpoena is quashed, as the RLI Subpoena should have been, no documents may be sought, so logging privilege would be redundant—an *added* burden in an analysis meant to *relieve* burden. The privilege log requirement applies only when a person is “withholding subpoenaed information”; a wholly

¹¹Even if there were some reason to find the Naugle Declaration insufficient to establish the private nature of all of the documents at issue, under *Perry* the district court still should not have denied RLI’s prima facie case, but instead should have found the First Amendment *does* protect documents that were shared only between RLI and legislators or legislative staff, while potentially permitting discovery of documents distributed more broadly. 591 F.3d at 1165 n.13. Accordingly, even if the district court had not erred in finding the Naugle Declaration conclusory, it still would have erred in failing to provide such relief.

different subsection governs motions to quash such that no information remains subpoenaed. *Compare* Fed. R. Civ. P. 45(e)(2)(A) *with* Fed. R. Civ. P. 45(d)(3).

Observing that a privilege log is not necessary to quash a subpoena that categorically infringes privilege is a judicial commonplace. Indeed, district courts within this Circuit, other circuit courts, and other district courts explicitly recognize the fact that a privilege log is not necessary when “it is apparent from the face of the subpoena” that privileged or protected information is sought.¹²

In short, RLI is “seeking to quash the subpoena[]; [it is] not producing documents. A privilege log is inapplicable here.” *Broadband iTV*, 2015 U.S. Dist. LEXIS 51131, at *9. *Perry* found First Amendment privilege applicable to the

¹²*See Jordan v. Comm’r, Miss. Dep’t of Corr.*, 947 F.3d 1322, 1328 n.3 (11th Cir. 2020); *see also Broadband iTV, Inc. v. Hawaiian Telecom*, No. 15-mc-80053 HRL, 2015 U.S. Dist. LEXIS 51131, at *9 (N.D. Cal. Apr. 17, 2015); *see also, e.g., Hall v. Balt. Police Dep’t*, No. 1:24-1137-RDB, 2025 U.S. Dist. LEXIS 26704, at *30–31 (D. Md. Feb. 13, 2025) (quoting *Garrity v. Gov. Bd. of Cariños Charter Sch.*, No. 20-340-MV/KK, 2021 U.S. Dist. LEXIS 133760, at *5 (D.N.M. July 19, 2021)) (a party may demonstrate privilege “without a privilege log where the challenged request is . . . necessarily seeking privileged information”); *Williams v. Dave Wright BGH, Inc.*, No. 19-300-SMR-SBJ, 2020 U.S. Dist. LEXIS 261876, at *6 (S.D. Iowa Dec. 23, 2020) (a “declaration . . . combined with [a] presentation of authority suffices to meet the burden to establish the . . . privilege,” particularly where non-parties are concerned (citation omitted)); *Bresler v. Wilmington Tr. Co.*, No. PJM 09-2957, 2013 U.S. Dist. LEXIS 201311, at *8 (D. Md. Aug. 8, 2013) (where a party “object[s] to [] subpoenas *in toto*,” “[t]here is no requirement that a privilege log be produced”); *accord United States v. Coburn*, No. 2:19-cr-00120 (KM), 2022 U.S. Dist. LEXIS 21429, at *12–13 (D.N.J. Feb. 1, 2022) (finding “categorical” privilege log “sufficient” as “a reasonable and less burdensome approach”; noting that when a subpoena’s demands, “on their face, . . . would naturally yield a large volume of privileged documents,” privilege claim need not be presented “document-by-document”).

whole category of private, strategic documents sought therein. But *other* documents were sought in *Perry*, so relief was appropriately requested in the form of a protective order. The *only* documents at issue here are those that lie at the heart of RLI's strategy. A motion to quash was the proper avenue for relief. The district court's privilege log requirement was error and should be reversed.

D. Challengers did not satisfy their burden to overcome RLI's privilege.

Despite finding no prima facie case, the district court “proceed[ed] to discuss relevance . . . [under] the heightened relevancy standard of the First Amendment privilege test” and “whether less intrusive means of obtaining information exist,” Order, D. 108 (Ex. 1), 9–10. While the court correctly found that “certain aspects of the Plaintiffs’ proposed narrowed subpoena requests are overbroad and include materials that are not relevant,” *id.* at 11, it otherwise clearly erred as to both relevance and undue burden.

1. The documents sought are not relevant under any analysis.

First, the district court erred in finding that “[c]ommunications . . . [with] Idaho legislators” were relevant and discoverable because they might show whether the abortion trafficking law was “intended to impede interstate travel,” *id.* at 12, which errs in both the First Amendment privilege analysis and the relevance analysis under Federal Rule of Civil Procedure 26. The question is whether, in a case where no invidious discrimination is alleged, such documents may be used to

show legislative purpose; quite simply, they may not. Mem., D. 72-1, 13–15; Reply Supp. Mot., D. 93, 5–7 (“**Reply**”); *see also* Def.’s Mem. Resp. Mot., D. 88, 2–5 (“**Labrador Memorandum**”). The “general rule” is that “discovery of a legislator’s subjective motivations” is prohibited. *Las Vegas v. Foley*, 747 F.2d 1294, 1298 (9th Cir. 1984). The Order asserts the Ninth Circuit has found evidence of lobbyists’ role in legislation relevant. Order, D. 108 (Ex. 1), 13 (citing *Mi Familia Vota v. Fontes*, 129 F.4th 691, 727–28 (9th Cir. 2025)). But rather than discussing, even minimally, the fact that RLI had already shown that such evidence is relevant only in cases where invidious discrimination is alleged (as it was in *Mi Familia Vota*, 129 F.4th at 724–25), but *not* in simple right to travel cases, the Order simply ignored those arguments—and the binding precedent adduced therein. *See generally* D. 108 (Ex. 1).

Challengers also failed to adduce any case finding that an interstate travel claim is comparable to invidious discrimination cases and therefore permits inquiry into subjective motivations. *See* Opp’n, D. 87, 9–11; *see also* Labrador Mem., D. 88, 3 (noting that Challengers “cite no case that applies the *Arlington Heights* framework to the right to travel and make[] no effort (despite recognizing that *Arlington Heights* is an Equal Protection case, [D.] 87 at 13) to connect the dots between their cited cases on relevant legislative history and the right to interstate travel”). So there was no basis for the Order to overlook this

distinction.¹³ The Order’s acknowledgment that “evidence of legislative motives has bounds,” D. 108 (Ex. 1), 12–13, only highlights the error since this case is precisely where those bounds apply. Overlooking that fact was clear error.

Moreover, even *if* evidence of invidious discrimination were relevant here, the district court adduced no basis for declining to apply the “general rule,” which often applies “[e]ven where a plaintiff must prove invidious purpose or intent, as in racial discrimination cases[.]” *Foley*, 747 F.2d at 1298. The Order’s failure to deal with this aspect of *Foley* is particularly problematic since this is *not* a case in which invidious legislative motive must be proven and thus is nowhere near the high bar required to make subjective motivations of individual legislators relevant. As *Foley* clearly explains, it is *not* true that a law serving appropriate governmental interests “will be invalidated if those who voted for it had illicit

¹³ *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 912, 916 (1982) (Burger, C.J., concurring in the judgment; White, J., concurring in the judgment) (a plurality opinion on equal protection grounds), cited in the Order, D. 108 (Ex. 1), 11, 13, surely cannot provide the basis: it only shows the “primary objective” of a law implicating the right to travel may be relevant when equal protection issues are also raised, and does not show that the subjective motives of individual legislators are relevant even then. *Id.* at 903 (citing *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982)). *Zobel*, too, was fundamentally about equal protection, and was clear that the “purposes” it considered were the *legislature’s* purposes—and only those that were objective—not the subjective motivations of individual legislators. 457 U.S. at 61 n.7, 67. The fact that equal protection cases, in some circumstances, avoid the rule against discovery of subjective motives of legislators, does not change the fact that there is *no precedent* for breaking that rule in *this* case, which has no equal protection claim, *see generally* Compl., D. 1 (Ex. 2).

motives.” 747 F.2d at 1298. So “the general rule” applies here, *id.*, and finding otherwise was clear error, contrary to *Foley* and the other law cited by RLI.

To hold that inquiry into the motivations of individual legislators is permissible in *any* case involving some allegation of an inappropriate legislative motive is to gut the binding precedent clearly prohibiting same *except* in very particular cases with very particular circumstances. The district court’s holding, however, does just that. That holding was error, and should be reversed both under the First Amendment privilege analysis and independently under Rule 26.

2. The Order imposes an undue burden.

The Order’s cursory examination of the burden on RLI was also erroneous. The Order contends that Challengers showed that there are no less intrusive “means of obtaining the information[.]” D. 108 (Ex. 1), 13–14 (citing D. 87 at 11–12, 15; D. 98–104).¹⁴ That is not the case. Challengers relied on a misunderstanding of Idaho’s Public Records Act, alleging that Challengers would

¹⁴RLI will primarily address Challengers’ arguments posited in the Opposition, D. 87, for two reasons. First, that is Challengers’ only brief directly addressing the Motion. Second, the Order’s citation to D. 98–104 is difficult to understand. Most of the filings in that range have nothing to do with Challengers’ attempt to show other sources of information. *E.g.*, D. 102 (Non-Party RLI’s Request for Oral Argument on Motion); D. 103 (incorrectly filed entry). The only docket entry containing argument marginally on point, Pls.’ Opp’n to Non-Party Idaho State Representative Barbara Ehardt’s Mot. Quash, D. 101, merely acknowledges the then-pending Motion and does not address RLI’s arguments, such as the privacy of RLI’s communications or the availability of public records requests for any communications available thereunder. *Id.* at 10–11.

have been required to “mak[e] 105 public records requests” in order to obtain from legislators the information sought, D. 87, 11, while in reality only one request would have been required, Reply, D. 93, 7–8 (citing Idaho Code §§ 74-101(15), -126(1)).¹⁵ That aside, Challengers’ argument is not even relevant to the inquiry, which is whether there is a *less burdensome* means of obtaining the information. Because responding to public records requests is integral to legislators’ jobs, and not done under compulsion, it cannot be considered a burden at all. *Id.* at 7. Compare this with the undue burden of *compelling* small, non-profit RLI to comb through *years* of records concerning major legislation.¹⁶ The Order clearly erred in finding no undue burden despite these two facts.

Challengers argued that “[t]he scope of disclosure required by Idaho’s public records law is not coextensive with that required by Rule 26.” D. 87, 11. But again, RLI showed this argument’s flaw. Reply, D. 93, 8. Challengers’ contention that some of the records it seeks may not be available via public

¹⁵RLI additionally noted that, even if 105 public records requests *were* required, the simple copy-and-pasting of the request 105 times would be far less burdensome than for a small nonprofit to comb through years of records. *Id.* at 8.

¹⁶ RLI also rebutted Challengers’ contention that the “timeframe” of receiving responses to public records requests—generally, three days—might be too slow, particularly in light of Challengers’ own delay. Opp’n, D. 87, 11; Reply, D. 93, 8, 8 n.8. The Order, declining to address this point, provides no reason to think that the alleged timing issue might burden Challengers.

records request constitutes an admission that those records are, in fact, not public but private. *Id.* This essentially concedes RLI's prima facie case of First Amendment privilege, verifying RLI's strong interest in maintaining the documents' privacy. The Order failed to address this problem. Because this problem clearly show that Challengers fail to meet their burden, that is clear error.

Finally, the Order errs in finding that "RLI's engagement with Idaho legislators . . . lessens the weight of RLI's status as a nonparty given the [documents'] relevance[.]" D. 108 (Ex. 1), 14. This constitutes error, first, because the documents are *not* relevant, and second, because it misapprehends the basis for protecting non-parties. Non-parties are not afforded special protections simply because they have nothing to do with the underlying facts. Such a rule would be meaningless since the only reason non-parties ever become involved with litigation is because they *do* have something to do with the litigation. The district court clearly erred by finding that RLI is not subject to protection as a non-party simply because it had something to do with the legislation at issue.

E. The Revised Demand does not fix the overbreadth.

Although the Order's Revised Demand narrowed Challengers' demands, D. 108 (Ex. 1), 15, it did not remedy their overbreadth. First, the Order still requires production of "[all] [c]ommunications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98[.]" *Id.* at 15. This plainly encompasses documents

having nothing to do with the intent of the abortion trafficking law. For example, an invitation stating, “You are invited to a reception about H.B. 242,” would have nothing to do with said intent, yet the Order’s demand would clearly encompass same. This is precisely the sort of overbreadth that is prohibited.

RLI also noted that Challengers’ demands suffered from temporal overbreadth, a problem the Order does not address at all. *See generally* D. 108 (Ex. 1). The demands’ temporal scope encompassed communications occurring even more than two years earlier than H.B. 98, “the earliest version of the” law, was introduced. D. 72-1, 20. Rather than justify this, Challengers simply alleged that *NRLC* (not RLI) proposed legislation before the law was passed, but even that allegation left a year-and-a-half of overbreadth even if it *had* been RLI who proposed the legislation. Reply, D. 93, 11. Yet it was not, so the two-plus year overbreadth remained. The district court ignored this issue.

The temporal overbreadth of Challengers’ demands—and the Revised Demand—is also present in their demand for documents *after* the relevant timeframe. The RLI Subpoena demanded documents “to the present,” i.e., the date of service, September 12, 2025. D. 72-3 (Ex. 3), 1, 7. But H.B. 242 (the “amended and re-introduced” bill) was passed on March 30, 2023. Compl., D. 1 (Ex. 2), ¶ 11. While RLI has already shown that individual legislators’ communications are not relevant at all, it is also true that there is no conceivable basis by which *post-*

enactment statements could affect the legislative intent of the abortion trafficking law: “post-passage remarks of legislators” do not “change the legislative intent[.]” *Reg’l Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974); *see also Schlothan v. Alaska*, 276 F.2d 806, 815 (9th Cir. 1960). Accordingly, the district court clearly erred by entering a Revised Demand that would not be justified in subject matter or timeframe even if the court’s relevance analysis were correct.

In sum, the Order contains numerous clear errors. Accordingly, for all of the foregoing reasons, the Clear Error Factor is satisfied on numerous bases.

II. RLI has no other means of relief.

The Other Means Factor is also satisfied. In *Perry*, the Court assumed “that no collateral order appeal is available” against a discovery order on First Amendment privilege grounds.¹⁷ 591 F.3d at 1157 (citing 28 U.S.C. §§ 1291, 1292(a)(1) and 1292(b); *Foley*, 747 F.2d at 1297) (quotation marks omitted). Mandamus review is “appropriate for discovery matters which otherwise would be reviewable only on direct appeal after resolution on the merits.” *Foley*, 747 F.2d at 1297; *see also Perry*, 591 F.3d at 1157 (quoting same); *Admiral Ins. Co. v. U.S. Dist. Court*, 881 F.2d 1486, 1488 (9th Cir. 1989).

¹⁷Should this Court find it appropriate to assume otherwise today (when at least one circuit has found that First Amendment privilege asserted by a third party warranted application of the collateral order doctrine, *Whole Woman’s Health v. Smith*, 896 F.3d 362, 368 (5th Cir. 2018)), it should construe this petition as a collateral order appeal and reverse the Order due to its numerous clear errors.

Perry noted that, although direct appeal of non-final decisions is permitted in rare cases under the collateral order doctrine, there was “uncertainty about the availability of collateral order review” following *Mohawk*, which found collateral order review was not available against discovery orders denying claims of attorney-client privilege. 591 F.3d at 1156. Therefore, despite noting distinctions between the analysis as it pertained to attorney-client privilege versus First Amendment privilege, this Court “assume[d] . . . that discovery orders denying claims of First Amendment privilege are not” directly appealable. *Id.* at 1155–56.

As of 2011, this question remained undecided in the Ninth Circuit, *Anonymous Online Speakers v. United States Dist. Court*, 661 F.3d 1168, 1173 n.1 (9th Cir. 2011), and it appears this Court has not addressed the question since then. Accordingly, the mandamus analysis plainly favors granting mandamus under this factor since this case closely echoes *Perry*.

III. The Harm Factor is satisfied.

The Harm Factor strongly favors mandamus. It is an oft-repeated proposition in this Court that where a district court erroneously “compel[s] disclosure, any damage the [producing entity] suffer[s] would not be correctable on appeal.” *Star Editorial v. United States Dist. Court*, 7 F.3d 856, 859 (9th Cir. 1993); *see also Perry*, 591 F.3d at 1157 (quoting same); *Admiral Ins.*, 881 F.2d at 1491. This uncorrectable damage is severe. Complying with compelled “discovery

[] against [a] claim of privilege destroys [the] right sought to be protected.”

Id. at 1491 (citing *In re von Bulow*, 828 F.2d 94, 98 (2d Cir. 1987)). That is because an order that “brushes aside a litigant’s claim of a privilege not to disclose” and compels production of information, “leaves only an appeal after judgment as a remedy,” an “inadequate” remedy that occurs only after the right of privilege is “destroy[ed].” *In re von Bulow*, 828 F.2d at 98. This result is particularly repugnant here. The ““loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.””

Fellowship of Christian Athletes v. San Jose Unified Sch. Dist., 82 F.4th 664, 694 (9th Cir. 2023) (en banc) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)).

For three reasons, it is no retort that the Order gives RLI the option of propounding further objections and a privilege log. First, where a motion to quash should have been granted, relieving a nonparty of the burden of litigation, it is plain that the nonparty is unduly burdened if required nonetheless to continue therein, particularly when that means searching and describing years’ worth of irrelevant communications, *supra* Parts I.D.1, I.E (discussing total irrelevance of documents at issue, including timeframe). Even outside of the motion to quash context, the rules do not require a privilege log. Fed. R. Civ. P. 26(b) Advisory Committee Notes (1993) (noting that defined information is not required “when a

party asserts a claim of privilege,” as providing same “may be . . . unduly burdensome”). *In* the motion to quash context, particularly in light of *Perry*, it is plain that being required to undergo that process is an undue burden. Nor can that burden be corrected on appeal. The time spent combing through years of documents cannot be returned no matter the result.¹⁸

Second, as established above, the Balancing Test puts the burden on the discovery *proponent* after a prima facie case of First Amendment privilege is made. This protects the substance of the rights at stake by giving litigants claiming First Amendment privilege a meaningful chance to assert same. A framework that precludes “a fair consideration” of the First Amendment claim is, by definition, “unduly strict.” *Buckley v. Valeo*, 424 U.S. 1, 74 (1976); *see also Brock v. Local 375, Plumbers Int’l Union*, 860 F.2d 346, 350 (9th Cir. 1988) (citing same in First Amendment balancing context). A discovery *proponent* who believes a prima facie case of First Amendment privilege can be overcome bears the burden of

¹⁸ Considering the context in which this privilege log was required—in which RLI had *already* noted, in a sworn declaration, the private and strategic nature of the documents sought—it is apparent that the district court’s requirement of a privilege log demands the disclosure of further details, such as names and highly specific descriptions of subject matter. Accordingly, another fundamental consideration concerning the Harm Factor is the fact that the very chill RLI seeks to avoid would be *caused* by producing a privilege log of the sort the district court requires. That is, there is no reason to doubt that legal advocacy organizations would be chilled by the fact that they may have to comb through years of irrelevant documents in order to describe them in a log, even though they are categorically privileged, just as they would be chilled by compelled production.

showing heightened relevance and unavailability from other sources. Requiring the First Amendment-protected party to prove that the documents at issue are *not* highly relevant and *are* available from other sources would essentially render the privilege a nullity, a grave harm.

Third, the fundamental fact is that the Order exemplifies such nullification of First Amendment privilege. As described above, the district court's failure to apply *Perry* resulted in its holding that RLI's declaration that the documents at issue are private and strategic—assertions not meaningfully challenged by any party—was effectively meaningless. If RLI's sworn declaration statements, which were non-conclusory and more specific than those found sufficient in *Perry, supra* Part I.B.1, were not found sufficient to assert First Amendment privilege, by the same logic the district court will not find a privilege log asserting the same basis of First Amendment privilege sufficient. This petition is therefore necessary to preserve the very privilege that would be considered—and would be ultimately denied—in a privilege log. In other words, First Amendment objections that clearly should have been sustained under *Perry* were *already* erroneously overruled. That brings us back to the main point: RLI is harmed by the district court's order because it requires RLI—*whether it makes further objections or not*—to produce First Amendment privileged documents since its objections have already been overruled.

Finally, the Harm Factor encompasses “substantial costs imposed on the public interest.” *Perry*, 591 F.3d at 1158. That analysis in this case echoes *Perry*:

This risk applies not only to the official proponents . . . but also to the myriad social, economic, religious and political organizations that publicly support or oppose [legislation]. The potential chilling effect on political participation and debate is therefore substantial Declining to exercise [] mandamus jurisdiction in this case, therefore, would imperil a substantial public interest

Id. at 1158 (quotation marks and citation omitted).

As the foregoing shows, the injury RLI would sustain by being forced to comply with the Order is precisely the sort of injury that has often been held to warrant mandamus relief. Yet, as an injury to a precious Constitutional right, it is also more severe than the injury at issue in many such cases. Even temporally minimal compelled compliance would certainly constitute an irreparable injury. The Harm Factor therefore weighs heavily in favor of granting the writ.

IV. The Repeated Error and New Problem Factors are satisfied.

Finally, the last two factors are also satisfied since the district court’s clear error presents a new problem that is likely to be oft-repeated. While this case largely echoes *Perry*, it is different insofar as it concerns a motion to quash, rather than a motion for protective order. Accordingly, while *Perry*’s *application* to this circumstance is clear, it remains true that the district court erred because it misapprehended *Perry* because it does not address motions to quash. As in *Perry*,

then, it is true here that this case presents “the need to resolve a significant question of first impression” and that “this novel and important question may repeatedly evade review because of the collateral nature of the discovery ruling.” 591 F.3d at 1158–59; *see also In re Kirkland*, 75 F.4th at 1051.

Additionally, it appears this Court has not directly addressed whether private, but not strictly internal, communications may ever be protected by First Amendment privilege.¹⁹ That remains, then, an important issue of first impression which may repeatedly evade review if not addressed here. Accordingly, the Repeated Error Factor and the New Problem Factor are satisfied.

Conclusion

For all of the foregoing reasons, this Court should grant mandamus, reverse the Order, and require the district court to quash the RLI Subpoena.

¹⁹ *Perry* emphasized that private, strategic communications *are* protected; to the extent it held certain external messages may not be, it emphasized that that was because the external messages at issue *were not strategic*. *Perry*, 591 F.3d at 1165 n.12. In this case, it is established by sworn declaration that the communications *are* strategic; indeed, the formulation of legislation is at the *core* of RLI’s strategy. *Supra* Part I.A. This case therefore represents the perfect opportunity for this Court to make clear that the Ninth Circuit takes the Supreme Court’s rule seriously—that First Amendment chill, not strictly internal communication, is what is required to invoke First Amendment privilege.

Dated: January 16, 2026

Respectfully submitted,

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Certificate of Compliance

I hereby certify that the foregoing Petition for Writ of Mandamus contains 7,797 words as calculated by the word count function of WordPerfect 2020. It therefore complies with the length limitations of Fed. R. App. P. 21(d) and Ninth Circuit Rule 21-2(c), because, excluding the parts listed by Fed. R. App. P. 21(a)(2)(C) and 32(f), it does not exceed 30 pages or 7,800 words.

Dated: January 16, 2026

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Certificate of Service

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Case Management System (ACMS) on January 16, 2026.

I further certify that on January 16, 2026, a notice of the filing of the foregoing (including a complete copy of the foregoing) will be filed in the underlying proceeding in the United States District Court for the District of Idaho in compliance with Federal Rule of Appellate Procedure 21(a)(1), and that all parties to the proceeding will be served with that notice through the district court's CM/ECF system.

Dated: January 16, 2026

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Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1, RLI hereby states that it is a nonprofit organization and that no parent corporation or publicly held corporation owns 10% or more of its stock.

Dated: January 16, 2026

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Statement of Related Cases

Pursuant to Circuit Rule 28-2.6, counsel for RLI states that it is aware of no pending related cases.

Dated: January 16, 2026

/s/ Joseph D. Maughon

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FRAP 21(a)(2)(C) Exhibit 1

“Order”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO,
NORTHWEST ABORTION ACCESS
FUND, and INDIGENOUS IDAHO
ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as
the Attorney General for the State of Idaho

Defendant.

Case No. 1:23-CV-00323-DKG

ORDER

Before the Court is a Motion to Quash Subpoena filed by Right to Life of Idaho, Inc., an entity not named as a party in this action. (Dkt. 72). The motion is fully briefed. (Dkt. 87, 88, 93). The facts and legal arguments are adequately presented in the record. Accordingly, in the interest of avoiding delay, and because the decisional process would not be significantly aided by oral argument, the motion will be decided on the record.¹ For the reasons that follow, the motion will be granted in part and denied in part.

¹ For this reason, the motion for hearing is denied. (Dkt. 102).

BACKGROUND

This case challenges the constitutionality of Idaho Code Section 18-623, which “criminalizes ‘abortion trafficking’ defined as ‘[a]n adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion,...or obtains an abortion-inducing drug...by recruiting, harboring, or transporting the pregnant minor within’ the state of Idaho.” *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024) (quoting I.C. § 18-623(1)); (Dkt. 1). Plaintiffs are an individual and two advocacy organizations who seek to counsel pregnant minors in Idaho and provide material support to access legal abortion in other states. *Id.* at 795. Defendant is the Idaho Attorney General. Plaintiffs assert claims alleging Idaho Code Section 18-623 is void for vagueness under the Fourteenth Amendment, violates their First Amendment rights, and infringes on their right to interstate travel. (Dkt. 1, 41). On September 12, 2025, Plaintiffs served a subpoena duces tecum to Right to Life of Idaho, Inc. (RLI), an entity not named as a party in this action, requesting production of five categories of documents and materials. (Dkt. 72-3). RLI objected to the subpoena, to which Plaintiffs responded by proposing “narrow[ed]” requests for production. (Dkt. 72-4). On October 23, 2025, RLI filed the motion presently before the Court seeking to quash the subpoena under Federal Rule of Civil Procedure 45(d)(3).²

² Plaintiffs issued a similar subpoena to the National Right to Life Committee, Inc. (NRLC), which is the subject of a separate motion to quash pending in the District Court for the District of Columbia. (Dkt. 72-1 at 4 n.2; Dkt. 87 at 3 n.1).

STANDARD OF LAW

Under Federal Rule of Civil Procedure 34(c), a nonparty may be compelled to produce documents and tangible things or to permit an inspection pursuant to a subpoena issued as provided in Rule 45. The scope of discovery allowable through a subpoena under Rule 45 is the same as that permitted under Rule 26(b). Fed. R. Civ. P. 45 advisory committee note (1970) (“[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules.”); Fed. R. Civ. P. 34(a) (“A party may serve on any party a request within the scope of Rule 26(b).”).

Upon a timely motion, the Court must quash or modify a subpoena under Rule 45(d) where, as relevant here, the subpoena requires disclosure of privilege or other protected matter, or subjects the recipient to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv). The burden of persuasion is on the party moving to quash the subpoena. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal 2005). The party issuing the subpoena must demonstrate the requested discovery is relevant. *Nachison v. American Airlines, Inc.*, 2025 WL 346081, at *2 (N.D. Cal. Jan. 30, 2025).

DISCUSSION

On this motion, RLI seeks to quash the subpoena issued by Plaintiffs on the basis of First Amendment privilege, relevancy, overbreadth, and undue burden. (Dkt. 72, 93). Defendant argues the subpoena should be quashed because the requested discovery is irrelevant. (Dkt. 88). Plaintiffs oppose the motion in all respects, arguing the requested information is not privileged, the information is relevant to the right to interstate travel

claim, and the narrowed subpoena requests are not overbroad or unduly burdensome. (Dkt. 87).

The parties and RLI present differing perspectives of the information sought in the subpoena. The subpoena requests, as “narrowed,” state as follows:

1. Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials prepared *for dissemination to legislators*; and
2. Documents created for the purpose of communicating with legislators about those “abortion trafficking” bills like H.B. 242 and H.B. 98 – such as drafts of model language, position summaries, or legislative fact sheets – *to the extent such materials were shared externally or intended for legislative audiences*.

(Dkt. 72-4) (italics in original).³ The subpoena expressly does “not seek internal deliberations, membership information, strategic planning materials, or communications solely among NRLC, RLI, or their affiliates unrelated to direct legislative engagement.” (Dkt. 72-4).

The parties and RLI dispute whether and to what extent the subpoena seeks internal materials. The Court finds the language of the narrowed subpoena requests could be construed to encompass both internal and external materials. For the reasons stated herein, the Court will limit the subpoena to exclude purely internal materials but will allow discovery of communications, documents, and materials actually provided to Idaho

³ H.B. 98 and H.B. 242 were the pieces of legislation introduced during the 2023 Idaho legislative session that became Idaho’s Abortion Trafficking law, codified as Idaho Code Section 18-623.

legislators and legislative staff that concern the legislation relevant to this case. The term “purely internal” refers to communications, documents, and materials that were not provided to Idaho legislators or legislative staff, as distinguished from “external” communications, documents, and materials that were so provided. With this context in mind, the Court finds as follows.

1. First Amendment Privilege

“A party who objects to a discovery request as an infringement of the party’s First Amendment rights is in essence asserting a First Amendment *privilege*.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010) (italics in original) (citations omitted). A claim of First Amendment privilege is subject to a two-part analysis. *Id.* First, the party asserting the privilege must make “a ‘prima facie showing of arguable first amendment infringement,’” which requires demonstrating “‘that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.’” *Id.* (quoting *Brock v. Local 375, Plumbers Int’l Union of Am.*, 860 F.2d 346, 350 (9th Cir. 1988) (citation omitted brackets in original)). Second, if the party asserting the privilege makes such a showing, the burden shifts to the party seeking discovery to “demonstrate that the information sought through the [discovery] is rationally related to a compelling governmental interest ... [and] the ‘least restrictive means’ of obtaining the desired information.” *Id.* at 1161. The second part of the analysis is meant to determine whether

the party seeking the discovery has demonstrated an interest in obtaining the requested disclosures that is sufficient to justify the infringement on the First Amendment right asserted, not necessarily to preclude discovery. *Id.*

A. First Amendment Infringement

RLI bears the initial burden to establish a prima facie case of a First Amendment infringement. *Perry*, 591 F.3d at 1160. RLI asserts its internal and external communications and documents; political advocacy activities, messaging, and communications; and strategic operations are protected from disclosure by the First Amendment privilege. (Dkt. 72, 93). Compelled disclosure of certain internal communications, documents, and materials of the type alleged here could be shown to have a deterrent or chilling impact on First Amendment rights. *Perry*, 591 F.3d at 1159. “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association....” *Id.* (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). “The First Amendment protects political association as well as political expression,” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976), and the “freedom to associate with others for the common advancement of political beliefs and ideas is ... protected by the First and Fourteenth Amendments.” *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973).

Here, however, RLI has not carried its burden at part one of the *Perry* analysis to show an arguable First Amendment infringement in this case. *Perry*, 591 F.3d at 1160, 1163; (Dkt. 72, 93). RLI’s conclusory contention that a First Amendment privilege of its

internal and external communications is “self-evident” and “common sense” given the nature of the First Amendment chill that arises through compelled disclosure of core political speech is insufficient. (Dkt. 72, at 11-12; Dkt. 93 at 2-3). While political speech, advocacy, and association are important First Amendment rights, asserting the First Amendment privilege requires more than stating one engages in political activity and therefore disclosure of communications and materials will result in an unconstitutional chilling or other infringement on First Amendment rights. Indeed, in the cases RLI relies on to support its contention, the parties asserting the First Amendment privilege made a prima facie case by submitting declarations and privilege logs. *LeGrand v. Abbott Labs.*, 2024 WL 4469099, at *1 (N.D. Cal. Oct. 9, 2024); *Apple Inc. v. Match Group, Inc.*, 2021 WL 3727067 (N.D. Cal. Aug. 19, 2021). Here, no privilege log was submitted describing the nature of the documents and communications that RLI contends fall within the First Amendment privilege. Fed. R. Civ. P. 26(b)(5)(A), 45(e)(2)(A)(ii); *Perry*, 591 F.3d at 1153 n. 1 (stating “some form of privilege log is required” to assert the First Amendment privilege). Instead, RLI submitted the Declaration of Emily Naugle with its reply brief to demonstrate that enforcement of the discovery requests will deter and chill communication and participation in and with RLI by its members, donors, volunteers, participants, and those with whom RLI seeks to communicate and affiliate; impact its

associations; and harm its effectiveness. (Dkt. 93-1, Dec. Naugle).⁴ As such, the Naugle Declaration does no more than make the same broad allegations and conclusions of the deterrent and chilling impacts that compelled disclosure would have on RLI's association rights, participation, and effectiveness, as set forth in RLI's briefing. While these are the types of harms that may invoke the First Amendment privilege, the Court finds the general references to "private," "internal," and "strategic" communications and documents, and the conclusory assertions of privilege contained in RLI's briefing and the Naugle Declaration do not demonstrate an arguable First Amendment infringement as to all of the requested discovery in this case consistent with the directives in *Perry*, let alone a privilege in the limited discovery allowed herein. *Perry*, 591 F.3d at 1153 n. 1, 1160; *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 84-85 (D. Ariz. 2022).

At best, the Naugle Declaration could possibly demonstrate that some of the information requested – purely internal communications and documents – implicates First Amendment interests. *Perry*, 591 F.3d at 1159-1164. The concerns relevant to RLI's purely internal communications and materials are addressed by the Court's limitations on

⁴ Generally, courts will not consider new evidence in a reply without first giving the non-movant an opportunity to respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996). However, courts may consider evidence rebutting arguments raised for the first time in the non-movant's opposition. *BME Fire Trucks LLC, et al. v. Cincinnati Casualty Co.*, 2025 WL 3443532, at *7 (D. Idaho Dec. 1, 2025). Here, RLI bears the initial burden to establish the prima facie First Amendment privilege, and should have provided all materials relevant to that burden with its opening brief. *Perry*, 591 F.3d at 1160; Fed. R. Civ. P. 6(c)(2); Local Civ. R. 7.1(b)(2). Nevertheless, the Court has considered the Declaration as "rebuttal" evidence to Plaintiffs' response brief, and because the Declaration encompasses arguments made in RLI's opening brief. (Dkt. 87 at 6, n. 3; Dkt. 93 at 3, n. 4). Going forward, the parties and all participants in this litigation are directed to submit any and all supporting materials with their initial briefing.

the discovery that will be allowed, discussed below. Still, no prima facie showing of a First Amendment privilege has been made as to external communications, documents, and materials provided to or with Idaho legislators and legislative staff about H.B. 98 or H.B. 242. *See e.g., Sol v. Whiting*, 2013 WL 12098752, at *2 (D. Ariz. Dec. 11, 2013); *La Union Del Pueblo Entero v. Abbott*, 2022 WL 17574079, at * 7 n. 10 (W.D. Texas Dec. 9, 2022) (“The Court will not presume that a protected associational relationship exists between a party and every other person or entity with whom they share common beliefs or goals...such an expansive view of the associational privilege would swallow the discovery process altogether.”). Based on the foregoing, the Court finds RLI has not met its prima facie burden at the first part of the *Perry* analysis.⁵ The Court will next evaluate the relevancy and the need for the discovery.⁶

B. Relevance and Need for the Discovery

At the second part of the *Perry* analysis, the burden shifts to the party seeking discovery to demonstrate “an interest in obtaining the disclosures it seeks...which is sufficient to justify the deterrent effect...on the free exercise...of [the] constitutionally

⁵ In so finding, the Court is not minimizing the important First Amendment interests implicated here nor deciding whether any particular materials are discoverable. Rather, the Court is simply unable to conclude on this record that RLI has shown an arguable First Amendment infringement in all of its internal and external communications. *See e.g., Mi Familia Vota*, 343 F.R.D. at 83-85.

⁶ While RLI has not met its initial burden, the Court will proceed to discuss relevance as discovery can only be requested or compelled that is relevant and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1); (b)(2)(C)(iii). In doing so, the Court will apply the heightened relevancy standard of the First Amendment privilege test given the possibility that the requested discovery involves political speech and association, the unique circumstances in this case, and because the outcome is the same under either standard.

protected right of association.” 591 F.3d at 1161 (quoting *NAACP*, 357 U.S. at 463). To make this determination, the Court balances the burdens on RLI against the significance of the interest in disclosure, and considers the importance of the litigation, the “centrality of the information sought to the issues in the case,” whether less intrusive means of obtaining information exist, and the “substantiality of the First Amendment interests at stake.” *Id.* The party seeking the discovery must show that the information requested is “highly relevant to the claims or defenses in the litigation – a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1),” and the request must “be carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable.” *Id.*⁷ Further, the Court is mindful that nonparties subject to Rule 45 subpoena requests are afforded special consideration. *See e.g. Mi Familia Vota*, 343 F.R.D. at 81-82.

Here, Plaintiffs point to the right to interstate travel claim as the basis for needing the requested discovery and its relevance. (Dkt. 87). The right to interstate travel claim alleges that Idaho Code Section 18-623 violates Plaintiffs’ right to enter one state and leave another. (Dkt. 1 at ¶¶ 73-75, 79, 102-111). “A state law implicates the right to travel when it actually deters such travel,...when impeding travel is its primary objective,...or

⁷ Under Rule 26(b)(1), the scope of discovery is any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties’ relative access to the information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit. Fed. R. Civ. P. 26(b)(1). “Information within the scope of discovery need not be admissible in evidence to be discoverable.” *Id.*

when it uses any classification which serves to penalize the exercise of that right.”

Attorney Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 902 (1986) (citations and marks omitted); *Yellowhammer Fund v. Marshall*, 776 F.Supp.3d 1071, 1096-1104 (M.D. Ala. 2025).

Plaintiffs contend the information sought is necessary and relevant to establishing that Idaho Code Section 18-623’s primary objection is impeding travel. (Dkt. 87).

Defendant maintains legislative motive is irrelevant and the only questions presented in this litigation are of statutory construction. (Dkt. 88). RLI agrees with Defendant and further argues the motivation of individual legislators is irrelevant, the requests are not the least restrictive means of obtaining the information and are unduly burdensome, and the weighing of the burdens weigh in favor of RLI. (Dkt. 72, 93). Plaintiffs maintain the balancing of interests favors disclosure, which is the least intrusive means of obtaining the necessary information, is not unduly burdensome, and is not overbroad. (Dkt. 87).

Preliminarily, the Court finds certain aspects of the Plaintiffs’ proposed narrowed subpoena requests are overbroad and include materials that are not relevant. (Dkt. 72-4). Specifically, the requests for communications or materials that were not actually provided to Idaho legislators or legislative staff concerning H.B. 242 and H.B. 98. Materials or information “prepared for dissemination” or “created for the purpose of communicating with legislators,” but not actually shared with legislators or legislative staff, are not relevant to the issue of whether the primary objective of the challenged statute is impeding travel. Any communications or materials RLI prepared, created, or discussed

internally but never provided to or communicated with Idaho legislators have no bearing on the primary objective of the legislation at issue in this case. Accordingly, the Court will limit Plaintiffs subpoena request to the following:

Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials actually disseminated to Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98.

As limited, this subpoena request is carefully tailored to avoid unnecessary interference with any protected activities and to produce discovery that is directly relevant to the claims in this case.

Utilizing the above limited subpoena request, the Court next considers whether the information sought through discovery is highly relevant to the claims or defenses in the litigation such that the interests in obtaining the discovery is sufficient to justify the impact on RLI's interests. *Perry*, 591 F.3d at 1161. The Court finds the limited discovery allowed herein is highly relevant to the right to travel claim. Communications and materials provided to Idaho legislators and legislative staff concerning H.B. 242 or H.B. 98 bear directly on the issue of whether the passage of the legislation at issue was motivated or intended to impede interstate travel. The information is therefore important to the litigation and central to the issues presented in this case.

The Court is unpersuaded by the arguments of RLI and Defendant that legislative motive, and that of individual legislators, is irrelevant to the right to travel claim and that the issues here are only ones of statutory construction. (Dkt. 72, 88, 93). While evidence

of legislative motives has bounds, particularly in First Amendment challenges, that does not mean it is irrelevant or undiscoverable in all cases or contexts. *See e.g. DoorDash, Inc. v. City of New York*, 754 F.Supp.3d 556, 567-568 (S.D. N.Y. 2024) (finding nonparties' communications with city council members relevant to challenge to the constitutionality of a city ordinance under the Equal Protection and Dormant Commerce Clause); *City of Las Vegas v. Foley*, 747 F.2d 1294 (9th Cir. 1987) (limiting the relevance of legislative motives in the context of a First Amendment challenge). For instance, a lobbyist role in the process of proposing challenged legislation and the materials they sent to legislators about that legislation were found to be relevant to determining whether the legislation was enacted with intent to discriminate. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 727-28 (9th Cir. 2025) (involving challenges to state voter registration laws under federal voting statutes, a consent decree, and Equal Protection Clause). Here, the right to travel claim alleges that Idaho Code Section 18-623 unreasonably deters and burdens the right to enter and leave a state and that the intent behind the passage of the statute was to impermissibly restrict such travel. (Dkt. 1 at ¶¶ 75, 105-107). The claim therefore puts the primary objective of the statute squarely at issue. *Soto-Lopez*, 476 U.S. at 902. RLI's communications and materials provided to Idaho legislators and legislative staff about that legislation are highly relevant to that issue, as it is evidence of the primary objective for enacting the statute.

Plaintiffs have attempted to obtain the discovery through other sources and have shown that other possible means of obtaining the information are not more efficient or

less intrusive. (Dkt. 87 at 11-12, 15; Dkt. 98-104). Indeed, given the discovery request being allowed herein is limited to specific information directly relevant to this litigation that was shared with public officials about a matter of public concern, intrusion on RLI's interests, if any, is limited. *See e.g., Sol*, 2013 WL 12098752, at *2; *La Union Del Pueblo Entero*, 2022 WL 17574079, at *7 n. 10. Further, RLI contends it is a stranger to this case but, unlike other nonparties, RLI is not a stranger to the legislation at issue in this case. (Dkt. 72, 93); *Matsumoto*, 122 F.4th at 795 (noting comments made by RLI during House State Affairs Committee hearing). RLI's engagement with Idaho legislators and legislative staff concerning the challenged legislation, lessens the weight of RLI's status as a nonparty given the direct relevance of such communications and materials to the right to travel claim.

While political speech and association rights are important First Amendment interests, the Court finds RLI's interests relevant to the communications and materials made with and provided to Idaho legislators about H.B. 242 and H.B. 98 are outweighed by the importance and need for this limited discovery that is highly relevant to this case.

2. Conclusion

In sum, the Court will grant in part and deny in part the motion to quash the subpoena. The motion is denied as to the request to quash the subpoena entirely and the request for the limited discovery allowed herein. The motion is granted as to the subpoena's request for information that is not highly relevant. To the extent any privilege exists, the Court finds the limited discovery allowed herein is highly relevant and

necessary to the right to travel claim such that it outweighs any privilege, and that the Court's carefully tailored discovery request is the least restrictive means for obtaining the relevant information. *See Perry*, 591 F.3d at 1160-61; *La Union Del Pueblo Entero*, 2022 WL 17574079, at *7 n. 10; *Sol*, 2013 WL 12098752, at *2-3. Accordingly, Plaintiffs may seek the following discovery from RLI:

Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials actually disseminated to Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98.

Only communications and materials that were actually made with and provided to Idaho legislators and legislative staff concerning H.B. 242 and H.B. 98 are discoverable.

Communications or materials of RLI that are purely internal, were among or exchanged with anyone other than Idaho legislators and legislative staff, or do not concern H.B. 242 and H.B. 98, are not discoverable. If it was not communicated or provided to Idaho legislators or legislative staff about H.B. 242 or H.B. 98, it is not discoverable.

ORDER

THEREFORE IT IS HEREBY ORDERED that the Motion to Quash (Dkt. 72) is **GRANTED IN PART AND DENIED IN PART** as stated herein, and the Motion for Hearing (Dkt. 102) is **DENIED**. On or before **January 23, 2026**, Right to Life Idaho, Inc. must produce discovery responsive to the following:

Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials actually disseminated to Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98.

Alternatively, if Right to Life Idaho, Inc. has objections to the discovery request allowed herein, it must provide any objections to Plaintiffs no later than **January 9, 2026**. The parties and Right to Life Idaho, Inc. must thereafter meaningfully confer regarding the objections and attempt to resolve the same in good faith by **January 16, 2026**. If, after conferring, any objections are unresolved, Right to Life Idaho, Inc. may file an appropriate motion that must include all supporting materials on or before **January 23, 2026**.⁸ Any response briefs must be filed no later than **January 30, 2026**. Any reply is due by **February 4, 2026**. The parties may jointly request to extend the dates stated herein, if necessary.



DATED: December 19, 2025

A handwritten signature in black ink, appearing to read "Debora K. Grasham".

Honorable Debora K. Grasham
United States Magistrate Judge

⁸ Failure to include supporting materials with the opening motion and briefing may result in any late filed materials not being considered or other sanctions.

FRAP 21(a)(2)(C) Exhibit 2

“Complaint”

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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.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

I. INTRODUCTION

Idaho has some of the most oppressive criminal abortion statutes in the United States. Its Total Abortion Ban, codified at Idaho Code § 18-622, was passed in 2020, prior to the U.S. Supreme Court decision in *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 597 U.S. ____ (2022), and “triggered” when the *Dobbs* decision overruled *Roe v. Wade*, 410 U.S. 113 (1973). Under Idaho’s Total Abortion Ban, “[e]very person who performs or attempts to perform an abortion . . . commits the crime of criminal abortion.” Idaho Code § 18-622(2). Idaho’s Total Abortion Ban initially had no exceptions. Not for rape, or incest, or to save the life of the pregnant person. Those were only affirmative defenses. Idaho Code § 18-622(3).¹ A Total Abortion Ban in Idaho wasn’t enough. Understanding that many of Idaho’s neighboring states continue to recognize a person’s right to control their reproductive health, that Idahoans in need of reproductive health care services that might include abortion health care would travel to these states, and that other Idahoans and out-of-state reproductive health advocacy organizations would assist Idahoans obtain lawful abortion health care outside of Idaho, the Idaho Legislature acted again.

This time, under the guise of protecting parents’ rights (a selective rationale in Idaho at best),² the Idaho Legislature passed, and Governor Brad Little signed, a statute seeking to isolate minors from those who might help them access abortion health care.³ Specifically, the legislature

¹ The Idaho Legislature amended Idaho Code § 18-622(3) in 2023 to make the affirmative defenses into exceptions. *See* 2023 Idaho Laws Ch. 298 (H.B. 374).

² In the 2023 session, the Idaho Legislature also passed, and Governor Little signed, H.B. 71, 67th Leg., which banned gender affirming medical care for transgender minors, even where a parent wanted their child to receive such medical care. Two families of transgender girls have sued the state alleging, among other claims, that it violates parental rights. *See* Audrey Dutton, *Families of Transgender Teen Girls Sue over Idaho’s Ban on Gender Care for Youth*, Idaho Capital Sun (June 1, 2023), <https://idahocapitalsun.com/2023/06/01/families-of-transgender-teen-girls-sue-over-idahos-ban-on-gender-care-for-youth/>.

³ 2023 Idaho Laws Ch. 310 (H.B. 242).

criminalized adults who help minors travel for abortion care, if the adult has the intent to conceal the abortion from a parent or guardian. Apparently aware that they can't make abortions — or receipt of medications used in medical abortions — that occur in other states unlawful, they instead made it unlawful to provide travel assistance within Idaho, including helping minors reach or cross Idaho's borders. They call it abortion trafficking. Ignoring that some of the minors may seek an abortion because they were sexually abused by a parent or guardian, that they have consulted with trusted adults who support their position, or that they are actual victims of human trafficking, they instead seek to stop pregnant minors from crossing state lines to receive abortion health care.

The statute is unconstitutional. It is poorly written. It is vague and unclear in the conduct it prohibits. It infringes on the right to interstate travel, which United States Supreme Court Justice Brett Kavanaugh expressly stated was not implicated by *Dobbs*. It infringes on the right to intrastate travel. It infringes on First Amendment rights to speak about abortion and to associate and to engage in expressive conduct, including providing monies and transportation (and other support) for pregnant minors traveling within and outside of Idaho to access out-of-state legal abortion care. Plaintiffs, by contrast, are an individual and two organizations that seek to assist Idaho minors obtain reproductive health care that is lawful outside of Idaho — abortion, which necessitates some form of travel within Idaho to reach its borders. They now bring this civil action for declaratory and injunctive relief and allege as follows:

I. PARTIES

1. Plaintiff Lourdes Matsumoto is an individual and a resident of Idaho. She is an attorney who routinely works with victims of domestic and sexual violence, including minors. Her work includes representing victims of sexual violence resulting in pregnancy. In her work with minors who become pregnant, and in her individual capacity, she would like to discuss abortion options and assist minors in getting abortions in states where abortion remains legal, including by

transporting them or assisting them obtain transportation from Idaho to those states. Plaintiff Matsumoto fears prosecution under the Abortion Travel Ban.

2. Plaintiff Northwest Abortion Access Fund (“NWAAF”) is an abortion fund, made up of a working board, paid staff, and trained volunteers. NWAAF serves Idaho, Oregon, Washington, and Alaska. NWAAF helps people in these states access abortion care in various ways, including by transporting them across state lines. In the last year, NWAAF has provided assistance to 768 people in the Pacific Northwest. Idahoans made up 166 of that group, some of whom were Idaho minors.

3. NWAAF, through its paid staff and trained volunteers, uses funds it raises to speak about abortion and to associate and to engage in expressive conduct, including providing monies and transportation (and other support) for pregnant minors traveling within and outside of Idaho to access out-of-state legal health care services, including abortion. NWAAF wishes to continue the assistance it provides but fears prosecution under the Abortion Travel Ban.

4. Plaintiff Indigenous Idaho Alliance (“IIA”) is an Idaho 501(c)(3) non-profit. IIA is organized to serve Indigenous peoples. This includes serving the five tribes whose traditional, usual, and accustomed lands encompass territory within Idaho, and whose traditional, usual, and accustomed lands are often recognized as transecting and incorporating land within the U.S. state/Canadian provincial boundaries of Washington, Idaho, Montana, Nevada, Utah, Wyoming, California, British Columbia, and Alberta. This area has one of the highest *per capita* populations of Indigenous people in the political boundaries of the United States. IIA’s work also includes serving Indigenous people from other tribes across the U.S. who are in this area and far from their reservations and homelands.

5. IIA Founder and Organizer tai simpson is a member of the Nimiipuu Nation, also called the Nez Perce Tribe of Idaho. The traditional, usual, and accustomed lands of the Nimiipuu people, like that of the other tribes whose territory encompasses land within Idaho, are often recognized as transecting and incorporating land within the U.S. state/Canadian provincial boundaries of Washington, Idaho, Montana, Wyoming, British Columbia, and Alberta.

6. Through IIA and to serve its mission, Founder and Organizer tai simpson and others affiliated with IIA have assisted pregnant people, including minors in Idaho, access abortion care across the traditional, usual, and accustomed lands of the Indigenous people they serve. IIA wishes to continue to provide this assistance but fears prosecution under the Abortion Travel Ban.

7. Defendant Raúl Labrador is the Attorney General for the State of Idaho and he is named in his official capacity. A state attorney general is the proper defendant where the state attorney general “intends either to enforce a statute or to encourage local law enforcement agencies to do so.” *See Culinary Workers Union, Loc. 266 v. Del Papa*, 200 F.3d 614, 618–19 (9th Cir. 1999) (internal quotation marks and citation omitted). Defendant Labrador has authority to prosecute violations of Idaho Code § 18-623, at his sole discretion, if the authorized prosecuting attorney refuses to do so. Idaho Code § 18-623(4).

II. JURISDICTION AND VENUE

8. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. This is an action to enforce civil and constitutional rights pursuant to 42 U.S.C. § 1983 and the United States Constitution.

9. This Court has authority to award the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201, 2202, and 1343, Federal Rules of Civil Procedure 57 and 65, and the general legal and equitable powers of the Court.

10. Venue is appropriate under 28 U.S.C. § 1391(b) because the Defendant engages in his official duties within this District and because a substantial part of the acts or omissions giving rise to this action arose from events occurring within this District.

III. FACTUAL ALLEGATIONS

A. IDAHO ENACTS ITS ABORTION TRAVEL BAN.

11. “Abortion Trafficking” (the “Abortion Travel Ban”) was first introduced in the Idaho Legislature on February 7, 2023, as Idaho House Bill 98, by Representative Barbara Ehardt. The bill was later amended and re-introduced as House Bill 242 (“H.B. 242”) by Senator Todd Lakey and passed on March 30, 2023, with a 27–7–1 vote in the Idaho Senate and a 58–11–1 vote in the House.

12. Representative Ehardt repeatedly referred to the bill as a “parents’ rights” bill. During a March 27, 2023 Senate State Affairs Committee hearing, she testified, “[l]et me just say a couple things from my perspective, this is a parental rights bill, it really, it’s a parental rights bill and as we just basically lay this out, this does have to do with abortion trafficking and that would be taking a minor from, without parental permission, it’s all about parental permission, taking a minor from Idaho and trafficking that minor to another state to receive an abortion.”

13. H.B. 242 was signed into law on April 5, 2023, by Governor Brad Little. In a letter explaining his decision, Governor Little wrote that the law does not interfere with interstate travel; instead, it “seeks only to prevent unemancipated minor girls from being taken across state lines for an abortion without the knowledge and consent of her parent or guardian.”⁴

⁴ Ruth Brown, *‘Abortion Trafficking’ Bill Signed, Despite Washington Governor’s Plea*, Idaho Reports (Apr. 5, 2023), <https://blog.idahoreports.idahoptv.org/2023/04/05/abortion-trafficking-bill-signed-despite-washington-governors-plea/>.

14. In response to a request from Washington Governor Jay Inslee to veto the Abortion Travel Ban, Idaho Governor Little again stated that the law does not criminalize interstate travel for reproductive care, but rather prevents minors from traveling across state lines for an abortion without parental consent.⁵ Governor Little has further stated that Idaho has “the right and duty” to make laws regarding abortion after the overturning of *Roe*.

15. Due to its “emergency clause,” H.B. 242 went into effect May 5, 2023, even though it was not an official part of the Idaho Code until July 1, 2023. It is codified at Idaho Code § 18-623.

16. Idaho Code § 18-623 provides that:

(1) An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604, Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state commits the crime of abortion trafficking. As used in this subsection, the terms ‘procure’ and ‘obtain’ shall not include the providing of information regarding a health benefit plan.

“(2) It shall be an affirmative defense to a prosecution under subsection (1) of this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.

“(3) It shall not be an affirmative defense to a prosecution under subsection (1) of this section that the abortion provider or the abortion-inducing drug provider is located in another state.

“(4) The Idaho attorney general has the authority, at the attorney general's sole discretion, to prosecute a person for a criminal violation of this section if the prosecuting attorney authorized to prosecute criminal violations of this section refuses to prosecute violations of any of the provisions of this section by any person without regard to the facts or circumstances.

“(5) Any person who commits the crime of abortion trafficking, as provided in subsection (1) of this section, shall be punished by imprisonment in the state prison for no less than two (2) years and no more than five (5) years.

⁵ While parental consent is an affirmative defense to prosecution under the Abortion Travel Ban, nothing within the Abortion Travel Ban requires parental consent.

17. Idaho Attorney General Raúl Labrador has made clear that he is willing to enforce Idaho criminal abortion statutes even where any abortion occurs in another state. In a now-“rescinded” legal opinion letter dated March 27, 2023, he stated that medical professionals who refer pregnant patients across state lines for either medical or chemical abortions violate Idaho Code § 18-622(2), Idaho’s Total Abortion Ban.

18. He also opined that the Abortion Travel Ban, which he noted provides him with the authority to prosecute violations, is constitutional. *See* Constitutionality of H.B. 242, Op. Att’y Gen. (Mar. 13, 2023).

B. THE ABORTION TRAVEL BAN HAS HARMFUL EFFECTS.

19. Idaho’s draconian abortion statutes — the worst in the nation — have harmed Idahoans’ reproductive health and their options for reproductive health care. Idaho trails far behind other states regarding its number of physicians per capita.⁶ A January 2023 report by the Idaho Department of Health and Welfare shows that 98.2% of areas in Idaho have a primary care professional shortage.⁷ Indeed, Idaho has the fewest active physicians in the United States.⁸

⁶ *Understanding Idaho’s Doctor Shortage*, Boise State Public Radio, <https://bit.ly/3doQyFO> (last visited Apr. 20, 2023).

⁷ Idaho Dep’t Health & Welfare, *Bureau of Rural Health & Primary Care Brief* (Jan. 2023), <https://bit.ly/3QEEcrp>.

⁸ *See* Association of American Medical Colleges, *2021 State Physician Workforce Data Report* (Jan. 2022), https://store.aamc.org/downloadable/download/sample/sample_id/506/. Idaho is also the only state “without a legal requirement or specialized committee to review maternal deaths related to pregnancy.” Natalie Schachar, *As US maternal mortality rates surge, Idaho abandons panel investigating pregnancy-related deaths*, Idaho Capital Sun (June 30, 2023), <https://idahocapitalsun.com/2023/06/30/as-us-maternal-mortality-rates-surge-idaho-abandons-panel-investigating-pregnancy-related-deaths>.

20. Idaho is also one of the states most affected by the nationwide OB-GYN shortage.⁹ Its abortion statutes criminalizing and chilling reproductive health care have OB-GYNs fleeing the state,¹⁰ and at least two hospitals closing their labor and delivery departments.¹¹ This shortage is exacerbated by the lack of an OB-GYN residency program in Idaho,¹² meaning that every OB-GYN physician must be recruited to Idaho from out of state. Few are willing to work in a state where they face criminal prosecution for providing reproductive health care routine in other states.

21. Some health care providers and clinics that provide a full array of reproductive health services, including abortion services, have modified their operations to comply with Idaho's Total Abortion Ban and still provide all appropriate reproductive health care services to persons in Idaho and the Pacific Northwest. Idaho's Total Abortion Ban has not changed the number of people seeking abortion care, it just changed where Idahoans must go to receive abortion care.

22. For example, Planned Parenthood has opened a clinic in Ontario, Oregon, that provides full reproductive health services, including abortions. Ontario is 53 miles west of Boise

⁹ U.S. Dep't of Health & Human Servs. et al., Projections of Supply and Demand for Women's Health Service Providers: 2018-2030 (Mar. 2021), <https://bit.ly/3PhGagh> (projecting demand of OB-GYNs to exceed supply in Idaho).

¹⁰ Kylie Cooper, *I Came to Provide Care for Complicated Pregnancies; I'm Leaving Because of Idaho's Abortion Bans*, Idaho Capital Sun (Feb. 10, 2023), <https://idahocapitalsun.com/2023/02/10/i-came-to-provide-care-for-complicated-pregnancies-im-leaving-because-of-idahos-abortion-bans/>.

¹¹ Press Release, Bonner General Health, Discontinuation of Labor & Delivery Services at Bonner General Hospital (Mar. 17, 2023), <https://bonnergeneral.org/wp-content/uploads/2023/03/Bonner-General-Health-Press-Release-Closure-of-LD-3.17.2023.pdf>; Press Release, Valor Health, Discontinuation of Labor & Delivery Services at Valor Health Hospital (Mar. 29, 2023), <https://www.valorhealth.org/wp-content/uploads/2023/03/Press-Release-3.29-scaled.jpg> (notice that as of June 1, 2023, Valor Health Hospital is no longer offering labor and delivery services).

¹² Kelcie Moseley-Morris, *Idaho Medical School Director to Budget Committee: Residencies Still a Challenge for Students*, Idaho Capital Sun (Jan. 27, 2023), <https://bit.ly/43IenOC> (noting Idaho lacks residencies in pediatrics and OB-GYN).

along Interstate 84, and the most practical way to get there is by car since there is no public transportation on that route.

23. In addition to modifying their operations, many out-of-state health care providers who offer abortion services have seen a dramatic increase in the number of patients coming from Idaho for abortion care. Although there have been fewer abortions performed in Idaho since *Roe* was overturned, there has been an increase in abortions performed in Idaho's neighboring states, according to data from the Society of Family Planning.¹³ Washington and Oregon saw an increase in abortions of 1,490 and 1,320, respectively.¹⁴ Additionally, Nevada performed 2,580 more abortions than before.¹⁵ Patients who reside in states where abortion care is severely restricted, or banned entirely, are forced to travel out of state to get the abortion care they need, which in turn places a strain on abortion care providers in states where abortion is legal.

24. The inherent barriers of out-of-state travel coupled with the finite number of abortion providers has resulted in a significant strain for out-of-state providers. Planned Parenthood clinics in Central and Eastern Washington experienced an overall 56% increase in abortion patients coming from Idaho in 2023 compared to the year before.¹⁶

25. This influx of patients traveling from Idaho seeking abortion care out of state is particularly heightened at Planned Parenthood clinic locations that offer in-clinic abortions (also known as surgical abortion) in addition to medication abortion. The Planned Parenthood clinic in Kennewick, Washington, which is 130 miles from Lewiston, Idaho, offers in-clinic abortion

¹³ Danny Westneat, *In the WA v. Idaho Abortion Wars, Data Shows Idaho Is Losing*, Seattle Times (June 28, 2023), <https://www.seattletimes.com/seattle-news/politics/in-the-wa-v-idaho-abortion-wars-data-shows-idaho-is-losing>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

services. That location saw a 4,450% increase in patients coming from Idaho within the first five months of 2023 (91 versus 2, respectively).¹⁷

26. Minors will need to rely on trusted adults to drive them from Boise, or other cities in the Treasure Valley, to the Planned Parenthood clinic in Oregon, where minors may get an abortion without parental consent if they are over age 15, or to the Planned Parenthood clinic in Washington, where minors may get an abortion without parental consent. Minors may need to rely on trusted adults for advice regarding reproductive health options, including abortion, where those options are available and legal, and how and from whom to obtain transportation. Under Idaho Code § 18-623, the simple act of driving a minor to the Oregon border to get an abortion without the minor's parent or guardian knowing — or even providing advice on how to do that — could result in a mandatory minimum of two years and up to five years in prison.

27. Pregnancy, childbirth, and parenting significantly impact an individual's physical and mental health, finances, and personal relationships. The decision to impact one's health with a pregnancy or to become a parent is extremely personal and permanent. An intimate decision of this magnitude must be left to the individual to determine without governmental interference, regardless of age. While parents and guardians most times will provide guidance to minors on these life altering decisions, not all minors have a strong, trusting, or stable relationship with a parent or guardian.

28. Guided by their individual health needs, values, and circumstances, minors may seek guidance and help about abortion from other trusted adults for a variety of deeply personal reasons, including medical, familial, and financial concerns. Those reasons can include preserving

¹⁷ Annette Carey, *Huge out-of-state surge in E. Washington abortions since Idaho, Texas bans*, Tri-City Herald (June 26, 2023), <https://www.tricityherald.com/news/local/article276713511.html> (noting increase in out of state abortions).

their health, financial concerns about the ability to work or go to school while pregnant or parenting, complicated family circumstances, or facts related to how the minor became pregnant. Without the ability to ask for help from their chosen trusted adult regarding their health, including the risks of continuing a pregnancy, minors will lose the right to make critical decisions about their health, bodies, and lives.

29. If adults cannot assist minors in accessing safe abortion care out of state, and if minors cannot otherwise make the trip out of state because of uncertainty of how to access that care, the Abortion Travel Ban will force some minors to terminate their unwanted pregnancies outside a clinical setting, which would not be the preferred choice for some of these minors.

30. Although many minors faced with an unintended pregnancy choose to involve their parents, many do not. There are minors who cannot or do not have access to their parents. There are minors who are afraid to anger or disappoint their parents, as well as those who face the threat of violence in their homes. For many minors, it is best to seek the help of a trusted adult who is not a parent or guardian. Young people are the ones in the best position to decide whom they trust to involve in their care. The Abortion Travel Ban will delay or prevent pregnant minors' access to abortion, which in turn will endanger their health and safety. Additionally, this law has and will continue to have a chilling effect on adults who are supportive of a young person's choice to have an abortion but are hesitant to help because they are concerned about going to prison.

31. History has shown that requiring parental involvement for abortion care can increase the risk of harm or abuse, delay care, and lead minors to seek out dangerous alternatives.¹⁸

¹⁸ Sophia Naide, *"Parental Involvement" Mandates for Abortion Harm Young People, But Policymakers Can Fight Back*, Guttmacher Institute (Feb. 19, 2020),

32. Indeed, when abortion was a recognized constitutional right, Idaho, like other states, had judicial bypass statutes that allowed pregnant minors to obtain abortions in Idaho without parental consent to address precisely these potential harms. Idaho Code § 18-609A(1)(b) (2015). If a pregnant minor in Idaho is not in a situation where that minor can go to a parent, can no longer seek judicial bypass, and trusted adults cannot help without fear of prosecution, who can a pregnant minor turn to for help?

33. The risk of abuse is especially acute for the Black, Indigenous, People of Color (“BIPOC”), and LGBTQ+ communities. There are already great healthcare disparities for historically marginalized communities in anti-abortion states. These states tend to limit access to health care, lack choices for effective birth control, and have ineffective and inadequate sex education curriculum in schools. The Abortion Travel Ban will result in a disproportionately negative impact on persons in these same marginalized groups, who will likely have the hardest time traveling to neighboring states to terminate pregnancies and may struggle to raise children they otherwise would not have chosen to have.

34. Incidents of sexual violence go unreported to law enforcement at a significantly higher rate than other violent crimes, with less than 25% reported overall. While the reasons for a

<https://www.gutmacher.org/article/2020/02/parental-involvement-mandates-abortion-harm-young-people-policymakers-can-fight-back#:~:text=Research%20also%20shows%20that%20most,people%20by%20delaying%20medical%20care.HYPERLINK%20https://www.reuters.com/article/us-health-teens-abortion/parental-notification-law-appears-to-limit-delay-abortion-idUSKBN1EJ0QO> https://www.reuters.com/article/us-health-teens-abortion/parental-notification-law-appears-to-limit-delay-abortion-idUSKBN1EJ0QO;

survivor to not report a sexual assault are varied, one of the top cited reasons is distrust and fear of law enforcement, according to a poll conducted by the Rape and Incest National Network.¹⁹

35. This distrust and fear of law enforcement is especially heightened in BIPOC individuals whose communities experience a disproportionate rate of criminalization and police harassment. A 2022 Gallup poll among American adults found that while 53% of White Americans have “a great deal” or “quite a lot of confidence” in the police, only 30% of non-White Americans share that same trust.²⁰

36. The distrust and fear of law enforcement from survivors of sexual violence, coupled with that same distrust towards the police from BIPOC communities, significantly reduces the likelihood that a minor from a BIPOC community who is pregnant as a result of sexual violence will report this act to the police.²¹

37. The Abortion Travel Ban also negatively and disproportionately impacts victims of Intimate Partner Violence (IPV). Along with other forms of abuse, those enduring IPV are often the subject of “reproductive coercion.”²² The American College of Obstetricians and

¹⁹ Moira Donegan, ‘*Who Will Protect You from Rape Without Police? Here’s My Answer to That Question*,’ Guardian (June 17, 2020), <https://www.theguardian.com/commentisfree/2020/jun/17/abolish-police-sexual-assault-violence>.

²⁰ Laura Santhanam, *Two-Thirds of Black Americans Don’t Trust the Police to Treat Them Equally. Most White Americans Do.*, PBS NewsHour (June 5, 2020), <https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do#:~:text=white%2Damericans%2Ddo-,Two%2Dthirds%20of%20black%20Americans%20don%27t%20trust%20the%20police,Most%20white%20Americans%20do.&text=Nearly%20half%20of%20black%20Americans,NewsHour%2DNPR%2DMarist%20poll;https://news.gallup.com/poll/394283/confidence-institutions-down-average-new-low.aspx>

²¹ Donegan, *supra* note 19.

²² Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 *Contraception* 316, 316–17, note 23 (Jan. 29, 2010); Anne M. Moore et al., *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United*

Gynecologists recognizes reproductive coercion as behavior that interferes with contraception use and pregnancy, often involving sabotage of contraceptive methods, sexual coercion, and pregnancy pressure.

38. This can include hiding, withholding, or destroying oral contraceptives; breaking or damaging condoms on purpose; removing condoms during sex as an attempt to promote pregnancy; not withdrawing when that was the agreed upon method of contraception; removing vaginal rings, contraceptive patches, or intrauterine devices; and may include coercing a woman into sex, into unprotected sex, or into pregnancy. Additionally, it can include coercing a woman to have an abortion, or, conversely, taking steps to prevent a woman from having an abortion, such as restricting her travel or money in a way that would prevent her from accessing a lawful abortion.²³ Reproductive coercion can involve using rape to force victims into unwanted pregnancies to increase dependency and make it harder for the survivor to escape.

39. When the National Domestic Violence Hotline surveyed over 3,000 women seeking help, more than 25% reported that their abusive partner sabotaged birth control and tried to coerce pregnancy.²⁴

States, 70 Soc. Sci. & Med. 1737, 1738 note 23 (2010); *see also* ACOG Committee Opinion No. 554: *Reproductive and Sexual Coercion*, 121 *Obstetrics & Gynecology* 411, 411–15 (2013, reaffirmed 2022), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion.pdf>.

²³ Ann L. Coker, *Does Physical Intimate Partner Violence Affect Sexual Health? A Systematic Review*, 8 *Trauma, Violence, & Abuse* 149, 151–53 (2007); *see also* Miller et al., *supra* note 22, at 319; Lauren Maxwell et al., *Estimating the Effect of Intimate Partner Violence on Women’s Use of Contraception: A Systematic Review and Meta- Analysis*, 10 *PLoS One* 1 (2015); Moore et al., *supra* note 22; Sanctuary for Families, *Access to Abortion – A Lifeline for Survivors of Domestic Violence* (June 24, 2022), <https://sanctuaryforfamilies.org/abortion-domestic-violence>.

²⁴ Nat’l Domestic Violence Hotline, *1 in 4 Callers to the National Domestic Violence Hotline Report Birth Control Sabotage and Pregnancy Coercion* (Feb. 15, 2011), <https://www.thehotline.org/news/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>; *see also* Heike Thiel de Bocanegra et al., *Birth*

C. PLAINTIFFS SEEK TO ASSIST MINORS IN OBTAINING LAWFUL ABORTION SERVICES.

40. The Plaintiffs are individuals and organizations with long histories of serving as trusted adults for minors who find themselves pregnant. They associate with pregnant minors as a show of solidarity, communicating a message to minors who find themselves pregnant. That message is often that minors are not alone. Plaintiffs' support also communicates a message to those who may seek to isolate and abuse minors that these minors will have the support of trusted adults.

41. While each Plaintiff has a slightly different message and mission, each Plaintiff engages in protected First Amendment activities to share and support these messages and missions. Each Plaintiff also seeks to convey accurate and complete information about minors' lawful options when faced with a pregnancy. Such options could include where and how to obtain a lawful abortion; how to get there; support with childcare and other needs; payment for abortion health care services; food assistance in transit; and often involve offering to drive the minor wherever the minor needs to go, if that minor is without transportation, in order for the minor to investigate and follow through with a reproductive decision.

42. Each of the Plaintiffs wishes to drive pregnant minors within the State of Idaho in furtherance of securing, for those who desire it, lawful abortion medical care, as one of many important services offered.

43. Plaintiff Matsumoto is an attorney who works with survivors of domestic and sexual violence, including minor survivors. As a result of this violence, some of these survivors, including minors, have become pregnant. In both her professional and private capacities, she

Control Sabotage and Forced Sex: Experiences Reported by Women in Domestic Violence Shelters, 16 *Violence Against Women* 601 (2010).

wishes to assist those persons, including minors, access legal abortion services outside of Idaho. Although she is trained as a lawyer and has been practicing law for several years, she is unsure what conduct in that process would violate Idaho Code § 18-623. Plaintiff Matsumoto is driven by her belief in bodily autonomy for every citizen, including minors, and her words and actions seek to convey this belief.

44. Plaintiff NWAAF is a non-profit entity comprised of a working board, paid staff, and trained volunteers that provides emotional, financial, logistical, practical, and informational assistance to those who may become pregnant and need or choose to consider abortion as an option. NWAAF serves Idaho, Oregon, Washington, and Alaska. It is the only independent abortion fund in the Pacific Northwest. NWAAF's assistance includes the provision of travel funds, travel logistics and organization, and actually driving patients to abortion providers. NWAAF's work and travel assistance extends to minors, including driving minor patients to abortion providers.

45. NWAAF's work includes booking and directly paying for bus tickets, plane tickets, and ride shares, as well as providing adult volunteers to drive patients, including minor patients, to abortion appointments in states where abortion is legal. NWAAF also provides food assistance, funding to abortion providers for their work, and lodging assistance. NWAAF provides this assistance to both adults and minors in the State of Idaho.

46. In the last year, NWAAF has provided this assistance to 768 people in the Pacific Northwest. Idahoans made up 166 of that group, some of whom were Idaho minors.

47. When transporting or facilitating transportation for minors, NWAAF does not seek or obtain parental consent. Parents and guardians may or may not know about or approve of NWAAF's support of these minors. Idaho Code § 18-623 directly impacts the mission and the work of NWAAF.

48. As NWAAF noted after Governor Little signed H.B. 242 into law, “Many minors do not have supportive or safe parents or guardians in their lives who they can ask to help them get an abortion. It’s remarkable that lawmakers believe that young Idahoans don’t have the capacity to make reproductive healthcare choices for themselves or deserve bodily autonomy, but believe that those same young people should have the capacity to raise and care for children on their own, without any major social or economic support.”

49. NWAAF wishes to continue funding legal, out-of-state abortions for pregnant minor Idahoans, including by directly paying and/or reimbursing out-of-state licensed providers of abortion services and providing financial aid to pregnant minor Idahoans for that purpose.

50. NWAAF wishes to continue providing informational materials and planning assistance (such as organizing and funding transportation and lodging) to pregnant minor Idahoans for obtaining legal, out-of-state abortions.

51. NWAAF wishes to continue transporting pregnant minor Idahoans to out-of-state licensed providers of safe, legal abortions.

52. NWAAF’s working board, paid staff, and trained volunteers are concerned that continuing these efforts may subject them to prosecution under Idaho Code § 18-623.

53. Among the priorities of IIA is seeking justice for the Missing and Murdered Indigenous People (MMIP) and their families. IIA is aware that in the United States, Indigenous women and girls are the victims of gender-based violence at a statistical rate twice that of Anglo-American women and girls.

54. In the experience and observations of IIA, unwanted pregnancy or coercive pregnancy is often the result of the high rate of gender-based violence, which includes rape, experienced by Indigenous women and girls. The Indigenous women and girls who face unwanted

and coerced pregnancy are then often victims of further violence to conceal the crime of rape or to punish them for seeking protection, self-care, or reproductive health care including abortion care.

55. IIA has provided direct assistance or financial assistance for pregnant minors seeking abortion care, with awareness that the pregnant minor's parents do not know about the minor's intent to seek abortion care. In some instances where it is providing assistance, IIA knows, or has reason to believe, that a parent or sibling or other close relative is the perpetrator of the sexual violence that caused the minor to become pregnant. In some instances where it is providing assistance, IIA knows, or has reason to believe, that a person of authority such as a law enforcement officer, or teacher, or coach, etc., is the perpetrator of the sexual violence that caused the minor to become pregnant. Thus, in these instances, IIA believes it is unsafe and harmful to the pregnant minor to disclose information to the pregnant minor's parent or guardian.

56. Plaintiff IIA is driven by their desire to serve the storied culture of their people through trust-based mutual care and aid, which includes ensuring access to abortions, including access for minors. All of their words and actions are in furtherance of these beliefs.

57. All Plaintiffs support and aid pregnant minors at a difficult time in their lives. They lend their support, time, and money, so that young people can make informed decisions—based on accurate information—without judgment and without concern that they or their families may lack the resources to carry out the decisions those young people wish to make. Plaintiffs provide this assistance at moments when time is of the essence, and when young people might feel they have nowhere to turn for a host of complicated and deeply personal reasons.

D. THE U.S. CONSTITUTION REQUIRES THAT CRIMINAL STATUTES PROVIDE ADEQUATE NOTICE OF WHAT CONDUCT IS PROHIBITED.

58. The United States Constitution's guarantee of due process requires that the Plaintiffs have fair notice of which activities are lawful and which activities may put them within

the crosshairs of law enforcement. It violates due process to force Plaintiffs to operate in a regulatory framework that is so standardless that it invites arbitrary enforcement and chills lawful conduct.

59. The government violates the Fourteenth Amendment’s due process guarantee by taking a person’s life, liberty, or property under a criminal law that is so vague that it “fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595-96 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983)). A criminal statute violates the “fair notice” requirement if it fails to give a person of ordinary intelligence fair notice that her contemplated conduct is forbidden by the statute. *United States v. Adams*, 343 F.3d 1024, 1035 (9th Cir. 2003); *see also Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972).

60. Idaho Code § 18-623 lacks clarity, fails to provide fair notice of the conduct it punishes, and invites arbitrary enforcement. It is vague both in scope and effect. Under the present statute, adults who have been helping and mentoring youth will now be in the precarious position of navigating a confusing law while trying to help a pregnant minor who has nowhere else to turn and must make a decision in a short period of time.

61. In the Idaho Legislature’s rush to block persons in Idaho from traveling to other states where abortion care is lawful, they have created a statute that makes unclear when lawful mentoring support stops, and unlawful conduct begins. A person of ordinary intelligence must discern what is helpful information regarding abortion for a pregnant minor and what constitutes recruiting; she must determine when an in-person meeting with that

person becomes harboring. And she must hope that the line she draws in her own mind is the same line that law enforcement and prosecutors draw.

62. The statute purports to make criminal where one “procures” an abortion or “obtains” an abortion-inducing medication, both completed acts, but also purports to prohibit actions that occur well before an abortion takes place such as recruiting, harboring, or transporting. A person of ordinary intelligence would be unable to identify at what point she violates the statute, and at what point ordinary counseling or mentoring a pregnant minor, or traveling with such a minor within Idaho, may cross a line into attempt.²⁵

63. The statute also fails to provide adequate notice regarding what culpability attaches to communication or the lack thereof with a pregnant minor’s parents and/or guardians. The statute’s intent provision fails to provide adequate notice regarding whether the intent to conceal must be directed at one or more parent, and whether there is an affirmative defense if one parent provided consent but the other did not.

64. Indeed, although Representative Ehardt and Governor Little described the Abortion Travel Ban as criminalizing an abortion without parental consent, the lack of parental consent is not an element of the offense. Rather, parental consent is only an affirmative defense. Thus, an adult who obtains consent still violates the statute and can assert the defense of parental consent only after the fact.

65. Even the Idaho legislators who sponsored H.B. 242 are unsure when a violation occurs, or even what constitutes a violation. In an exchange with another state senator at the March 27, 2023 Senate State Affairs Committee hearing, Senator Lakey acknowledged that

²⁵ Idaho Code § 18-306 provides that “[e]very person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof” is punishable for the attempt.

“recruiting, harboring and transporting, those are descriptive words, I guess the court would have to decide if the conduct constitutes one of those three things.”

66. A law that requires *a court* to decide after the fact whether conduct violates the law is not one that puts an ordinary person on notice of what it prohibits.

67. Plaintiff Matsumoto is unsure of what conduct Idaho Code § 18-623 prohibits. But for the statute’s lack of clarity over whether she would be prosecuted, she would assist minors in traveling to Oregon or Washington getting abortions in states where abortion remains legal.

68. Plaintiffs NWAAF and IIA likewise are unsure of what conduct Idaho Code § 18-623 prohibits. They wish to continue all of their activities that assist pregnant Idaho minors in obtaining abortions in states where abortion is legal but are uncertain whether they will be prosecuted for such actions.

E. THE U.S. CONSTITUTION GUARANTEES AND PROTECTS PLAINTIFFS’ RIGHT TO TRAVEL FREELY AMONG AND ACROSS STATE BORDERS.

69. “[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.” *Att’y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986) (citation omitted). Recognition of the right to travel dates to the earliest period of self-government in the United States, under the Articles of Confederation, Article IV, which guaranteed the right of “free ingress and regress to and from” neighboring states.

70. A state may not unreasonably burden a person’s right to (1) enter and leave that state, (2) be treated fairly when temporarily present in another state, or (3) be treated the same as other citizens of a state when moving there permanently. *Saenz v. Roe*, 526 U.S. 489, 500 (1999). At issue here is the ability to enter and leave the state.

71. Plaintiffs are having their rights to interstate and intrastate travel infringed in two ways by the Abortion Travel Ban. First, the vagueness of the statute impermissibly chills their

right to travel. Second, any interpretation of the statute facially deprives them of their right to travel.

72. As described above, Plaintiffs need to know what is prohibited by this law so that they can comply with it. The law is so uncertain that Plaintiffs cannot tell if it is criminal to operate a motor vehicle on the streets and highways of Idaho because a pregnant minor is in the car, and Plaintiffs' own rights to travel are implicated and effectively chilled.

73. Any of the many interpretations of the Abortion Travel Ban imposes a clear government action intended to stop travel to another state of both the young person and an adult. The state may not constitutionally ban the use of its roads and highways for the purpose of preventing people from exercising their constitutional rights, particularly when that travel is to exercise lawful rights in other states.

74. Idaho Code § 18-623 applies to every foot of highway and street in Idaho, making this ban necessarily an interstate travel ban, as it prevents Plaintiffs and pregnant minors from traveling within Idaho to reach a state where abortion is lawful.

75. The legislative history shows that impeding travel is the primary objective of Idaho Code § 18-623. Governor Little repeatedly referred to H.B. 242 as criminalizing interstate travel to access abortion services. Idaho legislators also made it clear that the purpose of this bill is to criminalize "putting a pregnant person in your car and travelling up to the border."

76. This right to travel is not only a right to travel interstate but a recognized right to travel intrastate, sometime referred to as the right to movement. Of the four circuits that have squarely decided cases about the right to intrastate travel, three have recognized such a right.²⁶ The

²⁶ *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646 (2d Cir. 1971); *Selevan v. New York Thruway Auth.*, 584 F.3d 82 (2d Cir. 2009); *Spencer v. Casavilla*, 903 F.2d 171 (2d Cir. 1990);

Idaho Supreme Court has also recognized the right to operate a motor vehicle on public streets and highways as constitutionally protected. *Adams v. City of Pocatello*, 416 P.2d 46, 48 (1966).

77. Idaho legislators who supported H.B. 242 made clear that their objective is to punish lawful activity outside of Idaho by criminalizing the routine act of travel within Idaho's borders. Senator Lakey made clear that H.B. 242 targets *intrastate* conduct. "We have the authority and the obligation and the opportunity to establish criminal laws in Idaho, . . . [i]t doesn't happen when they cross the state line. It happens when they take the furtherance and act in this capacity to facilitate and procure an abortion, and then get that minor to travel within the state to pursue that abortion."²⁷

78. Senator Lakey confirmed that position in an exchange with another senator at the March 27, 2023 Senate State Affairs Committee hearing:

Sen. James Ruchti: Thank you Mr. Chairman and Senator Lakey, I'm, I'm just fascinated by this concept of making unlawful the travel across state lines. Because we, we do have an act in the travel to state that's legal, in Idaho it's illegal, could the prohibition on travel across state lines to obtain services that are illegal in the travel to state, but legal, excuse me, illegal in Idaho, but legal in the travel to state be used in other areas like purchasing marijuana for example?

Sen. Todd Lakey: Mr. Chairman and Senator Ruchti, let me make sure we're clear, on lines 19 and 20, we're talking about the recruiting, harboring, or transporting for the attempt to procure or in the furtherance of the procurement

Ramos v. Town of Vernon, 353 F.3d 171 (2d Cir. 2003); *Lutz v. City of York, Pa.*, 899 F.2d 255 (3d Cir. 1990); *Wardwell v. Bd. of Educ. of City Sch. Dist. of City of Cincinnati*, 529 F.2d 625 (6th Cir. 1976); *Johnson v. City of Cincinnati*, 310 F.3d 484 (6th Cir. 2002); *Cole v. City of Memphis*, 839 F.3d 530 (6th Cir. 2016); *D.L. v. Unified Sch. Dist. No. 497*, 596 F.3d 768 (10th Cir. 2010) (finding no right); *McCraw v. City of Oklahoma City*, 973 F.3d 1057 (10th Cir. 2020) (finding no right). The Ninth Circuit has yet to decide whether there is such a right. *Potter v. City of Lacey*, 46 F.4th 787 (9th Cir. 2022); *Nunez by Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997). The Plaintiffs in this case ask this Court to recognize this right and find it infringed by the Abortion Travel Ban.

²⁷ Kelcie Moseley-Morris, *Nation's First Interstate Abortion Ban Bill Awaits Idaho Governor's Signature*, Idaho Capital Sun (Mar. 30, 2023), <https://idahocapitalsun.com/2023/03/30/nations-first-interstate-abortion-ban-bill-awaits-idaho-governors-signature/>.

of an abortion unlawful in Idaho. But, it, it, it's the activity that occurs within the state, not the transport across state lines. That's um, it, it says transporting the pregnant minor within the state commits the crime. So it's not the across state lines portion. And what we're saying is, abortion is illegal in Idaho, if you're furthering that, without the knowledge of the parents, then that conduct is illegal.

Sen. James Ruchti: Thank you Mr. Chairman and Senator Lakey, but that's what fascinates me. Is because, in putting a pregnant person in your car and travelling up to the border, you haven't committed a crime at all, there's no crime that's been committed, so how is that made illegal?

Sen. Todd Lakey: Mr. Chairman and Senator Ruchti, as a legislature, we define what crimes are in Idaho, so in this case, we are saying that conduct constitutes a crime.

Sen. James Ruchti: And so, by that same reasoning, if you put somebody in your car with the intent of heading to Oregon to go purchase marijuana, we, the state legislature, under this reasoning, could make traveling from Boise to the border illegal?

Sen. Todd Lakey: Mr. Chairman and Senator Ruchti, yes, if we decide to go down that road.

Mar. 27, 2023 Meeting of Senate State Affairs Committee, Audio/Video recording at 0:34:17 - 0:36:44;https://lso.legislature.idaho.gov/MediaPub/2023/AgendaMinutes/230327_ssta_0800AM-Minutes.pdf.

79. Idaho Code § 18-623 is nothing more than the Idaho Legislature preventing minors from accessing abortion care that is legal in Idaho's neighbor states by criminalizing a trusted adult's travel. The age of consent to get an abortion in Oregon is 15, and a minor can get an abortion without parental consent in Washington.

80. Even worse, Idaho Code § 18-623 raises the specter of an enforcement scheme that targets "attempt" conduct and casts a wide net, including traffic stops of reproductive age female minors, in an effort to stop pregnant minors traveling to another state from even reaching the border.

81. For Plaintiffs and others similarly situated who seek to travel through Idaho and across state lines to assist pregnant minors in receiving lawful abortion care in neighboring states,

their own right to travel is infringed. They are prohibited from traveling to engage in lawful conduct in another state.

F. THE U.S. CONSTITUTION PROTECTS PLAINTIFFS' RIGHTS TO FREELY ASSOCIATE, SPEAK, AND FUND OTHERS' TRAVEL ACROSS STATE BORDERS.

82. Plaintiffs have First Amendment rights to associate freely with each other and with pregnant Idahoans, to provide information, and to engage in expressive conduct, including providing funding or practical support for pregnant Idahoans traveling to access out-of-state services that are legal where rendered, including abortion. U.S. Const. amends. I, XIV; *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1193 (9th Cir. 2018).

83. Pregnant Idahoans, including those who seek Plaintiffs' assistance, have constitutional rights to receive information from Plaintiffs and to travel to states where full reproductive health care—including abortions—is legal.

84. Plaintiff NWAAF's and Plaintiff IIA's use of funds in furtherance of their missions is considered speech and is protected by the First Amendment.

85. All Plaintiffs' provision of information regarding abortion access to pregnant persons in Idaho, including pregnant minors, is likewise speech and is protected by the First Amendment. *See Bigelow v. Virginia*, 421 U.S. 809, 824-25 (1975). Idaho Code § 18-623 infringes on these rights by criminalizing speech about lawful activity.

86. Charitable donations are a protected form of freedom of speech and association under the First Amendment. Organizations and their donors have a strong privacy interest in their affiliation—including the funding relationship—that is grounded in the First Amendment.

87. A law that subjects donors or volunteers to prosecution on the basis of their exercise of First Amendment rights (such as donating funds and/or time to a charitable organization)

violates the First Amendment, even if the organization itself were accused of illegal activity. *Elfbrandt v. Russell*, 384 U.S. 11, 17 (1966).

88. To the extent Idaho Code § 18-623’s prohibition on “procuring” or “obtaining” an abortion by “recruiting, harboring, or transporting” encompasses activities funded by Plaintiffs’ donors, Idaho Code § 18-623 infringes on the donors’ First Amendment rights.

89. Idaho Code § 18-623 criminalizes only speech that supports those seeking abortion care. Under the First Amendment, the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *Aschcroft v. ACLU*, 535 U.S. 564, 573 (2002)).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Idaho Code § 18-623 Is Unconstitutionally Void for Vagueness)

90. Paragraphs 1 through 89 are realleged and incorporated as if fully set forth herein.

91. The Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of property without due process of law.

92. A criminal law that is so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement, violates due process.

93. Idaho Code § 18-623 is unconstitutionally vague because it lacks clarity, fails to provide fair notice of the conduct it punishes, and invites arbitrary enforcement.

94. Idaho Code § 18-623 prohibits “recruiting” and “harboring,” but Plaintiffs Matsumoto, NWAAF, and IIA are unable to determine under these vague terms where lawful mentoring support stops, and unlawful conduct begins.

95. Plaintiffs Matsumoto, NWAAF, and IIA are unable to determine what is helpful information regarding abortion for a pregnant minor and what constitutes recruiting. They

cannot tell what conversations with a pregnant minor are permissible, and what conversations violate the statute. If Plaintiffs inform a pregnant minor that the Planned Parenthood clinic in Ontario provides abortion services, are they recruiting?

96. Plaintiffs Matsumoto, NWAAF, and IIA are unable to determine when an in-person meeting with a pregnant person becomes harboring, particularly if that in-person meeting occurs relatively near an Idaho border.

97. Idaho Code § 18-623 criminalizes conduct by an adult acting with the “intent to conceal” the abortion from a pregnant minor’s “parents or guardian.” Plaintiffs Matsumoto, NWAAF, and IIA are unable to determine what contact, lack of contact, communication, or lack of communication, with a pregnant minor’s parent, parents, or guardian constitutes an intent to conceal, nor whether that communication must be with all parents and guardians.

98. Idaho Code § 18-623 also provides an affirmative defense if a “parent or guardian . . . consented to [the] trafficking.” Plaintiffs Matsumoto, NWAAF, and IIA are unable to determine what contact, lack of contact, communication, or lack of communication, with a pregnant minor’s parent, parents, or guardian constitutes an affirmative defense, whether that communication must be with a single parent or guardian, and to what activity the parent or guardian must consent.

99. For these reasons, Idaho Code § 18-623 is vague both in scope and effect and deprives Plaintiffs of their due process rights under the United States Constitution.

100. The Abortion Travel Ban is enforced by Defendant under color of state law.

101. Accordingly, Plaintiffs are entitled to a declaratory judgment, judgment awarding temporary, preliminary, and permanent injunctive relief, declaratory relief, attorneys’ fees, costs, and any other relief the Court deems just and appropriate.

**SECOND CLAIM FOR RELIEF
(Infringement on the Fundamental Right to Interstate Travel)**

102. Paragraphs 1 through 101 are realleged and incorporated as if fully set forth herein.

103. The right to travel is protected by the Constitution. *Saenz*, 526 U.S. at 503. Specifically, the constitutional right to travel “protects the right of a citizen of one State to enter and to leave another State.” *Id.* at 500. This includes “the right to go from one place to another, including the right to cross state borders while en route.” *Id.* (citing *Edwards v. California*, 314 U.S. 160 (1941)).

104. A state may not unreasonably burden a person’s right to enter and leave that state. *Id.* at 499. Free interstate migration is vital and fundamental to transform “many States into a single Nation.” *Soto-Lopez*, 476 U.S. at 902–03.

105. The Abortion Travel Ban unreasonably burdens Plaintiffs’ right to enter and leave a state.

106. The intent behind the passage of the Abortion Travel Ban was to impermissibly restrict the travel of both Plaintiffs and the pregnant minors they serve.

107. The Abortion Travel Ban deters travel, including the travel of the Plaintiffs who seek to assist pregnant minors.

108. Plaintiffs seek to continue helping pregnant minors in Idaho travel out of state for lawful abortions but face an imminent threat of prosecution under the Abortion Travel Ban. They fear prosecution for traveling with a pregnant minor from Idaho into another state.

109. Plaintiffs’ lawful and constitutionally protected conduct has been chilled by the passage of the Abortion Travel Ban, as described herein.

110. The Abortion Travel Ban is enforced by Defendant under color of state law.

111. Accordingly, Plaintiffs are entitled to a declaratory judgment, judgment awarding injunctive relief, declaratory relief, attorneys' fees, costs, and any other relief the Court deems just and appropriate.

**THIRD CLAIM FOR RELIEF
(Infringement on the Fundamental Right to Intrastate Travel)**

112. Paragraphs 1 through 111 are realleged and incorporated as if fully set forth herein.

113. The right to travel within a state is no less fundamental than the right to travel between the states. Intrastate travel "is an everyday right, a right we depend on to carry out our daily life activities. It is, at its core, a right of function." *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002).

114. This right is sometimes described interchangeably as freedom of movement, the right to travel freely on public fora, and right to intrastate travel. "Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. . . . It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

115. The Abortion Travel Ban unreasonably burdens Plaintiffs' right to intrastate travel, and that right for the pregnant minors they serve. The Abortion Travel Ban also violates Plaintiffs' right, as recognized by the Idaho Supreme Court, to operate a motor vehicle on public roads and highways.

116. The intent behind the passage of the Abortion Travel Ban is to impermissibly restrict the travel, including travel within the State of Idaho, of both Plaintiffs and the pregnant minors they serve.

117. The Abortion Travel Ban deters travel, including travel within the State of Idaho, by Plaintiffs who seek to assist pregnant minors.

118. Plaintiffs seek to continue helping pregnant minors in Idaho travel out of state for lawful abortions but face an imminent threat of prosecution under the Abortion Travel Ban and cannot safely do so without relief from this Court. In order to travel out of state, Plaintiffs must travel freely in state.

119. Plaintiffs' lawful and constitutionally protected conduct has been chilled by the passage of the Abortion Travel Ban, as described herein.

120. The Abortion Travel Ban is enforced by Defendant under color of state law.

121. Accordingly, Plaintiffs are entitled to a declaratory judgment awarding injunctive relief, declaratory relief, attorneys' fees, costs, and any other relief the Court deems just and appropriate.

**FOURTH CLAIM FOR RELIEF
(Infringement on First Amendment Rights)**

122. Paragraphs 1 through 121 are realleged and incorporated as if fully set forth herein.

123. The First Amendment to the United States Constitution guarantees its citizens the rights to free speech, assembly, association, and petition. U.S. Const. amend. I.

124. The U.S. Constitution does not permit Idaho to bar providing information regarding conduct legal in another state just because it is illegal in this one. All Plaintiffs wish to provide information on conduct legal in other states. Banning speech on the basis of a legal intended purpose is a violation of all Plaintiffs' free speech rights.

125. The U.S. Constitution does not permit Idaho to prohibit funding or other practical support for Idahoans seeking to undertake legal conduct in another state. Plaintiffs IIA and NWAAF's use of funds is protected speech. Banning the use of funds on the basis of a legal intended purpose is a violation of Plaintiffs' free speech rights.

126. Idaho Code § 18-623 infringes on all Plaintiffs' rights to associate freely with each other and with pregnant Idahoans and to engage in expressive conduct, including providing funding or practical support for pregnant Idahoans traveling to access out-of-state services that are legal where rendered, including abortion.

127. Idaho Code § 18-623 has a chilling impact on all Plaintiffs' behavior.

128. Idaho Code § 18-623 has and will continue to have a chilling impact on Plaintiffs NWAAF and IIA's ability to uphold their missions. It may also undermine their relationships with donors and members and their ability to recruit and retain volunteers.

129. Idaho Code § 18-623 further infringes on Plaintiffs' First Amendment free speech right to provide to pregnant persons in Idaho, including pregnant minors, information regarding abortion access in states where it is legal.

130. Idaho Code § 18-623 targets the content of Plaintiffs' speech, criminalizing speech and expressive conduct that is about only one specific type of reproductive health care, therefore it is a content or viewpoint based prohibition.

131. The Abortion Travel Ban is enforced by Defendant under color of state law.

132. Accordingly, Plaintiffs are entitled to a declaratory judgment, judgment awarding temporary, preliminary, and permanent injunctive relief, declaratory relief, attorneys' fees, costs, and any other relief the Court deems just and appropriate.

IV. PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment in their favor and against Defendant Labrador:

1. Declaratory judgment relief:
 - a. That the Abortion Travel Ban, Idaho Code § 18-623, is unconstitutional under the First Amendment;
 - b. That the Abortion Travel Ban, Idaho Code § 18-623, is unconstitutionally vague;

- c. That the Abortion Travel Ban, Idaho Code § 18-623, is an unconstitutional infringement on the right to interstate travel;
 - d. That Idahoans have a protected right to intrastate travel and that the Abortion Travel Ban, Idaho Code § 18-623, unconstitutionally infringes on that right;
 - e. That enforcement of the Abortion Travel Ban, Idaho Code § 18-623, against any of the Plaintiffs or any of their agents, board members, staff, or volunteers, for speech or other expressive conduct with minors related to the provision of legal abortion services regardless of parental consent, is unconstitutional, including but not limited to:
 - i. Counseling about legal abortion services;
 - ii. Informing about legal abortion services;
 - iii. Recommending legal abortion services;
 - iv. Informing about legal abortion providers;
 - v. Informing about sources of funding, travel, expenses and accommodations in or outside of Idaho related to legal abortion services;
 - f. That enforcement of the Abortion Travel Ban, Idaho Code § 18-623, against any of the Plaintiffs or any of their agents, board members, staff, or volunteers, for providing transport services or any other support to minors related to the provision of legal abortion services is unconstitutional, regardless of parental consent, including but not limited to:
 - i. Funding or otherwise financially supporting such transport;
 - ii. Driving or otherwise traveling in order to seek abortion services where such services are legal;
 - iii. Housing or otherwise helping to effectuate travel in order to access abortion services where such services are legal.
2. Enjoining Attorney General Raúl Labrador from enforcing Idaho Code § 18-623.
 3. Reasonable attorneys' fees and costs.
 4. Any other relief that the Court deems just and proper.

DATED: July 11, 2023.

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson

LEGAL VOICE

/s/ Wendy S. Heipt

Wendy S. Heipt

Kelly O'Neill

THE LAWYERING PROJECT

/s/ Jamila A. Johnson

Jamila A. Johnson

Paige Suelzle

Attorneys for Plaintiffs

FRAP 21(a)(2)(C) Exhibit 3
“RLI Subpoena”



SERVE AND LEAVE

September 12, 2025

Wendy J. Olson
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702
D. 208.387.4291
wendy.olson@stoel.com

Kerry Uhlenkott
Right to Life Idaho, Inc.
431 Denver Rd,
Grangeville, ID 83530

Re: Subpoena Duces Tecum - *Matsumoto et. al v. Labrador*, Case No. 1:23-cv-00323-DKG

Dear Right to Life of Idaho, Inc.:

Enclosed please find a Subpoena Duces Tecum issued in the matter of *Matsumoto et. al v. Labrador*, Case No. 1:23-cv-00323-DKG, United States District Court for the District of Idaho. The subpoena requests certain documents and electronically stored information. Although the subpoena specifies that the documents are to be produced at the time of your deposition, you may, if you prefer, provide the requested documents **in advance of the deposition date.**

If you choose to produce the materials early, please send them to the undersigned at the address below (or contact us to arrange secure electronic transfer). Please produce the documents in full and in the manner described in Exhibit A to the subpoena. If you also execute the attached records custodian affidavit, we will cancel the deposition and relieve you of your obligation to appear.

Whether you choose to produce the documents early or at the deposition itself, please be assured that the subpoena remains in effect and that all rights and obligations under the Federal Rules of Civil Procedure apply. If you have any questions or concerns—including about timing, form of production, or privilege—please do not hesitate to contact me.

Thank you for your cooperation and attention to this matter.

Very truly yours,

Wendy J. Olson

Encls.

RECEIVED
25-0651
SEP 12 2025
By: AO
EX. 1

SERVE AND LEAVE

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.

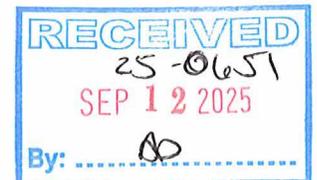
Case No. 1:23-cv-00323-DKG

**AFFIDAVIT OF RECORDS
CUSTODIAN**

I, _____, being first duly sworn, state as follows:

1. I am employed by _____ as _____, and I am authorized and qualified to make this affidavit regarding the records described below.
2. In response to the Subpoena Duces Tecum issued in the above-captioned matter, I have caused a diligent search to be made for records responsive to the requests set forth in Exhibit A to the subpoena.
3. The documents produced herewith are true and complete copies of records kept by _____.
4. Such records:
 - o (a) were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - o (b) were kept in the course of regularly conducted activity of _____; and
 - o (c) were made as a regular practice of _____.
5. To the best of my knowledge, the attached records are authentic and have not been altered, except for any redactions made to protect privileged or confidential information, which have been identified accordingly.
6. I make this affidavit in lieu of personal appearance at a deposition, with the understanding that the records produced may be used in evidence subject to the Federal Rules of Evidence.

AFFIDAVIT OF RECORDS CUSTODIAN - 1



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ____ day of _____, 20, at _____.

Name of Custodian _____

Title/Position _____

Organization _____

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
 District of Idaho



Lourdes Matsumoto et al.

Plaintiff

v.
 Raúl Labrador

Defendant

Civil Action No. 1:23-cv-00323-DKG

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
 OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Right to Life of Idaho, Inc.
 c/o Kerry Uhlenkott, 431 Denver Rd, Grangeville, ID 83530
(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachment A.

Place: Stoel Rives LLP 101 S. Capitol Blvd., Suite 1900, Boise, ID 83702-7705	Date and Time: 10/2/2025 1:10 p.m. MT
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/8/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Wendy J. Olson

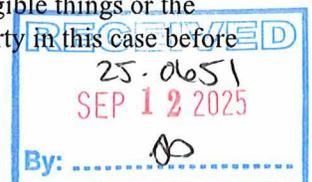
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Lourdes Matsumoto, Indigenous Idaho Alliance, & NWAAF, who issues or requests this subpoena, are:

Wendy J. Olson, 101 S. Capitol Blvd., Suite 1900, Boise, Idaho 83702-7705, Wendy.olson@stoel.com 208-389-9000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:23-cv-00323-DKG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. “Abortion Trafficking Legislation” means any statute, bill, resolution, proposed law, or regulation introduced or enacted in any jurisdiction within the United States that purports to restrict, regulate, or criminalize adults assisting in the movement of minors or young people across city, county, or state lines for purposes of obtaining an abortion, or for purposes related to facilitating, assisting, or supporting an abortion, including laws framed or described as measures to prevent “trafficking” or “abortion trafficking.” This definition encompasses legislation whether enacted, proposed, or pending, regardless of whether it has been titled or justified as protecting parental rights, preventing human trafficking, or safeguarding minors.
2. “Document” means any writing, record, or electronically stored information (ESI) including and without limitation, correspondence, emails, text messages, instant messages, social media content, postings on collaborative platforms, memoranda, notes, reports, drafts, contracts, meeting minutes, calendars, recordings, photographs, and any other data or compilation, whether stored on paper, electronically, or in any other medium from which information can be obtained.
3. “H.B. 98” shall mean House Bill 98, introduced in the Idaho Legislature on February 7, 2023, prior to its amendment and reintroduction as H.B. 242.
4. “H.B. 242” shall mean House Bill 242, passed by the Idaho Legislature on March 30, 2023, reported signed by the Governor on April 5, 2023, and effective May 5, 2023, later codified at Idaho Code § 18-623.
5. “Idaho Legislature” shall mean the Legislature of the State of Idaho, including both its Senate and House of Representatives.
6. “Legislator” shall mean any current or former member of the Idaho Legislature, including Senators or Representatives, in their official capacity, as well as their agents, representatives, and attorneys, and in the departments or subdivisions of the State of Idaho at which the Legislator is employed, including any officers, directors, employees, agents, subdivisions, affiliates, or any other person acting in concert, whether directly or indirectly.
7. “Relating to” or “Concerning” means consisting of, reflecting, referring to, describing, discussing, evidencing, or in any way connected with the subject matter identified.
8. “National Right to Life” refers to National Right to Life Committee, Inc., National Right to Life Committee Educational Trust Fund, National Right to Life Conventions Inc., National Right to Life Educational Foundation Inc., National Right to Life Political Action Committee, National Right to Life Victory Fund, and any of their directors, members, trustees, officers, employees, agents and representatives, including attorneys, and each of their parent companies, subsidiaries, affiliates, divisions, successors, assignees and predecessors.
9. Timeframe: Unless otherwise specified, the requests herein seek documents created, sent, or received from January 1, 2021 to the present.
10. “You” or “Your” refers to the person or entity to whom this subpoena is directed, including all present and former officers, employees, agents, representatives, and anyone acting on their behalf.

INSTRUCTIONS

1. Produce all responsive documents in your possession, custody, or control, as those terms are defined the Federal Rules of Civil Procedure.

ATTACHMENT A

2. Documents maintained electronically shall be produced in their native electronic format (including metadata), or in another reasonably usable form if native format is not feasible.
3. If any document is withheld under a claim of privilege, provide a privilege log that complies with Federal Rule of Civil Procedure 26(b)(5).
4. If you claim that no responsive documents exist, state that fact in writing.
5. The singular includes the plural, and vice versa. The present tense includes the past tense, and vice versa.
6. The connectors “and” and “or” shall be interpreted either disjunctively or conjunctively as necessary to bring within the scope of the Requests for Production all responses that might otherwise be outside of its scope.
7. Each Document is to be produced in its entirety, without abbreviation or limitation, or redaction, except as otherwise specifically permitted by the Federal Rules of Civil Procedure or Order of this Court.

DOCUMENTS TO BE PRODUCED

1. All documents sent to and received from Legislators concerning H.B. 242 and H.B. 98.
2. All documents relating to H.B. 242 and H.B. 98, including any meeting notes, memoranda, or minutes concerning H.B. 242 and H.B. 98.
3. All documents sent to and received from National Right to Life concerning H.B. 242 and H.B. 98.
4. All documents, including drafts, relating to Abortion Trafficking Legislation.
5. All materials submitted to, received from, or exchanged with any Idaho state agency of government employee concerning H.B. 242 and H.B. 98.

FRAP 21(a)(2)(C) Exhibit 4

“Naugle Declaration”

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*Admitted *pro hac vice*

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

**LOURDES MATSUMOTO,
NORTHWEST ABORTION ACCESS
FUND, and INDIGENOUS IDAHO
ALLIANCE,**

Plaintiffs,

v.

RAÚL LABRADOR, in his official capacity
as in his capacity as the Attorney General for
the State of Idaho,

Defendant.

Case No.: 1:23-cv-00323-DKG

**Declaration of Emily Naugle in Support of
Non-Party Right to Life of Idaho, Inc.'s,
Reply in Support of Motion to Quash
Subpoena**

In support of Right to Life of Idaho, Inc.'s ("**RLI**"), Reply in Support of Motion to Quash Subpoena ("**Motion**"), I, Emily Naugle, make the following declaration pursuant to 28 U.S.C.

Section 1746:

1. I am over 18 years of age.
2. I am the president of RLI, which received the subpoena at issue in the Motion ("**RLI Subpoena**").
3. RLI, a non-profit, volunteer organization, is the oldest pro-life organization in the State of Idaho. It is the Idaho affiliate of National Right to Life Committee, Inc., a federation of 50 affiliated state right-to-life organizations, the nation's oldest and largest pro-life organization. RLI works through education and legislation to achieve its purpose of advancing the rights of the unborn.
4. I have personal knowledge of matters relating to RLI, its activities, intentions, communications, and strategy.
5. I also have personal knowledge of RLI's donors and other entities and individuals RLI works with to achieve its goals.
6. If RLI were required to comply with the RLI Subpoena, communication in and with RLI would be deterred, as would participation in and with RLI. RLI wishes to continue pursuing its purposes without being impeded by such deterrence.
7. The RLI Subpoena's demands, including the narrowed form of the demands described in the motion to quash filed in the above-captioned case, seek both private communications with legislators or their staff and documents that might have originally been intended for such communication but that RLI ultimately declined to share with legislative audiences.

8. Were RLI required to comply with the RLI Subpoena and disclose these private conversations and documents, which lie at the heart of its strategy, both RLI's communications and participation in RLI would be gravely harmed in numerous ways, including (but not limited to) the following.

9. Legislators would be less willing to communicate with RLI, gravely harming RLI by hindering its ability to advance legislation favorable to its cause, one of its most essential purposes.

10. Donors, knowing that all that is required for RLI's opponents to receive a trove of RLI's private strategic communications (including purely internal communications) is for those opponents to serve a subpoena in litigation unrelated to RLI, would be more hesitant to become or remain associated with RLI. As a non-profit entity that depends on donors for fundraising, RLI would be gravely harmed by this result.

11. Individuals who may wish to affiliate or work with RLI beyond making a donation, whether by joining RLI, participating in an event, volunteering, or otherwise, would be less inclined to do so. As an organization whose existence depends on such affiliation, this would gravely harm RLI.

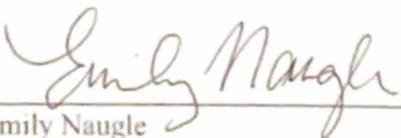
12. RLI already endures anger from various members of the public who disagree with RLI's positions and actions. Increased disclosure of RLI's private communications and documents would likely lead to further such hostility. That result would not only be harmful on its own, but also would have the effect of increasing the harms listed above by further deterring individuals and entities from communicating with and participating in RLI in order to avoid such hostility.

13. RLI's opponents, being able so easily to obtain RLI's private, strategic communications, would obviously be able to more effectively oppose RLI's efforts based on the unfair advantage of receiving that insight into RLI's strategy. That would harm RLI's effectiveness. Again, such a result would not only be harmful on its own, but also would have the effect of increasing the harms listed above by further deterring communication and participation with RLI since the advantageousness of such affiliation is reduced as effectiveness is reduced.

14. Internal discussions have already occurred among the leadership of RLI concerning the fact that, if RLI is compelled to comply with the RLI Subpoena, RLI's ability to conduct essential communications will be stifled and addressing the ways in which it would need to change its communications. Similar discussions concerning the gravely harmful results that would accrue from being forced to comply with the RLI Subpoena will no doubt continue unless and until it is quashed.

I affirm under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of November 2025.



Emily Naugle