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**Pro hac vice application forthcoming*

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MAYDAY HEALTH

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

MAYDAY HEALTH,

Plaintiff,

vs.

RAÚL R. LABRADOR, Attorney General of
Idaho, in his official capacity,

Defendant.

Case No. 1:26-cv-00334-AKB

**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

The Attorney General does not dispute that the First Amendment protects Mayday’s billboard and website, that it is impermissible to penalize Mayday for publishing truthful information about abortion care, or that his office has threatened to prosecute this protected speech using the Idaho statutes Mayday identified, causing Mayday to cancel its contract for a billboard in Nampa and to otherwise remain silent. Nor will the Attorney General agree to a narrow consent order committing *not* to prosecute Mayday under those laws—as Mayday has proposed. *See* Vazquez Decl. Ex. 1. In other words, the Idaho Attorney General is asking this Court to leave Mayday silenced while he reserves the right to prosecute. That is not a viable legal position, but is more than sufficient to establish Mayday’s standing.

The Attorney General’s contrary arguments—that his 2023 Opinion Letter was “withdrawn,” that it did not name Mayday, that the challenged laws are not new, and that Mayday lacks standing because other prosecutors may also enforce the laws, among others—are foreclosed by the same authorities he cites. As the Ninth Circuit held in both *Planned Parenthood Great N.W., HI, AK, IN, KY v. Labrador*, 122 F.4th 825 (9th Cir. 2024), and *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024), a plaintiff who wants to share information about abortion in Idaho need not wait for the Attorney General to knock on the door before seeking relief. The motion should be granted.

ARGUMENT

I. Mayday Has Standing To Bring This First Amendment Action

Mayday has standing to seek pre-enforcement preliminary injunctive relief against the threatened application of Idaho Code Sections 18-603, 18-607, 18-622, 18-623, and 48-601 against its Nampa billboard campaign because the suppression of its protected speech is a cognizable

constitutional injury in fact, traceable to the Attorney General, and redressable by such an injunction. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

The Attorney General disputes only that Mayday has suffered an injury in fact. He is wrong. “[U]nique standing considerations tilt dramatically toward a finding of standing” in First Amendment pre-enforcement actions because “a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury.” *Planned Parenthood*, 122 F.4th at 834, 836 (citation modified). Accordingly, a plaintiff in such an action must show only that it (i) intends to engage in conduct “arguably affected with a constitutional interest,” (ii) the conduct is “arguably . . . proscribed” by law, and (iii) there is a “credible threat of prosecution.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 161–64 (2014) (citations omitted); *see also Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024). All three elements are met here.

A. The Attorney General Does Not Dispute That Mayday Intends to Engage in Protected Speech Arguably Proscribed by Idaho Law

The Attorney General does not dispute that the first two *Driehaus* elements are satisfied. Nor could he. Both *Matsumoto* and *Planned Parenthood* involved materially similar speech and the Ninth Circuit found both elements satisfied. In this case, as to the first element, Mayday intends to display a mobile billboard in Nampa stating “Pregnant? Don’t want to be? Learn more at www.mayday.health” and to publish its website to Idahoans—speech the First Amendment “squarely protect[s].” *Matsumoto*, 122 F.4th at 812 (citing *Bigelow v. Virginia*, 421 U.S. 809, 822, 827–28 (1975)); *see* Mot. 9–11. As to the second element, Mayday cited numerous statutes that the Attorney General himself has claimed criminalize such speech. *See* Mot. 14. It makes no difference that the Attorney General’s reading of these statutes is unconstitutional; to establish standing, it is enough that his interpretations purport to arguably reach Mayday’s speech. *See Driehaus*, 573 U.S. at 162.

B. Mayday Has Shown a Credible Threat of Enforcement

The third *Driehaus* element is also easily satisfied. The Attorney General argues he has not made a plaintiff-specific threat that generates an actionable credible threat of enforcement. Opp. 7 (contending that he has “done nothing as it pertains to Mayday”). But that is not the test. Federal courts “‘have never held that a specific threat is necessary to demonstrate standing’” in a First Amendment action. *Isaacson v. Mayes*, 84 F.4th 1089, 1100 (9th Cir. 2023) (citation omitted). The Supreme Court has instead repeatedly found pre-enforcement standing where a statute arguably covered protected speech and the government—as here—refused to disavow enforcement. *See Babbitt v. UFW Nat’l Union*, 442 U.S. 289, 302 (1979); *Va. v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 15–16 (2010). The Ninth Circuit faithfully applies that rule, recognizing that the credible-threat inquiry often “‘rises or falls with the enforcing authority’s willingness to disavow enforcement.’” *Peace Ranch*, 93 F.4th at 490. And indeed it has *twice* held that the Attorney General’s refusal to disavow enforcing the very laws at issue in this case against other speakers sufficed to create actionable controversies. *See Matsumoto*, 122 F.4th at 797–99; *Planned Parenthood*, 122 F.4th at 838–41.

The record here more than meets the standard. The Attorney General has claimed broad authority to prosecute any person involved in “the promotion of abortion pills to the public,” Sieff Decl. Ex. 13 at 2, “any speech” that could enable minors to obtain even a lawful out-of-state abortion, Appellant’s Reply Br., *Matsumoto v. Labrador*, No. 23-3787, ECF No. 43.1 at 11 (9th Cir. filed Feb 7, 2024), advice encouraging abortion, Vazquez Decl. Ex. 2 at 8, 9, and to generally label abortion-related speech criminal or a punishable deceptive practice, Def’s Mem. in Supp. of Mot. for Summ. J., *Matsumoto v. Labrador*, No. 1:23-cv-0323, ECF No. 137-1 at 15–16 (D. Idaho filed April 16, 2026). When asked to even informally disavow enforcing the identified statutes against Mayday’s planned mobile billboard promoting the information on its website, his office

refused to provide any assurance. Mot. 6–7. And despite his empty claims of non-enforcement in this litigation, the Attorney General has now also refused to end this action through a targeted consent order formally disavowing the threat he claims does not exist—and thus should have no problem foreswearing. *See* Vazquez Decl. Ex. 1. His similar refusal to disavow enforcement on the record confirmed the existence of a credible enforcement threat in *Planned Parenthood*, 122 F.4th at 834 (counsel’s refusal at hearing to disavow “the legal analysis or conclusions” of opinion letter showed credible threat) (citation omitted), just as the California Attorney General’s refusal to disavow enforcement of a California law at oral argument corroborated the credible threat in *Peace Ranch*, 93 F.4th at 490 (counsel’s refusal to disavow enforcement at oral argument likewise showed credible threat)—and that was not even a First Amendment case.

The Opposition underscores the point by *expressly reserving* the authority the Attorney General refuses to disavow. An injunction as-applied to Mayday’s speech would harm Idaho, the Attorney General says, by preventing him from enforcing the identified state laws “if there ever were a need to properly enforce” them. Opp. 11. Having preserved the option to enforce the identified laws against Mayday’s speech, the Attorney General cannot fault Mayday for taking him at his word. *See Tingley v. Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022) (government’s reservation to enforce a law “as it enforces other restrictions” created a credible threat), *abrogated on other grounds by Chiles v. Salazar*, 146 S. Ct. 1010, 1019 (2026) (affirming that plaintiff had standing and reversing only to hold that plaintiff was also likely to prevail on the merits of his First Amendment claim).

C. The Attorney General’s Contrary Arguments Fail

The Attorney General’s counterarguments all reduce to the same mistaken premise: that Mayday must accept coerced silence or risk fending off the unrenounced threat of unconstitutional penalties for engaging in protected speech. None have merit.

First, the formal withdrawal of the 2023 Opinion Letter does not eliminate the Attorney General’s threat of enforcement. The Ninth Circuit rejected that precise argument in *Planned Parenthood*, holding that the same withdrawal letter the Attorney General cites here did not moot the controversy or eliminate the credible threat because it “did not disavow or disclaim the legal reasoning or conclusions” stated in the letter “[n]or did it offer an alternative interpretation” of the statute. 122 F.4th at 834. That remains true. The Attorney General *still* has not disavowed the substantive legal positions staked out in the 2023 Opinion Letter or identified any limiting interpretation of Idaho Code Sections 18-603, 18-607, 18-622, 18-623, or 48-601 that would spare Mayday’s speech. To the contrary, the Attorney General continues to press arguments for expansive enforcement authority. *Supra* p. 4.

Nor does it matter that the March 2023 Opinion Letter is now three years old. *Cf.* Opp. 10. It is not the novelty of a policy that makes a refusal to disavow enforcement actionable but the fact that the policy’s “history of enforcement is negligible or non-existent.” *Matsumoto*, 122 F.4th at 797. That may be because a policy “is of recent vintage,” *id.*, or because the government has reserved enforcement authority it simply has not yet exercised. *Tingley*, 47 F.4th at 1068 (reserving right to enforce a then three-year old statute created a credible threat of enforcement despite lack of enforcement history). Standing turns on whether Mayday now faces a credible threat if it proceeds with its planned speech. Because the Attorney General refuses to disavow enforcement—and most recently, Mayday’s offer to enter a consent decree—it does.

Second, the Attorney General is wrong that there is no credible threat of enforcement because the 2023 Opinion Letter did not name Mayday or address “information clearinghouses.” Opp. 7–9. Pre-enforcement standing does not require a personal demand letter. *See Isaacson*, 84 F.4th at 1100. The relevant question is whether the Attorney General’s interpretation of the

statutes at issue threatens Mayday’s intended conduct. They do. Mayday’s billboard directs viewers to a website that publishes information about abortion pills and reproductive health resources. The Attorney General has asserted general authority (not limited to any particular speaker) to penalize “the promotion of abortion pills to the public.” Mot. 4; *Supra* p. 3. If that phrase means anything, it threatens Mayday’s speech.

Third, Mayday did not ask for legal advice or an advisory opinion. Mayday asked the State’s chief prosecutor whether he would withdraw his threat to penalize identified First Amendment activity. Mot. 6–7. His refusal to do so has legal consequences. *See Planned Parenthood*, 122 F.4th at 838–41; *supra* pp. 3–5.¹ Mayday’s request for forbearance against relevant third parties—referring to “the billboard operator” Mayday had hired, as well as other service providers Mayday relies upon to disseminate its message, Opp. 4 (quoting Mayday’s letter)—changes nothing. The First Amendment protects every link “in the speech process,” *Citizens United v. FEC*, 558 U.S. 310, 336 (2010), because governments could otherwise exploit the “division of labor” inherent in publishing to attack different “levels of the production and dissemination of ideas,” *McConnell v. FEC*, 540 U.S. 93, 251–52 (2003) (Scalia, J., dissenting in part). That means speakers have standing to challenge restraints against their downstream distributors, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963), as well as upstream input providers they rely on to speak, *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 187 (2024), as violations of *their own* constitutional rights. The requested injunction runs only against the Attorney General and protects Mayday from penalties or threats against its billboard and website.

¹ The observation (Opp. 5) that Mayday’s initial correspondence did not reference the Attorney General’s 2023 Opinion Letter also carries no legal significance. Mayday’s standing does not depend on whether its pre-suit communications identified every fact contributing to its reasonable fear of enforcement. The Attorney General cites no authority stating otherwise. And for good reason: the First Amendment protects speakers whose expression is chilled by government action; it does not condition access to judicial review on the contents of informal correspondence.

Fourth, Mayday’s standing to seek an injunction against the Attorney General does not disappear simply because other Idaho officials could also enforce the statutes. The Ninth Circuit already rejected this argument from the Attorney General in *Matsumoto*, explaining that when a law “grants enforcement powers to multiple government authorities, an injunction against the exercise of those powers by any one of those authorities suffices” to establish standing. 122 F.4th at 801–02 (reaffirming that “a plaintiff need not sue every defendant that may cause her harm”). Even if there were any statutes that the Attorney General lacked authority to enforce directly, his authority under Idaho law to assist county prosecutors in enforcing penal statutes “demonstrates the requisite causal connection for standing purposes.” *Planned Parenthood*, 122 F.4th at 838–39. It is thus enough that the requested injunction would relieve a discrete injury from the Attorney General. See *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (plaintiff need only show redress of “‘an injury’” not “‘every injury’”). Enjoining the Attorney General from threatening or penalizing Mayday for its protected speech would eliminate the very threat from his office that caused Mayday to suspend the billboard campaign and refrain from Idaho-focused activity.

Finally, the Attorney General’s reliance on *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134 (9th Cir. 2000) (en banc), is misplaced. *Thomas* rejected standing where plaintiffs lacked a concrete plan to violate the challenged law and thus could not show a meaningful threat of enforcement. *Id.* at 1139–41. Mayday has done the opposite: it contracted for a specific billboard on a specific date in a specific city, suspended it only after the Attorney General refused to disavow enforcement, and remains ready to proceed if protected by this Court. *Thomas* does not require willing speakers to risk unrenounced criminal penalties before invoking the First Amendment. See *Tingley*, 47 F.4th at 1068 (applying *Thomas* to hold that the refusal to disavow reserved enforcement authority in similar circumstances sufficed).

II. Preliminary Injunctive Relief Is Warranted

Once standing is confirmed, Mayday’s entitlement to preliminary injunctive relief follows because the Attorney General’s opposition arguments derive entirely from what he contends is the absence of an actionable enforcement threat. Opp. 10. Because there is such a threat, and because the Attorney General does not otherwise deny that Mayday will prevail on the merits and suffer irreparable injuries that support preliminary injunctive relief, the Court should grant the motion.

A. Mayday Will Prevail On The Merits Of Its First Amendment Claim

The Attorney General does not deny that the First Amendment protects Mayday’s publication of information about lawfully available abortion services, and advances no argument suggesting he could punish, restrain, or prevent it under any level of First Amendment scrutiny—much less the strict scrutiny that applies. See Mot. 8-14 (explaining why Mayday will prevail on the merits). That concession means this element is met. See *Am. Encore v. Fontes*, 152 F.4th 1097, 1120 (9th Cir. 2025) (failure to defend enforcement on the merits meant likelihood of success factor was met in pre-enforcement First Amendment challenge).

B. The Remaining *Winter* Factors Favor An Injunction

The Attorney General does not dispute that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), or that a credible threat that chills speech is irreparable harm even without actual prosecution. *Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019). His opposition instead rests on conflating the irreparable harm analysis with the enforcement threat analysis. Opp. 10. Because there is a credible threat of enforcement, *supra* §§ I.C-D, Mayday has been—and will remain—irreparably harmed absent relief. Mot. 4–7.

The Attorney General’s equitable arguments also repeat his standing theory. He says an injunction is unnecessary and would interfere with Idaho’s interest in enforcing its laws. Opp. 11.

But the State has no legitimate interest in unconstitutional enforcement. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013); *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And the irreparable injury he claims Idaho would suffer if he could not enforce the identified laws against Mayday (Opp. 11) underscores the credibility of *his threat*, not the reality of any cognizable injury to the State or the public. *Supra* p. 4.

The requested injunction is also properly tailored. Mayday does not ask the Court to facially invalidate Idaho's abortion laws or bind officials who are not parties. It seeks as-applied preliminary injunctive relief preventing the Attorney General from taking action under Idaho law to penalize or threaten Mayday for displaying its identified mobile billboard in Idaho or publishing its website to Idahoans. Mot. 15. That relief tracks Mayday's constitutional injury and prevents the Attorney General from violating Mayday's rights.

CONCLUSION

Mayday respectfully requests that the Court enter a preliminary injunction to address its ongoing and concrete First Amendment injury.

DATED: July 13, 2026

By: /s/ Adam S. Sieff
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**Pro hac vice applications forthcoming*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MAYDAY HEALTH,

Plaintiff,

vs.

RAÚL R. LABRADOR, Attorney General of
Idaho, in his official capacity,

Defendant.

Case No. **1:26-cv-00334-AKB**

**DECLARATION OF FARRAH C. VAZQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Farrah C. Vazquez, declare as follows:

1. I am an associate attorney with the law firm of Davis Wright Tremaine LLP and represent Plaintiff Mayday Health. I make this declaration based on personal knowledge, except where specified as made on information and belief. If called, I would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an email exchange between the Division Chief in the Attorney General's office, Jim Craig, with my colleague, Adam Sieff, dated July 7, 2026.

3. Attached hereto as **Exhibit 2** is a true and correct copy of an opinion letter from Attorney General Raúl R. Labrador to Idaho Representative Judy Boyle, titled Attorney General Opinion No. 23-04 and dated September 15, 2023.

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

Los Angeles, California

July 13, 2026

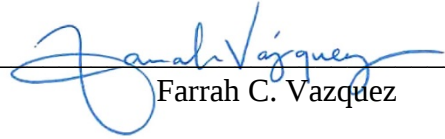
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EXHIBIT 1

Vazquez, Farrah

From: James Craig <James.Craig@ag.idaho.gov>
Sent: Tuesday, July 7, 2026 4:50 PM
To: Sieff, Adam; Brian Church; Saad Bembridge, Nicole
Cc: Handman, Laura; Vazquez, Farrah; Adeleke, Azeezat; Kelly, Chelsea; Kumar, Ambika; Wendy Heipt; William Mitchell; Kelly O'Neill
Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

[EXTERNAL]

Adam,

The AG will not agree to a consent order.

Jim



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Brian and Jim –

Considering the Attorney General's response to the preliminary injunction motion, would the Attorney General agree to a consent order, to be entered by the Court on the docket, stating that his office will not take any action—including under Idaho Code §§ 18-603, 18-607, 18-622, 18-623, and 48-601—to penalize or threaten to penalize Mayday for displaying the mobile billboard identified in the Complaint, or for publishing its website, within Idaho?

Please let us know at your earliest convenience.

Adam

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[EXTERNAL]

Thank you. I will fix that, apply Adam and Kelly's e-signatures, and get that on file.

--



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Yes—thank you, Brian. Noting there's a minor error in Adam's last name only on the stipulation signature block (please change from "Seiff" to "Sieff").

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Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill

<koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

[EXTERNAL]

Thanks. For whom may I apply signatures? Adam and Kelly?

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>

Sent: Tuesday, June 23, 2026 5:05 PM

To: Brian Church <brian.church@ag.idaho.gov>; Sieff, Adam <AdamSieff@dwt.com>; James Craig <James.Craig@ag.idaho.gov>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

Brian,

We agree to the proposed stipulation. Thank you.

Nicole Saad Bembridge

Associate, Davis Wright Tremaine LLP

P 206.757.8545 E nicolesaadbembridge@dwt.com

A 920 5th Avenue, Suite 3300, Seattle, WA 98104-1610

DWT.COM

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

Sent: Tuesday, June 23, 2026 12:01 PM

To: Sieff, Adam <AdamSieff@dwt.com>; James Craig <James.Craig@ag.idaho.gov>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

[EXTERNAL]

Adam and Kelly:

The deposition I was at yesterday ran long. Please see the attached proposed stipulation and order.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Sieff, Adam <AdamSieff@dwt.com>

Sent: Monday, June 22, 2026 10:50 AM

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

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat

<AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea

<ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William

Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: Re: Mayday Health v. Labrador, 1:26-cv-00334-AKB

Thanks we'll review.

Adam S. Sieff

Partner, Davis Wright Tremaine LLP

P 213.633.8618 **E** adamsieff@dwt.com

A 350 South Grand Avenue, 27th Floor

Los Angeles, CA 90071

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

Sent: Monday, 22 June 2026 12:41:13

To: James Craig <James.Craig@ag.idaho.gov>; Sieff, Adam <AdamSieff@dwt.com>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat

<AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea

<ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William

Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

[EXTERNAL]

Adam,

I'm going to prepare a stipulation, which I will circulate to you today. This will note what you and I outlined below.

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: Brian Church

Sent: Wednesday, June 17, 2026 12:15 PM

To: James Craig <James.Craig@ag.idaho.gov>; Sieff, Adam <AdamSieff@dwt.com>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

Hi, Adam:

It looks like my office was served with a copy of the motion for a preliminary injunction on Monday, June 8. We will respond to preliminary injunction motion on Monday, June 29.

We are fine agreeing to hold off on the responsive pleading deadline until after the preliminary injunction motion is resolved. Let's do 21 days after the Court fully resolves the preliminary injunction motion.

Thanks,

Brian

--



Brian V. Church | Lead Deputy Attorney General

Civil Litigation and Constitutional Defense Division

Office of the Attorney General | State of Idaho

Phone: (208) 334-2400

From: James Craig <James.Craig@ag.idaho.gov>

Sent: Friday, June 12, 2026 7:48 AM

To: Sieff, Adam <AdamSieff@dwt.com>; Brian Church <brian.church@ag.idaho.gov>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: RE: Mayday Health v. Labrador, 1:26-cv-00334-AKB

Thanks, Adam. I'm in the middle of a trial right now. The trial is scheduled to end on Monday. I'll review this information after the trial and get back to you next week.

Thanks,

Jim



James E. M. Craig | Division Chief
Civil Litigation and Constitutional Defense
Office of the Attorney General | State of Idaho
O: 208-854-8088 | W: ag.idaho.gov

From: Sieff, Adam <AdamSieff@dwt.com>

Sent: Thursday, June 11, 2026 11:26 PM

To: James Craig <James.Craig@ag.idaho.gov>

Cc: Handman, Laura <laurahandman@dwt.com>; Vazquez, Farrah <FarrahVazquez@dwt.com>; Adeleke, Azeezat <AzeezatAdeleke@dwt.com>; Saad Bembridge, Nicole <NicoleSaadBembridge@dwt.com>; Kelly, Chelsea <ChelseaKelly@dwt.com>; Kumar, Ambika <AmbikaKumar@dwt.com>; Wendy Heipt <wheipt@legalvoice.org>; William Mitchell <wmitchell@legalvoice.org>; Kelly O'Neill <koneill@legalvoice.org>

Subject: Mayday Health v. Labrador, 1:26-cv-00334-AKB

You don't often get email from adamsieff@dwt.com. [Learn why this is important](#)

Jim –

As you know, we've served your office with a complaint and motion for a preliminary injunction in the above-captioned matter. Courtesy copies of those papers are attached. To streamline proceedings, we'd be willing to stipulate to stay your responsive pleading deadline pending adjudication of the injunction motion.

Let us know how your office wishes to proceed.

Adam



Adam S. Sieff
Partner | Davis Wright Tremain LLP

P 213.633.8618 E adamsieff@dwt.com

A 350 South Grand Avenue, 27th Floor, Los Angeles, CA 90071

DWT.COM in

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EXHIBIT 2



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

ATTORNEY GENERAL OPINION NO. 23-04

TO: The Honorable Judy Boyle
Idaho House of Representatives
P.O. Box 83720
Boise, ID 83720-0038

You have requested an opinion from the Attorney General on how the prohibitions on promoting or counseling in favor of abortion in the No Public Funds for Abortion Act, Chapter 87, Title 18, Idaho Code, apply to professors and other educators employed by Idaho's public universities and community colleges. Your request raises an important question on the application of Idaho law, and therefore this opinion is published as an official opinion of the Idaho Office of the Attorney General.

QUESTION PRESENTED

Does the language in the No Public Funds for Abortion Act prohibiting the use of public funds to "promote" or "counsel in favor" of abortion prohibit employees of public institutions of higher education from speaking on abortion within the context of academic teaching and scholarship if their speech could be viewed as supporting abortion?

CONCLUSION

No. The No Public Funds for Abortion Act comprehensively prohibits the use of public funds to, among other things, "provide, perform, or induce an abortion; assist in the provision or performance of an abortion; promote abortion; counsel in favor of abortion; refer for abortion; or provide facilities for an abortion or for training to provide or perform an abortion." However, under a plain language interpretation of the Act applying appropriate canons of statutory construction, the Act does not prohibit university employees from speaking on abortion in their academic teaching or scholarship, even if that teaching or scholarship could be viewed as supporting abortion or abortion rights in general.

Representative Judy Boyle

September 15, 2023

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ANALYSIS

In 2021, the State of Idaho enacted the “No Public Funds for Abortion Act.” See Idaho Code § 18-8701. Among other things, the Act prohibits the use of public funds “in any way to provide, perform, or induce an abortion; assist in the provision or performance of an abortion; promote abortion; counsel in favor of abortion; refer for abortion; or provide facilities for an abortion or for training to provide or perform an abortion.” Idaho Code § 18-8705(1). It also prohibits the use of any “part of any tuition or fees paid to a public institution of higher education ... to pay for an abortion, provide or perform an abortion, provide counseling in favor of abortion, make a referral for abortion, or provide facilities for an abortion or for training to provide or perform abortion.” Idaho Code § 18-8706. An intentional violation of the act by a public officer or public employee “shall be considered a misuse of public moneys punishable under section 18-5702, Idaho Code.” Idaho Code § 18-8709.

This opinion is intended to clarify the scope of the Act as it relates to academic teaching and scholarship conducted by the employees of Idaho’s public institutions of higher education. These important questions concerning academic freedom and the free speech rights of public university professors are frequently litigated from all sides of the political spectrum.¹

I. First Amendment Interpretation Framework.

A. The Presumption of Constitutionality.

Interpretation of the Act is guided by well-established canons of statutory interpretation relating to the constitutionality of a statute. First, “[i]t is generally presumed that legislative acts are constitutional, that the state legislature acted within its constitutional powers, and any doubt concerning interpretation of a statute is to be resolved in favor of that which will render the statute constitutional.” *Olsen*

¹ See, e.g., *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021) (holding that the university violated a professor’s free-speech rights when it disciplined him for refusing to use a student’s preferred pronouns); *NCF Freedom, Inc. v. Diaz*, No. 4:23-cv-00360-MW-MAF (N.D. Fla. 2023) (complaint alleging that Florida’s SB 266, which, according to the complaint, “outlaws college courses thought to advance ‘political or social activism’ and other disfavored concepts and prohibits the expenditure of funds associated with any program promoting ‘diversity, inclusion and equity,’” violates academic freedom); *Jackson v. Wright*, No. 4:21-CV-00033, 2022 WL 179277 (E.D. Texas 2022) (ruling on a motion to dismiss in which a university professor alleged that he was disciplined, in violation of the First Amendment, for his academic writings and scholarship relating to a racially charged dispute about certain musical theorists); *De Piero v. Penn. St. Univ.*, No. 2:23-cv-02281 (E.D. Pa. 2023) (complaint alleging constructive termination in violation of university professor’s First Amendment rights based on the university professor’s disagreement with “antiracist” training); *Reges v. Cauce*, 2:22-cv-0964 (W.D. Wash. 2023) (complaint alleging First Amendment violation due to disciplinary action against professor for refusing to include university land acknowledgement on class syllabus and including his own views on the subject on the syllabus).

Representative Judy Boyle
 September 15, 2023
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v. J.A. Freeman Co., 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990) (citations omitted). “Whenever possible, a statute should be construed so as to avoid a conflict with the state or federal constitution.” *State v. Gomez-Alas*, 167 Idaho 857, 866, 477 P.3d 911, 920 (2020) (brackets and citation omitted). Thus, “[w]hen possible, the Court is obligated to seek an interpretation of a statute that upholds its constitutionality.” *Planned Parenthood Great Nw. v. Idaho*, 171 Idaho 374, 397, 522 P.3d 1132, 1155 (2022) (cleaned up). “[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible, we are obligated to construe the statute to avoid such problems.” *INS v. St. Cyr*, 533 U.S. 289, 299–300 (2001) (cleaned up). In interpreting statutes, one “must construe statutes under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed.” *Twin Lakes Canal Co. v. Choules*, 151 Idaho 214, 218, 254 P.3d 1210, 1214 (2011) (cleaned up). Finally, a statute should be given “an interpretation that will not render it a nullity.” *Id.* (citations omitted).

B. Binding Precedent Allows Government to Limit Funding of Promotion of Abortion.

The U.S. Supreme Court has specifically addressed the question of whether the government may, under the First Amendment, prohibit the use of government funds to “engag[e] in activities that encourage, promote or advocate abortion as a method of family planning.” *Rust v. Sullivan*, 500 U.S. 173, 180 (1991) (cleaned up). The Court held that “[t]here is no question but that the ... prohibition ... is constitutional.” *Id.* at 192. This is because “the government may make a value judgment favoring childbirth over abortion and implement that judgment by the allocation of public funds.” *Id.* at 192–93 (internal quotations, ellipses, and citation omitted). These restrictions can also be imposed upon employees who are voluntarily employed, since the “employees remain free ... to pursue abortion-related activities” when they are not using the government funds and the prohibitions in question “do not in any way restrict the activities of those persons acting as private individuals.” *Id.* at 198–99.

Rust’s holding is even more notable because it was decided when the U.S. Supreme Court’s precedent erroneously recognized a federal constitutional right to abortion. Now that the Supreme Court has correctly held that the U.S. Constitution does not provide a right to abortion, *see Dobbs v. Jackson Women’s Health Organization*, 142 S.Ct. 2228, 2242 (2022), and Idaho has criminalized abortion in most circumstances, *see Idaho Code* § 18-622, this reasoning is even stronger. And there is no question that the State of Idaho may constitutionally prohibit the use of public funds to perform a criminal act, or to incite, solicit, or agree to assist a criminal act. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (incitement); *Brown v. Hartlage*, 456 U.S. 45, 55 (1982).

Representative Judy Boyle
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C. Binding Precedent Protects Speech by University Employees on Matters of Public Concern in Teaching or Scholarship.

At the same time that the First Amendment permits the government to limit the use of public funds in support of abortion, there is also a long line of cases from the U.S. Supreme Court and the U.S. Courts of Appeals interpreting the First Amendment protection of speech uttered by public employees. One of the earliest is *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cnty., Ill.*, 391 U.S. 563 (1968). In that case, the Court stated that even though public employees cannot be “compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest” as a condition of working for a government employer. *Id.* at 568. However, “it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general.” *Id.* Thus, in analyzing the free speech claims of public employees, the “problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.*

More recently, the U.S. Supreme Court, in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), addressed the question of “whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee’s official duties.” *Id.* at 413. The Court answered this question in the negative and held that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Id.* at 421.

However, *Garcetti* also noted that “[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.” *Id.* at 425. Indeed, the U.S. Supreme Court has stated that “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967). “That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Id.* Thus, the majority in *Garcetti* determined that “[w]e need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.” *Garcetti*, 547 U.S. at 425. Similarly, the Court in *Rust* observed that “the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control

Representative Judy Boyle
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Page 5

speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment.” *Rust*, 500 U.S. at 200.

While the U.S. Supreme Court has not yet decided whether the *Garcetti* analysis “would apply in the same manner to a case involving speech related to scholarship or teaching,” *Garcetti*, 547 U.S. at 425, the issue has been addressed by several courts of appeals, including the Ninth Circuit. In *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014), the court held that “*Garcetti* does not—indeed, consistent with the First Amendment, cannot—apply to teaching and academic writing that are performed pursuant to the official duties of a teacher and professor.” *Id.* at 412 (internal quotations omitted).

Similarly, courts in the Fourth, Fifth, and Sixth circuits, in addition to the Ninth Circuit, have held that *Garcetti* does not apply to professors at public universities while engaging in teaching and scholarship. See *Meriwether*, 992 F.3d at 512 (compiling cases to support its holding that public universities “cannot force professors to avoid controversial viewpoints altogether in deference to a state-mandated orthodoxy” and concluding that the university violated a professor’s free-speech rights when it disciplined him for refusing to use a student’s preferred pronouns). Helping students think critically is a core value of public universities, and the “need for the free exchange of ideas in the college classroom is unlike that in other public workplace settings.” *Id.* at 507. “The Nation’s future depends upon leaders trained through wide exposure to [the] robust exchange of ideas.” *Keyishian*, 385 U.S. at 603. “Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Id.* (quoting *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957)).

Thus, “academic employee speech not covered by *Garcetti* is protected under the First Amendment, using the analysis established in *Pickering*.” *Demers*, 746 F.3d at 412. Under the two-part *Pickering* balancing test, the employee must first “show that his or her speech addressed matters of public concern.” *Id.* (internal quotations omitted). “Second, the employee’s interest in commenting upon matters of public concern must outweigh the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* (internal quotations omitted).

In applying this two-part *Pickering* balancing test to the question presented, there can be no doubt that speech related to abortion does address matters of public concern. In balancing that against the State’s interest in promoting the efficiency of

Representative Judy Boyle

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Page 6

the public services it performs through its employees, it is important to note that this issue deals with a relatively small subset of public employees—only those employees of public institutions of higher education engaging in academic scholarship and teaching. The interest of this small subset of employees, however, has what the U.S. Supreme Court has declared to be a “special concern of the First Amendment.” *Keyishian*, 385 U.S. at 603. This interest is of such vital importance that “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.” *Id.* (internal quotations and parentheses omitted).

On the other hand, the State also has a vitally important interest in that it is entitled to make certain value judgments and to implement that value judgment through the allocation of public funds. *See Rust*, 500 U.S. at 192–93. Further, the State, as set forth in Idaho’s statutes, has a “‘profound interest’ in preserving the life of preborn children,” and has declared it to be the policy of the State that “all state statutes, rules and constitutional provisions shall be interpreted to prefer, by all legal means, live childbirth over abortion.” Idaho Code § 18-601; *see also Dobbs*, 142 S.Ct. at 2284 (2022) (describing a state’s interest in prohibiting abortion as including, among other things, a “respect for and preservation of prenatal life at all stages of development,” “the protection of maternal health and safety,” and “the mitigation of fetal pain”).

In the same way that a public university cannot discipline a professor for failing to comply with the university’s preferred pronoun policy in the professor’s classroom, *see Meriwether*, 992 F.3d at 511, the balancing test would likely make it unconstitutional for a state to prohibit professors from discussing abortion in the classroom or engaging in academic scholarship relating to abortion, even if some of that teaching and scholarship could be viewed as supporting abortion. If the Act were construed to prohibit that speech, the prohibition would likely be unconstitutional. Nevertheless, as discussed below, that issue is not reached because the plain language of the Act does not prohibit speech related to abortion in the context of academic teaching and scholarship. Thus, it is unnecessary to reach any final resolution of the *Pickering* balancing test in this context.

Representative Judy Boyle

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II. The Act Does Not Prohibit Public University Employees from Engaging in Speech in Academic Teaching or Scholarship Which Could Be Viewed as Supporting Abortion in General.

When engaging in statutory interpretation, the objective “is to derive the intent of the legislative body that adopted the act.” *Estate of Stahl v. Idaho State Tax Comm’n*, 162 Idaho 558, 562, 401 P.3d 136, 140 (2017). As the Idaho Supreme Court has explained,

[s]tatutory interpretation ... begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Id. (quoting *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d, 970, 973 (2011)). In addition, it must be presumed that the legislature was aware of all applicable legal precedent existing at the time the statute was passed, including the legal precedent relating to academic speech discussed above. *Twin Lakes Canal Co.*, 151 Idaho at 218, 254 P.3d at 1214.

The plain text of the Act does not prohibit public university employees from engaging in speech relating to academic teaching and scholarship that could be viewed as supporting abortion. The Act prohibits the use of public funds to “promote abortion” and to “counsel in favor of abortion.” The plain meaning of these terms do not prohibit professors from speaking on abortion in their teaching and scholarship, even if that teaching or scholarship could be viewed as supporting abortion.

1. Interpreting “counsel in favor of.”

“Counsel” is defined, in part, as “advice, esp. that given formally.” *Counsel*, THE NEW OXFORD AMERICAN DICTIONARY (2001). In the context of the Act, which is designed to prohibit the use of public funds for abortion, the plain meaning of the term “counsel” must refer to the counsel or advice one person gives to another person asking for advice or help with a specific situation. Academic teaching about abortion, discussing the arguments some have advanced in favor of abortion within the academic environment, and conducting academic scholarship relating to abortion

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would not be impacted by the term “counsel in favor of abortion,” since those activities do not relate to counseling a specific person in a specific circumstance in favor of abortion. Thus, a professor might violate the Act by advising a specific student during office hours to obtain an abortion, but would not violate the Act by discussing abortion in a favorable manner in class or in scholarship.

2. Interpreting “promote.”

The term “promote” sometimes has a more generalized meaning than “counsel,” being defined as “further the progress of (something, esp. a cause, venture, or aim); support or actively encourage.” *Promote*, THE NEW OXFORD AMERICAN DICTIONARY 1364 (2001). However, within statutory law, “promote” has also been interpreted with a meaning similar to the meaning of “counsel” discussed above. In *U.S. v. Williams*, 553 U.S. 285, 300 (2008), the U.S. Supreme Court held that the term “promotes,” in a statute criminalizing the pandering of child pornography, “does not refer to abstract advocacy, such as the statement ‘I believe that child pornography should be legal’ or even ‘I encourage you to obtain child pornography.’” Rather, the term “refers to the recommendation of a particular piece of purported child pornography with the intent of initiating a transfer.” *Id.* The court held that the statute which, among other things, prohibited the promotion of child pornography, “falls well within constitutional bounds.” *Id.* at 299.

The use of “promote” in the Act should be interpreted in the same manner as the U.S. Supreme Court did in *Williams*. Just as the term “promote,” as used in the federal statute prohibiting the pandering of child pornography does not “refer to abstract advocacy,” the term “promote” in the Act also does not refer to the abstract teaching and scholarship of abortion conducted by university professors. Rather, teaching and scholarship are critical to fulfill the ideals set forth in the above cited cases. These ideals—helping to train our Nation’s future leaders, encouraging the robust exchange of ideas, helping students to learn how to think critically—are not inhibited by the Act. Rather, what is prohibited is contribution, on State time and money, to efforts to facilitate abortions. The most reasonable construction of the Act according to its plain language and the presumption of constitutionality is that it does not penalize the critical discussion of, or even favorable coverage of, abortion within the context of academic teaching and scholarship.

3. Application of the Act.

Based on this plain language interpretation, the Act does not prohibit any academic discussion in favor of abortion. While it is impossible to list every possible act that may be permissible, or that may run afoul of the Act, as examples only, a literature professor could assign students to read in class essays or literature discussing, or even advocating for, abortion without fear of violating the Act. An

Representative Judy Boyle

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Page 9

ethics professor could discuss abortion, and assign students to research topics of abortion, within a medical ethics course without fear of violating the act. A law school professor could teach about *Roe v. Wade*, *Dobbs*, and how states have regulated, or not regulated, abortion in the aftermath of *Dobbs*, and could even advocate that *Roe* was right and *Dobbs* is wrong, and that the State of Idaho's laws regarding abortion should be changed, without fear of violating the Act.² Professors can conduct academic scholarship, including research and writing, about abortion, even if that research or writing supports abortion, without fear of violating the Act.

The plain meaning of the phrases “promote abortion” and “counsel in favor of abortion” do not prohibit speech about abortion in the context of academic teaching and scholarship conducted by the employees of public institutions of higher education engaged in academic teaching and scholarship, even if that teaching or scholarship could be viewed as supporting abortion. However, official activities by public university employees which do not constitute academic teaching or scholarship would be prohibited by the Act. As an example only, a professor or other university employee could not, during office hours, counsel a specific student to abort her baby, or refer that student to an abortionist in order to abort her baby. And a professor could not, as part of her academic research or teaching responsibilities, use public funds to participate in or assist with an abortion in another state.

Nor do university professors have *carte blanche* authority to do whatever they want relating to abortion in the context of their teaching and scholarship. For example, Idaho Code § 39-9306(3) prohibits the use of “an unborn infant or the bodily remains or embryonic stem cells of an aborted infant in animal or human research, experimentation or study, or for transplantation.” That statutory prohibition is unrelated to the speech or expressive conduct of university employees and is thus unaffected by this interpretation of the Act. And the other prohibitions in the Act not addressed above forbid the use public funds to provide abortions, induce abortions, provide facilities for abortions or training to provide or perform an abortion, counsel a specific person to obtain an abortion, or to refer a specific person for abortion.

Finally, this opinion addresses only how the Act affects the academic speech of employees of public institutions of higher education relating to teaching or scholarship. It does not relate to speech by employees of public higher education institutions that is not related to teaching or scholarship, or to teaching or scholarship that is not speech or expressive conduct. Nor does this opinion apply to teachers at public primary and secondary schools since the same academic freedom analysis may not apply to primary and secondary school teachers. See, e.g., *Demers*, 746 F.3d at

² While it should go without saying, just as a professor could talk about his or her position on abortion as part of a relevant class discussion, students in the class would be equally free under the First Amendment to express their opinions on abortion, even if their opinions are opposed to the professor's opinions, without facing adverse consequences from the professor (such as a lower grade).

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413 (“[T]he degree of freedom an instructor should have in choosing what and how to teach will vary depending on whether the instructor is a high school teacher or a university professor.”); *Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 334 (6th Cir. 2010) (holding that the “right to free speech protected by the First Amendment does not extend to the in-class curricular speech of teachers in primary and secondary schools made ‘pursuant to’ their official duties.”).

CONCLUSION

For the reasons above, I conclude that the plain meaning of the No Public Funds for Abortion Act does not prohibit employees of institutions of higher education from engaging in abortion related speech as part of their academic teaching or scholarship, even if that teaching or scholarship could be viewed as supporting abortion. Although the prosecutorial authority of this office is limited and triggered only upon referral by a county prosecutor, *see* Formal Opinion 23-1, this office would not bring any referred prosecution under the Act inconsistent with the interpretation set forth herein.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 18-8701
§ 18-8705
§ 18-8706
§ 18-8709
§ 18-622
§ 18-601
§ 39-9306

2. Idaho Cases:

Estate of Stahl v. Idaho State Tax Comm’n, 162 Idaho 558, 401 P.3d 136 (2017)
Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285 (1990)
Planned Parenthood Great Nw. v. Idaho, 171 Idaho 374, 522 P.3d 1132 (2022)
State v. Gomez-Alas, 167 Idaho 857, 477 P.3d 911 (2020)
State v. Schulz, 151 Idaho 863, 264 P.3d, 970 (2011)
Twin Lakes Canal Co. v. Choules, 151 Idaho 214, 254 P.3d 1210 (2011)

3. Other Authorities:

Brandenburg v. Ohio, 395 U.S. 444 (1969)
Brown v. Hartlage, 456 U.S. 45 (1982)

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Demers v. Austin, 746 F.3d 402 (9th Cir. 2014)
De Piero v. Penn. St. Univ., No. 2:23-cv-02281 (E.D. Pa. 2023)
Dobbs v. Jackson Women's Health Organization, 142 S.Ct. 2228 (2022)
Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist., 624 F.3d 332 (6th Cir. 2010)
Garcetti v. Ceballos, 547 U.S. 410 (2006)
INS v. St. Cyr, 533 U.S. 289 (2001)
Jackson v. Wright, No. 4:21-CV-00033, 2022 WL 179277 (E.D. Texas 2022)
Keyishian v. Bd. of Regents of Univ. of N.Y., 385 U.S. 589 (1967)
Meriwether v. Hartop, 992 F.3d 492 (6th Cir. 2021)
NCF Freedom, Inc. v. Diaz, No. 4:23-cv-00360-MW-MAF (N.D. Fla. 2023)
NEW OXFORD AMERICAN DICTIONARY (2001)
Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cnty., Ill., 391 U.S. 563 (1968)
Reges v. Cauce, No. 2:22-cv-0964 (W.D. Wash 2023)
Rust v. Sullivan, 500 U.S. 173 (1991)
Sweezy v. State of New Hampshire, 354 U.S. 234 (1957)
U.S. v. Williams, 553 U.S. 285 (2008)

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