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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHOANS UNITED FOR WOMEN AND FAMILIES, Petitioner, vs. RAUL R. LABRADOR, in his official capacity as the Idaho Attorney General; PHIL MCGRANE, in his official capacity as the Idaho Secretary of State; LORI WOLFF, in her official capacity as Administrator of the Idaho Division of Financial Management; and IDAHO DIVISION OF FINANCIAL MANAGEMENT, Respondents.	Case No. **52636-2025** **ORIGINAL ACTION**

PETITIONER'S BRIEF IN SUPPORT OF VERIFIED PETITION FOR WRITS OF CERTIORARI AND MANDAMUS

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INTRODUCTION

Post-*Dobbs v. Jackson Women's Health*, each state is charged with regulating abortion according to its citizens' will. 597 U.S. 215 (2022). Through the state constitution, the people of Idaho have reserved to themselves the right of direct democracy to decide issues like this by the will of the voters.

Petitioner Idahoans United for Women and Families ("Idahoans United") is working to place before the Idaho electorate a measure on reproductive health care in the 2026 general election (the "Initiative"). The Initiative seeks to protect Idahoans' rights to make personal decisions about reproductive health care. The Initiative would establish the right to abortion up to fetal viability and in medical emergencies. The Initiative would also protect a person's right to privacy in consulting with health care providers and, in turn, protect providers from professional discipline, civil liability, or criminal liability solely on the basis that the health care provider knowingly advised, assisted, facilitated, informed, referred, or otherwise aided a person in exercising their right to reproductive freedom and privacy.

To correctly ascertain the voters' decision on the Initiative, the ballot titles assigned by the Attorney General and the fiscal impact statement prepared by the Division of Financial Management must accurately reflect the measure's content, or the exercise will only result in confusion, to the prejudice of the Initiative. The ballot titles and fiscal impact statement must substantially comply with Idaho Code sections 34-1809 and 34-1812. These statutes mandate clarity for titles and fiscal impact statements, among other requirements, because the initiative process should capture the will of the people, not confound it.

Idahoans United seeks this Court's review of the short ballot title because (1) it omits two key characteristics of the Initiative—the medical emergency exception and the right of privacy;

and (2) it uses the term "fetus viability," which is not in common usage and leads to confusion and prejudice. The long ballot title is likewise rendered confusing and prejudicial due to the use of the term "fetus viability." And the fiscal impact statement—while required to be clear, concise, unbiased, and lacking legal and technical terms—is anything but. The fiscal impact statement (1) includes contradictory, or at the very least, confusing, speculation about potential impacts; (2) wrongly implies that Medicaid and corrections spending would increase; (3) obscures meaning by including citations to statute in lieu of explanation; and (4) prejudicially includes an irrelevant reference to the state's $850 million Medicaid budget. In reality, like the Initiative itself states, the measure does not impose a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by the act.

The shortcomings of the fiscal impact statement and ballot titles are confirmed by scientific review. Dr. Hilary Shulman, PhD., a professor at Ohio State University, who specializes in the study of how word choice influences information processing in politics, was retained by Idahoans United to review the fiscal impact statement and ballot titles. Based on her expertise and well-established findings in her field, Dr. Shulman attests, with reasonable scientific certainty, that (1) issues with the Fiscal Impact Statement independently and collectively will confuse many voters and cause them to vote against the Initiative for reasons unrelated to the purpose and true fiscal impact of the Initiative, and (2) use of the uncommon term "fetus viability" serves no legitimate purpose and biases voters against the Initiative.

Upon review, this Court should find the ballot titles and fiscal impact statement fail to substantially comply with Idaho law; certify the fair and objective titles that Petitioner proposes, or something similar, to the Idaho Secretary of State; and certify an accurate, clear and concise

fiscal impact statement in the form Petitioner proposes, or something similar, to the Idaho Secretary of State.

With this brief, Idahoans United filed a Verified Petition for Writs of Certiorari and Mandamus ("Petition"). In support of its Petition, Idahoans United filed the Declarations of Melanie Folwell ("Folwell Decl."), Anne Henderson Haws ("Haws Decl."), and Hillary C. Shulman ("Shulman Decl."). Idahoans United concurrently filed a Motion to Expedite the Proceedings.

STATEMENT OF THE CASE

A. The United States Supreme Court Returned Regulation of Abortion to the States.

On June 24, 2022, the United States Supreme Court ruled that "no [abortion] right is implicitly protected by any constitutional provision[.]" *Dobbs*, 597 U.S. at 231, overruling *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

In closing, the *Dobbs* decision confirmed that each state should decide the legality of abortion. Specifically, the *Dobbs* opinion states, "The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives." *Id.* at 302.

B. Polling of Idahoans Shows Majority Support for Abortion in Some or Almost All Cases.

With the states now charged with determining regulation of reproductive health care, the law should reflect the perspective of Idaho's electorate. Idahoans United—a locally led, 501(c)(4) non-profit entity advocating for access to comprehensive reproductive health care and promotion of the well-being of women, children, and families in Idaho—commissioned a poll of

Idahoans regarding their positions on abortion and related issues. Folwell Decl., ¶¶ 3-4, Ex. A. Idahoans United hired FM3 Research to conduct the poll. *Id.*, ¶ 4. FM3 Research is a well-respected political research firm that specializes in conducting surveys for candidate and ballot measure campaigns. *Id.*

The poll revealed that—though Idaho voters' feelings toward abortion in general are complex—the severe restrictions and penalties currently imposed by Idaho law are broadly and emphatically unpopular. *Id.*, Ex. A at 2.

Not only do three in five Idahoans believe that abortion should be legal in some or almost all cases, but findings also indicate that:

- A broad majority (63%) believe abortion should be a decision between a woman, her family, and her doctor;
- The same percentage of Idahoans (63%) oppose felony criminal charges for a health care provider who performs an abortion; and
- Even more (69%) believe we should not impose our views of abortion on others.

Id., Ex. A at 2.

C. Since the 2022 Polling, Idahoans United Has Grown in Membership and Continued Its Advocacy.

As of the date of this filing, Idahoans United has more than 3,000 members and volunteers across the State of Idaho. *Id.*, ¶ 3.

D. The Initiative Seeks to Restore Comprehensive Reproductive Health Care and Privacy.

In line with the Idaho voters' opinions reflected in polling and the wishes of Idahoans United's broad membership, Idahoans United is working to place the Initiative on the 2026 general election ballot. *Id.*, ¶ 5. If passed by voters, Title 39 of Idaho Code would be amended by

the addition of a new Chapter 8, entitled the "Reproductive Freedom and Privacy Act." The full text of the Initiative is provided as Exhibit B to the Folwell Declaration.

The Initiative has three chief characteristics. One, it codifies the "right to make personal decisions about reproductive health care that directly impact the person's own body, including but not limited to the right to make decisions about: i. Abortion; ii. Childbirth care; iii Contraception; iv. Fertility treatment; v. Miscarriage care; and vi. Prenatal, pregnancy, and postpartum care." *Id.*, Ex. B at ¶ 2(a). Two, the Initiative establishes the right to abortion "up to fetal viability and in medical emergencies." *Id.*, Ex. B at ¶ 1. And three, the Initiative protects a patient's right to privacy in consultation with health care providers and, in turn, protects health care providers from "professional discipline, civil liability, or criminal liability . . . solely on the basis that the health care provider knowingly advised, assisted, facilitated, informed, referred, or otherwise aided a person in exercising their right to reproductive freedom and privacy." *Id.*, Ex. B at ¶ 2(b), (e).

E. Idahoans United Received the Fiscal Impact Statement and Ballot Titles for the Initiative.

On November 20, 2024, Idahoans United sent a copy of the Initiative petition to the Secretary of State signed by at least twenty qualified electors of the state. *Id.*, ¶ 6, Ex. C. Together with the Initiative petition, Idahoans United provided a proposed funding source statement. *Id.* The Secretary of State's office filed the petition and transmitted it to the Attorney General for issuance of a certificate of review, as provided in Idaho Code section 34-1809.

On December 20, 2024, the Secretary of State transmitted to Idahoans United the fiscal impact statement ("FIS") and the assumptions it was based on ("Assumptions") for the Initiative, which was prepared by the Idaho Division of Financial Management ("Division"), and the

Attorney General's certificate of review. *Id.*, ¶ 7, Ex. D. The FIS and Assumptions provide as follows:

> The laws affected by the initiative would not impact income, sales, or product taxes. There is no revenue impact to the General Fund found.
>
> The initiative could change state expenditures in minor ways. Costs associated with the Medicaid and prisoner populations may occur; see Idaho Codes 20-237B and 56-255 and the Medicaid references from Health and Welfare.
>
> Passage of this initiative is likely to cost less than $20,000 per year. The Medicaid budget for providing services was about $850 million in FY2024. If passed, nominal costs in the context of the affected total budget are insignificant to the state.
>
> Assumptions
>
> Changes in costs associated with the ballot initiative could impact state funding expenditures for Corrections and Medicaid budgets. The amount of those costs would be dependent on the frequency of need for reproductive services within the agencies. The manner of the budget impacts would be different for Corrections due to the health care provisions used by the agency; there is no expected changes to the Corrections health care budget. Billing history prior to the Dobbs decisions suggests that $20,000 per year is a conservative over-estimate of the costs. Neither of these agencies reverted funding when the Dobbs decision was made in 2022 (and already established legislation in Idaho code took effect). It is assumed that any additional costs due to the passage of this ballot initiative could be absorbed in the Corrections and Health and Welfare budgets should the ballot initiative pass.

Id., Ex. D.

On December 26, 2024, Idahoans United submitted a letter to the Attorney General requesting the issuance of short and long ballot titles for the Initiative under Idaho Code section 34-1809(2)(a). *Id.*, ¶ 8. On January 10, 2025, the Attorney General provided short and long ballot titles for the Initiative. *Id.*, ¶ 9, Ex. E. The titles read as follows:

Short Title

> Measure establishing a right to abortion up to fetus viability and to make reproductive decisions regarding one's own body.

Long Title

> The measure seeks to change Idaho's laws by introducing a right to reproductive freedom and privacy including a right to abortion up to the point of the fetus's ability to survive outside the womb. After fetal viability, there would be no general right to abortion except in cases of "medical emergency." The "medical emergency" exception would expand Idaho's current life exception and allow abortions when pregnant women face complicating physical conditions that threaten their life or health, "including serious impairment to a bodily function" or "serious dysfunction of any bodily organ or part."
>
> The proposed measure codifies a right to make reproductive decisions, including contraception, fertility treatment, and prenatal and postpartum care. This includes a "right of privacy" in making these decisions. The measure seeks to prevent the state from enforcing certain abortion laws protecting the life of the unborn child. It would also impose a requirement that any restrictions on reproductive decisions, including abortion prior to fetus viability, must be "narrowly tailored to improve or maintain the health of the person seeking reproductive health care." The measure would also prevent the state from penalizing patients, healthcare providers, or anyone who assists in exercising the proposed right.

Id., Ex. D.

F. Records from a Public Records Request Indicate the Fiscal Impact Statement Was Prepared With the Intent to Show Expenditure.

On January 29, 2025, Idahoans United obtained records from the Division through a public records request, including communications between employees of the Division, Secretary of State's Office, and Idaho Department of Health and Welfare ("DHW"). Folwell Decl., ¶ 10. Ex. G. The communications show the fiscal impact statement was prepared with an aim to show increased expenditures, even though the Division initially concluded the Initiative will not cause additional State expenditures. *Id.* The documents show the Division speculated about what costs might, in theory, result, notwithstanding the plain language of the Initiative and data surely available to it from the Idaho Department of Health and Welfare. *Id.*

G. Idahoans United Retained a Leading Scholar to Review the Ballot Titles and Fiscal Impact Statement.

Idahoans United retained Dr. Hilary Shulman, Ph.D. to analyze and provide her professional conclusions regarding the ballot titles and fiscal impact statement. Shulman Decl., ¶¶ 1-2. Dr. Shulman is an Associate Professor with the School of Communication at The Ohio State University. *Id.*, ¶ 1. Her area of academic focus includes Political Communication, but more specifically the study of how word choice influences information processing and public engagement in the areas of politics, health, and science. *Id.* She was the lead author of and received the Micahu Pfau Outstanding Article Award for the article, "Predicting vote choice and election outcomes from ballot wording: The role of processing fluency in low information direct democracy elections." Political Communication, 39(5), 652-673 (2022).

Dr. Shulman provides a report regarding her analysis and attests with reasonable scientific certainty to the following conclusions[1]:

(1) The Fiscal Impact Statement includes legal and technical terms in its explicit reference to two legal statutes (Idaho Codes 20-237B and 56-255). Voters' lack of knowledge of the meaning of these statutes, coupled with their inability to look these laws up in the voting booth, obfuscate the conclusions voters are able to draw about the fiscal impacts of this bill;

(2) The Fiscal Impact Statement contains reference to numbers and dollar amounts which are contradictory to the claim, "The laws affected by the initiative would not impact income, sales, or product taxes. There is no revenue impact to the General Fund found." The subsequent inclusion of the numerical amounts of "$20,000" and "$850 million in FY2024" are likely to

[1] Shulman Dec. at ¶¶ 2-11, Exhibit A (Shulman Report).

draw reader's attention and create the impression that the bill costs money. This is an inaccurate impression and thus misleading;

(3) There are references to two groups in the Fiscal Impact Statement that, based on strong scholarly precedent, will negatively bias voters' impressions of the bill. The Fiscal Impact Statement prejudices the initiative by including the terms "Medicaid" and "prisoners," a program and population negatively viewed by many, which are unrelated to the purpose of the initiative. When language that references discriminated against identities, or populations, is used, prejudicial attitudes are likely to become top of mind. This is a well-documented communication and psychological process referred to as a framing effect. In this instance, this framing effect will increase the likelihood that negative sentiment towards this legislation is produced, due to the evocation of these prejudices. This will negatively bias voters' impression of the legislation and will reduce the legislation's likelihood of passage accordingly;

(4) The referenced issues with the Fiscal Impact Statement independently and collectively will confuse many voters and cause them to vote against the Initiative for reasons unrelated to the purpose and true fiscal impact of the Initiative;

(5) The interchangeable use of the term "fetal" and "fetus" between the Short and Long Title is not semantically accurate. "Fetal" is a general term that relates to a fetus. Conversely, "fetus" is singular. Drawing upon the rich academic literature and studies in framing theory once again, references to general themes versus individual instances evoke different types of considerations. Specifically, singular references, known as "episodic" framing, is likely to increase attributions of individual responsibility and/or blame. The presence of these considerations will negatively bias attitudes towards this bill and negatively impact the

Initiative's likelihood of passage. Notably, the phrase "fetal" does not conjure up individual responsibility considerations and would remedy this concern; and

(6) Given that "fetal viability" is the commonly accepted medical term, there appears to be no good faith basis for the interjection of the uncommon term "fetus viability." The only purpose in using the uncommon term "fetus viability" is to bias voters against the Initiative. Shulman Decl., ¶ 3, Ex. A (Report at pp. 1-12).

H. Idahoans United Seeks Review of the Ballot Titles and Fiscal Impact Statement.

Idahoans United now seeks this Court's review of the defective short and long ballot titles and fiscal impact statement.

ISSUES PRESENTED

1. Whether the short ballot title assigned by the Attorney General substantially complies with Idaho Code section 34-1809, given its failure to include two distinctive characteristics of the Initiative, its use of uncommon language, and the potential for it to mislead voters and prejudice the Initiative.

2. Whether the long ballot title assigned by the Attorney General substantially complies with Idaho Code section 34-1809, given the use of the term "fetus viability" and the inconsistency in the usage of the terms "fetus viability" and "fetal viability."

3. Whether the FIS prepared by the Division substantially complies with Idaho Code section 34-1812, when the FIS lacks clarity and conciseness, includes legal citations, and is based on incorrect and unfounded budgetary assumptions and references.

4. Whether Idahoans United is entitled to its reasonable attorneys' fees under Idaho Code section 12-117(1) because Respondents acted without a reasonable basis in fact or law.

JURISDICTION

The Court has "original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction." Idaho Const., art. V, § 9; Idaho Code § 1-203; I.A.R. 5(a). Once the Court asserts its original jurisdiction, "it may issue writs of mandamus and/or prohibition." *Ybarra v. Legislature by Bedke*, 166 Idaho 902, 906, 466 P.3d 421, 425 (2020).

A writ of mandamus "is not a writ of right, and this Court's choice to issue a writ is discretionary when compelled by urgent necessity." *The Associated Press v. Second Jud. Dist.*, 172 Idaho 113, 120, 529 P.3d 1259, 1266 (2023) (citing *Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 393, 496 P.3d 873, 879 (2021)).

A writ of mandamus may be issued by the Supreme Court to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station. Idaho Code § 7-302; Idaho Code §1-203.

A writ of certiorari or review may be granted by any court when an officer is exercising judicial functions, and has exceeded their jurisdiction, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy. Idaho Code § 7-202. Like the writ of certiorari, a writ of mandamus or prohibition must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. Idaho Code § 7-303; *Union Pac. Land Res. Corp. v. Shoshone Cty. Assessor*, 140 Idaho 528, 532, 96 P.3d 629, 633 (2004).

The issue before the Court is one of statewide importance and arises from the people's fundamental constitutional right to initiate legislation, as set forth in Article III, Section 1 of the

Idaho Constitution. *Idahoans For Open Primaries v. Labrador* (*In re Verified Petition for Writs of Certiorari & Mandamus*), 172 Idaho 466, 476, 533 P.3d 1262, 1272 (2023). This "is sufficient to invoke this Court's original jurisdiction." *Id.* Idahoans United cannot begin collecting signatures for the Initiative until they have valid certified ballot titles and a valid FIS. *See id.* at 475-76, 533 P.3d at 1271-72; *see also Buchin v. Lance (In re Writ of Prohibition Entitled "Ballot Title Challenge Oral Argument Requested")*, 128 Idaho 266, 273, 912 P.2d 634, 641 (1995). Idahoans United has no other adequate remedy at law and requests expedited relief.

Idahoans United's request that the Court exercise original jurisdiction relating to the fiscal impact statement is further supported by the absence of any process for speedy administrative review pursuant to Idaho Administrative Procedures Act ("IAPA"). The Division is not an "agency" under IAPA. *See* Idaho Code § 67-5201(3) (defining "agency"). Rather, the Division is a division within the governor's office. Idaho Code § 67-1910. As the Division is not an "agency," its "actions are not subject to judicial review under the IAPA unless there is a statute invoking the judicial review provisions of the IAPA," *Burns Holdings, Ltd. Liab. Co. v. Madison Cty. Bd.*, 147 Idaho 660, 662, 214 P.3d 646, 648 (2009). Given there is no such statute, Idahoans United has no other adequate remedy at law other than an extraordinary writ.

ARGUMENT

A. The Short Ballot Title Does Not Substantially Comply with Idaho Code § 34-1809.

The short ballot title assigned to the Initiative fails review because it omits two key characteristics of the Initiative—medical emergency and right of privacy—and uses the incorrect term "fetus viability," which is not in common usage and would cause confusion on the ballot.

1. Short titles must be distinctive, comprehensive, neutral, and use common language.

This Court reviews ballot titles under Idaho Code section 34-1809 for "substantial compliance." *Idahoans for Open Primaries*, 172 Idaho at 479, 533 P.3d at 1268.

a) Short ballot titles must be distinctive and comprehensive.

"Under I.C. § 34-1809, the fundamental inquiry is whether the short title is 'distinctive,' that is, whether the short title 'set[s] forth the characteristics which distinguish this proposed measure and expeditiously and accurately acquaint the prospective signer with what he or she is sponsoring.'" *ACLU v. Echohawk*, 124 Idaho 147, 151, 857 P.2d, 626, 630 (1993). This Court has defined "distinctive" as: "(1) referring primarily to that which marks or distinguishes one thing regarded in its relation to other things, (2) a mark or character indicating separation, (3) distinguishing from something diverse, or (4) serving or used to distinguish or discriminate." *Buchin v. Lance*, 128 Idaho at 270, 912 P.2d at, 638.

The Court examines the initiative to determine its chief characteristics and whether they are captured in the short title. *Id.* In other words, "the short title is to be comprehensive in nature." *Id.*, 128 Idaho at 270, 912 P.2d at 638; *see also In re Idaho State Fed'n of Labor*, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954) (holding short title must be "comprehensive").

For instance, in *In re Idaho State Federation of Labor*, this Court held a short title failed because it was not comprehensive. 75 Idaho at 375, 272 P.2d at 712. The Court summarized the initiative in that case as "an initiative measure for the right to work regardless of union membership or non-membership." *Id.* The Attorney General's short title was "The Right to Work Initiative Proposal." *Id.* at 370, 272 P.2d at 708. While "right to work" was a commonly used term, the title failed to acquaint the voter with the key content of the initiative, which was related to union membership or non-membership. *See id.* at 375, 272 P.2d at 712.

In *Buchin*, the Idaho Supreme Court held the following short title invalid: "An initiative prohibiting abortions beyond the point of viability and providing exceptions." 128 Idaho at 269, 271, 912 P.2d at 637, 639. The short title omitted any reference to how the initiative proposed to change the existing abortion laws—because abortions beyond the point of viability were already prohibited at the time of the initiative, and no explanation was made for how the law would change were the initiative adopted by the electorate. *Id.* at 271, 912 P.2d at 639. In other words, the proposed changes were the distinctive characteristics of the initiative and needed to be included in the short title. *Id.* The Court provided a new short title: "Initiative amending existing law regarding third trimester abortions; creating civil and criminal liability for violations; deleting certain existing criminal penalties." *Id.* at 273, 912 P.2d at 641.

And, in *Idahoans for Open Primaries*, this Court held a short ballot title was not distinctive or comprehensive because it used the term "nonparty blanket primary," which "fail[ed] to communicate to voters a key characteristic of the initiative—how many candidates advance to the general election." 172 Idaho at 482-83, 533 P.3d at 1278-79. Moreover, the term "nonparty blanket primary" was not used in common parlance in Idaho and thus was not distinctive. *Id.*

b) Short titles must be neutral.

In addition to analyzing whether the short title comprehensively captures the distinctive characteristics of the initiative, the Court also evaluates whether the title is neutral, as opposed to "argumentative" or "prejudicial." *ACLU*, 124 Idaho at 149, 151, 857 P.2d at 628, 630; *see also Idahoans for Open Primaries*, 172 Idaho at 482-83, 533 P.3d at 1278-79 (holding short ballot title failed substantial compliance review in part because the term "nonparty blanket primary" was prejudicial and misleading). Neutrality is important because in preparing the ballot titles, the

Attorney General is entrusted with a "quasi-judicial" task. *Buchin*, 128 Idaho at 270, at 638. Terminology posing a risk of confusing the voters is prejudicial. *See Idahoans for Open Primaries*, 172 Idaho at 486, 533 P.3d at 1282 ("At a minimum, the statement is ambiguous; thus, it is likely to prejudice the Initiative.").

c) Short titles must use words by which the measure is commonly referred to or spoken of.

Idaho Code section 34-1809(d)(i) requires the Attorney General to prepare a "[d]istinctive short title not exceeding twenty (20) words by which the measure *is commonly referred to or spoken of* and which shall be printed in the foot margin of each signature sheet of the petition" (emphasis added).

This Court has explained that, "[t]he plain and unambiguous language of section 34-1809(2)(d)(i) requires the Attorney General to ascertain how an initiative is commonly referred to or spoken of and incorporate that language into the short title." *Idahoans For Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277. This "task necessarily requires the Attorney General to determine how Idahoans commonly refer to and speak of a measure[.]" *Id.* The Court has also held that, where "the Attorney General is unable to identify the common language Idahoans use to refer to the measure," the Attorney General "may look outside of the state to determine whether common language can be found in other states." *Id.* The job of "[a]scertaining how *the public* refers to a measure is important because the short title must 'set forth the characteristics which distinguish [the] proposed measure and expeditiously and accurately acquaint the prospective signer with what he is sponsoring.'" *Id.* (quoting *In re Idaho State Fed'n of Labor*, 75 Idaho at 373, 272 P.2d at 710). Finally, "[w]hen ascertaining the language used to commonly refer to the measure, the Attorney General must remain mindful that the statute requires him to use language that is not 'intentionally an argument or likely to create prejudice either for or

against the measure.'" *Id.* at 466, 481, 533 P.3d at 1262, 1277 (quoting Idaho Code § 34-1809(2)(e)).

2. The short ballot title is not distinctive or comprehensive because it omits two of the three key characteristics of the Initiative.

The Initiative has three chief characteristics: it codifies the right to make personal decisions about reproductive health care; it establishes the right to abortion up to fetal viability and in medical emergencies; and it protects a patient's right to privacy in consultation with health care providers. Folwell Decl., ¶ 5, Ex. B; ¶ 13. The second and third of these chief characteristics are not captured in the short title. It is thus not comprehensive and does not substantially comply with section 34-1809(2)(d)(i). *See Buchin*, 128 Idaho at 270, 912 P.2d at 638; *see also In re Idaho State Fed'n of Labor*, 75 Idaho at 374, 272 P.2d at 711.

a) The short title fails review because it omits the medical emergency exception.

The short title does not mention the medical emergency exception after "fetus viability." The medical emergency exception is a distinctive feature of the Initiative—and must be included—because (1) it is one of two portions of the timeline defining the right to an abortion (before viability versus after viability); and (2) it alters existing law governing abortion in the case of medical emergency. *See Buchin*, 128 Idaho at 270, 912 P.2d at 638 (holding chief characteristics of an initiative must be included in the short ballot title).

First, the medical emergency exception is a significant element of the Initiative because it addresses the period of complex pregnancies when arguably the most difficult determination regarding abortion is made—when a pregnant person's health is endangered through conditions caused by carrying the fetus, though viable. The short ballot title addresses the right to abortion before "fetus viability." To omit the medical emergency exception is to ignore the second half of

the whole—what rights exist after fetal viability. Inclusion of the medical emergency exception in the short title informs the voter that the limits on abortion rights are on the ballot, with those limits drawn at fetal viability and medical emergency—a concept captured in the long ballot title, at length, recognizing its significance to the proposed legislation. *See In re Idaho State Fed'n of Labor*, 75 Idaho at 375, 272 P.2d at 712 (holding short ballot title inadequate because it failed to inform the voter of the distinctive feature of the initiative—union membership or non-membership).

Second, the medical emergency exception in the Initiative poses a significant change to existing law and is therefore distinctive. *See Buchin*, 128 Idaho at 271, 912 P.2d at 639 (holding an abortion initiative short ballot title inadequate because it failed to be distinctive by omitting how abortion law would be altered if the measure were adopted). Today, controlling "Idaho law prohibits abortions unless necessary to prevent a pregnant woman's death; the law makes no exception for abortions necessary to prevent grave harms to the woman's health, like the loss of her fertility." *Moyle v. United States*, 603 U.S. 324, 325-26, 144 S. Ct. 2015, 2016 (2024) (Kagan, J., concurring) (citing Idaho Code § 18-622). When Idaho's Total Abortion Ban first became effective, it made *all* abortions a crime, while allowing limited affirmative defenses to defendants where an "abortion was necessary to prevent the death of the pregnant woman; and (2) in the case of rape or incest, prior to the abortion, the woman provided the physician with a copy of her report of rape or incest to law enforcement." *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 394, 522 P.3d 1132, 1152 (2023). The Idaho Legislature later amended Idaho Code section 18-622 to change those affirmative *defenses* into limited *exceptions*, but Idaho continues to outlaw abortion unless "necessary to prevent the death of the pregnant woman" or the "woman has reported to a law enforcement agency that she is the victim of an act of rape or

incest and provided a copy of such report to the physician who is to perform the abortion." Idaho Code § 18-622.

The Initiative's medical emergency exception fills a gap in the law regarding death absent an abortion. In contrast to existing law, the Initiative covers those exceedingly fraught situations when a physician cannot determine with medical certainty that a pregnant person will die absent an abortion. The Initiative's definition of medical emergency includes "[t]o protect a pregnant patient's life; or . . . [f]or which delay may . . . [p]lace the health of a pregnant patient in serious jeopardy[.]" Again, the Initiative addresses the reality that physicians and patients face under current law—that the outcome of emergent physical complications during a pregnancy—cannot be predicted with medical certainty. Under the current law, lack of medical certainty means lack of any reasonable legal certainty, to the detriment of patient and physician. The Initiative's medical emergency exception covers this situation that is unthinkable to those who have not experienced it.

By allowing an exception for defined medical emergencies, the Initiative places more reliance on the professional, medical judgment of the physician. The Initiative provides that the physician must exercise "good faith medical judgment, based on the facts known at the time." The Initiative encourages the exercise of medical judgment tailored to the specific patient, allowing that the existence of a medical emergency is "determined on a case-by-case basis."

The Initiative's medical emergency exception is a distinctive feature of the Initiative and must be captured in the short ballot title. The short title here is like that in *In re Idaho State Federation of Labor*, which failed because it did not include the key concept of union membership or non-membership. 75 Idaho at 375, 272 P.2d at 712. It is also like the one in *Idahoans for Open Primaries*, which this Court held was not distinctive or comprehensive

because it "fail[ed] to communicate to voters a key characteristic of the initiative—how many candidates advance to the general election." 172 Idaho at 482-83, 533 P.3d at 1278-79.

The short ballot title does not substantially comply with Idaho Code section 34-1809(2)(d)(i) because it omits the medical emergency exception.

b) The short title fails review because it omits the right to privacy in reproductive decisions.

Similarly, the short ballot title lacks reference to an entire element of the measure—the right of privacy. On its face, the right of privacy is a distinctive characteristic of the Initiative.

The text of the Initiative includes "private" or "privacy" ten times, showing it is a key characteristic of the proposed measure. *Id.*, Ex. B. And these are not passing references. The right extends to the protection of a person's own health care decisions in consultation with their health care provider. *Id.*, Ex. B at ¶ 2(b). The Initiative likewise protects the health care provider otherwise suffering consequences from such private consultations, prohibiting "professional discipline, civil liability, or criminal liability . . . solely on the basis that the health care provider knowingly advised, facilitated, informed, referred, or otherwise aided a person in exercising their right to reproductive freedom and privacy." *Id.*, Ex. B at ¶ 2(e). Moreover, the Initiative's Statement of Purpose declares that reproductive health care choices "are deeply private matters that should be decided by a person in consultation with their health care provider." *Id.*, Ex. B.

The omission of the right of privacy causes the short ballot title to fail the distinctiveness test. *See In re Idaho State Fed'n of Labor*, 75 Idaho at 374, 272 P.2d at 711 (holding short ballot title inadequate for failure to include a chief characteristic of the proposed measure). Without a reference to the right to privacy, the short title cannot be deemed "comprehensive," as required by this Court's precedent. *Buchin*, 128 Idaho at 270, 912 P.2d at 638.

There is no legitimate argument that including the right of privacy in the short title would somehow make the short title confusing. Like the omission of the medical emergency exception, there is no reasonable basis for the omission of this key characteristic.

For this additional reason, the short ballot title does not substantially comply with Idaho Code section 34-1809(2)(d)(i).

3. **The short ballot title is also inadequate because it uses language uncommon to the measure.**

The Attorney General's short ballot title does not substantially comply with section 34-1809(2)(d)(i). It uses the uncommon term "fetus viability" in place of the common and accurate term "fetal viability,"[2] referring to the point in a pregnancy when the fetus has a significant likelihood of sustained survival outside of the uterus absent extraordinary medical measures. The Attorney General must ascertain how the Initiative is commonly referred to or spoken of by Idahoans. *Idahoans For Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277. And, if the Attorney General is unable to do so, he may look outside of Idaho to see if common language can be found in other states. *Id.* Here, there is no need to look beyond Idaho, as it is clear that Idahoans use the term "fetal viability" to refer to the point in a pregnancy when the fetus has a significant likelihood of sustained survival outside of the uterus absent extraordinary medical measures. However, even if the Attorney General looked outside of Idaho to ascertain how the Initiative is commonly referred to or spoken of, he would find that "fetal viability" is likewise the term most often used by people in other states. The Attorney General could perform a

[2] *See* Pettker et al., "The Limits of Viability," Obstet. Gynecol. 142(3) (Aug. 4, 2023), *available at*, pmc.ncbi.nlm.nih.gov/articles/PMC10424821 (discussing fetal viability) (last visited Jan. 29, 2025).

searching inquiry and still find no substantial justification for use of the term "fetus viability" in place of "fetal viability."

Moreover, the use of the term "fetus viability" rather than "fetal viability" is an instance of episodic framing, which is likely to increase attributions of blame. Shulman Decl., ¶ 10, Ex. A. The usage of "fetus" in this context will thus negatively bias attitudes toward the Initiative and decrease likelihood of passage. *Id.*, ¶¶ 10-11, Ex. A.

i. The term "fetus viability" is not in common usage in Idaho or beyond.

Idahoans most commonly use the term "fetal viability" to refer to the point in a pregnancy when the fetus has a significant likelihood of sustained survival outside of the uterus absent extraordinary medical measures. *See* Haws Decl., ¶ 2, Ex. A. There is no discernable debate about the term "fetal viability."

News articles published throughout the state of Idaho in the Idaho Statesman, the Coeur d'Alene Press, the Lewiston Morning Tribune, the Idaho Press Tribune, the Bonner County Daily Bee, the Idaho State Journal, the Post Register, the Moscow-Pullman Daily News, and the Twin Falls Times are replete with the use of the term "fetal viability" in reporting on the topic. Haws Decl., ¶ 2, Ex. A. Meanwhile, a search for "fetus viability" in these Idaho newspapers' online archives going back a decade turns up markedly blank—substantial evidence that the term "fetus viability" is not the common language Idahoans use. *Id.*

Outside of Idaho, the evidence of common usage is much the same. A search of the online archives of the Wall Street Journal, the New York Times, the Salt Lake Tribune, and the Las Vegas Sun for the term "fetal viability" turned up blank. *Id.*, ¶ 3, Ex. B. Only by searching for the word "abortion" in these papers' archives was any use found, once in the New York Times and once in the Wall Street Journal, in 1997 and 1996, respectively. *Id.*, ¶ 3, Ex. B.

Casting an even wider net, by adding the Chicago Tribune, the Los Angeles Times, the Seattle Times, and the Washington Post to the search, conclusively shows that the term "fetal viability" is used far more frequently than "fetus viability" at the national level. *Id.* ¶ 4, Ex. C. For instance, of the 488 search returns for the term "fetal viability" in the Washington Post, only 19 returns showed for "fetus viability." *Id.*

Casting a different net yields substantially similar results. A Google search of the term "fetus viability" automatically returns results for "fetal viability" instead—both in its general "All" search category and when the search is filtered to the "News" category. *Id.*, ¶ 5, Ex. D.

There is no indication that the term "fetus viability" is the term by which the key provision of the Initiative is commonly referred to or spoken of, in Idaho or beyond. The Attorney General's short title fails to substantially comply with section 34-1809(2)(d)(i) because it uses the uncommon term rather than the pervasively and clearly common one used in the Initiative itself—fetal viability.

ii. The term "fetus viability" is not used in Idaho law, in bellwether legal decisions on the topic, or in the majority of state legislation or constitutional amendments.

The Attorney General's use of the term "fetus viability" is neither founded in Idaho law nor in federal bellwether decisions on the topic of abortion.

In determining whether a term chosen by the Attorney General for a ballot title is language by which the measure is commonly referred to or spoken of, the Court has looked to prevailing law. *See Idahoans For Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277 (analyzing search of court opinions for contested term). Here, sources of law do not support the Attorney General's choice to use "fetus viability." Instead, sources use the more accurate term "fetal viability."

For instance, the term "fetus viability" is also not a term used in any current Idaho law on the subject of abortion. Those laws are found at Title 18 Chapter 6, "Abortion and Contraceptives," Idaho Code section 18-601 *et seq.*, and at Title 18 Chapter 88, "The Fetal Heartbeat Preborn Child Protection Act," Idaho Code section 18-8801 *et seq*. As a searching review of the statutory provisions of each of the above laws reveals, the term "fetus viability" is not once used in current Idaho law.

Likewise, the term "fetus viability" is not used in the bellwether abortion cases *Dobbs*, and before it, *Casey*. Instead, the term used by the authors of both decisions is the common term, "fetal viability." *See Dobbs*, 597 U.S. at 360 ("So the Court struck a balance, as it often does when values and goals compete. It held that the State could prohibit abortions after ***fetal viability***, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways" (emphasis added); *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992) ("Understood another way, we answer the question, left open in previous opinions discussing the undue burden formulation, whether a law designed to further the State's interest in fetal life which imposes an undue burden on the woman's decision before ***fetal viability*** could be constitutional" (emphasis added).

Similarly, abortion and reproductive health care measures on the ballot in other states in 2024, exclusively used the term "fetal viability." Such measures include those on the ballot in Arizona (Proposition 139 establishing a fundamental right to abortion that the state may not interfere with before the point of ***fetal viability***), Missouri (Amendment 3 to amend the constitution of Missouri to provide the right for reproductive freedom, and provide that the state legislature may enact laws that regulate abortion after ***fetal viability***), Nebraska (Initiative 434 to

amend the Nebraska Constitution to provide that all persons shall have a fundamental right to abortion until ***fetal viability***), and Nevada (Question 6 to establish the constitutional right to an abortion, providing for the state to regulate abortion after ***fetal viability***, except where medically indicated to protect the life, physical health, or mental health of the pregnant woman).

B. Here, the Attorney General's use of "fetus viability" is inconsistent with sources of law and common legislative usage, and therefore fails to substantially comply with section 1809(2)(d)(i). The long ballot title the Attorney General assigned to the Initiative violates Idaho Code § 34-1809(2)(e).

1. Long titles must be an impartial statement of the purpose of the initiative without being argumentative or prejudicial.

In making the general (or long) "ballot title, the attorney general shall, to the best of his ability, give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure." Idaho Code § 34-1809(2)(e).

The Attorney General's language must express the "purpose of the measure" without being argumentative or prejudicial. *Idahoans For Open* Primaries, 172 Idaho 466, 487, 533 P.3d 1262, 1283 (2023) (quoting *Buchin*, 128 Idaho at 270, 912 P.2d at 638). "However, unlike the short title, the general title is not required to be distinctive or to use language by which the measure is commonly referred to or spoken of." *Id.*

A long title is prejudicial when it uses terms that risk confusing voters, including the use of "an undefined term that is very similar to, but slightly different" than that used by Courts in discussing the issue. *Id.* 172 Idaho at 481, 484, 533 P.3d at 1277, 1280.

2. The Initiative's long title is prejudicial and confusing.

The long title does not substantially comply with Idaho Code section 34-1809(2)(e), which requires that the long title be prepared as a true and impartial statement of the purpose of

the Initiative. In preparing the long title, the Attorney General may not use language that is intentionally argumentative or likely to create prejudice (for or against) the Initiative. Idaho Code § 34-1809(2)(e); *see also Idahoans For Open Primaries*, 172 Idaho at 487, 533 P.3d at 1283; *and see Buchin v*, 128 Idaho at 270, 912 P.2d at 638. Here, the Attorney General's use of a similar, but different and uncommon term is likely to confuse voters and cause prejudice to the Initiative.

a) Use of the term "fetus viability" is likely to create prejudice against the Initiative.

The Attorney General's interjection of the word "fetus" into the common phrase "fetal viability" is intentionally an argument and is likely to create prejudice against the Initiative.

Because, as discussed herein, there is no discernible common usage of the term "fetus viability," one might look to the documents specifically related to the Initiative to determine its origin. The Initiative itself does not use the term "fetal viability" and only uses the term "fetus" in the text of the fetal viability definition. Folwell Decl., ¶ 5, Ex. B ("'Fetal viability' means the point in a pregnancy when, on the basis of a physician's good faith medical judgment, based on the facts known at the time, and determined on a case-by-case basis, the fetus has a significant likelihood of sustained survival outside of the uterus without extraordinary medical measures").

The Attorney General's Certificate of Review, which is prepared in accordance with Idaho Code section 34-1809(1)(a), also does not use the term "fetus viability." *See* Folwell Decl., ¶ 7, Ex. D Instead, the Attorney General expressly discusses the Initiative provisions involving "fetal viability," quoting the same. *Id.*, ¶ 7, Ex. D (Matters of Substantive Import). The only time the Attorney General uses the word "fetus" in any context in the Certificate of Review is in the closing paragraph, wherein he cites the "Potential Conflict with Right to Life." *Id.*, Ex. D. There,

he states: “This right to abortion is inherently in conflict with the life of the unborn child (the ‘fetus’).” *Id.*

Attorney General Labrador has made clear in public statements distributed for media release that he will do everything he can to protect Idaho’s current abortion laws. On December 12, 2024, a media release from Attorney General Labrador cited “a significant victory in Idaho’s ongoing fight to protect Life.” Haws Decl., ¶ 5, Ex. E. at 10. Mr. Labrador indicated that, “Our pro-life fight is far from over.” *Id*., at 11. And that, “[he] will always fight to protect the lives of mothers and their unborn children here in Idaho and defend our state sovereignty and the rule of law.” *Id.* In a statement released on July 1, 2024, Attorney General Labrador stated: “Even if government officials are bent on radical abortion agendas, pro-life Americans are just as motivated—if not more—to protect the unborn and their mothers. That includes my office. The people of Idaho elected me to uphold and defend our laws, and I will do everything I can to stand up for laws that hold that all life is precious and worth protecting.” *Id.*, at 8. Early in 2024, Attorney General Labrador issued a statement in which he said: “The fight for Life in Idaho will never end. There is no legislation – state or federal – that can ever heal the hearts of individuals and help them understand the precious gift of life should be protected, not discarded as an inconvenience or burden. But we can offer every protection possible to the unborn.” *Id.*, at 4.

The Attorney General’s subsequent injection of the term “fetus” into the common phrase “fetal viability” may be understood by Idaho voters to signal a particular viewpoint on abortion rights. The Attorney General’s interjection of “fetus” into the common term “fetal viability” is rather intentionally an argument. The uncommon term’s use does not contribute to the purpose of the short title, which is to communicate the chief characteristics of the Initiative. Instead, the uncommon and potentially politically charged terminology is likely to cause confusion or bias to

the prejudice of the Initiative. Therefore, the long title fails to substantially comply with section 34-1809(2)(e).

The Initiative is prejudiced by the Attorney General's use of "fetus viability" rather than a consistent usage of "fetal viability." Shulman Decl., ¶¶ 10-11 Ex. A. The two terms are not interchangeable. *Id.*, Ex. A at III. The term "fetus" is singular. *Id.* By contrast, "fetal" is a more general term that references, or reflects, this stage of development. *Id.* Work in framing theory has found that policy support is impacted by the use of individualized (i.e. episodic) versus general (i.e. thematic) terms. *Id.* Policy attitudes are impacted negatively by episodic framing, which engenders attributions of individual responsibility and blame toward individuals. *Id.* Here, the use of the episodic term "fetus" is likely to make attributions of blame salient, and these attributions will negatively impact attitudes toward the Initiative. *Id.*

b) The long title risks confusing voters by switching terms and thereby will cause prejudice to the Initiative.

The Attorney General's long title risks confusing voters because it uses both "fetus viability" and "fetal viability" to refer to the same thing. Voter confusion induced by the use of different terms will prejudice the Initiative because a confused voter is less likely to vote in favor of the measure. *See* Shulman Decl., Ex. A (linguistic obfuscation causes perception that the speaker is being intentionally dishonest or is untrustworthy). The Attorney General's usages of these terms in the titles is as follows:

- Short title: "Measure establishing a right to abortion up to ***fetus viability*** and to make reproductive decisions regarding one's own body."
- Long title: "After ***fetal viability***, there would be no general right to abortion except in cases of 'medical emergency.'"

2. Long title: "It would also impose a requirement that any restrictions on reproductive decisions, including abortion prior to ***fetus viability***, must be 'narrowly tailored to improve or maintain the health of the person seeking reproductive health care.'"

Folwell Decl., ¶ 9, Ex. F (emphasis added).

Using two different terms to reference the same thing within the same document is inherently confusing. This is especially true as here, the Initiative only uses one of the terms and does so under a specific definition for that term.

Moreover, the actual switch from the commonly used and understood term, "fetal viability" to a similar but different term, "fetus viability" is likely to cause voter confusion. The Court discussed a similar issue in *Idahoans For Open Primaries*. There, the Attorney General advanced terms to use in the ballot titles that were very similar to but slightly different from terms used in the United States Supreme Court's analysis of the constitutionality of certain primary systems; the terms were also different from the term actually used in the proposed initiative. *Id.* The Court found that the Attorney General's similar but different terms failed to "accurately describe the primary system" proposed by the initiative. 172 Idaho at 484, 533 P.3d at 1280. The similar but different terms risked voter confusion. *Id.* The Court indicated that the term that was most accurate, was the one actually used in the initiative petition to describe the system the initiative proposed. *Id.*

Here, the Attorney General is also advancing the use of a very similar but slightly different term. As the Court found in *Idahoans for Open Primaries*, the use of a new, uncommon term, "fetus viability," fails to accurately describe the law proposed by the Initiative and causes risk of voter confusion. Likewise, the term that is most accurate is the one used in the Initiative—fetal viability.

C. The FIS prepared by the Division violates Idaho Code § 34-1812.

1. Fiscal impact statements must be unbiased, prepared in good faith, clear, concise, and avoid legal and technical terms.

The requirements for the preparation of and content of fiscal impact statements are set forth in Idaho Code section 34-1812. The "division of financial management, in consultation with any other appropriate state or local agency," is charged with preparing "an unbiased, good faith statement of the fiscal impact of the law proposed by the initiative." Idaho Code § 34-1812(1).

The content of the fiscal impact statement is as follows: it must "describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure is approved by the voters." *Id.* § 34-1812(2). It must also include "both immediate expected fiscal impacts and an estimate of any state or local government long-term financial implications." *Id.* The "fiscal impact statement must be written in clear and concise language and shall avoid legal and technical terms whenever possible." And "[w]here appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context." *Id.*

The fiscal impact statement is composed of two parts: "a summary of the fiscal impact statement, not to exceed one hundred (100) words, and a more detailed statement of fiscal impact that includes the assumptions that were made to develop the fiscal impact." *Id.* § 34-1812(3). Notably, like ballot titles, when gathering signatures, a copy of the fiscal impact statement must be offered, along with the initiative, and the sponsor's proposed funding source statement[3] to the

[3] When an initiated measure is first delivered to the secretary of state to start the pre-circulation petition review process, the sponsors must also furnish information proposing "a funding source for the cost of implementing the measure." Idaho Code § 34-1804(2).

elector to review. *Id.* And, like the ballot titles, the fiscal impact statement (and the proposed funding source statement) are "published in the state voter's pamphlet and on the official ballot." *Id.*

2. The Division should be required to issue a fiscal impact statement that substantially complies with the standards in Idaho Code section 34-1812.

The issue of whether a certain fiscal impact statement, as prepared by the Division, complies with section 34-1812 has not been raised in an Idaho Court, and therefore the legal standard to review is a matter of first impression. Idahoans United urges this Court to adopt substantial compliance as the legal standard. Like review of ballot titles, review of a fiscal impact statement is a "situation[] where the critical inquiry is whether a party has met statutory requirements[.]" *Idahoans For Open Primaries*, 172 Idaho at 479, 533 P.3d at 1275. And like the Attorney General's quasi-judicial role in preparing ballot titles, *id.* at 481, 533 P.3d at 1277, the Division's role in preparing a fiscal impact statement is quasi-judicial. Both the Division and the Attorney General are charged with providing neutral, impartial statements regarding initiatives. The Attorney General should "give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure," and the Division likewise must provide a fiscal impact statement that is "unbiased" and prepared in "good faith." *Compare* Idaho Code § 34-1809(2)(e), *with* Idaho Code § 34-1812(1). Similarly, the Attorney General's short ballot title must use common language, and the Division's fiscal impact statement must "avoid[s] legal and technical terms whenever possible." *Id.*

Idaho law places the Division under a clear legal duty to furnish an unbiased, clear, and concise fiscal impact statement that ensures voters receive an accurate and understandable presentation of the reasonably likely fiscal impacts associated with initiative measures.

Idahoans United asks the Court to examine the FIS and determine whether it substantially complies with the law. Section 34-1812 provides clear, objective criteria for what constitutes an acceptable fiscal impact statement: it must be unbiased, developed in good faith, and articulated in a manner that is both clear and devoid of unnecessary legal and technical terms.

3. The first two sentences of the FIS come close to substantial compliance with Idaho Code § 34-1812.

Aside from a minor drafting error by reference to "laws affected by the initiative" rather than to the Initiative itself, the first two sentences of the Division's proposed FIS for the Initiative explain the absence of fiscal impact: "The laws affected by the initiative would not impact income, sales, or product taxes. There is no revenue impact to the General Fund found [sic]." Folwell Decl., ¶ 7, Ex. D. These two sentences also mostly align with the Idahoans United's funding source statement, which similarly states, "[n]o funding source is required for the Reproductive Freedom and Privacy Act as it does not create any new financial obligation on the state" and "[b]ecause no funding source is required, the Act has no impact on income taxes, sales tax, or product taxes." Folwell Decl. ¶ 6, Ex. C.

4. At the very least, the remainder of the FIS does not substantially comply with section 34-1812.

The remainder of the FIS does not substantially comply with section 34-1812 because it is unclear, not concise, includes legal terms and technical terms unnecessarily, and relies on unfounded assertions about alleged budgetary impacts. As such, it does not appear to have been prepared in good faith to follow the rule of section 34-1812.

The FIS provides that "[t]he initiative could change state expenditures in minor ways." Folwell Decl. ¶ 7, Ex. D. Citing sections 20-237B and 56-255 of the Idaho Code, as well as unspecified "Medicaid references from Health and Welfare," the FIS states that "costs associated with the Medicaid and prisoner populations may occur." *Id.*

The Division's Assumptions confirm that the FIS includes unfounded assumptions about state expenditures. The Assumptions state that "[c]hanges in costs associated with the ballot initiative *could* impact state funding expenditures for Corrections and Medicaid budgets." *Id.* (emphasis added). The Division posits that "[t]he amount of those costs would be dependent on the frequency of need for reproductive services within the agencies." *Id*. It assumes that "[t]he manner of the budget impacts would be different for Corrections due to the health care provisions used by the agency," while simultaneously stating that "there is no expected changes to the Corrections health care budget." *Id.* Without supporting evidence or reasoning, the Assumptions state that "[b]illing history prior to the *Dobbs* decision suggests that $20,000 per year is a conservative over-estimate of the costs." The Assumptions conclude by suggesting "[n]either of these agencies reverted funding when the *Dobbs* decision was made in 2022 (and already established legislation in Idaho code took effect)," and thus "assum[ing] that any additional costs due to the passage of this ballot initiative could be absorbed in the Corrections and Health and Welfare budgets should the ballot initiative pass." *Id.*

If this all sounds confusing, it is. Read closely, the Division's FIS speculates that the Initiative will *probably* cost the state nothing, but *could* cost the state something, and *if* it does cost the state something, *presumably* it is because of Medicaid beneficiaries and prisoners. That it likely requires some legal training and a background in state health care financing to understand all of that is, in and of itself, a problem under the requirements of section 34-1812.

And confusion on the ballot has been demonstrated to be prejudicial to the measure. *See* Shulman Decl., ¶ 9, Ex. A.

Section 34-1812(2) clearly provides that "[a] fiscal impact statement shall describe any projected *increase or decrease* in revenues, *costs*, *expenditures*, or indebtedness that the state or local governments *will experience* if the ballot measure is approved by the voters" (emphasis added). The statement must also "include both immediate *expected* fiscal impacts and an *estimate* of any state or local government long-term financial implications." *Id.* To be sure, "[w]here appropriate, a fiscal impact statement *may* include both estimated dollar amounts and a description placing the estimated dollar amounts into context," *id.*, but in all cases the Division must include in the statement "the assumptions that were made to develop the fiscal impact[.]" *Id.* § 34-1812(3).

Section 34-1812 mandates that the Division ground its projections in supported assumptions and unbiased good faith reasoning. A fiscal impact statement that is the result of arbitrary or baseless speculation, and which contradicts the legal effect of the Initiative itself, is not "unbiased" or in "good faith." Section 34-1812's mandate that fiscal impact statements be drafted with "clear and concise language" and "avoid[ing] legal and technical terms whenever possible" underscores the Division's clear legal duty to provide voters with a reliable and accurate analysis of the potential financial consequences of the Initiative.

5. Division communications show the FIS was not prepared to comply with section 34-1812.

The Division's own communications made in the course of preparing the FIS for the Initiative underscore that the Division strayed from its statutory mandate. *See* Folwell Decl., ¶ 10, Ex. G. When the Division first looked at an early draft of the Initiative in September 2024, it initially concluded (rightly) that there is "no impact to state dollars from a revenue or

expenditure perspective." *Id.* at 18, 23. At that time, the Division did not provide the Secretary of State with assumptions upon which their conclusion was based because, in the Division's view, "since there is no fiscal impact to the general fund, there aren't really assumptions to share." *Id.* Later, upon review of Idahoans United's submission of an updated version of the Initiative (this one), which includes in clear terms that it will not cause any new state expenditures, the Division changed course. *Id.* at 8, 15. Hoping to deter future ballot measure sponsors from including unfounded claims about the potential fiscal impacts of proposed laws, the Division began speculating internally about what costs might, in theory, result notwithstanding the Initiative's plain language. *Id.* at 5-8.

The Division never concluded that the Initiative's language regarding financial obligations was unfounded; it wanted to set a precedent to discourage statements that might be incorrect in future measures. Acknowledging that a "reading of the current law" dictated a corresponding FIS that was simple, concise, and which accurately indicated the Initiative would have no fiscal impact, the Division postulated that "[a]ssumptions might entail female prison population" and "[s]imilar considerations apply to the Medicaid population, but with (*probably* reasonably) different rates." Folwell Decl., ¶ 10, Ex. G. at 21 (emphasis added). When the Initiative language was finalized and sent to the Secretary of State's office in November 2024, the Division continued working to come up with "standard language for indicating that the costs are 'positive but small' or 'positive but not significant in terms of the budget to which this applies." *Id.* at 5.

6. The FIS does not substantially comply with the law because the Initiative's passage will not result in any new financial obligations on state or local governments.

The Initiative explicitly states it does not impose any new financial obligations on the state to pay for, fund, or subsidize reproductive health care services. Subsection 4(b) of the Initiative states: "This act does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by this act." Folwell Decl. ¶ 5, Ex. B. "Statutory interpretation begins with the literal language of the statute," and the Initiative unambiguously means what it says. *State v. Amstad*, 164 Idaho 403, 405, 431 P.3d 238, 240 (2018) (citation omitted).

The Division need not go beyond the text of the Initiative. A good faith, unbiased statement of the Initiative's fiscal impact should, as a matter of law, assume that the law will be followed as written. *See, e.g.*, *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007) ("Where the statutory language is unambiguous, the Court does not construe it but simply follows the law as written.").

Indeed, just last year, the Nevada Supreme Court heard a challenge to a ballot measure regarding reproductive freedom on the grounds that the measure required state expenditures without providing revenue. *Washington v. Nevadans for Reprod. Freedom*, 557 P.3d 62 (Nev. 2024). The respondents in that case sought to add a new section to the Nevada constitution establishing a fundamental right to abortion, while leaving the state authority to regulate the provision of abortion after fetal viability. *Id.* Opponents to the measure argued that the measure violated the Nevada Constitution by "making appropriations or requiring an expenditure of money without imposing a sufficient tax to cover the costs." *Id.* (citing Nev. Const. art. 19, § 6). The Nevada Supreme Court disagreed because, like the Initiative at issue here, the measure

"[did] not require an appropriation or expenditure of money by its plain language and [did] not require the State to pay for or provide abortions." *Id.* Like the challengers in that case, who could not read in financial implications that were not there, the Division's FIS cannot project financial obligations that the Initiative expressly does not impose.

The Division's FIS does not substantially comply with section 34-812 because the Initiative's passage will not result in any new financial obligations on state or local governments.

7. The Initiative, as applied, will have no financial impact on state or local governments.

Even if the Initiative were somewhat ambiguous about its potential financial implications, which it is not, the Division's suggestion that it may result in financial burdens on state budgets, particularly concerning Medicaid and the Department of Corrections, is legally unsupportable. "[I]t is well settled that the state is not required to equalize the ability to exercise fundamental rights in the private sector with regard to persons of differing wealth." *Dep't of Health & Welfare ex rel. Martz v. Reid*, 124 Idaho 908, 913, 865 P.2d 999, 1004 (Ct. App. 1993); *see also Doe v. Dep't of Soc. Servs.*, 439 Mich. 650, 678, 487 N.W.2d 166, 178 (1992) ("In the absence of some burden on the government to provide funds for the exercise of a right, a decision by the Legislature not to fund the exercise of a right is distinct from a legislative action that impinges upon that right."). The Division has no basis, in fact or in law, to assert that by codifying a right to reproductive freedom and privacy, the Initiative imposes an affirmative financial obligation on the state to assist women in exercising that right. Idaho Code section 18-8705 prohibits the use of public funds by state or local entities and their recipients for activities related to abortion, including performing, promoting, counseling, or referring for abortions, as well as providing facilities or training for such services. The Initiative does not change that.

(1) The Initiative will not cause increased Medicaid spending.

The FIS cites Idaho Code section 56-255 and "Medicaid references from Health and Welfare." These references suggest that *perhaps* the Initiative as applied will somehow have some insignificant financial impact to the State of Idaho's Medicaid program. The assertion is wrong; the Initiative will have no financial impact to Idaho's Medicaid program.

"Medicaid is a cooperative federal-state program to help people of limited financial means obtain health care. Under the program, the federal government provides funds to the states, which the states then use (along with state funds) to provide the care." *Planned Parenthood Ariz., Inc. v. Betlach*, 727 F.3d 960, 963 (9th Cir. 2013). There are federal regulations that condition the federal money for a state's Medicaid budget on the plan providing coverage for certain services. For instance, a state Medicaid plan "must specify that, at a minimum, categorically needy beneficiaries are furnished . . . [p]regnancy-related services and services for other conditions that might complicate the pregnancy." 42 C.F.R. § 440.210(a)(2); *see also id.* § 440.220(a)(1) ("A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, . . . [p]renatal care and delivery services for pregnant women."). Accordingly, Idaho Medicaid *already* pays for nearly all of the reproductive related-services that might be implicated by the Initiative. *See* Idaho Code § 56-255(5)(a)(vi) ("Benefits for all medicaid participants . . . include . . . [f]amily planning services and supplies for individuals of child-bearing age"); *see also, e.g.*, IDAPA 16.03.09.682.01 (contraception coverage); *id.* 16.03.09.892 (pregnancy-related services coverage). In short, even if the Initiative *did* impose an affirmative obligation on Idaho Medicaid to pay for reproductive related health care services, which it does not, there is no legal basis for the Division to speculate that the Initiative will increase costs to the state when it is *already paying for those services.*

Nor does the Initiative's application to abortion care have any financial implications for the state. For nearly fifty years, federal law—through what is commonly known as the "Hyde Amendment"—has prohibited the use of federal funds to reimburse of cost of abortion care under Medicaid, except in cases where the pregnancy endangers the life of the mother or results from rape or incest. *Harris v. McRae*, 448 U.S. 297, 302 (1980). The Hyde Amendment has been included in various appropriations bills since its first passage in 1976 and has been subject to different versions over the years, but the core restrictions remain consistent.

Idaho Code section 56-209c, which the current FIS directly cites, is essentially a restatement of the Hyde Amendment. ("No funds available to the department of health and welfare, by appropriation or otherwise, shall be used to pay for abortions, unless it is the recommendation of one (1) consulting physician that an abortion is necessary to save the life of the mother, or unless the pregnancy is a result of rape, as defined in section 18-6101, Idaho Code, or incest as determined by the courts."). Even if the Initiative somehow repealed Idaho Code 56-209c by implication, federal law, which essentially says the exact same thing, would still prohibit the state from using Medicaid dollars for abortions except in those pre-existing limited circumstances.

The Division is wrong to assert that Idaho Medicaid's obligations related to abortion care changed after *Dobbs*, or that it will change yet again should the Initiative pass. Idaho Medicaid only provided coverage for abortion in the limited circumstances permitted under the Hyde Amendment before the United States Supreme Court's decision in *Dobbs*, when women had a federal constitutional right to abortion care. *See* IDAPA 16.03.09.511 (2021) ("The Department will fund abortions under the Medical Assistance Program only under circumstances where the abortion is necessary to save the life of the woman, or in cases of rape or incest as determined by

the courts, or, where no court determination has been made, if reported to a law enforcement agency."). Today, post-*Dobbs*, IDAPA 16.03.09.511 is effectively the same, providing that Idaho Medicaid "will fund abortions under circumstances where the abortion is necessary to save the life of the woman, or in cases of rape or incest as determined by the courts, or, where no court determination has been made, if reported to a law enforcement agency or child protective services."[4]

It has long been established that a woman's rights under *Roe* and its progeny did not "confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." *Harris*, 448 U.S. at 317-18. There is no legal basis to assert under current law that passage of the Initiative will somehow change that long established principle.

b) The Initiative will not result in any additional costs to the Idaho Department of Corrections.

The Division's FIS likewise confuses and misconstrues the Initiative's potential effect on the state's corrections budget. For one thing, the FIS's comments about the corrections budget are internally inconsistent. The Assumptions suggest that the Initiative might alter state expenditures relating to corrections, only to immediately assert that there would be no expected changes to the corrections health care budget. If, as the Division appears to concede, the end result of the Initiative is that there will be no impact to the state corrections budget, there is no good faith basis to include unclear language in the FIS suggesting otherwise.

[4] This Court need not address or consider the ongoing litigation between the State of Idaho and the federal government regarding whether and to what extent the Emergency Medical Treatment and Labor Act preempts Idaho's current criminal abortion ban. *See generally United States v. Idaho*, 623 F. Supp. 3d 1096 (D. Idaho 2022). Nor does this Court need to address whether Idaho's current Medicaid coverage scheme for abortion-related services complies with federal law. IDUWF takes no position on those issues here. Rather, in most basic terms, IDUWF's position here is that, all else equal, the state's financial obligations related to reproductive-related health care services is the same before and after the Initiative's passage.

It is true that the Eighth Amendment of the United States Constitution, applied to the states by the Fourteenth Amendment, obligates the states to provide a minimum level of medical care to incarcerated individuals. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Neither the *Dobbs* decision nor the Initiative changes that. The Initiative does not, and cannot, as a matter of law, alter the demands of the Eighth Amendment by creating additional financial obligations that were not there before, especially when the Initiative expressly says it will not do so.

Whether or not the Initiative becomes law, "[t]he Eighth Amendment 'does not place the burden on the state to guarantee to the inmate fulfillment of all needed treatment similar to that available in the private sector.'" *State v. Leach*, 135 Idaho 525, 532, 20 P.3d 709, 716 (Ct. App. 2001) (quoting *State v. Clay*, 124 Idaho 329, 332, 859 P.2d 365, 368 (Ct. App. 1993)). "Regarding the objective standard for prisoners' medical care claims, 'society does not expect that prisoners will have unqualified access to health care.'" *Wintrode v. Twin Falls Cty. Jail Admin.*, No. 1:24-cv-00171-BLW, 2024 U.S. Dist. LEXIS 112304, at *10 (D. Idaho June 24, 2024).

The level of care that must be provided to people in state custody is fairly narrow under the Eighth Amendment. *Wintrode*, 2024 U.S. Dist. LEXIS 112304, at *9 (D. Idaho June 24, 2024) (citing *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992)) (explaining that required medical treatments under the Eighth Amendment include those preventing substantial pain, further significant injury, or conditions affecting daily activities). Notwithstanding state law to the contrary, if "the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay." *Revere v. Mass. Gen. Hosp*., 463 U.S. 239, 245 (1983). But the Initiative cannot be read to trigger additional, federal constitutional rights to state-funded health care in contravention of its own plain language.

In other words, even if the Initiative were read to grant people in state custody a statutory right to reproductive health care that they have been previously denied, if providing that care is not mandated by the federal constitution, the State does not have to pay for it even if the person cannot pay for the care themselves. *See generally St. Alphonsus Reg'l Med. Ctr. v. Killeen*, 124 Idaho 221, 224, 858 P.2d 760, 762 (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 245 (1983)) ("[T]he Constitution does not dictate how the cost of that care should be allocated as between the governmental entity and the provider of the care. That is a matter of state law."). If the Initiative passes, as a matter of state law, there is no "financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by this act." Folwell Decl., ¶ 5, Ex. B at ¶ 4(b).

The Division's citation to Idaho Code section 20-237B to support its assumption that corrections may see increased costs due to the Initiative is misplaced. That statute generally states that the Department must pay providers a rate equal to Idaho Medicaid reimbursement rates when prisoners receive medical care. It says *nothing*, however, of *what care* prisoners are entitled to receive.

Instead, the type of care available to people in Idaho Department of Corrections' facilities is dictated by Department's standard operating procedure, which in line with the Eighth Amendment, is structured to "ensure that inmates have unimpeded access to healthcare services to meet their serious medical, dental and mental health needs." Idaho Dep't of Corr., Standard Operating Procedure 401.06.03.001, Access to Care (rev. Jan. 11, 2018). Notably, the Idaho Department of Corrections already does not generally pay for "elective" abortion, and even if the "attending obstetrician determines that it is medically necessary in order to protect the offender's life or health . . . an abortion must be paid for by the offender." Idaho Dep't of Corr., Standard

Operating Procedure: Counseling and Care of The Pregnant Offender, Control No. 401.06.03.058 (2015) (emphasis added). If prison policy today can dictate that offenders pay for the cost of an abortion when it is medically necessary in order to protect the life or health of the mother, then there is no reason to assume a ballot Initiative that says the same thing will have any additional impact to the Department of Corrections budget.

Now, if a person in custody requires reproductive health care services that fall within the ambit of the Initiative, and those needs are "serious," the state already has to provide access to that care notwithstanding whether the person has funds to pay for it themselves. There is no "projected increase" in costs or "immediate expected fiscal impacts" as a result of the Initiative where in some cases the Initiative might conceivably be read to provide a right to government funded care that already exists.

Moreover, the assumption that whatever statutory rights the Initiative may bestow on people in state custody may result in increased costs is even further attenuated by the reality that a prison regulation that impinges on inmates' constitutional or statutory rights are "nonetheless valid if it is reasonably related to legitimate penological interests." *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1069 (9th Cir. 2010) (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). The rights of people in prison "are subject to substantial limitations and restrictions in order to allow prison officials to achieve legitimate correctional goals and maintain institutional security." *Walker v. Sumner*, 917 F.2d 382, 385 (9th Cir. 1990). In this case, this Court need not resolve what additional rights, if any, the Initiative gives people in state custody. For present purposes, what matters is that the Initiative will have no legal impact to the state corrections budget regardless of how the Initiative is later construed in the prison context.

8. The FIS includes citations to statute in violation of Idaho Code § 34-1812.

The FIS also fails to substantially comply with Idaho Code section 34-1812(2)'s requirement that the Division "avoid legal and technical terms whenever possible." The FIS cites two statutes: "Costs associated with the Medicaid and prisoner populations may occur; see Idaho Codes 20-237B and 56-255 and the Medicaid references from Health and Welfare." Folwell Decl., ¶ 7, Ex. D. The statutory citations leave the voter to find the referenced statutes, which they may not be able to do, interpret the law, and speculate as to how it applies to the Initiative. The mention of "Medicaid references from Health and Welfare" is too vague to understand what source the voter is apparently expected to hunt down to read, digest, and apply to the Initiative. These references cause the FIS to violate Idaho Code section 34-1812(2), and the violations result in confusion and prejudice rather than providing information on the fiscal impact of the measure before the voter.

These issues are underscored by the expert opinion of Dr. Shulman, which addresses both the references to specific Idaho code sections and the specific call out of "Medicaid and prisoner populations." Shulman Decl., ¶ 6, Ex. A. Citing Idaho Code sections creates the impression that there is legal nuance to this statement and will lead people to infer that the bill will cost taxpayers money in unknown ways. *Id.* Research shows that ballots containing more complex and legalistic language were more opposed by participants than ballots written with simpler and more colloquial language. *Id.* Prejudice also follows from the identification of "Medicaid and prisoner populations," a program and group negatively viewed by many, which are unrelated to the purpose of the Initiative. *Id.*, ¶ 8, Ex. A. When language that references discriminated against identities or populations is used, prejudicial attitudes are likely to become top of mind. *Id.* This is a well-documented communication and psychological process referred to as a framing effect. *Id.*

In this case, the framing effect will increase the likelihood that negative sentiment toward the Initiative is produced, due to the evocation of these prejudices. *Id.*

9. The Division's reference in the FIS to the $850 million Medicaid budget is unnecessary and prejudicial.

With or without the references to the State of Idaho Medicaid and Corrections budgets, the Division's inclusion of a Medicaid budget of $850 million in the FIS is unnecessary and prejudicial. The reference to the $850 million Medicaid budget serves as a prejudicial diversion and is likely to mislead or confuse voters. The reference detracts from the clear and objective purpose of a fiscal impact statement, while also failing to provide voters with relevant fiscal context. Simply stating the total Medicaid budget does not aid voters in understanding how the Initiative will financially impact state and local budgets. Instead, it is an extraneous figure not tied to the fiscal impacts of the Initiative. By highlighting a large and unrelated number, the Division is not providing a clear and concise statement of the Initiative's fiscal impact.

Research supports this commonsense principle. When people read ballots, they do not read them left to right and up and down. Shulman Decl., ¶ 7 Ex. A. Instead, eye tracking data shows that people scan the document for salient parts, and dollar amounts in the FIS will draw the reader's attention and create the impression that the Initiative will cost money, although it does not. *Id.*

As set forth above, there is no sound legal or factual basis to indicate that the Initiative will *increase* costs to Idaho Medicaid or Corrections. Thus, the only conceivable effect of including the $850 million Medicaid budget is to suggest the right to reproductive health care and privacy protected by the Initiative is connected to this substantial public expense, when it clearly is not.

10. The Division should revise the FIS for clarity and conciseness.

The FIS requires revisions to substantially comply with the statutory requirements of clarity and conciseness as mandated by section 34-1812. This Court should order the Division to eliminate speculative language and instead provide concrete, substantiated facts that accurately reflect the Initiative's impact. This Court can order the Division to revise the FIS consistent with the actual fiscal impact of the Initiative—which is none. Idahoans United urges this Court to find the following statement appropriate for the Initiative: There is no fiscal impact to state or local governments.

D. Idahoans United Requests Its Reasonable Attorneys' Fees Under Idaho Code section 12-117(1).

Idahoans United seeks recovery of its attorneys' fees. Idaho Code section 117(1) "allows for an award of attorney fees to the prevailing party in a proceeding where a governmental entity and a person are adverse parties and the nonprevailing party 'acted without a reasonable basis in fact or law.'" *S Bar Ranch v. Elmore Cnty.*, 170 Idaho 282, 313, 510 P.3d 635, 666 (2022) (quoting Idaho Code § 12-117(1)); *see also Idahoans For Open Primaries*, 172 Idaho at 491, 533 P.3d at 1287 (awarding attorneys' fees to prevailing petitioners in ballot title challenge). The defective ballot titles violate basic principles of long-standing law requiring distinctive, comprehensive titles using common language so that the voters can clearly understand what they are being asked to support. And the fiscal impact statement is inaccurate and if left as drafted would mislead voters to the prejudice of the Initiative and Idahoans United's work and mission.

CONCLUSION

Idaho's fundamental constitutional right to initiative process is designed to capture the will of the people. Idahoans United asks this Court to uphold the letter of the law so that Idaho voters can fairly consider the Initiative and make a properly informed decision. The ballot titles

assigned by the Attorney General and the fiscal impact statement prepared by the Division of Financial Management must accurately reflect the Initiative's content and effect for the right to Idaho's initiative process to be true and meaningfully exercised by the people.

DATED: January 30, 2025

HOLLAND & HART LLP

By: */s/ Anne Henderson Haws*
Jennifer M. Jensen
Anne Henderson Haws

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2025, I caused to be filed, via iCourt, and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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