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Attorneys for Respondents

IN THE SUPREME COURT OF THE STATE OF IDAHO

PLANNED PARENTHOOD GREAT
NORTHWEST, HAWAII, ALASKA,
INDIANA, KENTUCKY, on behalf of itself, its
staff, physicians and patients, and Caitlin
Gustafson, M.D., on behalf of herself and her
patients,

Petitioners,

v.

STATE OF IDAHO; BRAD LITTLE, in his
official capacity as Governor of the State of
Idaho; LAWRENCE WASDEN, in his official
capacity as Attorney General of the State of
Idaho; JAN M. BENNETTS, in her official
capacity as Ada County Prosecuting Attorney;
GRANT P. LOEBS, in his official capacity as
Twin Falls County Prosecuting Attorney;
IDAHO STATE BOARD OF MEDICINE;
IDAHO STATE BOARD OF NURSING; and
IDAHO STATE BOARD OF PHARMACY,

Respondents,

and

Docket No. 49817-2022

**VERIFIED ANSWER TO
VERIFIED PETITION FOR WRIT
OF PROHIBITION AND
APPLICATION FOR
DECLARATORY JUDGMENT**

SCOTT BEDKE, in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; and the SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenors-Respondents.

The State of Idaho, Governor Brad Little, Attorney General Lawrence Wasden, Ada County Prosecuting Attorney Jan M. Bennetts, Twin Falls County Prosecuting Attorney Grant P. Loeb, the Idaho State Board of Medicine, the Idaho State Board of Nursing, and the Idaho State Board of Pharmacy (collectively, the State Respondents), hereby answer and respond to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment (“Petition”) filed June 27, 2022.

I. GENERAL RESPONSE

Unless specifically admitted herein, the State Respondents deny each and every allegation, claim, and request for relief in the Petition.

II. SPECIFIC RESPONSES

In response to the specific allegations, claims, and requests for relief contained in the specific paragraphs in the Petition, the State Respondents respond as follows:

INTRODUCTION

1. To the extent Petitioners’ Introduction may be construed to contain allegations or requests for relief, the State Respondents deny that an original action is an appropriate vehicle to resolve Petitioners’ claims; deny that Idaho Code § 18-622(2) is unlawful and unenforceable under the Idaho Constitution or the Idaho Human Rights Act; deny that Idaho Code § 18-622(2) violates Idaho law; deny that the Idaho Constitution contains a right to privacy that would encompass

abortion and therefore deny that Idaho Code § 18-622(2) could violate the Constitution on those grounds; deny that Idaho Code § 18-622(2) violates the Idaho Constitution's equal protection guarantee; deny that the Idaho Constitution contains an Equal Protection Clause; deny that Idaho Code § 18-622(2) violates the Idaho Human Rights Act; deny that Idaho Code § 18-622(2) treats men and women differently based on discriminatory gender stereotypes; deny that Idaho Code § 18-622(2) violates the Idaho Constitution's due process clause; and deny that Idaho Code § 18-622(2) is unconstitutionally vague. As for Petitioners' statements as to the provisions of Idaho Code § 18-622 and the Idaho Human Rights Act, the statutes speak for itself. The State Respondents deny any and all remaining allegations alleged in the Introductions and deny that Petitioners are entitled to any relief. The State Respondents request that this Petition be denied.

JURISDICTION

2. In answering paragraph 1, the State Respondents admit the quoted statements are attributable to the Idaho Constitution and cited statutes but state that the quoted sources speak for themselves and deny that the Petition is appropriate for the exercise of original jurisdiction or for the issuance of a writ of prohibition.

3. In answering paragraph 2, the State Respondents admit that the quoted statements are attributable to Idaho Appellate Rule 5(a) but state that Idaho Appellate Rule 5(a) speaks for itself and deny that the Petition is appropriate for the exercise of original jurisdiction or for the issuance of a writ of prohibition or declaratory judgment.

4. In answering paragraph 4, the State Respondents deny that Petitioners have alleged sufficient facts concerning a possible constitutional violation of an urgent nature. To the extent Petitioners are citing case law for a proposition, that proposition is a legal conclusion to which no response is required. The case law speaks for itself. To the extent an answer is required, the

allegations are denied. Answering further, the State Respondents deny that Petitioners correctly state the standard for the Court's exercise of its original jurisdiction.

5. In answering paragraph 4, the State Respondents admit that Petitioners are bringing four separate challenges to Idaho Code § 18-622(2) but deny that there has been any violation of the Idaho Constitution and/or the Idaho Human Rights Act under any of the challenges raised by Petitioners. The State Respondents further deny that there is a fundamental right to privacy in making intimate familial decisions that includes a right to abortion protected by the Idaho Constitution.

6. In answering paragraph 5, the State Respondents deny that Idaho Code § 18-622(2)'s effective date creates an issue of urgent statewide importance; deny that Petitioners lack any other adequate remedy at law; and deny that "the people of Idaho" need clarity from this Court as to the legal status of any of the claims raised by the Petitioners. The State Respondents deny that this challenge calls for the Court's immediate review.

PARTIES

7. In answering paragraph 6, the State Respondents admit only that physicians working with Planned Parenthood have performed medication and surgical abortions in Idaho in the past. The State Respondents deny the remaining allegations in paragraph 6 for lack of knowledge. The State Respondents further deny that Planned Parenthood has standing to bring suit on behalf of its current and future patients.

8. In answering paragraph 7, the State Respondents deny that Dr. Gustafson has standing to bring claims on behalf of her current and future patients. The State Respondents admit that Dr. Gustafson has performed abortions in Idaho in the past. The State Respondents deny the remaining allegations in paragraph 7 for lack of knowledge.

9. In answering paragraph 8, the State Respondents admit that the citation to case law is accurate but deny that the “State of Idaho” enacted Idaho Code § 18-622—rather, it was the Legislature of the State of Idaho, upon presentment to and signature by the Governor, that enacted Section 18-622. The State Respondents deny Idaho Code § 18-622 violates the Idaho Constitution or the Idaho Human Rights Act now that it has gone into effect. The State Respondents deny the remaining allegations.

10. In answering paragraph 9, including footnote 1, the State Respondents admit that Lawrence Wasden, Jan M. Bennetts, and Grant P. Loebs are law enforcement officials in Idaho who have the authority to enforce Idaho Code § 18-622. The statutes and constitutional provisions to which Petitioners cite speak for themselves. The State Respondents deny such authority as to Brad Little. Governor Little bears the responsibility set out in Article IV, Section 5 of the Idaho Constitution, which speaks for itself. The State denies that any of the officials named in this paragraph have exceeded their constitutional authority or that they would do so by enforcing Idaho Code § 18-622. The State Respondents deny that Idaho Code § 18-622 is unconstitutional. The State Respondents deny that this lawsuit is procedurally proper. To the extent that case law cited in this paragraph is proffered to support a legal proposition, it requires no response and speaks for itself. To the extent it requires a response, the State Respondents deny the same.

11. In answering paragraph 10, the State Respondents admit that the Idaho State Board of Medicine, Idaho State Board of Nursing, and Idaho State Board of Pharmacy are professional licensing boards charged, when appropriate, with the duty of suspending and revoking the licenses of doctors, nurses, and pharmacists in Idaho, respectively. The statutes to which Petitioners cite speak for themselves. The State Respondents deny that any of the aforementioned boards are without authority to enforce Idaho Code § 18-622 and deny that Idaho Code § 18-622 is

unconstitutional. To the extent that case law cited in this paragraph is proffered to support a legal proposition, it requires no response.

FACTS COMMON TO ALL CLAIMS

12. In answering paragraph 11, the State Respondents admit only that the paragraph cites a portion of Idaho Code § 18-622(2). The statute speaks for itself.

13. In answering paragraph 12, the State Respondents admit only that the paragraph cites a portion of Idaho Code § 18-604(1). The statute speaks for itself.

14. In answering paragraph 13, the State Respondents admit that the paragraph cites Idaho Code § 18-622(2). The statute speaks for itself.

15. In answering paragraph 14, the State Respondents admit only that the paragraph cites Idaho Code § 18-622(2). The statute speaks for itself.

16. In answering paragraph 15, the State Respondents admit only that the paragraph cites a portion of Idaho Code § 18-622(3). The statute speaks for itself.

17. In answering paragraph 16, the State Respondents admit only that Idaho Code § 18-622(1)(a) is correctly quoted. The statute speaks for itself. The State Respondents deny that Idaho § 18-622(2) was or is patently unconstitutional and deny all statements as to the motivations of the Idaho Legislature.

18. In answering paragraph 17, the State Respondents admit only that the case law is correctly quoted therein. The case law speaks for itself. The State Respondents deny that the judgment has not yet been entered in *Dobbs v. Jackson Women's Health Organization*. The State Respondents admit that the authority to regulate and prohibit abortions has been returned to the States.

19. In answering paragraph 18, including footnotes 2 and 3, the State Respondents admit only that Idaho Code § 18-622(2) became enforceable 30 days after the issuance of judgement in the *Dobbs* case. The statute speaks for itself. To the extent that paragraph 18 makes argumentative allegations, no response is required. To the extent a response is required, the State Respondents deny the same. The State Respondents admit that Section 18-622 took effect on August 25, 2022.

20. In answering paragraph 19, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

21. In answering paragraph 20, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

22. In answering paragraph 21, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

23. In answering paragraph 22, including footnote 4, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the allegations. The State Respondents deny the allegations as to the distances to out-of-state abortion providers for lack of knowledge.

24. In answering paragraph 23, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

25. In answering paragraph 24, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

26. In answering paragraph 25, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

27. In answering paragraph 26, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

28. In answering paragraph 27, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

29. In answering paragraph 28, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

30. In answering paragraph 29, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent that a response is required, the State Respondents deny the same.

31. In answering paragraph 30, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

32. In answering paragraph 31, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

CLAIMS FOR RELIEF

The Total Abortion Ban Violates the Idaho Constitution by Denying Idahoans the Fundamental Right to Privacy in Making Intimate Familial Decisions

33. In answering paragraph 32, the State Respondents incorporate the preceding responses to all paragraphs in the Petition.

34. In answering paragraph 33, the State Respondents admit only that the quoted statements are attributable to the cited case. To the extent that Petitioners argue a legal proposition, it requires no response and the case law speaks for itself. To the extent a response is required, the State Respondents deny the allegation.

35. In answering paragraph 34, Petitioners are citing case law for a proposition that is a legal conclusion and to which no response is required. To the extent an answer is required, the allegations are denied. The State Respondents deny that privacy in making intimate familial decisions encompassing abortion is a fundamental right protected by the Idaho Constitution. The State Respondents further deny that a right to decide whether to procreate has been recognized as a fundamental right under the Idaho Constitution by this Court.

36. In answering paragraph 35, the State Respondents admit only that the quoted statements are attributable to the Idaho Constitution. The Constitution speaks for itself. To the extent that the quoted statements are offered as a proposition to support a legal conclusion, no response is required. To the extent an answer is required, the State Respondents deny any such

legal conclusion. The State Respondents deny that there is a right to privacy in making intimate familial decisions under the Idaho Constitution.

37. In answering paragraph 36, Petitioners are making argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

38. The State Respondents deny the allegations in paragraph 37.

39. In answering paragraph 38, the State Respondents deny that Idaho Code § 18-622 violates the Idaho Constitution and deny that the Idaho Constitution contains a right to privacy in making intimate familial decisions that includes a right to abortion. The remaining allegations are legal arguments to which no response is required. To the extent a response is required, the State Respondents deny the same.

**The Ban Violates the Guarantee of Equal Protection in the Idaho Constitution
and the Idaho Human Rights Act**

40. In answering paragraph 39, the State Respondents incorporate the preceding response to all paragraphs in the Petition.

41. In answering paragraph 40, the State Respondents admit only that the quoted statements are attributable to the cited cases and to the Idaho Constitution and Idaho Code. To the extent that the quoted statements are offered as a proposition to support a legal conclusion, no response is required. To the extent an answer is required, the State Respondents deny any such legal conclusion.

42. In answering paragraph 41, including footnote 5, the State Respondents deny that the equal protection guarantee in Idaho's Constitution encompasses a right to abortion. To the

extent that the remainder of this allegation is a legal proposition, it requires no response. To the extent that an answer is required, the State Respondents deny the same.

43. In answering paragraph 42, the State Respondents contend that it contains argumentative allegations and legal propositions to which no response is required. The State Respondents admit only that the quoted statements are attributable to the cited case. To the extent a response is required, the State Respondents deny the same.

44. In answering paragraph 43, the State Respondents contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

45. In answering paragraph 44, the State Respondents deny that Idaho Code § 18-622 violates the Idaho Human Rights Act. To the extent that the remainder of this allegation is a legal proposition, it requires no response. To the extent that an answer is required, the State Respondents deny the same.

**The Total Abortion Ban Violates the Idaho Constitution's Due Process Clause
Because it is Unconstitutionally Vague**

46. In answering paragraph 45, the State Respondents incorporate by reference the preceding paragraphs.

47. In answering paragraph 46, the State Respondents admit that the quoted statements are attributable to the Idaho Constitution. Answering further, Petitioners are citing case law for a proposition that is a legal conclusion and to which no response is required. To the extent an answer is required, the allegations are denied.

48. In answering paragraph 47, the State Respondents deny that Idaho Code § 18-622 violates the Idaho Constitution. As to the remainder of paragraph 47, the State Respondents

contend that it contains argumentative allegations to which no response is required. To the extent a response is required, the State Respondents deny the same.

49. In answering paragraph 48, the State Respondents contend that it contains argumentative allegations to which no response is required. The State Respondents admit only that the quoted statements are attributable to the cited case. To the extent a response is required, the State Respondents deny the same.

50. In answering paragraph 49, the State Respondents deny the allegation.

51. In answering paragraph 50, the State Respondents deny the allegation.

52. In answering paragraph 51, the State Respondents deny the allegation.

PRAYER FOR RELIEF

In answering Petitioners' Prayer for Relief, the State Respondents deny that Petitioners are entitled to the relief requested in paragraphs (a)-(f).

III. AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Petitioners lack standing to assert claims for relief on behalf of any other individual, including Petitioners' current and future patients.

THIRD DEFENSE

Petitioners' claims for relief are inconsistent with and unsupported by Idaho law.

FOURTH DEFENSE

The Court lacks jurisdiction to consider the Petition.

FIFTH DEFENSE

Petitioners have a plain, speedy, and adequate remedy in the ordinary course of law.

SIXTH DEFENSE

There is no urgent necessity for this Court to resolve Petitioners' claims.

SEVENTH DEFENSE

The Court cannot issue the writ of prohibition that the Petitioners request because it would restrain individuals who are not respondents in this action.

EIGHTH DEFENSE

The State of Idaho is not a permissible respondent in an original action for a writ of prohibition.

NINTH DEFENSE

The writs that Petitioners seek cannot be granted because they are improper advisory opinions.

TENTH DEFENSE

Petitioners are not entitled to attorney fees.

DATED this 2nd day of September 2022.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

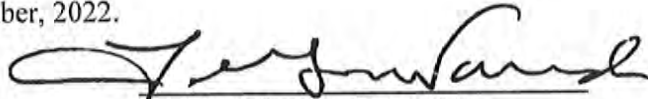
VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

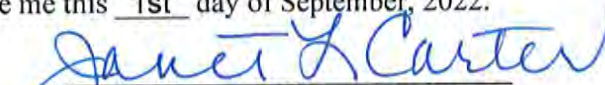
Lawrence Wasden, Attorney General of the State of Idaho, being first duly sworn, deposes and says:

I have read the foregoing Verified Answer to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment and know the contents thereof, and the same are true to the best of my knowledge and belief.

DATED this 1st day of September, 2022.


LAWRENCE G. WASDEN

SUBSCRIBED AND SWORN to before me this 1st day of September, 2022.


Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 7/29/2023



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September, 2022, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system which sent a Notice of Electronic Filing to the following persons:

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