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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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

Plaintiffs,

v.

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

Case No.

**COMPLAINT FOR DECLARATORY  
JUDGMENT**



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

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

## **I. PARTIES**

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

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

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

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

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

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

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

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

## II. JURISDICTION AND VENUE

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

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



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

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

16. Idaho Code § 18-623 provides that:

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

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

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

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

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

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





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

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

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

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

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

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



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

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

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

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

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













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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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













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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





DATED: July 11, 2023.

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