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Attorneys for Petitioner

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 the Administrator of
the Idaho Division of Financial Management;
and the IDAHO DIVISION OF FINANCIAL
MANAGEMENT,

Respondents.

Docket No. **52636-2025**

**VERIFIED PETITION FOR WRITS OF
CERTIORARI AND MANDAMUS**

INTRODUCTION

1. 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 their state constitution, the people of Idaho have reserved the right of direct democracy to decide issues like reproductive freedom and privacy by the will of the voters.

2. 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 Reproductive Freedom and Privacy Act (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 liability imposed based on the consultation or facilitation of the patient’s exercise of their right to reproductive freedom.

3. Idahoans United brings this original action seeking the Court’s review of the short and long ballot titles prepared by the Attorney General and the fiscal impact statement issued by the Division of Financial Management (the “Division”).

4. The short ballot title violates Idaho Code section 34-1809 by omitting two key characteristics of the Initiative, the medical emergency exception and the right of privacy. The short and long titles are defective due to use of conflicting, confusing language (“fetus viability” rather than “fetal viability”), not in common usage.

5. The fiscal impact statement fails to comply with Idaho Code section 34-1812. It is inaccurate, as the Initiative will not impose any financial burden on the State of Idaho. The fiscal impact statement is not written in clear and concise language and includes misleading information and legal and technical terms that are likely to confuse the electorate. The statement improperly projects costs that are not a true fiscal impact to the state, thereby prejudicing the Initiative.

6. These violations create confusion and a significant risk that Idaho voters will be less inclined to support the Initiative. Petitioner requests that this Court provide redress for the deficient ballot titles and fiscal impact statement so that Idahoans United members can continue their advocacy work and timely collect the signatures needed for the Initiative.

PARTIES

7. Idahoans United is an Idaho-based non-profit 501c4 organization. Its mission is to advocate for and restore access to comprehensive reproductive health care while promoting the well-being of women, children, and families in Idaho. Idahoans United is managed by a five-member board of directors. Its executive director is Melanie Folwell.

8. Respondent Raúl Labrador is named in his official capacity as the Attorney General of Idaho.

9. Respondent Phil McGrane is named in his official capacity as Secretary of State of Idaho.

10. Respondent Lori Wolff is named in her official capacity as the Administrator of the Idaho Division of Financial Management.

11. Respondent the Idaho Division of Financial Management is a division of the Office of the Governor established pursuant to Idaho Code section 67-1910. The Division has the duty, responsibility, and authority to, among other things, “serve as a clearinghouse for information, data and material which may be helpful in determining needed legislation” and “carry out continuing studies and analyses of the problems faced by the state and develop such recommendations for administrative or legislative action as would appear necessary.” Idaho Code § 67-1915.

JURISDICTION

12. This Court has jurisdiction over this matter pursuant to Article V, Section 9 of the Idaho Constitution, which vests the Idaho Supreme Court with original jurisdiction to issue writs of mandamus and certiorari. *See also* Idaho Code § 1-203.

13. A writ of certiorari, or review, may be granted by the Court when an inferior tribunal, board, or officer, exercising judicial functions, 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.

14. 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. The writ 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.

15. Reviewing ballot titles falls within the scope of its original jurisdiction. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954).

16. This Petition likewise requests that this Court declare the legal requirements and standards by which the fiscal impact statement is to be constructed and determine whether or not the fiscal impact statement as submitted by Administrator Wolff and the Division complies therewith. A declaration of law regarding Administrator Wolff's and the Division's duties under Idaho Code section 34-1812 is proper and necessary to adjudicate Idahoans United's petition for writs of review and mandate.

17. The issues presented herein are of statewide importance and arise from the people's fundamental constitutional right to initiative and referendum, as set forth in Article III, section 1 of the Idaho Constitution. Petitioner has no plain, speedy, and adequate remedy in the course of law. There is no process for speedy administrative review pursuant to Idaho Administrative Procedures Act ("IAPA"). The Division is not an "agency" under the IAPA. *See* 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.

18. The matter is urgent and calls for the Court's expedited review, as the delay caused by the issuance of the inaccurate and confusing fiscal impact statement and defective ballot titles undermines the initiative process and denies the citizens of Idaho the opportunity to make an informed decision on the proposed measure. Idahoans United therefore seeks the Court's intervention to rectify these deficiencies.

STANDING

19. Idahoans United has associational standing because its members would have standing to sue in their own right; the interests it seeks to protect are germane to the organization's purpose; and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

20. Idahoans United's members would have standing to sue in their own right. Melanie Folwell, executive director for, and member of, Idahoans United, has suffered and will continue to suffer injury in fact due to the defective ballot titles and fiscal impact statement, which would make collecting signatures more difficult. And the delay caused by the defective ballot titles and fiscal impact statement and consequent challenge also make the already onerous task of collecting signatures more difficult.

21. The interests Idahoans United seeks to protect in this action are germane to its purpose. The mission of Idahoans United is to advocate for and restore access to comprehensive reproductive health care while promoting the well-being of women, children, and families in Idaho. The Initiative is a proposed measure drafted to serve this mission.

22. This Court's review of the ballot titles and the fiscal impact statement does not require individual participation from Idahoans United's individual members. Idahoans United

seeks prospective relief, and its benefits will be shared by the entire membership without any need for individualized findings of injury that would require the direct participation of individual members.

STATUTORY FRAMEWORK

23. For over a century, Article III, section 1 of the Idaho Constitution has reserved to the people the power to propose, enact, approve, or reject laws through ballot initiatives or referendums.

24. Under the “initiative” power, the people can “propose laws” and “initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.” Idaho Const. Art. III, § 1.

25. The Idaho Supreme Court has held that the people’s initiative and referendum rights are fundamental rights. *Reclaim Idaho v. Denney (In re Writ of Prohibition)*, 169 Idaho 406, 427, 497 P.3d 160, 181 (2021).

26. The Idaho Legislature has codified the procedures and duties of public officials pertaining to ballot initiatives under Title 34, Chapter 18 of the Idaho Code.

27. Idaho Code sections 34-1809 and 34-1812 establish procedure by which citizen initiatives are assigned ballot titles and a fiscal impact statement before a measure can be circulated.

28. Idaho Code section 34-1809(2)(d) requires, among other things, that the Attorney General assign ballot measures a “[d]istinctive short title . . . by which the measure is commonly referred to or spoken of,” and a “general title expressing . . . the purpose of the measure.”

29. Further, “[i]n making the 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).

30. Idaho Code section 34-1809(3) outlines a 20-day appeal window during which “[a]ny person dissatisfied with the ballot title or the short title . . . may appeal to the supreme court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair.” Upon such an appeal, the Idaho Supreme Court is directed to examine the measure, hear argument, “and in its decision thereon certify to the secretary of state a ballot title and a short title for the measure in accord with the intent of this section.” Idaho Code § 34-1809(3)(c).

31. Idaho Code section 34-1812(1) mandates that upon “receiving a copy of an initiative petition from the secretary of state as provided in section 34-1804, Idaho Code, the division of financial management, in consultation with any other appropriate state or local agency, shall prepare an “unbiased, good faith statement of the fiscal impact of the law proposed by the initiative.”

32. Idaho Code section 34-1812(2) requires that a fiscal impact statement 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.” The fiscal impact statement must “include both immediate expected fiscal impacts and an estimate of any state or local government long-term financial implications.” *Id.* Additionally, the “fiscal impact statement must be written in clear and concise language and shall avoid legal and technical terms whenever possible.” *Id.* Where appropriate, the statement “may include both estimated dollar amounts and a description placing the estimated dollar amounts into context.” *Id.*

33. Idaho Code section 34-1812(3) specifies that a fiscal impact statement must include a summary, 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.

34. Idaho Code section 34-1812 requires that during the process of gathering signatures, a copy of the summary, the initiative, and the sponsor's proposed funding source information must be made available for electors to review before signing. These elements must also be published in the state voters' pamphlet and appear on the official ballot.

35. Additionally, "the fiscal impact statement summary, the detailed fiscal impact statement, and the sponsor's proposed funding source information shall be made available to the public on the secretary of state's website no later than August 1." Idaho Code § 34-1812(3).

FACTUAL BACKGROUND

36. The Reproductive Freedom and Privacy Act 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 any professional discipline, civil liability, or criminal liability imposed 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.

37. On its face, the Initiative states that the "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."

38. On November 20, 2024, Idahoans United submitted the Initiative petition to Mr. McGrane, the Idaho Secretary of State, to add a new section to Title 39, Idaho Code entitled the "Reproductive Freedom and Privacy Act."

39. On December 20, 2024, Secretary McGrane returned a certificate of review and fiscal impact statements for the proposed Initiative pursuant to Idaho Code sections 34-1908 and 34-1812.

40. On December 26, 2024, Idahoans United returned the Initiative for assignment of ballot titles pursuant to Idaho Code section 34-1809(2).

41. On, January 10, 2025, the Attorney General timely provided ballot titles for the Initiative to the Secretary of State pursuant to Idaho Code section 34-1809(2)(a), which Petitioner received the same day.

42. The Short Title drafted by the Attorney General states:

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

43. The long ballot title drafted by the Attorney General states:

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.

44. The Fiscal Impact Statement "Summary" states:

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.

45. The Fiscal Impact Statement “Assumptions” used to develop the fiscal impact statement state:

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 decision 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.

46. Petitioner brings this challenge to the ballot titles for the Initiative because they are inaccurate and do not comply with Idaho Code section 34-1809 in several respects. Petitioner further challenges the fiscal impact statement issued by the Administrator Wolff and the Division because is unclear and unconcise, and includes misleading information, assumptions, and legal and technical terms in violation of the clear dictates of Idaho Code section 34-1812.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The short ballot title the Attorney General assigned to the Initiative does not substantially comply with Idaho Code section 34-1809.

47. Petitioner incorporates the preceding paragraphs.

48. The short ballot title fails to comply with state law because it is not distinctive or comprehensive under Idaho Code section 34-1809. It fails to acquaint the voter with two of the primary characteristics of the Initiative: the medical emergency exception and the right to privacy in reproductive decisions.

49. The Attorney General must also endeavor to also use language in the short title by which the measure is commonly referred to or spoken of. Idaho Code § 34-1809(2)(d)(i). The short title drafted by the Attorney General uses the term “fetus viability,” which is not the language by which the measure is commonly referred to or spoken of. That language is “fetal viability.”

50. The Attorney General must also avoid using language that is likely to create prejudice against the measure. Idaho Code § 34-1809(2)(e). The Attorney General’s use of the term “fetus viability” in the short title is likely to create prejudice against the measure because it is likely to confuse voters, given it is not the common language and also conflicts with usage in the long title of the term “fetal viability” and the consistent use of the term “fetal viability” in the Initiative.

51. The short title prepared by the Attorney General can be revised to comply with section 34-1809 by revising the usage of “fetus viability” to “fetal viability” and by expressly including the key characteristics of the right to make private reproductive decisions and the medical emergency exception. A short title in alignment with the dictates of Idaho Code could read:

Measure establishing right to make private reproductive health care decisions, including abortion up to fetal viability and in medical emergencies.

52. This short title is 20 words—including the words of the clause, “Measure establishing right to.” However, the Court has held that the preposition clause of the short ballot

title—here, “Measure establishing right to”—is not part of the restrictive word count. *In re The Petition of Idaho State Fed’n of Lab. (AFL)*, 75 Idaho 367, 370 (1954). Petitioner asks the Court to certify this or some similar version of it as the short title for the Initiative, as provided by Idaho Code section 34-1809(3)(c).

SECOND CLAIM FOR RELIEF

The long ballot title the Attorney General assigned to the Initiative violates Idaho Code section 34-1809.

53. Petitioner incorporates the preceding paragraphs.

54. The Attorney General’s inconsistent usage of the terms “fetus viability” and “fetal viability” in the short and long titles is inaccurate and prejudicial and therefore violates section 34-1809(2)(d)(ii) and (e).

55. The long title prepared by the Attorney General can be corrected to comply with section 34-1809 by revising the usage of “fetus viability” to “fetal viability.” A long title in alignment with the dictates of Idaho Code could read:

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 fetal 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.

56. Petitioner asks this Court to certify this or a similar version of the long title for the Initiative, as provided by Idaho Code section 34-1809(3)(c).

THIRD CLAIM FOR RELIEF

The Fiscal Impact Statement prepared by Administrator Wolff and the Division of Financial Management violates Idaho Code section 34-1812.

57. Petitioner incorporates the preceding paragraphs.

58. Administrator Wolff's and the Division's duties regarding the issuance of a fiscal impact statement for a proposed ballot initiative are mandated by statute.

59. The issuance of a fiscal impact statement that does not comply with Idaho Code section 34-1812 has no legal sanction or authority, and in such cases this Court may declare the law on the subject and point out to the Division the legal scope within which its judgment and discretion must be exercised. *See In re Idaho State Fed'n of Labor*, 75 Idaho at 372, 272 P.2d at 710.

60. Administrator Wolff and the Division are under a clear legal duty to issue a fiscal impact statement that substantially complies with Idaho Code section 34-1812.

61. The proposed fiscal impact statement fails to substantially comply with Idaho Code section 34-1812 because it is biased, fails to contain a good faith statement of the fiscal impact of the law proposed by the Initiative, is not written in clear and concise language, and fails to avoid using legal and technical terms whenever possible.

62. The proposed fiscal impact statement includes contradictory or at the very least, confusing, speculation about potential impacts; wrongly implies that Medicaid and Corrections spending would increase; obscures meaning by including citations to statute in lieu of explanation; and prejudicially includes an irrelevant reference to the state's \$850 million Medicaid budget. In reality, the measure 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 the Initiative.

63. A fiscal impact statement in compliance with Idaho Code could read:

There is no financial impact to state or local governments.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

(A) Expedite this petition for review and mandamus to preserve the opportunity for the citizens of Idaho to exercise their fundamental right of the initiative;

(B) Find that neither the short nor long titles prepared by the Attorney General for the Initiative are in accordance with Idaho Code section 34-1809 and both therefore are deficient.

(C) Certify to the Secretary of State the short and long ballot titles provided by Petitioner, or a similar version. In the alternative, direct the Attorney General to immediately prepare ballot titles consistent with the proposed titles provided by Petitioner or otherwise in accordance with Idaho law.

(D) Find that the Division and its Administrator have issued a fiscal impact statement that does not substantially comply with Idaho Code section 34-1812.

(E) Direct the Administrator and the Division to issue the fiscal impact statement provided by Petitioner. In the alternative, direct the Administrator and the Division to issue a new fiscal impact statement otherwise in accordance with Idaho law.

(F) Conduct any hearing the Court may require pursuant to Idaho Appellate Rule 5(d).

(G) Award attorney fees and costs of this action to the Petitioner pursuant to Idaho Code section 12-117(1).

(H) For any other relief that the Court deems just and equitable.

Filed this 30th day of January, 2025.

HOLLAND & HART LLP

By: /s/ Anne Henderson Haws
Jennifer M. Jensen
Anne Henderson Haws
ATTORNEYS FOR PETITIONER

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

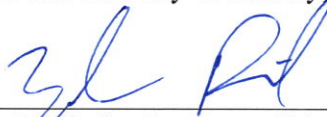
I, Melanie Folwell, executive director of Idahoans United for Women and Families, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; and that the matters and allegations therein set forth are true to the best of my knowledge and belief.



Melanie Folwell

SUBSCRIBED AND SWORN TO before me this 30th day of January, 2025.





Notary Public for the State of Idaho
My commission expires: 10-23-2030

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:

Div. of Financial Management
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- U.S. Mail
- Hand Delivered
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- Email/iCourt/eServe:

Administrator Lori Wolff
Idaho Division of Financial Management
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- Overnight Mail
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/s/ Jennifer M. Jensen

Jennifer M. Jensen
FOR HOLLAND & HART LLP