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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.

RAÚL 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 REPLY TO RESPONSE BRIEF OF RAÚL R. LABRADOR TO VERIFIED PETITION

Jennifer M. Jensen (ISB # 9275)
Anne Henderson Haws (ISB #10412)
HOLLAND & HART LLP
800 W. Main Street, Suite 1750
Boise, Idaho 83702-7714
Telephone: 208.342.5000
ahhaws@hollandhart.com
jmjensen@hollandhart.com

Attorneys for Petitioner

Raúl R. Labrador
Attorney General
Alan M. Hurst (ISB #12425)
Solicitor General
Michael A. Zarian (ISB #12418)
Deputy Solicitor General
Sean M. Corkery (ISB #12350)
Assistant Solicitor General
Office of the Attorney General
PO Box 83720
Boise, Idaho 83720-0010
Telephone: 208.334.2400
alan.hurst@ag.idaho.gov
michael.zarian@ag.idaho.gov
jack.corkery@ag.idaho.gov

Attorneys for Respondents Raúl R. Labrador and Lori Wolff and Idaho Division of Financial Management

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INTRODUCTION

On January 30, 2025, Idahoans United for Women and Families ("Idahoans United") filed this original action, challenging the ballot titles prepared by the Attorney General for the proposed ballot initiative, the "Reproductive Freedom and Privacy Act" (the "Initiative"). The Attorney General failed to prepare a short ballot title that substantially complies with Idaho Code section 34-1809.

The short ballot title omits two distinctive characteristics of the Initiative, uses uncommon language, and tends to mislead voters and prejudice the Initiative. The Attorney General further failed to assign a long ballot title that substantially complies with Idaho Code section 34-1809, given his use of the term "fetus viability" and the confusing and prejudicial inconsistency in the usage of the terms "fetus viability" and "fetal viability."

Despite *Dobbs v. Jackson Women's Health*, with each state now charged with regulating abortion according to its citizens' will, the Attorney General asks this Court to grant a more deferential standard for his duty to prepare neutral titles for legislation advanced by citizen initiative. The Court has made clear the Attorney General's duty when it comes to executing his quasi-judicial role in the citizen's initiative process—he must substantially comply with the requirements of Idaho Code section 34-1809, the purpose of which is to provide Idaho voters a clear understanding of the initiative they are being asked to vote on.

The Court must decline Attorney General's invitation to water down his quasi-judicial duty to Idahoans. Attorneys General must be required to act as third-party neutrals to ensure that the people's fundamental constitutional right to initiate legislation, as set forth in Article III,

Section 1 of the Idaho Constitution, is honored. Idahoans United asks this Court to uphold the law so that Idaho voters can fairly consider the Initiative and make a properly informed decision.

ARGUMENT

A. The Attorney General Seeks to Trammel the People's Initiative Right.

In response to Idahoans United's Petition and Opening Brief, the Attorney General seeks greater discretion than he is entitled to and downplays the importance of the initiative process. In his 35-page brief, however, nowhere does he argue that the ballot titles Idahoans United seeks are inaccurate. This omission concedes—as it must—that the changes Idahoans United seek would result in proper ballot titles. And given this concession, the Attorney General turns to downplaying the importance of the citizens' right to legislate, seeking a lower standard of review, claiming the duty to provide a distinctive title is impossible, and improperly taking political positions on the substance of the Initiative. Rather than abide by his quasi-judicial obligations, he reaffirms he "is pro-life," Response Brief of Raúl R. Labrador ("AG Br.") at 25-26, but asks the Court to overlook the biases in the ballot titles.

Idahoans United seeks this Court's assistance to uphold the Idaho Constitution's initiative right. The Attorney General should not be permitted to act as an advocate against the Initiative in the ballot title process but must perform his quasi-judicial function with impartiality. *Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, 481, 533 P.3d 1262, 1277 (2023) (preparing ballot titles is quasi-judicial). This Court has, unfortunately, had to sift out embedded substantive arguments from initiative procedural cases before. *See City of Boise v. Keep the Commandments Coal.*, 143 Idaho 254, 257, 141 P.3d 1123, 1126 (2006). In doing so, the Court has honored the

people's right to direct democracy, emphasizing that the initiative right is constitutional, "not an inconvenience created by rabble rousers and malcontents to vex established authority." *Id.* "The initiative process is a mandate, significant enough to be embodied in the Constitution, that enables voters to address issues of concern." *Id.*

B. This Court Should (Again) Reject the Attorney General's Bid to Grant Himself a More Deferential Standard.

In *Idahoans for Open Primaries*, this Court rejected the Attorney General's request for review of ballot titles under an abuse of discretion standard. 172 Idaho at 478–79, 533 P.3d at 1274–75. This Court set the ballot title standard of review as substantial compliance, a standard applied when determining whether a party has met statutory requirements. *Id.* Abuse of discretion, on the other hand, applies in a different legal context—when reviewing a developed factual record from the court below. *Id.*

Citing cases from other jurisdictions, the Attorney General again asks this Court to grant deference to his discretion rather than reviewing for substantial compliance. *See, e.g.*, AG Br. at 10 ("In Utah, the supreme court holds 'that in the creation of ballot titles, the drafter is entitled to considerable deference, and we will apply an abuse of discretion standard in conducting our review.' *Burr v. City of Orem*, 311 P.3d 1035, 1038–39 (Utah 2013)."); AG Br. at 34 ("The Court's deference should run to the Attorney General's titles, not the Petitioner's."). This Court has already considered and held—for good reason—that the standard is not one of deference to the Attorney General's discretion. *Idahoans for Open Primaries*, 172 Idaho at 478–79, 533 P.3d at 1274–75. There is no reason to disturb that precedent.

C. Substantial Compliance Focuses on the Purpose of the Statute.

"[S]ubstantial compliance does not require absolute conformity . . . but does require a good faith attempt to comply, and that the general purpose detailed in the statute is accomplished." *Smith v. Treasure Valley Seed Co., LLC*, 161 Idaho 107, 110, 383 P.3d 1277, 1280 (2016). The standard thus focuses on the purpose of the statute at issue and whether the purpose has been met, even if a minor, technical error was made.

The focus on the statute's purpose runs throughout substantial compliance case law in various contexts. For instance, in *Layrite Products Company v. Lux*, the Court held it proper to look to the purpose of the statute and whether the purpose had been fulfilled notwithstanding technical error. 86 Idaho 477, 484, 388 P.2d 105, 109 (1964) (declining to analogize to other situations rather than looking directly to the statute's purpose). A claim of lien had been signed before the property description had been filled in. *Id.* Respondent argued that this meant the claim of lien had not been verified under Idaho Code section 45-507. *Id.* at 483–84, 388 P.2d at 108–09. The Court held that the verification substantially complied with the statute. *Id.* The purpose of verification was to frustrate the filing of frivolous claims. *Id.* at 484–85, 388 P.2d at 109. Because the claimant had bound himself to the allegations in the claim, the purpose of the statute was satisfied, even if verification had been provided in an irregular manner. *Id.*; *see also Idaho Dep't of Health & Welfare v. Doe*, 155 Idaho 896, 902, 318 P.3d 886, 891 (2014) (holding consent did not substantially comply with statute providing for voluntary consent to absolute and complete termination of the parental relationship when consent at issue expressly included it was "subject to . . . conditions" and thus did not satisfy Idaho Code section 16-2005's purpose);

Ashley Glass Co. v. Hoff, 123 Idaho 544, 546–47, 850 P.2d 193, 194 (1993) (holding lien invalid because statute required a "copy" of the lien be served on defendant, and plaintiff gave oral notice, which did not fulfill the purpose of providing formal notice of lien to initiate a valid suit); *McLean v. Spirit Lake*, 91 Idaho 779, 782, 430 P.2d 670, 673 (1967) (holding that in determining substantial compliance with Idaho Code section 50-2010's requirement to file a notice of claim with the city before pursuing litigation, the Court considers the statute's purpose, which is to allow the city to investigate the cause of the injury and determine the city's liability).

This Court evaluates the ballot titles based on the purpose of Idaho Code section 34-1809. The statute was passed to effectuate Idaho citizens' constitutional right to direct democracy. Idahoans cannot exercise this right unless they have an accurate perception of the measure presented to them. A material element of presenting the measure is the ballot title.

The purpose of Idaho Code section 34-1809 is to provide the voters an understanding of the initiative they are being asked to vote on. *See ACLU v. Echohawk*, 124 Idaho 147, 151, 857 P.2d 626, 630 (1993) ("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.'").

The Attorney General's short ballot title fails to meet this purpose and fails substantial compliance.

D. The Attorney General Omitted Key Characteristics, Which Are Determined by Their Impact on Current Law.

The short ballot title does not fulfill the purpose of the statute because it omits key characteristics, failing the distinctiveness test meant to present the voter with a synopsis of the measure on the ballot. *See In re Idaho State Fed'n of Labor*, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954) (holding that the short title must be "comprehensive").

A chief characteristic is one that changes existing law. *Buchin*, 128 Idaho at 271, 912 P.2d at 639. Idahoans United explained in its opening brief why the Initiative has three such 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 provides a patient's right to privacy in consultation with health care providers." Idahoans at 16–20. These three elements change existing law and thus should be disclosed to the voter through the short ballot title. This case is like the inadequate short ballot title for an abortion initiative in *Buchin*, where the title failed to be distinctive because it omitted how abortion law would be altered if the measure were adopted. 128 Idaho at 271, 912 P.2d at 639.

The Initiative's medical emergency exception poses a significant change to Idaho abortion law. Current 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 (2024) (Kagan, J., concurring) (citing Idaho Code § 18-622); *see also Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 394, 522 P.3d 1132, 1152 (2023) (Idaho's Total Abortion Ban

criminalized all abortion with affirmative defenses for abortion necessary to prevent death of the pregnant woman and in the case of rape or incest if the woman provided the physician with a copy of her report of rape or incest to law enforcement); Idaho Code § 18-622 (amended to change affirmative defenses into exceptions).

Likewise, the Initiative's right of privacy alters Idaho law. The privacy right protects both the patient and the health care provider from suffering consequences for consultation and care in a patient's reproductive health decision making. Folwell Decl., ¶ 2(b), (e). Presently, there is no such right of privacy. Idaho law criminalizes abortion and imposes civil penalties and professional discipline for aiding a woman in obtaining an abortion. Idaho Code §§ 18-605, 606. Under current law, medical consultation becomes evidence in legal proceedings rather than a private exchange of health information. *See id.* The Initiative thus protects privacy by safeguarding both the patient and her health care provider.

A fair reading of the Initiative reveals that with respect to abortion, the main thrust of the measure is to allow the voters to decide its limits: pre-viability and in medical emergencies. That is their right after *Dobbs v. Jackson Women's Health*, 597 U.S. 215 (2022) held that each state should decide the legality of abortion. Omitting medical emergency is misleading because it does not accurately present what the Initiative proposes. *Idahoans for Open Primaries*, 172 Idaho at 484, 533 P.3d at 1280. Omitting medical emergency leaves out one of two limits on the right—the limit that particularly affects individuals who may not generally support an abortion right but agree that there are extremely difficult circumstances short of the pregnant patient's death that

should leave the decision to the patient. And in making that difficult decision, as well as other reproductive health care decisions, the patient should have privacy to consult with her doctor.

The Attorney General omitted chief characteristics from the ballot title. To justify his omissions, he asserts the Initiative has ten or more key characteristics, making it impossible to include them all. AG Br. at 14–15. But nowhere does he explain how the aspects of the Initiative he lists (contraception, miscarriage care, prenatal care, and childbirth care) change Idaho law, much less change the law in a way that is more significant than providing a medical emergency exception or right of privacy. AG Br. at 14–15, 33. At one point, he even agrees with Idahoans United's view on the privacy right changing Idaho law. *See* AG Br. at 33 (arguing that laws criminalizing those who aid abortion could be impacted by the Initiative). And the Attorney General cites a New York Times article underscoring the importance of the medical emergency exception and emphasizes the change in law on medical emergency, if the Initiative passes. AG Br. at 32. His argument only further reveals that medical emergency is a chief characteristic of the Initiative. Moreover, medical emergency is presently one of the most significant topics in Idaho law, *e.g.*, *Moyle v. United States*, 603 U.S. 324 (2024), subject to high-profile, pending litigation with the Attorney General, *St. Luke's Health Sys., Ltd. v. Labrador*, Case No. 1:25-cv-00015-BLW (D. Idaho).

Preparing the short ballot title is necessarily an exercise in reading comprehension, deciding what aspects are key concepts in light of existing law. The Attorney General's argument that a "20-word title cannot include every feature of a 1,200-word initiative" does not evidence good faith in preparing the titles. AG Br. at 13. Of course, a 20-word title cannot (and

need not) include every feature; it must include key characteristics. Throwing up one's hands and refusing to evaluate which aspects are most material does not constitute substantial compliance with the statute's requirement to provide a distinctive title that acquaints the voters with the proposed legislation's content.

E. The Short Ballot Title Does Not Substantially Comply with Idaho Code § 34-1809 Because It Uses Uncommon Language.

The short title fails to substantially comply with Section 34-1809 because it uses an uncommon, coded term, violating the requirement that the short title use language by which the measure is commonly referred to or spoken of. *Idahoans for Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277.

The Attorney General states that he "built" the ballot title "***almost entirely*** out of the initiative's own words." AG Br. at 1, 12 (emphasis added). But, with one key and unexplainable exception—unilaterally rejecting the Initiative's purposeful and exclusive use of the only term commonly used by Idahoans to communicate a critical point in pregnancy, "fetal viability" and exchanging it with a term that is unequivocally less used by Idahoans (and the nation at large), "fetus viability."

The Attorney General supplies no meaningful explanation as to why he chose to depart from the Initiative's language—and he fails to show he performed his statutorily mandated duty "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.

A task that "necessarily requires the Attorney General to determine how Idahoans commonly refer to and speak of a measure[.]" *Id.*

His assertion that the terms are synonymous should be rejected. Varying terms in the statutory context inherently imposes different meanings. *See, e.g.*, *Jones v. Lynn*, 169 Idaho 545, 557–58, 498 P.3d 1174, 1186–87 (2021) (holding that different statutory language identifying individuals subject to liability had different meanings); *State v. Staples*, 548 P.3d 375, 378 (Idaho Ct. App. 2023) ("When the legislature uses different language, a different meaning applies."). This is a basic canon of statutory construction, with which the Attorney General is familiar.

1. The Attorney General did not fulfil his duty to ascertain how Idahoans commonly refer to the measure.

The Attorney General did not perform sufficient (or perhaps any) pre-Petition inquiry to ascertain how Idahoans commonly 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, failing to fulfil his duty under Idaho Code section 34-1809(d)(i). *Idahoans for Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277.

Ignoring the fact that a searching review of Idaho newspapers for the last 10 years produced no published material where the term "fetus viability" was used, the Attorney General points to but one instance, in 1995, where the term "fetus viability" was used in a ballot title. *See e.g.*, *Buchin v. Lance*, 128 Idaho 266, 273, 912 P.2d 634, 641 (1995); *see also* Haws Decl., ¶ 2, Ex. A. Beyond that, the Attorney General provides no Idaho citation he considered in deciding to change the term expressly used and defined in the Initiative to another clearly uncommon term.

The citation to a ballot title from 1995—30 years ago—is insufficient to rebut the evidence of common usage supplied by Idahoans United.

As detailed in Idahoans United's opening brief, if the Attorney General had done his job, there is no reason to look outside of Idaho as it is clear Idahoans more 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.[1] On this basis alone, the Court should find the Attorney General failed to fulfil his third-party neutral duty to use language by which the measure is commonly known in Idaho.

2. Out-of-state sources do not confirm common usage.

Even if the Court does consider the argument provided by the Attorney General regarding of out-of-state usage, which it should not, he has failed to show his look outside the state was anything but a *post hoc* rationalization for his term of choice.

The Attorney General cites eight out-of-state court opinions, two scholarly articles, four additional news sources, a Wikipedia article, a Tweet, a Reddit article, and a Facebook post to support his contention that "any good faith effort" "would conclude that 'fetus viability' is used in Idaho and other states, across the political spectrum, and in all walks of life (or at least all walks of life in which people might discuss a fetus's viability)." AG Br. at 23. Not true. As is shown in Idahoans United's advancing papers, a searching review of the archives of eight

[1] The Attorney General attempts to inject the debate about the medical determination of the point of fetal viability into the Court's consideration of whether his term choice substantially complies with his statutory duties. *See* AG Br. at 15; 32-33. That topic is entirely sperate and irrelevant to his duty to ascertain how the point in time is commonly referred to or known (including in such debate).

national newspapers located in nearly every major geographic region of the United States shows the use of the term "fetal viability" far outweighs the use of the term "fetus viability." Haws Decl., ¶¶ 3-4, Ex. B and Ex. C. In the four major newspapers where the uncommon term was even found, the percentage of its use as compared to the percentage of the use of "fetal viability" was approximately 3.8 percent (the Chicago Tribune, the Los Angeles Times, the Seattle Times, and the Washington Post). *Id.* ¶ 4, Ex. C. Instead of acknowledging this stark contrast, the Attorney General asks the Court to throw the value of this information away based on his unvarnished assertion that the "traditional news media" is "not famously a pro-life industry." AG Br. at 22.

To that end, the Attorney General does not even try to contend that use of the term "fetus viability" *is the most common way* people refer to measure. Instead, he posits that he has fulfilled his "good faith" effort replacing the Initiative's own term and the most commonly used term with an allegedly *common one*. AG Br. at 23. Yet that assertion runs afoul of this Court's precedent, which has explained that the purpose of the Attorney General's duty to discern common usage is to ensure the short title "set[s] forth the characteristics which distinguish [the] proposed measure and expeditiously and accurately acquaint the prospective signer with what he [or she] is sponsoring." *In re Idaho State Fed'n of Labor*, 75 Idaho at 373, 272 P.2d at 710).

To accept the Attorney General's contention that use of an allegedly "common" term instead of a *much* more common term is a change he made in good faith (AG Br. 23-24) is to gloss over the integral fact that, in the short ballot context, the term "fetal viability" serves to acquaint a prospective signer and voter with a key characteristic of the Initiative, which is a

change in Idaho law which would result in protecting the right to an abortion up to the point of fetal viability, where it can then be regulated by the state, (except then, in cases of medical emergencies). If more Idahoans use the term "fetal viability" to refer to that point in time, however medically determined, use of a different one is inherently confusing. Notably, this fact shows why the Attorney General also argues that the Court should look away and decline to consider the expert opinion of scholar Hillary Shulman. *See* AG Br. at 26-29. Dr. Shulman provides this Court important information about the impact of the Attorney General's term switch. This Court's opinion in *Idahoans for Open Primaries*, demonstrates that such conclusion is not only scientifically sound and verifiable, but logical. 72 Idaho at 484, 533 P.3d at 1280 (finding use of similar but different terms failed to accurately describe a key provision of the initiative and that the term most accurate was the one actually used on the initiative petition).

An ordinary voter, when noticing a different term is used in the ballot title than the term used and defined in the Initiative, would wonder why—it is inherently confusing to use two different terms for "the same thing." Such voter confusion unnecessary, prejudicial, and importantly, easily avoidable if the Attorney General adheres to his statutory duty.

3. The Attorney General's term switch is argumentative and likely to prejudice the success of the initiative.

The Attorney General's switch from the term most commonly used by Idahoans and used and defined in the Initiative in both the short and long titles is argumentative and likely to prejudice the Initiative.

To show the switch of terms is argumentative and likely to cause prejudice, Idahoans United provided this Court with statements made by the Attorney General about his stance on abortion. Contrary to the Attorney General's assertion, Idahoans United *does not ask* the Court to apply a presumption for or against an Attorney General based on political and social positions. Instead, Idahoans United asks the Court to order the Attorney General to perform his duty with impartiality because that is the law. Enforcing that law to properly secure the citizens' constitutional right to legislate does not impinge upon future attorneys general and their right to speak freely on matters of public concern, either. The Attorney General recounts the position past Attorneys General have taken on abortion, asserting, that if the Court considers his out-of-court statements, it will discourage free speech by future attorneys general. What the Attorney General fails to consider though, is that the duty to impartially prepare ballot titles is independent from his political life. And, because attorneys general are indeed elected officials, the importance of ensuring the language they prepare for ballot titles is neutral and non-prejudicial is imperative to the citizens' right to legislate by initiative—no matter the political or social effect of the proposed law. He is after all "exercising a quasi-judicial function." *Idahoans for Open Primaries*, 172 Idaho at 481, 533 P.3d at 1277 (cleaned up).

In putting the Attorney General's statements before the Court, Idahoans United asks this Court to recognize that the use of the uncommon term by the Attorney General, in both the short and long title, is use of coded language that aligns with a particular stance on abortion and is therefore argumentative and prejudicial in violation of the law.

The Attorney General frames this Petition as "an abortion case." AG Br. at 29. It is not. The Petition is a citizen's initiative case. And it is an Idaho constitutional rights case. "The initiative process is a mandate, significant enough to be embodied in the Idaho Constitution, that enables voters to address issues of concern." *City of Boise*, 143 Idaho at 257, 141 P.3d at 1126. In so re-framing the Petition, the Attorney General asks this Court to conclude that Idahoans United is somehow hiding "unpleasant truths" by using the most commonly used term in the Initiative, rather than an idiosyncratic one aligned with those in "walks of life in which people might discuss a fetus's viability." *See* AG Br. at 23.

The Attorney General took it upon himself to "build" ballot titles that expose his position—which passes on the "wrongness" of a key provision of the Initiative. As the Attorney General asserts, "[n]obody elected Idahoans United." AG Br. at 34. Indeed, the fact that nobody elected the thousands of members of Idahoans United is otherwise telling. The initiative process, by design, allows the people to "compel[] authorities to listen when nothing else will." *City of Boise*, 143 Idaho at 257, 141 P.3d at 1126. The initiative right is constitutional, "not an inconvenience created by rabble rousers and malcontents to vex established authority." *Id.* The Court should require the Attorney General to use the common, defined term "fetal viability" throughout the short and long titles.

4. The long title is not an impartial statement of the purpose of the initiative.

The Attorney General failed to fulfil his duty to prepare a long title that fairly expresses the purpose of the Initiative 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). Instead, the Attorney General uses the term "fetus viability" interchangeably with "fetal viability" creating a prejudicial risk of confusing voters. *Id.*, 172 Idaho at 481, 484, 533 P.3d at 1277, 1280.

For all the reasons stated above, the Attorney General's use of the term "fetus viability" in the long title is prejudicial to the Initiative. As stated in Idahoans United's opening brief, different though, is the prejudice caused by his use of the term while also using the common term "fetal viability" within the long title. Contrary to the Attorney General's assertion, Idahoans United does not agree that "fetus viability" and "fetal viability" are mere synonyms. Shulman Decl., ¶¶ 10-11 Ex. A at III (the two terms are not interchangeable).

And, the issue is not one about "improving" the long ballot title. *See* AG Br. 29-30. The issue is whether the Attorney General's use of two similar, but different terms in the long title creates a prejudicial risk of confusing voters. And it does—a logical conclusion supported both by this Court's prior reasoning in *Idahoans for Open Primaries* and as confirmed by scientific review through the findings of Dr. Shulman. Based on Dr. Shulman's expertise and well-established findings in her field, she attests that use of the uncommon term "fetus viability" serves no legitimate purpose and biases voters against the Initiative. Shulman Decl., ¶¶ 10-11 Ex. A.

As Dr. Shulman explained, the use of the episodic term "fetus" is likely to make attributions of blame salient, and these such attributions will negatively impact attitudes toward the Initiative. *Id.* The Attorney General confirms the use of "fetal viability" is meant to point to

the "concrete individuality of fetuses," about which current Idaho law, that he is charged with defending, expresses a particular opinion. *See* AG Br. at 25; and 29 (citing Idaho Code §§ 32-102; 18-501 *et seq*.).

For these reasons, the Court should find the Attorney General's arguments about the long title unpersuasive. It fails to fairly express the purpose of the Initiative without being argumentative or prejudicial.

F. The Court Can and Should Consider the Expert Opinion of Dr. Shulman.

The Attorney General asserts the Court should decline to consider the expert opinion of Dr. Shulman because the Court is exercising its original jurisdiction. There is no jurisdictional bar that prevents the Court from considering an expert opinion. The Court has considered expert opinions submitted in support of petitions in the past. *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 522 P.3d 1132, (2023) (denying motion to strike statement in declaration of expert doctor). Instead, a bar to the Court's consideration of an expert opinion would be the result of a successful challenge to the qualifications, experience and expertise of a proffered expert. *See id.*, 171 Idaho at 398-399, 522 P.3d at 1156-1157 (citing Idaho R. Evid. 702). The Court will consider expert opinions where the expert provides an opinion "upon which an expert in the field can properly opine." 171 Idaho at 399, 522 P.3d at 1157. Dr. Shulman is an expert in her field. She specializes in the study of how word choice influences information processing in politics, and more specifically how language on ballots influences voter choice. Declaration of Hillary C. Shulman, ¶¶ 1-2. Moreover, because the Attorney General made no specific objections to the methodology Dr. Shulman employed in reaching her opinions, the Court should afford her

well-reasoned and well-supported opinions full weight. *See* 171 Idaho at 399, 522 P.3d at 1157 (where any objections to methodology in reaching opinions goes to weight, not admissibility).

The Attorney General also suggests that the Court should not consider the expert opinions because he and his office could not have possibly considered her opinion when the Attorney General prepared the ballot titles. This argument is a non-starter. Dr. Shulman's opinions do not add facts into the record; rather, the opinions are based on the record before the Court—a record that the Attorney General had full access to and participated in creating.

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 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: March 18, 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 18th day of March, 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:

Raúl R. Labrador
Attorney General
Alan M. Hurst
Solicitor General
Michael A. Zarian
Deputy Solicitor General
Sean M. Corkery
Assistant Solicitor General
Office of the Attorney General
PO Box 83720
Boise, Idaho 83720-0010

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☑ Email/iCourt/eServe:
alan.hurst@ag.idaho.gov
michael.zarian@ag.idaho.gov
jack.corkery@ag.idaho.gov

/s/ Anne Henderson Haws
Anne Henderson Haws
FOR HOLLAND & HART LLP

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