

Michael J. Bartlett, ISB No. 5496
BARTLETT & FRENCH LLP
1002 W Franklin St.
Boise, Idaho 83702
208-629-2311
208-629-2460 (fax)
michael@bartlettfrench.com

Alan E. Schoenfeld
Michelle N. Diamond
Rachel E. Craft
Cindy Y. Pan
Samuel J. McHale
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800
(212) 230-8888 (fax)
alan.schoenfeld@wilmerhale.com
michelle.diamond@wilmerhale.com
rachel.craft@wilmerhale.com
cindy.pan@wilmerhale.com
sam.mchale@wilmerhale.com

Attorneys for Petitioners

Joseph H. Rosenberg
Ann E. Himes
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(212) 663-6138
(202) 663-6363 (fax)
joseph.rosenberg@wilmerhale.com
annie.himes@wilmerhale.com

Vikram P. Iyer
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Ave.
Los Angeles, CA 90071
(213) 443-5300
(213) 443-5400 (fax)
vikram.iyer@wilmerhale.com

IN THE SUPREME COURT FOR 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,

Respondent.

Supreme Court No. 49615-2022

Case No. _____

**MOTION TO EXPEDITE
BRIEFING AND
ARGUMENT**

MOTION TO EXPEDITE BRIEFING AND ARGUMENT

Petitioners Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, and Caitlin Gustafson, M.D., move the Court to set an expedited briefing and oral argument schedule. Petitioners have filed a Verified Petition for a Writ of Prohibition and Application for Declaratory Judgment and a brief in support of the Petition. Petitioners are invoking this Court’s original jurisdiction, seeking relief on their claims that Senate Bill 1309 (SB 1309) violates: (1) the separation of powers doctrine set forth in Article II, § 1 of the Idaho Constitution; (2) the prohibition against “special” laws in Article III, § 19 of the Idaho Constitution; (3) the right to informational privacy protected under Article I, §§ 1, 2, 17, and 21 of the Idaho Constitution; (4) the due process clause under Article I, § 13 of the Idaho Constitution by imposing excessive and vague penalties; (5) the equal protection clause under Article I, §§ 1 and 2 of the Idaho Constitution by imposing disparate treatment on abortion providers; and (6) the fundamental right to privacy in making intimate familial decisions, protected under Article I, §§ 1, 13, 17, and 21 of the Idaho Constitution.

SB 1309 takes effect on April 22, 2022. Absent this Court’s intervention, SB 1309’s unconstitutional statutory scheme will strip the Executive of its power to ensure that the laws of this State are faithfully executed. SB 1309 exclusively empowers—and encourages—certain private citizens to bring civil claims against medical professionals who perform an abortion after fetal cardiac activity is detectable, which occurs at approximately six weeks after the first day of a patient’s last menstrual period (LMP), long before many patients even know they are pregnant and four months before viability. SB 1309 subjects those medical professionals to substantial legal

and financial risk. Medical professionals who perform an abortion after six weeks risk *a minimum* of \$20,000 in statutory penalties with no maximum as well as attorneys' fees and costs regardless of, and in addition to, the amount of actual damages incurred by a successful private plaintiff. And SB 1309 imposes this plainly punitive regime through private citizens, distorting the separation of powers and violating the Constitution's careful appointment of responsibility and discretion to the Executive branch, which has already recognized the unconstitutionality of this regime. The substantial legal and financial risks imposed by SB 1309 leave Petitioners and other medical professionals, no choice but to cease all abortion services in Idaho after 6 weeks, in violation of their and their patients' rights. Petitioners, other medical professionals, and the citizens of Idaho, urgently need clarity from the Court on the constitutionality of SB 1309.

Petitioners respectfully request an expedited schedule for Respondent's response and for Petitioners' reply. Petitioners further respectfully request that the Court put the case on its April docket and set oral argument in April so that this Court may grant relief prior to the law's April 22 effective date.

Respectfully submitted on this 30th day of March, 2022.

/s/ Michael J. Bartlett

MICHAEL J. BARTLETT
BARTLETT & FRENCH LLP
1002 W Franklin St.
Boise, Idaho 83702
208-629-2311
208-629-2460 (fax)
michael@bartlettfrench.com

ALAN E. SCHOENFELD*
MICHELLE N. DIAMOND*
RACHEL E. CRAFT*
CINDY Y. PAN*
SAMUEL J. MCHALE*
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800
(212) 230-8888 (fax)
alan.schoenfeld@wilmerhale.com
michelle.diamond@wilmerhale.com
rachel.craft@wilmerhale.com
cindy.pan@wilmerhale.com
sam.mchale@wilmerhale.com

JOSEPH H. ROSENBERG*
ANN E. HIMES*
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(212) 663-6138
(202) 663-6363 (fax)
joseph.rosenberg@wilmerhale.com
annie.himes@wilmerhale.com

VIKRAM P. IYER*
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Ave.
Los Angeles, CA 90071
(213) 443-5300
(213) 443-5400 (fax)
vikram.iyer@wilmerhale.com

Counsel for Petitioners

** Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2022, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system, and caused the following parties or counsel to be served by electronic means and Federal Express:

State of Idaho
Office of the Attorney General
Civil Litigation Division
954 West Jefferson Street, 2nd Floor
Boise, Idaho 83702
ecf@ag.idaho.gov

/s/ Michael J. Bartlett

MICHAEL J. BARTLETT