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IN THE SUPREME COURT OF THE STATE OF IDAHO

PLANNED PARENTHOOD OF THE 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.

Docket No. 49615-2022

**REPLY IN SUPPORT OF
MOTION TO RECONSIDER
ORDER RE: VERIFIED
PETITION FOR WRIT OF
PROHIBITION AND
APPLICATION FOR
DECLARATORY JUDGMENT**

The arguments made in Petitioners' Opposition to the Respondent's Motion to Reconsider lack merit. Respondent sees no need to reiterate the valid points it made in support of reconsideration and denial of Petitioners' motion to expedite briefing. Those points stand unharmed. Respondent writes only to address a few of Petitioners' misconceptions.

First, Chief Deputy Brian Kane’s letter analyzing SB 1309 in no way lessens the time that is required to fully develop and argue the general constitutional issues raised by the Petition. Mr. Kane’s letter was drafted without the benefit of any factual development, without the benefit of knowing Petitioners’ arguments, and as a conservative and theoretical analysis of a bill. Indeed, in the months since Mr. Kane’s letter was drafted, new evidence has been reported concluding that abortions among Texas women only decreased by about 10 percent following the enactment of Texas’s Senate Bill 8, suggesting that SB 1309’s effect, to the extent it has any, would likely be similarly limited and invalidating one of the key assumptions in Mr. Kane’s letter. Dianna Wray, *Texas Aimed to Ban Abortion Pills-But the Law Has Had Little Effect*, Texas Monthly, Mar. 8, 2022, <https://www.texasmonthly.com/news-politics/texas-medication-abortion-pill-ban-ineffective/> (“the overall number of abortions among Texas women [following the enactment of Senate Bill 8] may be down only a little more than 10 percent.”). This Court is being asked to determine weighty general constitutional issues as a court of last resort hearing issues on first impression in the context of specific factual contentions. There is no unfair benefit in affording every duly-enacted law its rightful presumption of constitutionality and striking it down only after both parties are allowed to present a full defense on both the law and the facts.

Second, Petitioners’ late-breaking attempt to disclaim the many factual contentions that they have put at issue with their Petition, brief, and supporting declarations do not change the fact of their reliance. And the fact that Respondent’s filing, submitted a little over 48 hours after Petitioners’ case was filed, did not identify all of its factual disputes is no reason to discount their existence. Respondent will identify and argue its factual disputes in its Answer and briefing. Until Petitioners strike the factual contentions in their Petition, brief, and supporting declarations, their arguments remain inappropriate for resolution on original jurisdiction for this reason alone.

Third, denying original jurisdiction or ordering an extended briefing schedule would not cause SB 1309 to evade judicial review, as Petitioners incorrectly assume. As pointed out in Respondent's memorandum, if Petitioners wish to ensure that SB 1309 cannot impact them, there are ample procedural tools available within the district court process. In fact, based on their argument in Section IV of their Opposition, Petitioners concede a straightforward orderly process exists by which the relief they seek can be granted on a preliminary basis during the pendency of a lawsuit.

For these reasons, and for the reasons stated in Respondent's memorandum, Respondent respectfully requests that this Court deny Petitioners' Motion to Expedite.

DATED: April 4, 2022.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2022, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system which sent a Notice of Electronic Filing to the following persons:

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