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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.

and

SCOTT BEDKE, in his official capacity as
Speaker of the House of Representatives of
the State of Idaho; CHUCK WINDER, in
his official capacity as President Pro
Tempore of the Idaho State Senate; and the
SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenors-Respondents.

Docket No. 49615-2022

**THE IDAHO LEGISLATURE'S
VERIFIED ANSWER TO VERIFIED
PETITION FOR WRIT OF
PROHIBITION AND APPLICATION
FOR DECLARATORY JUDGMENT**

Scott Bedke, in his official capacity as Speaker of the House of Representatives of the State of Idaho; Chuck Winder, in his official capacity as President Pro Tempore of the Idaho State Senate; and the Sixty-Sixth Idaho Legislature (collectively the “Legislature”), hereby answer and respond to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment (“Petition”) filed on March 30, 2022, as directed by this Court in its Order Granting Petition to Intervene on April 18, 2022.

GENERAL RESPONSE

Unless specifically admitted herein, the Legislature denies each and every allegation, claim, and request for relief in the Petition.

SPECIFIC RESPONSES

In response to the specific allegations, claims, and requests for relief contained in the specific paragraphs in the Petition, the Legislature responds as follows:

JURISDICTION

1. The Legislature admits this Court has original jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction. Accordingly, the Legislature admits the allegation contained in Paragraph 1 of the Petition.

2. With regard to paragraph 2 of the Petition, the Legislature does not dispute the restatement of Idaho Appellate Rule 5(a) and, accordingly, admits the allegation contained in Paragraph 2.

3. With regard to paragraph 3 of the Petition, the Legislature admits only that Petitioners assert that this Court has original jurisdiction.

4. With regard to paragraph 4 of the Petition, the Legislature admits only that the Petition asserts that SB 1309 violates the Idaho Constitution. the Legislature denies that SB 1309 violates any of the Idaho Constitutional provisions cited by Petitioners.

5. With regard to paragraph 5 of the Petition, the Legislature denies the allegations contained therein.

PARTIES

6. With regard to paragraph 6 of the Petition, the Legislature admits only that Planned Parenthood provides various services relating to reproduction and sexual health. The Legislature lacks information sufficient to form a belief as to the truth of many of the specific allegations regarding Planned Parenthood's corporate status. The Legislature denies that Planned Parenthood's medical professionals "will be threatened with ruinous civil liability" if they perform abortions in Idaho after SB 1309 goes into effect. While Legislature appreciates that Planned Parenthood states that it "brings this lawsuit" on behalf of itself, its medical professionals, and its current and future patients, the Legislature denies that Planned Parenthood has standing to make certain specific claims regarding individual informational privacy as to those individuals.

7. With regard to paragraph 7 of the Petition, the Legislature lacks information sufficient to form a belief as to the truth of the allegations regarding Dr. Gustafson's practice other than to admit that Dr. Gustafson is licensed in the State of Idaho, practicing in Idaho, and therefore, subject to the laws of the State of Idaho, including SB1309. The Legislature denies that Dr. Gustafson has standing to bring claims on behalf of her current and future patients related to informational privacy.

8. With regard to paragraph 8 of the Petition, the Legislature admits that members of the Idaho Legislature take an oath to uphold the Idaho Constitution. The Legislature denies that SB 1309, violates the Idaho Constitution.

FACTS COMMON TO ALL CLAIMS

9. With regard to paragraph 9 of the Petition, to the extent Petitioners simply cite case law for a proposition with no allegation, no response is required or given. The Legislature denies there are any “ruinous civil penalties” and, consequently, denies any allegation based on that assertion.

10. With regard to paragraph 10 of the Petition, the Legislature admits only that the paragraph states SB 1309’s definition of “fetal heartbeat.” The Legislature denies the remaining allegations in paragraph 10.

11. The Legislature denies the allegations in paragraph 11 of the Petition.

12. With regard to paragraph 12 of the Petition, the Legislature denies the characterization of “narrow.” The Legislature does admit that a civil cause of action is not available under SB 1309 for an abortion performed or attempted after a fetal heartbeat has been detected when certain exceptions apply. The Legislature denies the remaining allegations in paragraph 12 of the Petition. Answering further, the Legislature states that SB 1309 speaks for itself as to the applicable exceptions and incorporates that language herein.

13. With regard to paragraph 13 of the Petition, the Legislature admits only that SB 1309 creates a civil cause of action available to certain individuals described in SB 1309 who meet the standing requirements of the Idaho Constitution and denies any remaining allegation, including

the assertion that SB 1309 strips enforcement power from the executive branch of Idaho's government.

14. With regard to paragraph 14 of the Petition, the Legislature admits only that SB 1309 § 6(1) speaks for itself and denies any allegations regarding SB 1309 § 6(1) language as stated in paragraph 14.

15. With regard to paragraph 15 of the Petition, the Legislature admits only that SB 1309 § 6(3) speaks for itself as to for whom a civil cause of action under SB 1309 is not available. The Legislature denies the remaining allegations.

16. With regard to paragraph 16 of the Petition, the Legislature denies the allegations.

17. With regard to paragraph 17 of the Petition, the Legislature admits only that SB 1309 § 6(2) speaks for itself and denies any allegations regarding SB 1309 § 6(2) language as stated in paragraph 17.

18. With respect to paragraph 18 of the Petition, the Legislature admits only that SB 1309 provides for statutory damages in an amount not less than twenty thousand dollars (\$20,000), consistent with other legislation related to other civil causes of action. The Legislature denies the remaining allegations.

19. With regard to paragraph 19 of the Petition, that SB 1309 § 6(5) speaks for itself, the Legislature admits only that SB 1309 set out an affirmative defense to litigation, that SB 1358 is a trailer bill that amended SB 1309, that SB 1358 § 1(5) speaks for itself, and that the changes made to SB 1309 in SB 1358 § 1(5) did not eliminate any affirmative defenses or that there is anything that limits the application of other affirmative defenses. The Legislature denies any remaining allegations.

20. With regard to paragraph 20 of the Petition, the Legislature admits only that SB 1309 §§ 6(7), 6(8) speak for themselves and that Chapters 14, 17, 18, and Title 54 of the Idaho Code also speak for themselves. The Legislature denies any remaining allegations.

21. With regard to paragraph 21 of the Petition, the Legislature admits only that Idaho Code § 18-622(1), (2), and Idaho Code § 18-8806 speak for themselves and denies any remaining allegations stated in paragraph 21.

22. With regard to paragraph 22 of the Petition, the Legislature denies the allegations.

23. With regard to paragraph 23 of the Petition, the Legislature denies the allegations.

24. With regard to paragraph 24 of the Petition, the Legislature admits only that the letter attached to the Petition speaks for itself and was provided by the Idaho Office of the Attorney General. The Legislature denies that the Idaho Office of the Attorney General informed the Legislature that the bill was “likely unconstitutional.” The Legislature denies any remaining allegations.

25. With regard to paragraph 25 of the Petition, the Legislature admits only that the letter from Governor Brad Little attached to the Petition speaks for itself. The Legislature also admits that Governor Little signed SB 1309 into law. The Legislature denies any remaining allegations.

26. With regard to paragraph 26 of the Petition, the Legislature admits only that SB 1309’s effective date was April 22, 2022.

27. With regard to paragraph 27 of the Petition, the Legislature admits only that a plaintiff bringing suit under SB 1309’s civil cause of action provision could recover statutory

damages and costs as explained therein. The Legislature denies the remaining allegations in paragraph 27.

28. With regard to paragraph 28 of the Petition, the Legislature denies the allegations.

29. With regard to paragraph 29 of the Petition, the Legislature denies the allegations.

30. With regard to paragraph 30 of the Petition, the Legislature admits only that there are countless reasons individuals may pursue an abortion. the Legislature denies any remaining allegations or that any of the individuals desire an abortion for any reason stated in this paragraph.

31. With regard to paragraph 31 of the Petition, the Legislature denies the allegations.

The Legislature admits that the distances identified therein are correct.

32. With regard to paragraph 32 of the Petition, the Legislature denies the allegations.

33. With regard to paragraph 33 of the Petition, the Legislature denies the allegations.

34. With regard to paragraph 34 of the Petition, the Legislature denies the allegations.

35. With regard to paragraph 35 of the Petition, the Legislature denies the allegations.

36. With regard to paragraph 36 of the Petition, the Legislature denies the allegations.

37. With regard to paragraph 37 of the Petition, the Legislature denies the allegations.

38. With regard to paragraph 38 of the Petition, the Legislature denies the allegations.

CLAIMS FOR RELIEF

COUNT I

39. With regard to paragraph 39 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

40. With regard to paragraph 40 of the Petition, the Legislature admits the cited statements are found in Article II § 1 of the Idaho Constitution.

41. With regard to paragraph 41 of the Petition, the Legislature admits the cited statements are found in Article II § 1 of the Idaho Constitution.

42. With regard to paragraph 42 of the Petition, the Legislature admits the quoted statements are attributable to the Idaho Constitution and the Idaho Supreme Court cited in the paragraph. To the extent that paragraph 42 contains conclusions of law, no response is required nor given.

43. With regard to paragraph 43 of the Petition, the Legislature denies the allegations.

44. With regard to paragraph 44 of the Petition, the Legislature admits only that SB 1309 creates a civil cause of action with civil liability. The Legislature denies the remaining allegations in paragraph 44.

COUNT II

45. With regard to paragraph 45 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

46. With regard to paragraph 46 of the Petition, the Legislature admits the quoted statements are attributable to the Idaho Constitution.

47. With regard to paragraph 47 of the Petition, Petitioners are citing case law for a proposition that is a legal conclusion and to which no response is required. To the extent an answer is required, the Legislature denies the allegations and legal conclusion.

48. With regard to paragraph 48 of the Petition, the Legislature denies the allegations.

49. With regard to paragraph 49 of the Petition, the Legislature denies the allegations.

COUNT III

50. With regard to paragraph 50 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

51. With regard to paragraph 51 of the Petition, the Legislature denies the allegations.

52. With regard to paragraph 52 of the Petition, Petitioners attempt to cite a general legal proposition based on case law, and therefore, no response is required. To the extent an answer is required, the Legislature denies the allegations in paragraph 52 of the Petition.

53. With regard to paragraph 53 of the Petition, the Legislature denies the allegations.

COUNT IV

54. With regard to paragraph 54 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

55. With regard to paragraph 55 of the Petition, again the Legislature admits that the cited language is found in the referenced provisions of the Idaho Constitution and that Petitioners cite cases that they claim support that language. Petitioners are citing case law for a proposition that is a legal conclusion and to which no response is required. To the extent an answer is required, the Legislature denies the allegations.

56. With regard to paragraph 56 of the Petition, the Legislature denies the allegations.

57. With regard to paragraph 57 of the Petition, the Legislature denies the allegations.

58. With regard to paragraph 58 of the Petition, the Legislature denies the allegations.

COUNT V

59. With regard to paragraph 59 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

60. With regard to paragraph 60 of the Petition, the Legislature admits that the quotations attributed to the case law cited are correct quotations. However, Petitioners are citing case law for a pure legal conclusion without a factual allegation and to which no response is required. To the extent an answer is required, the Legislature denies the allegations.

61. With regard to paragraph 61 of the Petition, the Legislature denies the allegations.

62. With regard to paragraph 62 of the Petition, the Legislature denies the allegations.

COUNT VI

63. With regard to paragraph 63 of the Petition, the Legislature incorporates the preceding responses to all paragraphs in the Petition.

64. With regard to paragraph 64 of the Petition, the Legislature admits only that the quoted statements are found in the Idaho Constitution. The Legislature denies the remaining allegations in paragraph 64 of the Petition.

65. With regard to paragraph 65 of the Petition, the Legislature denies the allegations.

66. With regard to paragraph 66 of the Petition, the Legislature admits that the quoted statements are found in the Idaho Constitution

67. With regard to paragraph 67 of the Petition, the Legislature admits that the quoted statements are found in the Idaho Constitution.

68. With regard to paragraph 68 of the Petition, the Legislature admits that the quoted statements are found in the Idaho Constitution.

69. With regard to paragraph 69 of the Petition, Petitioners are citing case law for a proposition that is a legal conclusion with no application to alleged facts and to which no response is required. To the extent an answer is required, the Legislature denies the allegations. The

Legislature denies that SB 1309 violates any right or that any alleged right identified in the paragraph is a fundamental right protected by the Idaho Constitution.

PRAYER FOR RELIEF

70. As to Petitioners' Prayer for Relief, the Legislature denies that Petitioners are entitled to the relief requested in paragraphs (a)-(d) and further denies that Petitioners are entitled to emergency relief.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief may be granted.
2. Petitioners do not have standing to assert any claims related to information privacy of individuals not named in the Petition.
3. Petitioners' claims for relief are inconsistent with and unsupported by Idaho law.

Date: April 28, 2022

/s/ Daniel W. Bower

Daniel W. Bower
MORRIS BOWER & HAWS, PLLC

/s/ Monte Neil Stewart

Monte Neil Stewart

Lawyers for Intervenors-Respondents

VERIFICATIONS

Scott Bedke, in his official capacity as Speaker of the House of Representatives of the State of Idaho, being first duly sworn, deposes and says under penalty of perjury pursuant to the laws of the state of Idaho:

I have read the foregoing The Idaho Legislature’s Verified Answer to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment and know the contents thereof, and the same is true to the best of my knowledge and belief.

DATED this 28th day of April, 2022.



Scott Bedke, *Speaker of the House of Representatives of the State of Idaho*

Chuck Winder, in his official capacity as President Pro Tempore of the Idaho State Senate; being first duly sworn, deposes and says under penalty of perjury pursuant to the laws of the state of Idaho:

I have read the foregoing The Idaho Legislature’s Verified Answer to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment and know the contents thereof, and the same is true to the best of my knowledge and belief.

DATED this 28th day of April, 2022.



Chuck Winder, *President Pro Tempore Idaho State Senate*

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, I filed and served the foregoing via the Odyssey File and Serve system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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