

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; BRAD LITTLE, in his official
capacity as Governor of the State of Idaho;
LAWRENCE WASDEN, in his official capacity as
Attorney General of the State of Idaho; **JAN M.
BENNETTS**, in her official capacity as Ada County
Prosecuting Attorney; **GRANT P. LOEBS**, in his
official capacity as Twin Falls County Prosecuting
Attorney; **IDAHO STATE BOARD OF MEDICINE;**
IDAHO STATE BOARD OF NURSING; and
IDAHO STATE BOARD OF PHARMACY,

Respondents.

Case No. 49817-2022

**MOTION TO EXPEDITE BRIEFING AND ARGUMENT FOR VERIFIED
PETITION FOR WRIT OF PROHIBITION AND APPLICATION FOR
DECLARATORY JUDGMENT**

ORIGINAL JURISDICTION

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** Pro hac vice applications forthcoming*

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 that Idaho Code Section 18-622 (the Total Abortion Ban or the Ban) is unlawful and unenforceable under the Idaho Constitution and Human Rights Law, and seeking a writ of prohibition preventing (1) inferior Idaho courts from giving effect to the Ban's unlawful criminal cause of action, (2) Idaho law enforcement officials from enforcing the unlawful Ban, and (3) Idaho professional licensing boards from enforcing the Ban's unlawful suspension and revocation requirements.

The Total Abortion Ban takes effect on or around August 18, 2022. Absent this Court's intervention, the Total Abortion Ban will make it a felony for "[e]very person" to "perform[] or attempt[] to perform an abortion," with just two extremely narrow and unconstitutionally vague affirmative defenses which the provider charged with violating the Ban must prove by a preponderance of the evidence. Idaho Code §§ 18-622(2), (3). The first allows a physician to raise as an affirmative defense that the abortion was "necessary to prevent the death of the pregnant woman" in the "good faith medical judgment" of that physician "based on the facts known to the physician at the time," and the second allows a physician to raise as an affirmative defense that he or she performed the abortion after receiving a copy of a police report (or a report to child protective services, in the case of a minor) regarding "the act of rape or incest." *Id.* §§ 18-

622(3)(a)(ii), (b)(ii)-(iii). In all cases, the physician must use the method that provides “the best opportunity for the unborn child to survive,” unless that method “would have posed a greater risk of the death of the pregnant woman.” *Id.* §§ 18-622(3)(a)(iii), (b)(iv). These affirmative defenses so vague as to be impossible for medical professionals to implement without the threat of significant criminal liability.

Anyone who violates the Ban’s blanket prohibition will be subject to between two and five years’ imprisonment. *Id.* § 18-622(2). A health care professional who violates the Total Abortion Ban will have his or her professional license suspended for at least six months upon a first offense—and revoked permanently upon a second. *See id.* The substantial criminal and financial risks imposed by the Total Abortion Ban leave Petitioners and other medical professionals no choice but to cease nearly all abortion services in Idaho. Although the Total Abortion Ban subjects medical professionals to years of imprisonment, the real costs will be borne by their current and future patients—anyone who can become pregnant in the State. The many Idahoans who would otherwise be able to obtain safe abortion care in Idaho will be forced to obtain abortion care hundreds of miles away or to carry their pregnancies to term. Petitioners, other medical professionals, and the citizens of Idaho, urgently need clarity from the Court on the constitutionality of the vague Total Abortion Ban.

Petitioners respectfully request an expedited schedule for Respondent’s response and for Petitioners’ reply. Petitioners are scheduled for oral argument before the Court on August 3, 2022, in the related Case No. 49615, *Planned Parenthood v. State*, on the constitutionality of SB 1309

and respectfully request that oral argument on this case to be heard on the same date, so that this Court may grant relief prior to the law's effective date on or about August 18, 2022.

Dated on this 27th day of June, 2022.

Respectfully submitted,

/s/ Michael J. Bartlett
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 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:

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/s/ Michael J. Bartlett

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