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IN THE SUPREME COURT OF 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,

and

SCOTT BEDKE, in his official capacity as Speaker of the House of Representatives of the

Docket No. 49817-2022

MEMORANDUM IN SUPPORT OF STATE RESPONDENTS' MOTION TO STRIKE PORTIONS OF THE DECLARATIONS OF KRISTINE SMITH AND DR. CAITLIN GUSTAFSON

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.

I. INTRODUCTION

Just as with their challenge to the civil enforcement action of the Heartbeat Act (Docket No. 49615-2022), Petitioners again rely on declarations containing factual allegations that are inadmissible under Idaho Rules of Evidence 602, 701, and 702 here in their challenge to Idaho Code § 18–622 ("Section 622"). This Court should strike as inadmissible much of the testimony in the declarations of Kristine Smith and Dr. Caitlin Gustafson, which Petitioners offer as Exhibits 1 and 2 to their Brief in Support of Verified Petition for Writ of Prohibition and Application for Declaratory Judgment (Docket No. 49817-2022). Under the Idaho Rules of Evidence, the inadmissible claims in paragraphs 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 of the declaration of Kristine Smith, and in paragraphs 5, 10, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27 of the declaration of Dr. Caitlin Gustafson should be stricken as they contain speculative statements that are inadmissible under Rules 602, 701, and 702.

II. ARGUMENT

Petitioners rely on factual allegations in two declarations to support the claims and arguments[1] made in their Verified Petition for Writ of Prohibition and Application for Declaratory Judgment and supporting brief: the declaration of Kristine Smith, the Area Services Director of Planned Parenthood (Ex. 1), and the declaration of Dr. Caitlin Gustafson, a medical doctor who

[1] Petitioners now expressly limit the claims and arguments that their factual allegations support to only their argument that original jurisdiction is appropriate. Pet'rs' Br. in Response to this Court's June 30, 2022, Order Setting Hr'g 13-15.

performs abortions for Planned Parenthood (Ex. 2). Neither of these declarations specifically identify Smith or Dr. Gustafson as experts, so it is unclear whether their testimony is offered as expert testimony. However, since Petitioners did not offer Smith or Dr. Gustafson as experts in their initial Petition, it stands to reason they are offered here as lay witnesses, as well. *See* Pet'r's Opposition to Motion to Strike, Docket No. 49615-2022, p. 3 ("Petitioners do not offer the declarants as experts at this time, and so Idaho Rule of Evidence 702, which governs expert testimony, is inapplicable and irrelevant".). In any event, whether viewed as lay or expert testimony, many of the assertions made in these declarations are speculative in nature and/or fall outside the scope of the declarant's personal knowledge. As such, most of the content in each declaration should be stricken as inadmissible under the Idaho Rules of Evidence and well-settled legal precedent.

As explained in Respondent's Motion to Strike in Docket No. 49615-2022, Idaho Rule of Evidence 701 provides that lay witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are "(a) rationally based on the witness's perception; [and] (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue[.]" I.R.E. 701. As this Court has previously explained, speculative testimony is generally impermissible under the Idaho Rules of Evidence. *See Schwan's Sales Enterprises, Inc. v. Idaho Transp. Dep't*, 142 Idaho 826, 830, 136 P.3d 297, 301 (2006); I.R.E. 602, 701.

Expert testimony, including opinion, is admissible under Idaho Rule of Evidence 702 "if the expert's scientific, technical, or other specialized knowledge" will assist the trier of fact in understanding the evidence or resolving a disputed fact. I.R.E. 702. However, like lay testimony, expert testimony "must be based upon a proper factual foundation." *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999). Expert opinion that is "speculative, conclusory or

unsubstantiated by facts in the record" is inadmissible. *Id*. "An expert opinion that merely suggests possibilities, not probabilities, would only invite conjecture and may be properly excluded." *Nield v. Pocatello Health Services, Inc.*, 156 Idaho 802, 815, 332 P.3d 714, 727 (2014) (citing *Slack v. Kelleher*, 140 Idaho 916, 923, 104 P.3d 958, 965 (2004)). Finally, "expert opinion that is speculative or unsubstantiated by facts in the record is inadmissible because it would not assist the trier of fact to understand the evidence or determine a fact that is at issue." *Nield*, 156 Idaho at 815, 332 P.3d at 727 (citing *Karlson v. Harris*, 140 Idaho 561, 565, 97 P.3d 428, 432 (2004)).

A. Most of Kristine Smith's declaration should be stricken because her testimony is speculative and lacks the necessary foundation.

Smith's declaration contains a multitude of speculative statements. She identifies herself as the "Area Service Director of Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky (Planned Parenthood)." Pet'rs' Br. Ex. 1, ¶ 2. While these qualifications no doubt give her the ability to make factual statements as to the operational aspects of Planned Parenthood, the services that Planned Parenthood offers, and the general client data that one could reasonably expect to be stored in Planned Parenthood's records, she far exceeds the scope of her stated qualifications with numerous speculative claims and assertions in her declaration. These inadmissible statements should be stricken. Each of them is set forth below:

1. Paragraph 5

After misstating one of the affirmative defenses to prosecution under Section 622 by omitting the allowance for a physician to utilize their "good faith medical judgment" to determine whether an abortion was necessary to prevent the death of a pregnant woman, Smith goes on to speculate that Section 622 "places our medical staff in danger of losing both their livelihoods and their liberty should they perform any abortions." Pet'rs' Br. Ex. 1, ¶ 5. Smith offers no foundation

for this broad and ultimately speculative statement. The second sentence of paragraph 5 should be stricken.

2. Paragraph 6

Smith speculates about whether Planned Parenthood will be "forced to stop performing all abortion services" after the *Dobbs* judgment. *Id.* at ¶ 6. She provides no foundation for her statement and does not even mention whether she is referring only to Idaho abortions. Indeed, Smith's speculative statement is now irrelevant now that Section 622 has taken effect. Paragraph 6 should be stricken.

3. Paragraph 9

Numerous statements in paragraph 9 should be stricken. In that paragraph, Smith begins within the bounds of her qualifications, discussing the number of abortions provided in Idaho by Planned Parenthood, the demographic information of Planned Parenthood's patients, the insurance or Medicaid status of Planned Parenthood patients, and the assertion that Idaho abortions are essentially self-funded due to Idaho's laws surrounding Medicaid and private insurance. *Id.* at ¶ 9. However, just as she did in her supporting declaration in Docket 49615, Smith then goes beyond the information specific to Planned Parenthood patients and engages in a discussion of national poverty statistics and her interpretation of those statistics:

> Nearly 75% of pregnant persons who seek abortions nationwide live under 200% of the federal poverty level; and nearly 49% live under the federal poverty line. Currently 10.1% of Idaho's population lives in poverty. The poverty rate among women between 18 and 64 years old is 12.7%. The rate is also disproportionately high among people of color; as of 2020, 19.7 percent of Asian-Americans, 18.2 percent of Latinos, and 29.2 percent of Native Americans in Idaho live below the poverty line. The federal poverty level is widely considered an inadequate measure poverty, as it does not take into account the cost of child care, medical expenses, utilities or taxes. (In 2021 the federal poverty level for a family of four was $26,500). Thus, there are more Idaho residents struggling with poverty than these statistics indicate.

Id. at ¶ 9. These statements should be stricken from paragraph 9 as they are speculative and fall well outside the scope of Smith's knowledge as an Area Services Director of Planned Parenthood. Smith has not identified herself as a sociologist who could appropriately opine as to these poverty statistics, let alone speculate that there are more Idaho residents struggling with poverty than the very statistics she puts forward would indicate. And, as noted above, it appears that Planned Parenthood is offering Smith's testimony as a lay witness. Because the statements set forth above fall far outside the scope of Smith's personal knowledge, they should be stricken from paragraph 9.

4. Paragraphs 10 and 11

These paragraphs are based on assumptions that lack foundation about the availability of abortion services outside of Planned Parenthood facilities within and without Idaho and the circumstances and choices of third parties (including other abortion providers and Idaho women) after Section 622 becomes effective. *Id.* at ¶ 10, 11. Smith has established no source of personal knowledge about the location of every single abortion provider outside of Planned Parenthood, nor has she established the requisite knowledge about the availability of abortion in Idaho via mail and telehealth. Additionally, Smith has not—and cannot—establish personal knowledge regarding the choices that third parties will make about abortions after Section 622 goes into effect, nor has she established personal knowledge regarding the specific circumstances of Idaho women seeking abortions. Smith's speculation is also out of date now that Section 622 has gone into effect. Accordingly, State Respondents request that the Court strike paragraphs 10 and 11 in their entirety.

5. Paragraph 12

Paragraph 12 should also be stricken in its entirety. There, Smith opines about statistical data concerning the ratio of maternal-fetal medical doctors to live births, about Idaho citizens facing a "serious shortage of family medicine doctors," about the State's Indian Health Services

being "chronically underfunded," and about the maternal mortality rate. *Id.* at ¶ 12. Smith also makes claims about access to "regular healthcare" and what such healthcare "has been shown" to do, and the "risk of death in infancy" declining "if pregnant people are provided access to early and regular personal care." *Id.* To the extent this testimony is lay witness testimony, Smith has not shown that she has personal knowledge of these facts, assertions, or claims, and even if she were testifying as an expert, she has not established a basis for any such opinion. Instead, Smith merely relies on her experience managing the Idaho clinics for Planned Parenthood, and this is insufficient to show foundation for the statements, facts, assertions, and claims she espouses. To the extent this testimony is offered as expert testimony, Smith has not established that she is qualified to lay a foundation for socioeconomic and/or demographic statistics, or to opine on or comment on or offer medical testimony regarding "[a]ccess to regular healthcare," pregnancy-related deaths, the "risk of death in infancy," and "access to early and regular prenatal care." These assertions are not relevant to Petitioners' facial challenge to Section 622 and what is more, the assertions lack any foundation. Paragraph 12 should be stricken altogether.

6. Paragraph 13

In paragraph 13, Smith opines that "Idahoans also need improved access to contraceptives and a comprehensive sex education program to reduce unwanted pregnancies." *Id.* at ¶ 13. She follows this up by citing certain various statistics. To the extent this testimony is lay witness testimony, Smith has not shown that she has personal knowledge of these facts, assertions, or claims. Indeed, Smith has not asserted she has had so much as a single conversation with any Idaho abortion patient. To the extent this testimony is offered as expert testimony, Smith has not established that she is qualified to lay a foundation for socioeconomic and/or demographic statistics, or to opine on or comment on offer medical testimony regarding contraceptives and sex

education. Moreover, Petitioners are again offering assertions that are wholly irrelevant to their facial challenge to Section 622. Because these speculative statements lack foundation and relevance, the entirety of Paragraph 13 should be stricken.

7. Paragraph 14

In paragraph 14, Smith opines that "[t]he State could do much more to support and protect families and children." *Id.* at ¶ 14. She follows this up by making various assertions on topics ranging from food stamp (SNAP) benefits to comparison of pay between Native American women and a White Non-Hispanic man. *Id.* She further opines that people who want to access an abortion and do not have it are more likely to marginally employed, unemployed, or enrolled in public safety net programs compared to those who obtained an abortion, and that children born of mothers denied an abortion are more likely to live without adequate resources and more likely to experience poorer maternal bonding. *Id*. To the extent this testimony is lay witness testimony, Smith has not shown that she has any personal knowledge of these facts, assertions, or claims—and what's more, these claims are wholly irrelevant to the ultimate questions pending before this Court. Smith's declaration simply lacks any foundation upon which such statements could be based. To the extent this testimony is offered as expert testimony, Smith has not established that she is qualified to lay a foundation for socioeconomic and/or demographic statistics, or to opine on or comment on offer medical testimony regarding children. Paragraph 14 should be stricken in its entirety.

8. Paragraph 15

Smith makes reference to the affirmative defenses provided by Section 622. *Id.* at ¶ 15. But Smith has failed to establish the requisite foundation, personal knowledge, competence and/or expertise to argue that the affirmative defenses are "confusing and vague." and that "we will not be able to implement" them. *Id.* It is unclear what Smith means by implementing affirmative

defenses. Smith goes on to say that Planned Parenthood "will be forced to stop providing abortion services entirely," but again she does not lay any foundation for this speculative claim. *Id.* Moreover, Smith's speculation, even if it were admissible, is out of date because Section 622 has gone into effect. Because paragraph 15 is speculative, unclear, and contains improper legal conclusions, it should be stricken in its entirety.

9. Paragraph 16

Smith's assertion that Idaho is medically underserved in paragraph 16 lacks foundation. The availability of medical care throughout all of Idaho is not within the personal knowledge or expertise of the Area Services Director of Planned Parenthood, nor has Smith established that she is qualified to lay a foundation for socioeconomic and/or demographic statistics. Thus, paragraph 16 should be stricken in its entirety.

10. Paragraph 17

Smith, who spent much of paragraph 7 describing the plethora of non-abortion treatments provided by Planned Parenthood, fails to establish the foundation to assert that Section 622 will "prevent Planned Parenthood…from fulfilling its mission." *Id.* at ¶¶ 7, 17. Paragraph 17 should be stricken in its entirety.

11. Paragraph 18

Paragraph 18 is based on assumptions that lack foundation about the availability of abortion services outside of Planned Parenthood facilities within and without Idaho and the circumstances and choices of third parties (including other abortion providers and Idaho women) after Section 622 becomes effective. *Id.* at ¶ 18. Smith has established no source of personal knowledge about the location of every single abortion provider outside of Planned Parenthood, nor has she established the requisite knowledge about the availability of abortion in Idaho via mail and

telehealth. Smith has also not established personal knowledge regarding the choices that third parties will make about abortions after Section 622 goes into effect, nor has she established personal knowledge regarding the specific circumstances of Idaho women seeking abortions. And, again, this speculation is out of date now that Section 622 has gone into effect. Accordingly, State Respondents request that the Court strike paragraph 18 in its entirety.

12. Paragraph 19

In paragraph 19, Smith purports to represent the experience of Texas residents after a Texas law went took effect. *Id.* at ¶ 19. These statements should be stricken as they are wholly outside the scope of her personal knowledge. Smith has no personal knowledge of the effect of Texas Senate Bill 8, nor does she have personal knowledge about how Section 622 will impact Idaho women, including whether they would have to travel long distances to obtain care. Because all of paragraph 19 falls outside the scope of Smith's personal knowledge and/or is speculative in nature, the paragraph should be stricken in its entirety.

13. Paragraph 20

Paragraph 20, which opines that "people who want an abortion generally seek one as soon as possible, but face many logistical challenges," should also be stricken in its entirety as this broad overgeneralization is outside Smith's asserted personal experience in a managerial role. *Id.* at ¶ 20. If, for example, Smith were a counselor who could lay a foundation for what patients frequently report, or if Smith were a sociologist who could lay a foundation for and then analyze data about experiences in seeking abortion, such an assertion might be appropriate. Here, though, a blanket generalization about the private and personal reasons a person might seek an abortion generally and how soon they wish to obtain one is simply too speculative and should be stricken.

14. Paragraph 21-24, and 26

Paragraphs 21 through 24, and paragraph 26, of Smith's declaration contain a litany of assumptions and speculation about women and the circumstances they might face if they decide they wish to obtain an abortion in some hypothetical future scenario.[2] Smith has no medical training or personal knowledge for the medical facts she assumes nor has she established the necessary foundation for her speculation about the circumstances that women might face in a theoretical future situation. None of these statements are based on Smith's personal knowledge, nor do they fall under any expertise that Smith might have. Smith has identified her duties as managerial in nature. She has not established that she is qualified to opine on medical, sociological, psychiatric or economic issues, nor may she speculate about hypothetical future scenarios. Every one of these paragraphs should be stricken in their entirety.

15. Paragraph 25

Like paragraphs 21-24, and 26, paragraph 25 contains a litany of assumptions and speculation about women and the circumstances they might face if they decide they wish to obtain an abortion in some hypothetical future scenario. *Id.* at ¶ 25. Smith has no medical training or personal knowledge for the medical facts she assumes, nor has she established the necessary foundation for her speculation about the circumstances that women might face in a theoretical future situation. Although Smith says she "know[s] from [her] experience," *id.* at ¶ 25, she does not say what that experience was, which women she is referring to, how she has this experience, when, over what period of time, etc. In short, these statements are not based on Smith's personal

[2] It is not lost on State Respondents that, just as in their declarations in their first Heartbeat Act challenge, Smith and Dr. Gustafson repeatedly opine about possible burdens and obstacles that will be faced in the future. While such arguments may have been relevant to an undue burden analysis during the *Roe* era, they have no relevance here.

knowledge, nor do they fall under any expertise that Smith might have. Smith has identified her duties as managerial in nature. She is not qualified to opine on medical, sociological, psychiatric or economic issues nor may Smith speculate about hypothetical future scenarios. Paragraph 25 should be stricken.

B. Large parts of the declaration of Dr. Caitlin Gustafson should also be stricken as speculative and lacking necessary foundation.

Dr. Caitlin Gustafson is a physician who has been licensed in Idaho since 2004. Pet'rs' Br. Ex. 2, ¶ 2. While Dr. Gustafson's many years as a medical doctor and specific experience in the realm of obstetrics clearly provide her with a basis of knowledge to explain medical aspects of abortion procedures, medical risks inherent to abortion or to pregnancy, and other specific medical information, her declaration goes far beyond her qualifications and personal knowledge. At several points, Dr. Gustafson makes assertions that are improperly speculative and fall well beyond her personal knowledge. As set forth more fully below, these inadmissible statements should be stricken.

1. Paragraph 5

In paragraph 5, Dr. Gustafson speculates that Section 622 going into effect would "jeopardize other care that I provide to women who are experiencing a miscarriage or complications related to pregnancy." *Id.* at ¶ 5. Dr. Gustafson provides no foundation for this speculative statement. Indeed, her speculation is out of date as the law has gone into effect. The last clause of paragraph of 5 should be stricken.

2. Paragraph 10

The first two sentences of paragraph 10 should be stricken. Dr. Gustafson opines about the reasons that someone might seek an abortion and provides examples of hypothetical non-medical reasons. *Id.* at ¶ 10. Because Dr. Gustafson lacks the personal knowledge of what non-medical and

personal considerations a person might have for seeking an abortion, these sentences should be stricken.

3. Paragraphs 14-18 & 20-21

Paragraphs 14-21 are chock full of speculation from Dr. Gustafson regarding the impacts of Section 622 and are filled with arguments and legal conclusions that have no place in a declaration under penalty of perjury. Conclusory statements about Section 622 or its affirmative defenses, such as "vague," "chilled," and "devastating," simply underscore this point.

In paragraph 14, Dr. Gustafson misstates in the first sentence that Section 622 bans abortions—it criminalizes abortions unless an affirmative defense applies. The second sentence argues legal conclusions that the affirmative defenses are "extremely vague and narrow." The third sentence speculates about unspecified "devastating effects," that the law might have in the future, which is a speculative statement. *Id.* at ¶ 14. The entirety of paragraph 14 should be stricken as it is inaccurate, contains improper legal conclusions, and is speculative.

In paragraph 15, Dr. Gustafson asserts various fears she has, before acknowledging she understands what a "clinically diagnosable pregnancy" is. *Id.* at ¶ 15. The last two sentences of her declaration following on from that admission, though, have no relevance here, as Section 622 is not based on "a healthy or viable pregnancy." The last two sentences of paragraph 15 should be stricken as irrelevant.

Paragraph 16 simply states conclusory legal arguments clothed in a two-sentence paragraph. *Id.* at ¶ 16. Such legal arguments are not proper for a factual declaration based on personal knowledge. Paragraph 16 should be stricken entirely.

Paragraph 17 alleges that the affirmative defenses are "narrow" and alleges in a conclusory form that she would not be able to form a "good faith medical judgment." *Id.* at ¶ 17. The first clause and last sentence of paragraph 17 should be stricken.

In paragraph 18, Dr. Gustafson makes the legal conclusion that it is "impossible" to provide an abortion "while providing 'the best opportunity for the unborn child to survive.'" *Id.* at ¶ 18. Further, Dr. Gustafson offers irrelevant statements in the last sentence regarding chances of survival of and waiting, neither of which are measures in Section 622. The last two sentences of paragraph 18 should be stricken.

The last sentence of paragraph 20 should be stricken. Dr. Gustafson appears to be attacking the Legislature's policy choice of when to allow an abortion. *Id.* at ¶ 20. Yet the last sentence contains an argumentative legal conclusion that the statute fails to provide notice to physicians, and thus, that sentence should be stricken. In addition, Dr. Gustafson's statements about providing care to a woman who has recently miscarried should be stricken. Section 622 does not apply to care for miscarriage under the definition of abortion in Idaho Code § 18-604(1). And Dr. Gustafson's speculation that "such care could subject me to criminal consequences" should be stricken.

The last sentence of paragraph 21 should also be stricken. Dr. Gustafson comments that "women are often fearful or reluctant to report cases of rape and incest to anyone, let alone government officials." *Id.* at ¶ 21. Dr. Gustafson, whose asserted qualifications are that of a medical doctor, has not established the requisite foundation to make this statement.

4. Paragraph 22

The second sentence in paragraph 22 should be stricken. There, Dr. Gustafson asserts that she "believe[s] other providers will be forced to [stop providing all or nearly all abortions], and

therefore, abortion will become unavailable in Idaho." *Id.* at ¶ 22. This sentence should be stricken as Dr. Gustafson has no knowledge of how other medical providers might react once Section 622 goes into effect.

5. Paragraph 23

This paragraph should be stricken completely. *Id.* at ¶ 23. Here, Dr. Gustafson speculates about the impacts of Section 622 on women in Idaho, including making statements about "resources…and many other reasons," even though she has established no foundational basis to offer such speculation. She continues by speculating that Idaho women "will be forced to travel hundreds of miles" and further speculates about women who face "barriers" to out of state travel. *Id.* Dr. Gustafson has not established any sociological qualifications that would allow her to offer these statements, nor has she established any foundation within her personal knowledge for such statements. Paragraph 23 should be stricken.

6. Paragraphs 24-26

Paragraph 24 should be stricken in its entirety as outside the personal knowledge of Dr. Gustafson. Dr. Gustafson theorizes that those who carry an unwanted pregnancy to term may find it harder to emerge from poverty. *Id.* at ¶ 24. She goes on to assert that individuals unable to access abortion are marginally employed, unemployed, or more likely to be enrolled in a public safety net. Dr. Gustafson cites to several sources for these assertions, but these citations only serve to highlight the fact these economic and sociological assertions fall outside the scope of Dr. Gustafson's knowledge as a medical doctor, whose testimony as a lay witness must be based upon personal, non-specialized knowledge. *Id.* Paragraph 25, which asserts that Section 622 will disproportionally affect victims of intimate partner violence, should be stricken because her statements regarding economic, sociological, and legal "ties" are similarly outside her knowledge

as a medical doctor. *Id.* at ¶ 25. Paragraph 26, which asserts that Section 622 will disproportionately affect indigenous individuals and persons of color, should also be stricken for these reasons. *Id.* at ¶ 26. Dr. Gustafson simply has not provided a foundational basis to offer these sociologically based hypotheses.

7. Paragraph 27

In paragraph 27, Dr. Gustafson asserts that Section 622 will "greatly harm many Idahoans." *Id.* at ¶ 27. This statement is based purely on Dr. Gustafson's speculation as to the future consequences of Section 622. Furthermore, this statement is argumentative and lacks factual support. The final clause of Paragraph 27 should be stricken.

DATED this 2nd day of September 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 2nd day of September 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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