

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. 49899-2022

**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 Idaho Code Sections 18-8804, 18-8805 (the Six Week Ban) are 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 unlawful Ban, (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 Six Week Ban may take effect on or around August 19, 2022. Absent this Court’s intervention, the Six Week Ban will make it a felony for a “licensed health care professional” to “knowingly or recklessly perform[] or induce[] an abortion” when “a fetal heartbeat has been detected,” with just three extremely narrow and unconstitutionally vague exceptions. Idaho Code §§ 18-8804(1), 18-8805(2). The first excludes from the Ban abortions performed “in the case of a medical emergency,” *id.* § 18-8804(1), with medical emergency defined as “a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function,” *id.* § 18-8801(5). The second and third exceptions are “in the case of rape” and “in the case of incest” as

defined in other chapters of Title 18 of the Idaho Statutes, but first, the woman (or, if “a minor or subject to guardianship,” that woman *or* her parent or guardian) must have “reported the act of rape or incest to a law enforcement agency [or, for a minor, child protective services] and provided a copy of such report to the physician who is to perform the abortion.” *Id.* §§ 18-8804(1)(a)-(b). These exceptions are so vague—in their scope and/or in the methods by which physicians may demonstrate their compliance—as to be impossible for medical professionals to implement without the threat of significant criminal and professional licensure liability.

Anyone who violates the Six Week Ban will be subject to between two and five years’ imprisonment. *Id.* § 18-8805(2). A health care professional who violates the Ban will have his or her professional license suspended for at least six months upon a first offense—and revoked permanently upon a second. *Id.* § 18-8805(3). The substantial criminal and professional risks imposed by the Six Week Ban leave Petitioners and other medical professionals no choice but to cease most abortion services in Idaho. The many Idahoans who would otherwise be able to obtain legal and safe abortions in Idaho will be forced to either travel 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 Six Week 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 on procedural questions identified by the Court in the related Case Nos. 49615-2022, *Planned Parenthood v. State*, and 49817-2022, *Planned Parenthood v. State*, and respectfully request that

this Petition be heard on the same date.¹ Relief is urgently needed prior to the law's effective date, which appears to be on or about August 19, 2022.

Dated on this 25th day of July, 2022.

Respectfully submitted,

/s/ Michael J. Bartlett
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¹ With respect to those procedural questions and this Petition, Petitioners take the same position. A stay is necessary to prevent imminent harm, the Court can resolve the instant Petition without consolidation, and the Court can decide the Petition without sending the case to the trial court.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 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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