

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN
Chief of Civil Litigation

MEGAN A. LARRONDO, ISB #10597
DAYTON P. REED, ISB #10775
Deputy Attorneys General
954 W. Jefferson Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
megan.larrondo@ag.idaho.gov
dayton.reed@ag.idaho.gov
Attorneys for Respondents

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
State of Idaho; CHUCK WINDER, in his

Docket No. 49899-2022

**VERIFIED ANSWER TO
VERIFIED PETITION FOR WRIT
OF PROHIBITION AND
APPLICATION FOR
DECLARATORY JUDGMENT**

official capacity as President Pro Tempore of
the Idaho State Senate; and the SIXTY-SIXTH
IDAHO LEGISLATURE,

Intervenors-Respondents.

The State of Idaho, Governor Brad Little, Attorney General Lawrence Wasden, Ada County Prosecuting Attorney Jan M. Bennetts, Twin Falls County Prosecuting Attorney Grant P. Loeb, the Idaho State Board of Medicine, the Idaho State Board of Nursing, and the Idaho State Board of Pharmacy (collectively, the State Respondents), hereby answer and respond to the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment (“Petition”) filed July 25, 2022.

I. GENERAL RESPONSE

Unless specifically admitted herein, the State Respondents deny each and every allegation, claim, and request for relief in the Petition.

II. SPECIFIC RESPONSES

In response to the specific allegations, claims, and requests for relief contained in the specific paragraphs in the Petition, the State Respondents respond as follows:

INTRODUCTION

1. To the extent Petitioners’ Introduction, including footnotes one and two, may be construed to contain allegations or requests for relief, the State Respondents deny that an original action is an appropriate vehicle to resolve Petitioners’ claims; deny that Idaho Code § 18-8804 or § 18-8805 is unlawful or unenforceable under the Idaho Constitution or the Idaho Human Right Act; deny that Idaho Code § 18-8804 or § 18-8805 violate Idaho law; deny that § 18-8804 or § 18-8805 violates a fundamental right to privacy under the Idaho Constitution; deny that the Idaho

Constitution provides a fundamental right to privacy that extends to abortion; deny that § 18-8804 or § 18-8805 violates the equal protection guarantee of the Idaho Constitution; deny that the Idaho Constitution contains an Equal Protection Clause; deny that § 18-8804 or § 18-8805 violates the Idaho Human Rights Act; deny that § 18-8804 or § 18-8805 treats men and women differently based on discriminatory gender stereotypes; deny that § 18-8804 or § 18-8805 violates the Idaho Constitution's due process clause; deny that § 18-8804 or § 18-8805 is unconstitutionally vague; deny that § 18-8804 or § 18-8805 should be invalidated or declared unconstitutional; and deny that a stay should be entered. To the extent that Petitioners cite portions of Idaho Code or caselaw, the State Respondents admit those citations are accurate. The cited materials speak for themselves. To the extent that Petitioners offer portions of Idaho Code or caselaw in support of legal propositions, no response is required. To the extent that a response is required, the State Respondents deny the same. The State Respondents deny the remaining allegations within the Introduction, deny that Petitioners are entitled to any relief, and request that the Petition be denied. The State Respondents further admit only that § 18-8805 became effective on August 19, 2022 as a result of the issuance of the judgment in the Eleventh Circuit's July 20, 2022 decision in *Sistersong Women of Color Reprod. Justice Collective v. Governor of Ga.*, that Idaho Code § 18-622 became effective on August 25, 2022, and that this Court consolidated all three of Petitioners' pending challenges before it for the purposes of oral argument and opinion only.

JURISDICTION

1. In answering paragraph 1, where Petitioners incorporate by reference paragraphs 1 to 5 of their Verified Petition in case No. 49817-2022, the State Respondents incorporate by reference their responses in paragraphs 2 to 6 of their Verified Answer in the same case. *See*

Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 2-6, No. 49817-2022 (Idaho Sept. 2, 2022).

PARTIES

2. In answering paragraph 2, where Petitioners incorporate by references paragraph 6 to 10 of their Verified Petition in case No. 49817-2022, the State Respondents incorporate by reference their responses in paragraphs 7 to 11 of their Verified Answer in the same case. *See* Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 7-11, No. 49817-2022 (Idaho Sept. 2, 2022).

FACTS COMMON TO ALL CLAIMS

3. In answering paragraph 3, the State Respondents admit only that the citations to Idaho Code §§ 18-8804 and 18-8805 are accurate. The statute speaks for itself.

4. In answering paragraph 4, the State Respondents admit only that the citation to Idaho Code § 18-8801(1) is accurate. The statute speaks for itself.

5. In answering paragraph 5, the State Respondents admit only that the citations to Idaho Code § 18-8801(2) are accurate. The statute speaks for itself.

6. The State Respondents deny the allegations in paragraph 6 for lack of knowledge.

7. In answering paragraph 7, the State Respondents admit only that the citations to Idaho Code § 18-8803 are accurate. The statute speaks for itself.

8. In answering paragraph 8, the State Respondents admit only that the citation to Idaho Code § 18-8805(2) is accurate. The statute speaks for itself.

9. In answering paragraph 9, the State Respondents admit only that the citation to Idaho Code § 18-8805(3) is accurate. The statute speaks for itself.

10. In answering paragraph 10, the State Respondents admit only that the citation to Idaho Code § 18-8804 is accurate. The statute speaks for itself.

11. In answering paragraph 11, the State Respondents admit only that the citations to Idaho Code § 18-8804(1) and § 18-8801(5) are accurate. The statute speaks for itself.

12. In answering paragraph 12, the State Respondents admit only that the citations to Idaho Code § 18-8804(1)(a) and (b) are accurate. The statute speaks for itself.

13. In answering paragraph 13, the State Respondents admit only that the citation to Idaho Code § 18-8805(1) is accurate. The statute speaks for itself. The State Respondents deny the remaining allegations.

14. In answering paragraph 14, the State Respondents admit only that the citation to caselaw is accurate.

15. Paragraph 15 sets forth a legal proposition and requires no response.

16. Paragraph 16 sets forth a legal proposition and requires no response. The State Respondents admit only that Idaho Code § 18-8805 became enforceable on August 19, 2022.

17. The State Respondents deny the allegations in paragraph 17. The State Respondents incorporate by reference their responses in paragraphs 20 to 32 of their Verified Answer filed in case No. 49817-2022. *See* Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 20-32, No. 49817-2022 (Idaho Sept. 2, 2022). The State Respondents also incorporate by reference the responses in paragraphs 28 to 39 of the State of Idaho's Verified Answer filed in case No. 49615-2022. *See* Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 28-39, No. 49615-2022 (Idaho Apr. 28, 2022).

18. In answering paragraph 18, the State Respondents admit that Idaho Code § 18-8805 sets forth criminal penalties for certain abortions. The State Respondents deny the remaining allegations in paragraph 18.

19. In answering paragraph 19, the State Respondents deny the allegation for lack of knowledge.

CLAIMS FOR RELIEF

The Six Week Ban Violates the Idaho Constitution by Denying Idahoans the Fundamental Right to Privacy in Making Intimate Familial Decisions

20. In answering paragraph 20, the State Respondents incorporate the preceding responses to all paragraphs in this Answer.

21. In answering paragraph 21, wherein Petitioners incorporate paragraphs 33 to 38 of their Verified Petition filed in case No. 49817-2022 and paragraphs 64 to 69 of their Verified Petition filed in case No. 49615-2022, the State Respondents deny that the Idaho Constitution protects a fundamental right to privacy that includes abortion and incorporates the State of Idaho's and the State Respondents' responses to the referenced paragraphs. *See* Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 65-70, No. 49615-2022 (Idaho Apr. 28, 2022); Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶¶ 34-39, No. 49817-2022 (Idaho Sept. 2, 2022).

22. The allegations in paragraph 22 are legal propositions to which no response is required. To the extent a response is required, the State Respondents deny the allegation and incorporate the argument in the Respondent State of Idaho's Opposition to Petitioners' Brief in Support of Verified Petition for Writ of Prohibition and Application for Declaratory Judgment in No. 49817-2022 (Idaho Sept. 2, 2022).

The Ban Violates the Guarantee of Equal Protection in the Idaho Constitution and the Idaho Human Rights Act

23. In answering paragraph 23, the State Respondents incorporate the preceding responses to all paragraphs in this Answer.

24. The allegations in paragraph 24 are legal propositions to which no response is required. To the extent a response is required, the State Respondents deny the allegations and incorporate the responses in paragraphs 41 to 45 of the Respondent State of Idaho's Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment in No. 49817-2022 (Idaho Sept. 2, 2022).

25. The allegations in paragraph 25 are legal assertions to which no response is required. To the extent a response is required, the State Respondents deny the same and incorporate paragraph 41 of their Verified Answer to Verified Petition of Prohibition and Application for Declaratory Judgment for Writ in No. 49817-2022 (Idaho Sept. 2, 2022). *See* Verified Answer to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment ¶ 41, No. 49817-2022 (Idaho Sept. 2, 2022).

The Ban Violates the Idaho Constitution's Due Process Clause Because it is Unconstitutionally Vague

26. In answering paragraph 26, the State Respondents incorporate the preceding responses to all paragraphs in this Answer.

27. The allegations in paragraph 27 are legal propositions to which no response is required. To the extent a response is required, the State Respondents deny the same and incorporates paragraphs 47 and 50 of their Answer in case No. 49817-2022. *See* Verified Answer

to Verified Petition for Writ of Prohibition and Application for Declaratory Judgment, No. 49817-2022 (Idaho Sept. 2, 2022).

28. In answering paragraph 28, the State Respondents admit only that the citations to statute and caselaw are accurate. The statutes speak for themselves. To the extent that these legal authorities are cited for a legal proposition, the allegations require no response. To the extent that a response is required, the State Respondents deny the same.

29. In answering paragraph 29, the State Respondents admit only that the citations to statute and caselaw are accurate. The statutes and caselaw speak for themselves. To the extent that these legal authorities are cited for a legal proposition, the allegations require no response. To the extent that a response is required, the State Respondents deny the same.

30. In answering paragraph 30, the State Respondents admit only that the citations to statute and caselaw are accurate. The statutes and caselaw speak for themselves. To the extent that these legal authorities are cited for a legal proposition, the allegations require no response. To the extent that a response is required, the State Respondents deny the same.

Prayer for Relief

In answering Petitioners' Prayer for Relief, the State Respondents deny that Petitioners are entitled to the relief requested in paragraphs (a)-(f).

III. AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Petitioners lack standing to assert claims for relief on behalf of any other individual, including Petitioners' current and future patients.

THIRD DEFENSE

Petitioners' claims for relief are inconsistent with and unsupported by Idaho law.

FOURTH DEFENSE

The Court lacks jurisdiction to consider the Petition.

FIFTH DEFENSE

Petitioners have a plain, speedy, and adequate remedy in the ordinary course of law.

SIXTH DEFENSE

There is no urgent necessity for this Court to resolve Petitioners' claims.

SEVENTH DEFENSE

The Court cannot issue the writ of prohibition that the Petitioners request because it would restrain individuals who are not respondents.

EIGHTH DEFENSE

The State of Idaho is not a permissible respondent in an original action for a writ of prohibition.

NINTH DEFENSE

The writs that Petitioners seek cannot be granted because they are improper advisory opinions.

TENTH DEFENSE

Petitioners' claims are moot except for the very narrow set of circumstances covered by the preliminary injunction entered in *United States v. Idaho*, No. 1:22-CV-00329-BLW, 2022 WL 3692618, at *15 (D. Idaho Aug. 24, 2022).

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ELEVENTH DEFENSE

Petitioners are not entitled to attorney fees.

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

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

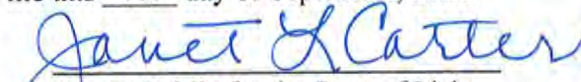
Lawrence Wasden, Attorney General of the State of Idaho, being first duly sworn, deposes and says:

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

DATED this 1st day of September, 2022.


LAWRENCE G. WASDEN

SUBSCRIBED AND SWORN to before me this 1st day of September, 2022.


Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 7/29/2023



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:

Michael J. Bartlett,
BARTLETT & FRENCH LLP

michael@bartlettfrench.com

Alan E. Schoenfeld
Rachel E. Craft
WILMER CUTLER PICKERING
HALE AND DORR LLP (New York, NY Office)

alan.schoenfeld@wilmerhale.com
rachel.craft@wilmerhale.com

Sofie C. Brooks
WILMER CUTLER PICKERING
HALE AND DORR LLP (Boston, MA Office)

sofie.brooks@wilmerhale.com

Attorneys for Petitioners

Daniel W. Bower
MORRIS BOWER & HAWS PLLC

dbower@morrisbowerhaws.com

Monte Neil Stewart
Attorney at Law

monteneilstewart@gmail.com

Attorneys for Intervenors-Respondents

/s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General