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Counsel for Plaintiff
United States of America

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF IDAHO,

Defendant,

SCOTT BEDKE; CHUCK WINDER; the
SIXTY-SIXTH LEGISLATURE,

Intervenors-Defendants.

Case No. 1:22-cv-329-BLW

**MOTION TO EXTEND BRIEFING
SCHEDULE REGARDING MOTIONS
FOR RECONSIDERATION**

The United States respectfully moves the Court to allow the United States to consolidate its responses to the Legislature’s motion for reconsideration, *see* Dkt. 97 (Sept. 7, 2022), and the State of Idaho’s forthcoming motion for reconsideration into a single brief, not to exceed 40 pages, which would be due no later than 21 days after the State files its motion for reconsideration. The Legislature has indicated it opposes this motion. *See* Ex. A at 1, hereto. The United States has attempted to ascertain the State’s position on this proposal, but despite multiple e-mails, the State has not indicated whether it agrees or disagrees with it. Regardless, good cause exists to adopt the United States’ proposal.

1. On August 24, 2022, the Court granted the United States’ motion for a preliminary injunction, enjoining Idaho’s abortion ban to the extent it conflicts with the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd. *See* Dkt. 95.

2. On September 7, 2022, the Legislature filed a motion asking the Court to reconsider its decision regarding the preliminary injunction. *See* Dkt. 97. The Court had previously granted the Legislature permission to intervene for the “limited” purpose of “show[ing] ‘the holes in the factual foundation’ of the United States’ motion,” Dkt. 27 at 1. But in its motion, the Legislature raises at least five separate legal arguments. The United States’ response to this motion is currently due under the Local Rules on September 28, 2022.

3. On September 9, 2022, the State emailed counsel alerting the parties that it also intends to file a motion for reconsideration by September 21, 2022. *See* Ex. A at 2-3. The State further noted that it “sees value in having its motion, and the motion filed by the Legislature ..., decided at the same time.” *Id.* at 3.

4. The United States agrees with the State that it would be most efficient and sensible for the Court to consider the two motions together. To that end, the United States proposed to the Legislature and the State on September 9, 2022 that the United States file a single consolidated brief

in response to the two motions, not to exceed 40 pages, within 21 days of the State filing its motion. *See* Ex. A at 2.

5. On September 14, 2022, the Legislature informed the United States that it opposes this motion “because (i) the preliminary injunction now in place is injuring by its overbreadth interests of great importance to Idaho and (ii) the Attorney General’s Office has not indicated what additional argument it believes it can make to further the matter now before the Court.” *Id.* at 1. It further noted that if the United States proceeded with filing this motion, the Legislature would “file a counter-motion to expedite.” *Id.* The State has not indicated its position as to this proposal.

6. Despite the Legislature’s objection, good cause exists to adopt the United States’ proposal to file a consolidated brief in response to the motions for reconsideration. The Legislature has advanced numerous legal arguments in its motion, despite being granted permission to intervene only to raise factual arguments, and the State will likely advance some of the same contentions. Having the United States address these arguments—and any others—together in one brief will allow for the most logical and efficient presentation to the Court. Further, given that the United States would ordinarily be afforded a 20-page brief to respond to each motion, permitting a consolidated brief will likely lead to the United States submitting fewer pages of briefing. The United States will endeavor to present its opposition as concisely as possible, but without having yet seen the State’s motion, the United States respectfully requests that its consolidated opposition be afforded the full number of pages granted by the local rules.

7. Piecemeal briefing, on the other hand, will impose additional burdens on the Court and on the parties without any meaningful offsetting benefit. Under the Legislature’s plan, the United States would have to file two oppositions that are duplicative to some degree, and the Court would presumably be expected to render two decisions, which again would be duplicative to the extent the State raises arguments similar to those in the Legislature’s motion. The Legislature claims this

inefficient use of resources is necessary to avoid “delay,” Ex. A at 1, which at most would be no more than two weeks—the difference between the briefing schedules on the Legislature’s motion and on the State’s forthcoming motion. This claim of purported delay assumes, moreover, that the Court will resolve the Legislature’s motion for reconsideration prior to, and separate from, the State’s forthcoming motion, which would itself be a highly inefficient manner of proceeding, as both the United States and the State of Idaho recognize. *See* Ex. A at 3.

8. In short, the United States’ proposal ensures that the issues are efficiently and logically presented to the Court for decision, while the Legislature’s position would result in needless duplication for no meaningful return. The United States therefore respectfully requests that the Court grant this motion and enter an order permitting the United States to file one brief, not to exceed 40 pages, in response to the Legislature’s and the State’s motions for reconsideration, due no later than 21 days after the State files its motion.

Dated: September 15, 2022

SAMUEL R. BAGENSTOS
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PAUL R. RODRÍGUEZ
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Respectfully submitted,

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Counsel for the United States

Eiswerth, Christopher A. (CIV)

From: Daniel Bower <dbower@morrisbowerhaws.com>
Sent: Wednesday, September 14, 2022 2:02 PM
To: Eiswerth, Christopher A. (CIV); brian.church@ag.idaho.gov; monteneilstewart@gmail.com; Megan Larrondo; Steven Olsen
Cc: Schwei, Daniel S. (CIV); Straus Harris, Julie (CIV); Nestler, Emily B. (CIV)
Subject: [EXTERNAL] RE: United States v. Idaho - motion to reconsider

Chris and counsel,

The Legislature opposes the delaying proposal now under discussion. That is because (i) the preliminary injunction now in place is injuring by its overbreadth interests of great importance to Idaho and (ii) the Attorney General's Office has not indicated what additional argument it believes it can make to further the matter now before the Court.

The DOJ's response to our pending Motion for Reconsideration is due September 28, 2022. We will oppose any motion to delay that date and, if such a motion is made, will file a counter-motion to expedite. Further, we reserve the right to file, at any time and for any reason, a motion to expedite the DOJ's response and any other filings relating to our pending Motion, as well as any hearing on that Motion and/or the Court's resolution of it.

Best regards,

Daniel W. Bower
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From: Eiswerth, Christopher A. (CIV) <Christopher.A.Eiswerth@usdoj.gov>
Sent: Monday, September 12, 2022 2:55 PM
To: brian.church@ag.idaho.gov; monteneilstewart@gmail.com; Daniel Bower <dbower@morrisbowerhaws.com>; Megan Larrondo <megan.larrondo@ag.idaho.gov>; Steven Olsen <steven.olsen@ag.idaho.gov>
Cc: Schwei, Daniel S. (CIV) <Daniel.S.Schwei@usdoj.gov>; Straus Harris, Julie (CIV) <Julie.StrausHarris@usdoj.gov>; Nestler, Emily B. (CIV) <Emily.B.Nestler@usdoj.gov>
Subject: RE: United States v. Idaho - motion to reconsider

Counsel, if you could let me know your position on the below, I would appreciate it.

Best regards,

Chris

Christopher A. Eiswerth

Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
202.305.0568

From: Eiswerth, Christopher A. (CIV)

Sent: Friday, September 9, 2022 4:07 PM

To: brian.church@ag.idaho.gov; monteneilstewart@gmail.com; dbower@morrisbowerhaws.com; Megan Larrondo <megan.larrondo@ag.idaho.gov>; Steven Olsen <steven.olsen@ag.idaho.gov>

Cc: Schwei, Daniel S. (CIV) <Daniel.S.Schwei@usdoj.gov>

Subject: RE: United States v. Idaho - motion to reconsider

Counsel,

We agree that it may be beneficial for the Court to consider the Legislature's motion and the State's forthcoming motion together, and for the United States to file a consolidated response. To that end, we intend to propose to the Court that the United States will file a combined response 21 days after the State files its motion. Although we believe we would be entitled to file a 40-page brief since we would be responding to two motions, we intend to present our opposition as succinctly as possible—likely closer to 30 pages. Given that we have not yet seen the State's motion, however, we would reserve the right to file up to 40 pages.

Please let us know your position on this anticipated motion.

Best regards,

Chris

Christopher A. Eiswerth

Trial Attorney
U.S. Department of Justice
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From: Brian Church <brian.church@ag.idaho.gov>

Sent: Friday, September 9, 2022 1:45 PM

To: Netter, Brian (CIV) <Brian.Netter@usdoj.gov>; Schwei, Daniel S. (CIV) <Daniel.S.Schwei@usdoj.gov>; Newman, Lisa N. (CIV) <Lisa.N.Newman@usdoj.gov>; Monte Stewart <monteneilstewart@gmail.com>; Daniel W. Bower <dbower@morrisbowerhaws.com>

Cc: Megan Larrondo <Megan.Larrondo@ag.idaho.gov>; Steven Olsen <steven.olsen@ag.idaho.gov>

Subject: [EXTERNAL] United States v. Idaho - motion to reconsider

Re: *United States v. Idaho*
1:22-cv-00329-BLW (D. Idaho)

Counsel:

As a matter of professional courtesy, I wanted to advise the United States that the State of Idaho also intends to file a motion to reconsider the district court's preliminary injunction order. The State will file

that motion on or before September 21. The State sees value in having its motion, and the motion filed by the Legislature Wednesday night, decided at the same time.

Brian

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Brian V. Church | Deputy Attorney General
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