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

**PLANNED PARENTHOOD GREAT
NORTHWEST, HAWAII, ALASKA, INDIANA,
KENTUCKY**, on behalf of itself, its staff, physicians
and patients, **CAITLIN GUSTAFSON, M.D.**, on
behalf of herself and her patients, and **DARIN L.
WEYHRICH, M.D.**, on behalf of himself and his
patients,

Plaintiffs,

v.

RAÚL LABRADOR, in his official capacity as
Attorney General of the State of Idaho; **MEMBERS
OF THE IDAHO STATE BOARD OF MEDICINE**
and **IDAHO STATE BOARD OF NURSING**, in their
official capacities, **COUNTY PROSECUTING
ATTORNEYS**, in their official capacities,

Defendants.

Case No. 1:23-cv-00142-BLW

**EMERGENCY REQUEST
FOR A STATUS
CONFERENCE**

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Plaintiffs Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, Caitlin Gustafson, M.D., and Darin L. Weyhrich, M.D., by and through their attorneys of record, hereby submit this Emergency Request for a Status Conference.

Last March, Defendant Attorney General Raúl Labrador issued a formal opinion letter (the “Crane Letter”), opining that Idaho’s abortion ban criminalizes referrals for lawful out-of-state abortions and also subjects licensed health care providers who make such referrals to loss of licensure in Idaho. Plaintiffs promptly sued, seeking a preliminary injunction against AG Labrador, each Idaho County Prosecutor, and each member of the Idaho State Boards of Medicine and Nursing (“the Boards”). The Court granted the preliminary injunction as to AG Labrador, finding that Plaintiffs were likely to succeed in showing that punishing referrals for out-of-state abortions violated the First Amendment. The Court declined to enjoin the members of the Boards, however, based on questions about the Boards’ authority to prosecute or enforce violations of Idaho’s abortion ban. The Attorney General appealed, and last week, the Ninth Circuit affirmed this Court’s preliminary injunction. *Planned Parenthood Great NW., Hawaii, Alaska, Indiana, Kentucky v. Labrador*, 2024 WL 4966057, at *12 (9th Cir. Dec. 4, 2024).

Shortly thereafter, Plaintiffs received credible information that, after the Ninth Circuit issued its opinion, the Idaho Division of Occupational and Professional Licenses (“DOPL”), which investigates complaints to support the Boards’ licensure decisions,¹ opened an investigation into a claim that an Idaho-licensed medical provider mentioned to a patient the option of accessing abortion care in another state where abortion is legal. That is, an

¹ The Boards are assigned to the DOPL, Idaho Code § 54-1805, which provides support to the Boards by investigating complaints through the Health Professions Bureau. *See* DOPL, *Organizational Chart Showing Board Reporting Structure*, <https://dopl.idaho.gov/wp-content/uploads/2024/07/DOPL-Org-Chart-Board-Reporting-Structure.pdf> (updated July 1, 2014); *see* DOPL, *Organizational Chart Showing Functional Level*, <https://dopl.idaho.gov/wp-content/uploads/2024/03/DOPL-Org-Chart-Functional-Level.pdf> (updated Jan. 22, 2024).

investigatory division supporting the Boards—which then have the authority to suspend and revoke the licenses of medical providers in Idaho, *see* Idaho Code §§ 54-1806(6), 54-1814(6), 54-1404(2)—was pursuing an investigation into the very conduct that this Court and the Ninth Circuit held was likely constitutionally protected. If true, this is extremely concerning in light of the Ninth Circuit’s clear First Amendment ruling and it raises urgent and very serious questions about whether the scope of the preliminary injunction is sufficient to protect Plaintiffs’ ongoing exercise of their First Amendment rights.

When the Court stayed all proceedings pending appeal, it recognized that circumstances could arise during the stay which may require Plaintiffs to seek relief from the Court. Dkt. 167 at 8. Plaintiffs respectfully submit that these circumstances are present now: The credible information Plaintiffs have received that a provider is currently being investigated for the precise speech that this Court and the Ninth Circuit have already found to be constitutionally protected necessitates, at a minimum, an immediate status conference to address the matter. Plaintiffs respectfully submit that, absent sufficient assurances that no investigation is currently underway or that any such investigation will be promptly ceased with no adverse disciplinary or licensure action being taken against the provider for said speech, the Court should assess what steps can be taken to protect Plaintiffs’ First Amendment rights, including lifting the stay, ordering expedited discovery into the investigation of medical providers for constitutionally protected conduct, setting a schedule for briefing of a renewed motion for a preliminary injunction, or expanding the scope of the existing preliminary injunction to run against the Boards.²

² Plaintiffs are concerned that disclosure to the defendants of the source or sources of their information about the investigation would expose the source or sources to retaliation. Plaintiffs are prepared to share that information with the Court *ex parte* if necessary.

For the foregoing reasons, Plaintiffs respectfully request that the Court schedule an emergency status conference at its earliest possible convenience and order counsel for AG Labrador and the Boards to attend.

RESPECTFULLY SUBMITTED this 11th day of December, 2024.

/s/ Colleen R. Smith
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2024, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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